

PUBLIC COMMENT

March 26, 2024

Jose Lopez
President
Board of Appeals Commission
49 South Van Ness Ave, Suite 1475
San Francisco, CA 94103

RE: Community Tenants Association Support Appeal No. 24-011

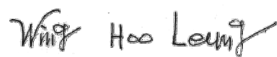
Dear Board of Appeals Commissioners,

I am writing this letter on behalf of the Community Tenants Association (CTA) to support the appeal filed by the Upper Chinatown Neighborhood Association for the project at 45-49 Bernard St (Appeal No. 24-011). The Community Tenants Association was formed in 1987 and has a membership of over 3,000 members, most of whom are low-income tenants living in Chinatown. Our mission is to defend the rights of low-income tenants throughout San Francisco. CTA focuses on tenants' rights, preservation of affordable housing, protection of existing tenants from displacement, and awareness on issues impacting the city's most vulnerable immigrant populations.

Throughout the pandemic, eleven Chinese immigrants were evicted at 45-49 Bernard St. Eight of the former residents are elderly and/or disabled. Nob Hill is home to a significant Chinese American population due to its proximity to Chinatown. However, with the influx of owner move in evictions and the condoization of formerly affordable multifamily homes, we are concerned about the potential loss of affordable housing units in proximity to Chinatown, upon which our monolingual community members heavily depend. Chinatown offers crucial in-language resources that are essential for many residents, driving their choice to reside in this area for convenient access to such amenities and affordable housing options. This would set a precedent for other buildings in the Lower Nob Hill neighborhood changing the affordability of the area.

We strongly urge the Board of Appeal to move forward with the Appeal Request for Appeal No. 24-011.

Sincerely,



Wing Hoo Leung

President of Community Tenants Association

Pacific Avenue Neighborhood Association
(PANA)

Julie Rosenberg
Executive Director
San Francisco Board of Appeals
49 South Van Ness Avenue, Suite 1475
San Francisco, CA 94103
Email: julie.rosenberg@sfgov.org

Re: Case No. 24-0011, 45, 47, & 49 Bernard Street
Hearing Date April 3, 2024

Dear President Jose Lopez, Alex Lemberg, Vice President, Commissioner Rick Swig, Commissioner *John* Trasviña, And Commissioner J.R. Eppler.

My name is Robyn Tucker. I am the Co-Chair of the Pacific Avenue Neighborhood Association (PANA). I am writing to you on behalf of the Appellants in the above-referenced case.

I have known Hanmin Liu for approximately 15+ years. During that time, we have worked together on many projects. I have known him to work only for the betterment of the neighborhood even when he is advocating on behalf of his own property interests.

The development plans that are the subject of this appeal has many problems:

1. The amount of rear yard proposed

Rear yard open space is critical to the health and well-being of our neighborhood residents. Once open space is removed, we never gain it back. The block where the subject property is located has remarkably little open space. Preserving what exists is critical. In addition, the Pacific Avenue Neighborhood Commercial District guidelines require a 45% rear yard setback. The reasoning for this guideline was to create contiguous open space for all neighbors to enjoy in our significantly dense neighborhood. Please preserve the open space that exists by requiring at least 20 feet of rear yard open space from the property line.

2. The Planning Commission justifiably denied the proposed roof deck and spiral staircase.

Residents are living on top of one another already. Add a roof deck to a very population dense neighborhood would be foolish as the entire block and for sure beyond would be negatively impacted by the many abuses that often occur on these spaces.

Please uphold the Planning Commission's decision to deny the roof deck and spiral staircase.

3. Maintain the existing building depth

Any further encroachment beyond the current depth of respondents building will have a negative impact on the Appellant's property and on the entire block. Approval of additional square footage will set a negative precedent for any new developments that follow.

Please ask the respondents to maintain the current footprint of the upper two floors.

Pacific Avenue Neighborhood Association
(PANA)

On behalf of the Pacific Avenue Neighborhood Association, its members and neighbors, thank you for your consideration in this matter.

Respectfully,

Robyn Tucker
Co-Chair, Pacific Avenue Neighborhood Association (PANA)
415-609-5607

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SAN FRANCISCO, CA 94133

Tel: +1-415-410-6617

E-Mail: stephen@white-us.com

24 March, 2024

Mr. José Lopez, President, San Francisco Board of Appeals

re: Appeal No. 24-0011

Dear President Lopez,

I've been a resident in the Upper Chinatown Neighborhood since 1976 and in that time I've gotten to know many of my neighbors including Hanmin Liu and Jennifer Mei.

