

Public Hearing
HARB Appeal Hearing
241 South 5th Street
Council Chambers
Monday, July 31, 2025
5 p.m.

Attending: City Councilor Reed, City Clerk Kelleher, Council Solicitor Gombar, Historic Preservation Specialist Johnson, HARB Solicitor Mayfield, and S. Figueroa (appellant) with D. Becker, Esq. – in person and Councilors Butler, Campos, Baez and Miller – virtually.

Ms. Reed called the public hearing for the HARB appeal for 241 South 5th St. to order at 5:08 pm, noting that although the room appears empty, a quorum exists with four Council members attending virtually. She asked Mr. Gombar, Council Solicitor, to conduct the hearing.

Mr. Gombar explained that the purpose of the hearing is to hear the appeal for 241 South 5th St. existing of:

1. Reconsideration of the work in violation that is not in compliance with HARB Resolution 6-2024 as approved at the February 20, 2024 HARB Meeting
 - a. Installation of the vinyl replacement windows on all rear facades
 - b. Infill of window and door openings as described in HARB Res 6-2024
 - c. Replacement of a door opening with a vinyl replacement window at the 2nd floor rear eastern façade of the main building
2. Work in violation that was completed after the above work was denied without HARB or staff approval:
 - a. Painting of the front façade
 - b. Replacement of all windows on the front façade
 - c. Replacement of the front grocer's alley entrance door
 - d. Alteration of the porch at the 2nd floor rear eastern façade of the main building
 - e. Installation of light fixtures at the rear façade
 - f. Installation of mini-split AC units at the rear facades

Mr. Gombar explained that the hearing procedure listed on the agenda will be followed. He noted that a stenographer is present, and he stressed the need to follow the rules of order for testimony. He added that this hearing is being held in accordance with the City's HARB ordinance and Local Agency Law procedures. He explained that during this proceeding Council sits in their quasi-judicial capacity which gives them the ability to deliberate about this matter in executive session prior to rendering a decision.

Mr. Gombar entered the following exhibits:

1. Notice of appeal June 4, 2025 with the application dated April 7, 2025
2. HARB Resolution 6-2024, dated February 20, 2024
3. Notice of Violation Aug 23, 2024 of work not in compliance with the HARB Resolution
4. HARB meeting minutes from May 29, 2025 at which time HARB Resolutions 23 and 24 2025 were issued.
5. HARB Resolution 23-2025, dated May29th denying the owner's request for reconsideration
6. HARB Resolution 24-2025 approving and denying certain work that was completed at the property.
7. Proof of advertisement of this hearing on July 17th and 24th
8. HARB Ordinance

Mr. Gombar stated that prior to beginning the testimony, there is a legal matter to deal with.

Ms. Mayfield, from Hartman, Valeriano and Magovern, stated that she is legal counsel to HARB and Mr. Becker, from Kozloff Stoudt, is representing Steven Figueroa, the appellant.

Ms. Mayfield stated that HARB believes that Council does not have jurisdiction to hear the appeal on the reconsideration of Resolution 6-2024. She stated that the HARB Board heard the appellant's plea for reconsideration of the decision made at the February 2024 meeting; however, there is nothing in the ordinance or any documentation providing HARB with the ability to reconsider decisions. She stated that the HARB ordinance does provide the applicant with the ability to file an appeal to City Council within 30 days of the date of the decision. She added that the HARB board recognizes that the applicant failed to attend the February hearing allegedly due to an illness; however, the applicant failed to contact Ms. Johnson until a few days after the hearing. She stated that the owner also failed to file an appeal within 30 days as provided in the ordinance and he has not provided any reasoning as to why a timely appeal was not filed. She stated that the HARB ordinance does not contain any standards for a late appeal, legally referred to as nunc pro tunc. She stated that generally there must be non-negligent circumstances beyond the party's control and not reasons due to their negligence or that of their attorney. She noted that the appeal was not requested until more than a year had passed which is beyond the scope of nunc pro tunc. Therefore, she asked Council to deny the appeal applied for Resolution 6-2024.

In response , Mr. Becker stated that the appellant is applying under nunc pro tunc because the HARB ordinance contains no language on how a situation like this should be handled. He stated that nunc pro tunc is something that is allowed by the courts; however, he expressed the belief that governing bodies have the right and opportunity to determine how to apply their ordinances. He noted that as the legislative body drafts and approves legislation, they may also decide how it should be applied. He explained that Black's legal definition of nunc

pro tunc means giving someone another opportunity – allowing something to be done after the time when it should have been done. He stated that as Ms. Mayfield stated, Mr. Figueroa was very ill and was not able to contact Ms. Johnson until a few days after the meeting, at which time, Ms. Johnson told Mr. Figueroa that the HARB board considered the application in his absence and the decision would arrive in the mail, not explaining the decision entered by the HARB. Mr. Becker stated that a few days later Mr. Figueroa spoke to Jamal Abodalo, who was the CD Director at the time and Mr. Abodalo advised Mr. Figueroa to proceed as Mr. Figueroa had planned and he would take care of the matter. Mr. Figueroa followed that guidance.

Mr. Becker stated that after additional discussions with City personnel, Mr. Figueroa contacted him for assistance and discussions with HARB representatives, Mr. Lachat and others took place about the need to reconsider the denial of the items at the February 2024 HARB meeting. On May 20, 2025, he and Mr. Figueroa appeared before HARB and HARB refused to reconsider the matter, saying they do not have that jurisdiction. Under this appeal, Mr. Figueroa is requesting fairness due to his reliance on the direction he received from Mr. Abodalo and the opportunity to have Council reconsider this denial. He expressed the belief that Council is well within their rights to do so.

