

**PETITION FOR APPEAL**

Planning & Building  
2263 Santa Clara Ave., Rm. 190  
Alameda, CA 94501-4477  
alamedaca.gov  
510.747.6800 • F: 510.865.4053  
Hours: 7:30 a.m.–3:30 p.m., M–Th

Please print clearly. This petition is hereby filed as an appeal of the decision of the:

Planning, Building & Transportation Director, which  
(Planning, Building & Transportation Director / Zoning Administrator / Planning Board / Historical Advisory Board)  
\_\_\_\_\_ for application  
(Denied/Granted/Established Conditions)

\_\_\_\_\_ number PLN20-0047  
(Application Type) (Application Number)  
at 1245 McKay Avenue, Alameda, CA 94501 County of Alameda on 26 March 2020  
(Street Address) (Date of Action)

State the reasons or justification for an appeal (attach additional sheets if needed):

See letter sent on 15 March 2020 to Mr. Dong and attached documents

**Appellant**

Name: John Healy Phone: (510) 865-4123  
Address: P.O. Box 6378, Alameda, CA 94501  
Email: jhealy@healylegal.com

Alameda Municipal Code (AMC) 30-25, Appeals and Calls for Review, provides that within ten (10) days a decision of the Planning, Building & Transportation Director or Zoning Administrator may be appealed to the Planning Board, and decisions of the Planning Board or the Historical Advisory Board may be appealed to the City Council. In addition to the appeal process, decisions of the Planning, Building & Transportation Director or Zoning Administrator may be called for review within ten (10) days to the Planning Board by the Planning Board or by the City Council and decisions of the Planning Board or the Historical Advisory may be called for review by the City Council or a member of the City Council.

**Fees (must accompany this petition)**

Single-Family Residential and Multi-family Residential / Commercial / Industrial: **\$2,082** as of 2019 - 2020  
(Please contact Planning Dept. at (510)747-6805 to confirm current fees)

  
Appellant Signature

John Healy

Print name

26 March 2020  
Date

**FOR OFFICE USE ONLY**

Received by: G.McFann Date Received: 3/26/20

Revised 8/19/2019

G:\Comdev\Forms\Planning Forms\Petition for Appeal.docx

Exhibit 3  
Item 7-B, June 8, 2020  
Planning Board Meeting



# HEALY LEGAL SERVICES

Attorney Services P.O. BOX 6378, Alameda, CA 94501

15 March 2020

Mr. Henry Dong  
Project Planner City of Alameda  
Planning, Building & Transportation Department  
2263 Santa Clara Avenue, Room 190  
Alameda, CA 94501-4477

RE: 1245 McKay Avenue, PLN20-0047 (Action Date 03/16/2020)  
Objection and Request for Entire Planning Board Review

Mr. Dong,

I object to the approval of PLN20-0047 and disagree that your review and approval, as set forth by your notice is ministerial, and CEQA does not apply. The language used in your public notice when citing *McCorkle Eastside Neighborhood Grp vs. City of St Helena* 31Cal.App.5th 80 (Cal Ct. App. 2018) is confusing and unclear. In your Public Notice, you state, "No further environmental review is required according to *McCorkle Eastside Neighborhood Grp vs. City of St Helena*, "Which found that design review for by right projects is ministerial decision" under Public Resources Code Section 21080." Review for by right projects? What does that mean?

I find no language that is beyond "Draft" in a document named "Draft" Objective Design Review Standards that could give you such authority. The Planning Board meet and set forth recommendations on February 10, 2020, but I found no Law in the City of Alameda that gives such authority at this time. Please correct me if I am wrong.

The notice also cites as a separate and independent basis, "A Mitigated Negative Declaration was adopted by the City Council on December 4, 2018." An appeal is proceeding in the 1st Appellate District Division 3 regarding this separate and independent basis you cite.

The entire federal property on McKay Avenue, aka 620 Central, and all of its buildings are on the City of Alameda's Historical Study List. The historic designation of the property in the City's general plan and the City's repeated recognition of the historically significant of the buildings require an EIR. See *League for Protection of Oakland's etc. Historic Resources vs. City of Oakland* (1997) 52 Cal.App.4th 896, 904 [60 Cal.Rptr.2d 821]. See *Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065,1071 [230Cal.Rptr. 413]

I respectfully object to approval of this application without it being heard by the entire Planning Board, City Council & others boards on several grounds, including but not limited to the ministerial approval of senior housing in space zoned A-P Administrative Professional. If Mr. Dong, you are the sole person who is doing this review, a decision outside of an appointed Planning Board would not serve the public good. I will pursue all lawful remedies if necessary, and I respectfully request that you send this application before the entire Planning Board and City Council and hold public hearings.