Not only have they been a general asset to the neighborhood here, but are also known for their generosity and kindness among us. They are both held in deep respect by everyone I know who is acquainted with them, in great contrast to the characterization of them in the Appeal of Constraints by the Hustons. Their claims of a "vitriolic, concerted campaign" and "tactics... to bully other neighbors ..." are odd considering the reality of the Huston's actions and behavior.

These would include tearing down fences without first talking to the affected neighbor, altering or destroying other neighbor's property, extremely shoddy and dangerous work trying to fix it, not being truthful about a 4th unit when they wanted to evict tenants, and then later claiming the 4th unit for their benefit. Some of their immediate neighbors are concerned about their ongoing negative interactions (I'm being polite here) and the unpleasant atmosphere that creates. This is the kind of behavior they project onto others when it is the contrary. In short, they have not been very neighborly from the very beginning. In fact, it seems they have been quite the opposite.

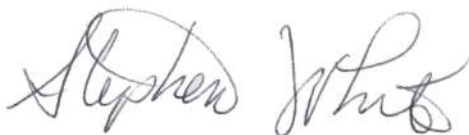
There are, in addition, other very concrete reasons to monitor and constrain their actions, and which do not need to be listed here, but include things like acting prior to obtaining permits, inconsistency in building plans between what was offered to the city and what we were shown, etc.

These actions and behaviors are not ones of trust and integrity, but rather of arrogance, indifference to the laws and rules, and clear lack of respect for city authorities, as well as for others in the community.

I might point out that there exists a blaring and stark contrast to my immediate neighbors here in the Terrace who have been engaged in renovation work during the same time period, and who have been nothing but respectful and easy to get along with during a very drawn out process.

There is no doubt the property needs work, but I strongly urge you to decline the appeal.

Sincerely,



Stephen White

From: [anastasia Yovanopoulos](#)
To: [BoardofAppeals \(PAB\)](#)
Subject: RE Appeal: 45a 45-47-49 Bernard Street
Date: Wednesday, March 27, 2024 3:53:47 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear President of the Board of Appeals Jose Lopez and fellow Commissioners,

RE: 45a 45-47-49 Bernard Street Appeal

I will be making public comment at the Appeals hearing on April 3, 2024 RE: 45a 45-47-49 Bernard Street asking you to deny the Appeal made by the property owners.

Attached please find the letter I wrote on 8/24/ 2022 pertaining to the Discretionary Review hearing re: 45 Bernard Street that provides background information for you and your fellow Commissioners regarding the tenants at the property address.

Sincerely,
Anastasia Yovanopoulos, Coordinator
SF Tenant Union Land Use and Planning Watch Committee

From: anastasia Yovanopoulos Date: Wednesday, August 24, 2022 at 4:53 PM To: Tanner, Rachael (CPC) , KATHRIN MOORE , Imperial, Theresa (CPC) , Ruiz, Gabriella (CPC) , Koppel, Joel (CPC) , Diamond, Susan (CPC) Cc: Ionin, Jonas (CPC)

Subject: 45a 45-47-49 Bernard Discretionary Review

Dear President Tanner and fellow Planning Commissioners,

San Francisco Tenants Union members are extremely distressed that the Huston family chose to purchase a tenant occupied building at 45a 45-47-49 Bernard, causing the permanent displacement of 11 inter-generational Chinese tenants, including people with disabilities from two 3 bedroom units at the property, using Owner Move-in and Relative move-in evictions during the pandemic. Our concern is for the remaining 73 old tenant, who speaks no English and has resided in her apartment for + 40 yrs. We fear the expansions, possibly dragging out construction, will result in a "renoviction". This is another profit driven speculator project, that had a DR not been filed, we would never have known about the evictions, nor been able to reach out to the remaining tenant to ensure that she knows her rights & has community support.

Where are the tenant services the Planning Department supposedly has put in place to investigate tenant issues?

The letter in the case file from Community Tenants Association makes note of the remaining tenant..."We are concerned that the last renter at 49 Bernard will face

indirect displacement."

Commissioners: We hope you'll ask the project sponsor to clarify exactly how the plans will impact the tenant. Will the tenant have to move out temporarily? If so will the relocation payment (of 3 months) be sufficient? What about the seismic work and the ADU project that is planned? What is the time required to complete that work? Due to the expansion plans and a contractor that can drag out construction time so that the relocation funds end, there is a possibility that she cannot return to her home. That is called "Renoviction".

Commissioners before you move to approve any plans, it would be prudent for the Commission to continue this case, so that a written agreement is put in place to ensure the elderly tenant will not also be forced out of her home.

Sincerely, Anastasia Yovanopoulos

SF Tenants Union member, Land Use & Planning Watch Committee

From: [T. Flandrich](#)
To: [Board of Appeals \(BA\)](#)
Subject: Appeal Case No. 24-0011 45a 45 47 49 Bernard Street SUPPORT Appellants Mei and Liu
Date: Wednesday, March 27, 2024 7:33:55 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

27.March 2024

Dear President Lopez and Commissioners,

As the Chair of North Beach Tenants Committee, I write to you today in SUPPORT of the appeal by Appellants Mei and Liu.

Our advocacy group got involved in this case starting in April 2022 as we grew very concerned with elements of a pattern & practice we have seen over the past decade in our Northeast corner which has ravaged our communities, displaced hundreds of our neighbors-Italian, Latinx and Chinese and diminished our communal support of families & elders. Below is a list that signaled a red flag for us and why we got involved:

- Owner Move-In and Relative Move-In Eviction Notices 2020;
- Omission: that a vacant unit-45a (a 4th unit) existed ;
- Only after the evictions, Plans revealed the existence of 4 units
- As the tenants' attorney Stephen Booth stated in the 8/25/22 hearing the evictions were not done in "good faith"
- Renovation plans will inevitably displace the senior tenant
- Draw out the renovations as Hustons both owner and contractor
- Will this be yet another case of permanent displacement for the remaining tenant?

Below is the letter I sent to the Planning Commissioners on August 21, 2022, I also attended & spoke at the August 25, 2022 hearing. I was pleased that Commissioners questions addressed the concerns that I and other tenant advocacy groups brought up and that urban design modifications, to mitigate the loss of yet more mid-block open space-were recommended.

Thank you for your consideration of support,
Theresa Flandrich, North Beach Tenants Committee

Discretionary Review Request (case no. 2020-005176DRP) - Please Take DR

August 21, 2022

Dear Commissioners,

We ask you to grant the DR, as the requestors show not only a disturbing history of evictions at 45-49 Bernard, but additional threats to the Upper Chinatown community. If we as a city did not have Discretionary Review we would never have known the following about 45a 45-47-49 Bernard Street:

Evictions of two intergenerational families, some members with disabilities

A total of 11 Chinese immigrants evicted from their 3 bedroom units at 47 and 49 Bernard and their long-time upper Chinatown community

Owner Move-In & Relative Move-In: Two sisters in their 20s who had homes, but chose to evict these families during the pandemic (8/31/2020 & 8/19/2020)

The new owners did not disclose at the time of evictions that there was a 4th residential unit in the building, an "unoccupied residential unit"

Their planning application dated 8/22/2020 shows 4 existing units; **owners chose not to reveal a vacancy, clearly exhibiting a "lack of good faith" behavior**

Our local ADU ordinance-does not allow an ADU if there has been an OMI in the past 5 years, and here, an end run would be choosing the State ADU program

Of grave concern today, is for the remaining 73 yo Chinese immigrant tenant, resident x 40 yrs, at 45 Bernard. We fear the expansions, a long, drawn out construction period will result in a "reno-viction"

The hearing on this case has been delayed several times due to the sponsors' non-code compliant plans and today, it is unclear what the plans are now. We ask you not to reward "the lack of good faith" behavior that forced 11 people out of their homes, in order to create a larger profit margin. We do support renovation of the 4th unit, 45A, not expansion. We ask that you deny any project that will cause further displacement and harm to this community.

We ask for a clear plan of work that may impact the remaining tenant at 45

Bernard – a timeline, any necessary relocation must be of the shortest duration

We ask for a written agreement clarifying tenant's right to return at the same rent

Lastly, we ask you to maintain, to preserve mid-block open space, especially here in this densely built part of Upper Chinatown, above all for the health, well-being and cultural traditions of this community.

Thank you for your consideration!

Theresa Flandrich

North Beach Tenants Committee

**Attachments also include SF Rent Board Eviction Notices--constraints un 1/11/2025

From: [Moe Jamil](#)
To: [BoardofAppeals \(PAB\)](#)
Cc: [Deborah Holley](#); [Scott Emblidge](#)
Subject: 51 Bernard Appeals - Correspondence in Support of the Appeal of the DR Requestor and against the appeal of the project sponsor
Date: Thursday, March 28, 2024 6:00:19 AM

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Dear Board of Appeals,

I live close to the proposed project on Jones Street two blocks away from the proposed project. In addition to being a neighbor, my wife and I serve on the board of Russian Hill Neighbors. Today, I write for myself to strongly support the appeals of the DR requestors for proposed modifications for this project and reject the appeal of the project sponsors.

Mid-block open space in our neighborhood is in short supply and on this block in particular it is even more scarce due the smaller lot sizes of these buildings. Also in this immediate area of Russian Hill parks and other open space are in short supply. The existing mid block open space should be preserved. This project is out of scale given the context of the block. Given the nature of this block and the small lot sizes modifications to the rear yard while code-compliant present extradiority and unusual circumstances that merit this commissions attention to modify the project. Additionally, the cultural importance of this mid-block open space is well-documented by the DR requestors.