Respectfully,

  
John Healy



Re: 1<sup>st</sup> Amended Supplemental Materials for Appeal of PLN 20-0047 dated March 26, 2020

Date: April 20, 2020

Subj: The Approval of PLN 20-0047 must be set aside for the following reasons:

First and formally, I am requesting the return of my appeal fee as the authority for which you cite in the planning notice of March 05, 2020, “*McCorkle Eastside Neighborhood Group vs. City of Helena* (2018) 31 Cal. App.5th 80” is not in effect and has not been codified. The “Draft” Objective Design Review Standards have not been approved by the City Council as of the date of the notice. In addition, the Planning Department has not proceeded in a manner required by law, and the determination is not supported by substantial evidence. The use of housing at this location is inconsistent with the City of Alameda’s General Plan. The authority to make this a ministerial decision is inconsistent with the facts and conflicts with the above-cited case.

1. In this notice, The City of Alameda Planning Department appears to be pursuing a plan to approve housing at this location. Please see the Alameda Point Collaborative (APC) application to the Department of Health & Human Services (HHS) acquisition of 620 Central Avenue Northern Parcel. APC, when asked in question (6) Description of how the program will link housing and services? APC’s answer: “Not applicable as permanent supportive housing will not be provided at the proposed project. (The program will offer extensive supportive services and housing advocacy, as described in the application). In further questions by HHS, it was asked several times about permanent supportive housing, and the answer repeated by APC in their amendments was that permanent supportive housing would not be provided. This was further illustrated by the removal of the “Emergency Shelter” plans in APC’s response to HHS.
2. The City of Alameda Planning Department and or staff has no jurisdiction to approve this project as the entire property is on the properly construed City of Alameda Study List. (City of Alameda Charter ARTICLE XXVIII; Alameda Municipal Code (hereinafter “AMC” Sec. 13-21-5b.4).
3. It violates the General Plan of the City of Alameda, which requires that this area be “Office Space”.
4. It violates Measure A, passed by the voters, and incorporated in the City of Alameda Charter Sec. 26.
5. It violates AMC CHAPTER XXX - DEVELOPMENT REGULATIONS ARTICLE I. - ZONING DISTRICTS AND REGULATIONS, 30-4.7 - A-P, Administrative—Professional District), which prohibits housing of any type in an Administrative Professional Zone.
6. It violates AMC - ZONING DISTRICTS AND REGULATIONS 30-8 - CONVERSION TO MULTIPLE HOUSES.



7. It violates the California Environmental Quality Act (hereinafter "CEQA") in that no notice was given as required to the adjacent businesses or the public at large, in either the original CEQA proceedings or these proceedings, Nor was notice given to the following agencies whose approval is required the Bay Area Air Quality Management District ("BAAQMD"), East Bay Municipal Utility District ("EBMUD"), California Department of Toxic Substance Control ("CDTSC"), California Department of Historic Preservation ("CDHP") and the SF Bay Area Conservation and Development Commission ("BCDC").

The original approval is currently on appeal, and any subsequent approvals based on the same purported CEQA approval will also be challenged and set aside on the bases set forth in Alameda County Superior Court Case No. RG 18933140. (Public Resources Code §21092; CEQA Guidelines, §15072(a), §15073, §15074(b).)

8. It violates the City of Alameda City Council Resolutions Nos. 15461, 15474, 15476, and Alameda Ordinance 3234. No Formal Mitigation was provided as required for the removal of toxic and hazardous materials contained throughout the buildings, soil, surrounding water, and air. No provision was implemented to safely mitigate hazardous materials. It should be noted that the project is within 1/4 mile of a public school, which triggers additional requirements under CEQA. On the one hand, the City of Alameda admits that the property requires the removal of hazardous material. While resolving to require a plan for qualified removal experts when found, none is required. (<https://www.alamedaca.gov/GOVERNMENT/FAQs/McKay>).

Further,

9. It violates the AMC for Hearing Procedures. (See AMC 1-8.01 et. Seq.).

10. The timing of the appeal and running of the appeal period violates both the spirit and law of the Presidential, Gubernatorial, and all local Emergency Orders put into place due to the Coronavirus.

11. It appears the City of Alameda Planning Department Staff members have failed to complete the proper amount of due diligence as required in this matter. The Application and subsequent modifications and answers made by APC to HHS are inconsistent with the evidence and conflict with the facts in hand.

12. The City of Alameda is currently experiencing financial hardship, and APC has consistently sought financial help from the City of Alameda for APC's current operations. The Planning Staff has not taken the time to look at the budget proposed by APC on this project as the financial assumptions are not based on reality.

Respectfully Submitted,



John Healy