The DR requestors materials are impressive and compelling. It is important to note that under the Alien Land Law Chinese Americans were prohibited from owning property during darker moments of our City's history. When the law was struck down by the US Supreme Court, this particular area of Russian Hill was some of the first properties to be owned by Chinese Americans given the proximity to Chinatown and the Pacific Avenue Commercial Corridor linking Polk Street and Chinatown/North Beach. This corridor was the main thoroughfare prior to the construction of the Broadway Tunnel. That construction also displaced a thriving Mexican American community near Our Lady of Guadalupe church. Standing with the DR requestors and granting their appeal and rejecting the appeal of the project sponsors is the right thing to do to stave off more displacement in this important neighborhood.

The City should also consider stricter land use controls (e.g. SUD or planning code amendment) in this area to prevent future intrusions to important mid-block open space along these important alleys like Bernard, Glover, Russell, Lynch and others.

Please grant the appeal of the DR requestors and reject the appeal of the project sponsors.

Sincerely,
Moe Jamil
Russian Hill

BOARD OF APPEALS
CITY AND COUNTY OF SAN FRANCISCO

HUSTON v. DBI/PDA

APPEAL NO. 24.010

Hearing Date: April 3, 2024

DECLARATION OF GABRIELLA RUIZ

I, Gabriella Ruiz, declare:

1. I present this testimony on my own behalf in response to allegations by a party in the above matter that that I failed to comply with rules regarding conflicts of interest. I seek to clarify the record with respect to those allegations. I do not appear to support or oppose either of the appeals before this body.
2. I served as a commissioner on the San Francisco Planning Commission from April 14, 2022 to February 29, 2024. I served on the commission as a private citizen and on my own time. During that period I was also employed by Chinatown Community Development Center (CCDC). At my request, my colleagues at CCDC were instructed not to communicate with me regarding any matter that may appear before the Commission.
3. Prior to the August 25, 2022 Planning Commission hearing regarding the matter on appeal, no one at CCDC had any communication with me regarding the proposed project at 45 Bernand or the related application for Discretionary Review. Leading up to the hearing the only documents I reviewed regarding the project or the DR application were those that were submitted for the Planning Department file.
4. I had not seen the email by Tan Chow dated August 22, 2022 until last week after it was submitted as a part of Appellant's brief and that brief was brought to my attention. I was not aware, at the time of the August 25, 2022 hearing, that Hanmin Liu may have been a contributor to CCDC. Thus I could not have disclosed that information at the time of that hearing. If I had known such information it would have had no impact on my ability to fairly and impartially consider and vote on the matter.

Dated: March 27, 2024



GABRIELLA RUIZ

March 27, 2024
President Jose Lopez
San Francisco Board of Appeals
49 South Van Ness Avenue, Suite 1475
San Francisco, CA 94103
Email: julie.rosenberg@sfgov.org

RE: Case No. 24-0010, Huston v. DBJ, Hearing Date: April 3, 2024

Dear President Lopez and Commissioners,

I am the Deputy Director of Operations at Chinatown Community Development Center (CCDC). I have been on the executive leadership team for over 10 years. I am writing to address some factual errors and mischaracterizations regarding CCDC in the Appellant Hustons' brief.

In submitting this letter, CCDC is not expressing a position in favor of or opposed to the appeal presented to this commission. This letter seeks to address two issues raised in the Appellants' brief:

1. CCDC has not taken any position for or against the proposed project or the Discretionary Review Application.

The Appellants' brief at pages 4-5 claims that CCDC took a position against their project in the proceedings before the Planning Commission. This is untrue.

The Appellants' claim appears to be based upon two emails contained in their brief's Appendix F, an email by Tan Chow and another by Maggie Dong. Neither of the emails constitute or reflect any position taken by CCDC presented to the Planning Commission.

More specifically, Appellants' brief at p. 4 incorrectly describes a message by Tan Chow on his personal email account as being authored by "leadership of that non-profit

organization.”¹ Tan Chow is a valued CCDC employee, but he is not and has not ever been on CCDC’s leadership team. Furthermore, he does not make or direct CCDC’s public policy positions. As in this instance, Mr. Chow may express his personal opinions on issues but the expression of those opinions is in no way equivalent to a position taken by CCDC.

The email by Maggie Dong included in Appellants' Appendix F also did not express or indicate a position by CCDC. The email was essentially a cover sheet for a document submitted on behalf of another community organization. The document attached was curiously not included in the Appellants' Appendix. A true and correct copy of that attachment, a letter authored by Community Tenants Association, 華協中心 as Exhibit A.

The Community Tenants Association is a well-known independent nonprofit organization in Chinatown. It is not an affiliate of CCDC. It is governed by its own board and makes its own decisions on policy. It also a volunteer, immigrant-led organization. As a community service our staff will occasionally forward communications on behalf of other community organizations with limited access to the internet. That is apparently what occurred in this instance. Merely sending a position statement by another organization does not convey any position by CCDC.

2. Appellants' brief presents a false narrative regarding the relationship between respondent Hanmin Liu, CCDC, and Commissioner Ruiz.

Appellants' brief implies that because of a contribution by respondent Hanmin Liu, CCDC took a position in this matter thus creating a conflict of interest or the appearance of such a conflict.

This narrative is inaccurate for multiple reasons including:

- A. CCDC did not take a position on the project in question.
- B. While CCDC is grateful to the many individuals who contribute to our organization, whether or not a donor is a party to an issue does not determine

¹ I also note that the copy of the Tan Chow email in the Appellants’ filing has been marked to suggest that the addressees are CCDC’s “leadership team.” That is not a correct description of the addressees. The list includes other members of our community who are neither our directors or staff. For example, the text of the email seems to be primarily addressed to “Allen Low” who is neither a director or staff member of CCDC; “Gordon Chin” retired over a decade ago, etc. The list also omits others who are in fact on our leadership team, including notably myself.

our positions on public policy. That is not how our leadership team makes decisions.

- C. Commissioner Ruiz served on the Planning Commission on her own time. CCDC did not seek to influence any of her decisions on the Commission. CCDC staff who interacted with Ms. Ruiz during her time on the Commission were instructed to refrain from any communications with her on any matter that may have appeared before the Commission. Consistent with this protocol we note that the personal email from Tan Chow was not addressed to Ms. Ruiz.

Again, I submit this letter not in opposition to or support of the appeal in question, but rather to correct the record as presented in the Appellants' brief.

Thank you for your attention.

Sincerely,

Whitney Jones
Deputy Director of Operations

Attachment: Exhibit A

Cc: boardofappeals@sfgov.org; corey.teague@sfgov.org; tina.tam@sfgov.org; tinahuston07@gmail.com; hanmin.liu@icloud.com



July 21, 2022

Rachael Tanner
President
San Francisco Planning Commission
49 South Van Ness Ave, Suite 1400
San Francisco, CA 94103

Dear Planning Commissioners,

I am writing this letter on behalf of the Community Tenants Association (CTA) to support the Discretionary Review filed by the Upper Chinatown Neighborhood Association for the project at 45-49 Bernard St. The Community Tenants Association was formed in 1987 and has a membership of over 2,500 members, most of whom are low-income tenants living in Chinatown. Our mission is to defend the rights of low-income tenants throughout San Francisco. CTA focuses on tenants' rights, preservation of affordable housing, protection of existing tenants from displacement, and awareness on issues impacting the city's most vulnerable immigrant populations.

Throughout the pandemic, eleven Chinese immigrants were evicted at 45-49 Bernard St. Eight of the former residents are elderly and/or disabled. Nob Hill is home to a significant Chinese American population due to its proximity to Chinatown. However, with the influx of owner move in evictions and the condoization of formerly affordable multifamily homes, we are concerned that the last renter at 49 Bernard will face indirect displacement.

We strongly urge the Planning Commission move forward with the Discretionary Review Request for the project at 45-49 Bernard St.

Sincerely,

Wing Hoo Leung, President
Community Tenants Association

EVAN M. ROSENBAUM, State Bar No. 310414
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Attorneys for Hanmin Liu and Jennifer Mei

SAN FRANCISCO BOARD OF APPEALS

Public Comment on Case No. 24-0010

Hearing Date: April 3, 2024

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I. INTRODUCTION

In their Appeal Brief for Case No. 24-0010 appealing the issuance of building permit No. 202008222415 for their own project proposed for 45-49 Bernard Street, Lindsey and Tina Huston attack the integrity of Planning Department staff, several members of the Planning Commission, the District Supervisor, and many of their own neighbors. They do not, however, present any coherent basis for overturning the Planning Commission's discretionary review decision that *approved* the Hustons' project with very minor modifications. In fact, as Hanmin Liu and Jennifer Mei, neighbors living adjacent to the Hustons' property, explained in their Appeal Brief for the related Case No. 24-0011, the Planning Commission did not go far enough. On behalf of Dr. Liu and Ms. Mei, we submit this response to the Hustons' Appeal for Case No. 24-0010, scheduled for hearing on April 3, 2024.

II. SUMMARY OF THE HUSTONS' APPEAL REQUEST

The Hustons have made two specific requests of the Board of Appeals. First, they say the Board should reverse the Planning Commission and allow their project to proceed without the minor modifications the Planning Commission required, namely removal of the roof deck, removal of the spiral staircase leading to the roof deck, and modification of the third floor so that it is identical to the second floor. Second, they say the Board should reverse the Planning Department's and Zoning Administrator's "erroneous" determination requiring a rear yard of 17'-9" and instead allow a larger building expansion of an additional 2' into the rear yard for a rear yard of 15'-9".

The Hustons' specific charges quoted from their brief are shown below:

“We appeal these modifications/constraints on the basis that we did not receive a fair and unbiased DR hearing due to the following:

1. Disregard for "Exceptional or Extraordinary Circumstances": The PC's modifications exceeded their authority, failing to demonstrate "exceptional or extraordinary circumstances" prior to making modifications.
2. Bias and Circumvention of Due Process: Three commissioners, taking advantage of a temporary lack of a full commission (5 Commissioners vs. 7 Commissioners), were influenced by:
 - 2.1 Undisclosed communications, meetings & private records exchanged w/ project opponents
 - 2.2 Undisclosed conflicts of interest
 - 2.3 Personal beliefs about owner-move-in evictions (OMI)
 - 2.4 Disparate treatment of planning code based on our "cultural" background.”

“We argue that modifications required by the Planning Department & Zoning Administrator, made after our 311 Notice as a condition for support by the Planning Department for the PC hearing, were erroneous, as the depth of the neighbors property were already legal as the existence of stairs had in fact been approved by the Planning Department, which was further confirmed via a recent variance approval. We ask that the Board confirm the depth approved in our 311 notice is the legally permissible depth into the rear yard at 15'9" (vs. the currently approved depth 17'9").”

III. RESPONSES TO THE HUSTONS’ APPEAL BRIEF CLAIMS

The Planning Commission did not exceed their authority by taking DR, and the Planning Commission provided objective reasons for the required modifications to the plans.

A. The Hustons' claim that the Planning Commission exceeded its authority and failed to demonstrate exceptional or extraordinary circumstances is false.

The Planning Commission has authority to determine whether exceptional or extraordinary circumstances exist in Discretionary Review cases. Here, the Commission based its decision to take DR and modify the project on explicit criteria contained in the Residential Design Guidelines. As stated in the Discretionary Action Memo dated October 4, 2022, the Commission took DR because “[t]here are extraordinary or exceptional circumstances in the case. The proposal complies with the Planning Code and the General Plan, [sic] but does not conform with the Residential Design Guidelines with respect to articulating the building to minimize impacts to light and air to the adjacent buildings.” The Commission’s reasoning is sound given the highly congested nature of this block in Upper Chinatown where access to light and air is already heavily impacted.

B. The Hustons' claim that any of the Planning Commissioners denied the Hustons due process through bias and/or taking advantage of a less than full Commission is nonsensical.

The Hustons nonsensically argue that because only five Commissioners were present at the hearing, the Hustons were somehow disadvantaged. First, the Hustons could have sought a continuance of their matter if they wanted it heard by the full Commission. Second, and more importantly, the Commission’s vote to take DR and require changes to the plan was passed by a **vote of 4-1**, so even if there had been seven Commissioners (and we assume for argument’s sake that the absent commissioners would have voted against DR), the motion still would have passed.

C. The Hustons' accusations that meetings and communications between project opponents and Planning Commissioners had to be disclosed is unfounded and is not a valid reason for their appeal.

The Planning Commission regularly communicates and meets with project sponsors and opponents prior to hearings, and there is no requirement that these activities be disclosed. Communications and meetings are often important for obtaining more information about a project and any objections to supplement the written materials. Unlike the Board of Appeals, the Planning Commission is not a quasi-judicial body, and there is nothing in the San Francisco Department of Planning and Planning Commission Statement of Incompatible Activities that prohibits such communications or requires disclosure. (See <https://sfplanning.org/sites/default/files/resources/2019-03/statement-of-incompatible-activities.pdf>)

D. The Hustons' allegation that Commissioner Ruiz had "undisclosed conflicts of interest" is unfounded and disrespectful.

The Hustons claim that one Planning Commissioner had a disqualifying conflict of interest because she worked for an organization that submitted a letter in opposition to the project. The Hustons mistake two completely distinct public interest organizations. The letter came from the Community Tenants Association (CTA).¹ Commissioner Ruiz was not employed

¹ The Community Tenants Association (CTA) is the largest community-based tenant group that organizes to defend the rights of low-income tenants throughout San Francisco. With over 1700 members, CTA advocates for the interest of the community and fosters immigrant leadership to lead citywide issues impacting tenants.

by the CTA but rather by a completely separate organization, the Chinatown Community Development Center (CCDC).

E. The Hustons' accusation that they were treated unfairly due to the Planning Commissioners' opinions regarding OMI evictions is unfounded.

The Planning Commissioners did not act improperly by asking questions about evictions and including a condition in the motion taking DR stating that “The Commission recognizes the Rent Control Ordinance and its direct impact as it relates to tenant rights, owner move-in evictions, the need to be able to locate previous tenants, first right of refusal at their previous rent rates, and that the current tenant may continue their tenancy for as long as they wish.”

One of the responsibilities of the Planning Commission is to evaluate projects in the context of the San Francisco General Plan. (San Francisco Charter section 4.105.) The San Francisco Housing Element contains goals and policies aimed at “stabilizing tenants and rental housing” and “eviction prevention and anti-displacement.” The reasons for these policies are that

Tenants often face greater housing precarity because they do not own their own homes and are more likely than homeowners to be lower income, face high housing cost burdens, and are often at greater risk of displacement. A majority of San Francisco residents are tenants, so tenant stability is often key to stabilizing communities. In addition, maintaining and preserving rental housing can be an important tool for preventing displacement of renters. The Stabilizing Tenants and Rental Housing program area covers a range of programs meant to help maintain housing security for renters including

Eviction Prevention and Anti-displacement, Tenant Protections, Acquisitions and Rehabilitation for Affordability, and Preserving Rental Unit Availability.

(See https://generalplan.sfplanning.org/11_Housing.htm)

Moreover, the Planning Commission did not base its DR decision on the tenant-related issues. Rather, it expressly based its decision on the adverse impacts on adjacent neighbors of specific features of the project. The Commission's reference to the impacts of tenant displacement is simply a recognition of a general (indisputable) problem, but that reference is not tied to any required modification of the project.

F. The Hustons' statement that they received "disparate treatment of planning code based on [their] 'cultural' background" is unfounded and offensive.

Accusations of "reverse discrimination" (*i.e.*, discrimination against a member of the majority) have become widespread in recent years and are sometimes an unfortunate part of the platform of local, state, and national political candidates. Such claims are often unfounded and simply inflammatory, which is the case here.

First, the Planning Commission based their decision to take DR and modify the project on objective criteria contained in the Residential Design Guidelines. To repeat, according to the Discretionary Action Memo dated October 4, 2022, the reason for the Commission taking DR is as follows: "There are extraordinary or exceptional circumstances in the case. The proposal complies with the Planning Code and the General Plan, [*sic*] but does not conform with the Residential Design Guidelines with respect to articulating the building to minimize impacts to light and air to the adjacent buildings."

Second, this Board should decline the Hustons' invitation to speculate about what was in the minds of individual Planning Commissioners and should instead evaluate the Commission's stated reason for its decision: "[a] government official's motive for voting on a land use issue is, subject to exceptions not pertinent here, irrelevant to assessing the validity of the action." (*Breneric Associates v. City of Del Mar* (1998) 69 Cal.App.4th 166, 184.) As the California Supreme Court has cautioned, an "attempt to divine, through . . . circumstantial evidence, the 'true,' illegitimate, motive for the [agency's] decision to deny [a petitioner's] development permit" is reversible error. (*Ibid.*)

The Hustons' mud-slinging is not limited to Planning Commissioners; they attempt to smear the reputation of Dr. Liu and Ms. Mei, two remarkable philanthropists and advocates for underserved communities. For example, the Hustons allege that Dr. Liu and Ms. Mei made a donation to the Chinatown Community Development Corporation as *quid pro quo* for CCDC opposing the Hustons' project. In fact, as part of their philanthropy, Dr. Liu and Ms. Mei have provided several modest gifts to CCDC since 2012 to support CCDC's work helping the community. The contributions played no role in CCDC's decision making, and the mere fact that Dr. Liu and Ms. Mei have contributed to CCDC in the past did not disqualify Commissioner Ruiz. There is no reason to believe Commissioner Ruiz had any knowledge of the contributions.

G. The Hustons improperly ask the Board of Appeals to reverse a determination by the Planning Department and Zoning Administrator to which they acquiesced: requiring a rear yard of 17'-9".

Perhaps the strangest part of the Hustons' appeal is their request that this Board allow their project to be built further into their rear yard than even the plans the Hustons submitted to

the Planning Commission provided. The Hustons' argument seems to go like this: (1) the Hustons proposed a deeper incursion into the rear yard, (2) Planning staff pointed out that the deeper incursion was unwarranted, (3) the Hustons modified their plans based on staff's recommendation and presented those plans to the Planning Commission, but (4) the Hustons now want to revive the deeper incursion even though it was never considered by the Commission because the Hustons acquiesced in the staff's recommendation.

First, we are unaware of any authority granted to the Board of Appeals to reverse decisions made by Planning staff or the Zoning Administrator, except in the case of a Zoning Determination Letter, which would need to be appealed within 15 days of issuance, and no such letter was issued in this case.

Second, because the Hustons acquiesced in the staff's recommendation requiring the depth of the rear yard and presented revised plans to the public and the Planning Commission showing the revised depth, they cannot now "change horses" and seek a more impactful project than the one the Commission evaluated.

Third, the Planning Staff's and Zoning Administrator's reasons for the modifications are sound and were explained on page 3 of the Discretionary Review Analysis: "The project has been modified from the original 311 notification drawing set, The rear wall of adjacent building at 51 Bernard used for the purpose of rear yard averaging did not qualify and resulted in the reduction of the rear extension being reduced by 2'. Several other changes have been incorporated into the revised drawings of the proposed project dated 7.15.2 2. These include removing the proposed fire escape at the rear, adding exterior decks, and adding a spiral stair to a roof deck- which has been reduced in size from the 311 proposal."

Fourth, and more importantly, as of January 14, 2024, as part of the Constraints Reduction Ordinance, the Planning Code no longer allows rear yard averaging and instead applies a uniform 30 percent required rear yard to the property, or 18', which is 3" less than the 17'-9" setback that the Hustons are challenging in their brief. According to the Zoning Administrator, because the subject permit was issued on January 24, 2024, the new 30 percent setback rule applies to the project. Presumably, the Zoning Administrator therefore will determine that the plans need to be revised to provide an 18' rear yard in compliance with the 30 percent setback rule.


IV. CONCLUSION

For the reasons discussed above, the Hustons' claim that they did not receive a "fair and unbiased DR hearing" is invalid and the changes required by the Planning Commission are consistent with the Residential Design Guidelines. Therefore, we respectfully request that the Board deny the Hustons' appeal.

Dated: March 28, 2024

Respectfully Submitted,

MOSCONE EMBLIDGE & RUBENS
LLP

By: 
Evan M. Rosenbaum

Attorneys for Dr. Hanmin Liu and
Jennifer Mei

From: [Rosenberg, Julie \(BOA\)](#)
To: [Longaway, Alec \(BOA\)](#)
Subject: FW: Letter of Support for Case No. 24-0011
Date: Monday, April 1, 2024 9:37:57 AM

Julie Rosenberg
Executive Director
San Francisco Board of Appeals
49 South Van Ness Avenue, Suite 1475
San Francisco, CA 94103
Phone: 628-652-1151
Email: julie.rosenberg@sfgov.org

-----Original Message-----

From: Sandy Leung <Sandy_Leung@yahoo.com>
Sent: Thursday, March 28, 2024 12:35 PM
To: Rosenberg, Julie (BOA) <julie.rosenberg@sfgov.org>
Subject: Letter of Support for Case No. 24-0011

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March 28, 2024

President Jose Lopez
Vice President Alex Lemberg
Commissioners Rick Swig, John Trasviña, and J. R. Eppler San Francisco Board of Appeals
49 South Van Ness Avenue, Suite 1475
San Francisco, CA 94103

Case No. 24-0011
Hearing Date: April 3, 2024
By Email: julie.rosenberg@sfgov.org

Dear President Lopez, Vice President Lemberg, and Commissioners,

We are lifelong San Franciscans, residing in our beloved city for almost five decades. We grew up in the Upper Chinatown neighborhood and are now raising our daughter in this treasured community. We currently live at 41 Bernard Street, directly adjacent to the permit applicant's building.

We are writing in support of Hanmin Liu and Jennifer Mei's appeal of the building permit at 45-49 Bernard Street (Case No. 24-0011).

We agree with the exceptional circumstances outlined in the appeal:

- A. The permitted 2024 plan set is inconsistent with the plans approved by the Planning Commission.
- B. There are substantial inconsistencies between the ADU Plans currently under review by Planning and the Project Plans.
- C. The project approved will have a significant impact on the mid block open space and does not conform with the Residential Design Guidelines.

- D. There are clarity and Enforceability Issues with DR Action Memo.
- E. There are substantial life safety and open space code compliance deficiencies.

Furthermore, due to the Huston's intimidation tactics and threatening behavior, several monolingual Chinese neighbors who also support this appeal have been afraid to come forward. We support this appeal for ourselves and for those who are too scared to speak up.

Thank you for your time and consideration, Sandy & Johnny Leung
41 Bernard Street
San Francisco, CA 94133