Mr. Gombar asked if any Council members have questions regarding the reconsideration request.

In response to a question from Ms. Reed, Mr. Gombar expressed the belief that specifics on the substance of the matter should not occur at this point in time, as this is a procedural matter.

Mr. Gombar closed the record at this point in time for a sidebar with Ms. Reed. After a few moments, Mr. Gombar went back on record, noting that the Council President's questions is better saved for the testimony portion of the meeting.

In response to a question from Mr. Baez, Mr. Gombar explained that the procedural matter is whether Council should reconsider the HARB decision from February 2024, as it was not timely filed by the applicant. He expressed the belief that Council should take this matter under advisement and continue with the hearing and consider the procedural matter of jurisdiction during deliberations in executive session.

Mr. Gombar stated that the nunc pro tunc matter is taken under advisement and the testimony portion of the hearing will begin.

Mr. Gombar questioned if there were any objections to the entry of the exhibits into the record. Mr. Becker and Ms. Mayfield stated that they had no objections.

Mr. Gombar stated that the two attorneys and their clients have agreed to present offer of proof, rather than the standard question/answer testimony. He explained that during offer of proof the attorneys will summarize the information that would be acquired during questions and answers from the witnesses. Council will also have the ability to ask direct questions from Ms. Johnson and Mr. Figueroa. Mr. Gombar asked Mr. Becker to proceed.

The court reporter administered the oath to Mr. Figueroa.

Mr. Becker stated that after Mr. Figueroa purchased the property at 241 South 5th Street, he began planning to renovate the property and make it a well-appointed and attractive residential property that would attract professionals. He named the building the Lofts at Callowhill and he spent approximately \$1M on the renovations. His property plan was scheduled for HARB review in February 2024 and unfortunately he fell ill with the flu or COVID with a high fever and he was unable to communicate with Ms. Johnson until a few days after the hearing. When he did speak with her to reschedule the hearing, he learned that the HARB board reviewed the application and would render a decision. He then spoke to a City employee who was previously referenced and the employee told him to proceed as planned that he would take care of the issue by speaking with Ms. Johnson and Mr. Figueroa proceeded with the work. After he completed the renovations, he received a Notice of Violation and he then contacted Kozloff Stoudt and discussions on getting on the right path began with Ms. Johnson and Mr. Lachat. He stated that Mr. Figueroa understands that he should not have proceeded without HARB approval. In the moment, he thought that he had permission to do the work from Mr. Abodalo, but in hindsight recognizes that that should not have happened. Mr. Becker stated that Mr. Figueroa asks for forgiveness for making that error and he wishes to take the right path.

Mr. Becker stated that the first step was an application to HARB, which was considered on May 20, 2025. He stated that HARB did a good job at the hearing, approving some work and denying others such as two of the split units. However, they refused to reconsider the decision from February 2024, which is why the matter was appealed to Council.

Mr. Becker stated that the issues they would like Council to reconsider are:

1. The installation of vinyl windows at the rear of the building
2. The closing off of certain window and door openings with brick purchased to replicate the original brickwork in the rear of the building
3. To restore a window original to the building where a door had been installed at some point prior to Mr. Figueroa's ownership
4. The location of the split units

Mr. Becker walked Council through the photographs attached to the application showing pre

and post renovations. Referring to a photo of bricked-in windows, Mr. Becker explained that MetEd did not want the high voltage electric lines to be accessible from any windows and MetEd defined where the electric meter needed to be installed.

Mr. Becker stated that Mr. Figueroa installed new wooden custom windows at the front of the property. The contractor suggested using vinyl at the rear of the property as the rear exterior is approximately 180 feet from the cartway and very difficult to see. He added that the vinyl windows are also custom and the wooden trim was retained. He noted that it is impossible to tell the difference between wooden and vinyl windows from the cartway at the rear of the property. He noted that Mr. Figueroa owns a property in Centre Park and HARB approved the installation of vinyl windows at that property.

Mr. Becker stated that the split units were elevated to the 2nd floor on the side of the property on recommendation of Blue Ridge Alpine Home Air Projects. He entered a spec sheet that explains the need for no more than a 30-foot separation between the exterior condenser unit and the unit inside the building. A greater distance between the units deteriorates the effectiveness of the units and causes problems with the operation of the units. He stated that the units are very similar in appearance to those on many other buildings in various other historic districts.

Mr. Becker asked Mr. Figueroa if the information that was provided was factual. Mr. Figueroa confirmed and he agreed to adopt it as his own testimony.

Ms. Reed stated that some of the photos after 17 appear to be missing. Mr. Becker stated that the photos were part of the HARB application noting that 18 and 19 are views of the front of the building where there were no HARB issues.

In response to a question from Ms. Mayfield, Mr. Becker stated that photo #7 shows the window to door conversion. Mr. Figueroa stated that he has photographs showing evidence that this area of the property was converted from a door to a window, evidenced by the lack of framing and the addition of bricks.

Ms. Mayfield inquired if the alleyway he referenced has a name. Mr. Figueroa stated that the cartway is named Pearl Street.

Ms. Mayfield stated that HARB has photographs showing instances where the electrical wires were painted to match the building. She inquired if Mr. Figueroa would be receptive. He agreed.

Mr. Gombar asked Mr. Figueroa if he has looked into the cost to come into compliance with HARB the decision. Mr. Figueroa stated that the replacement of the vinyl windows with

wood would cost approximately \$60,000+.

Mr. Figueroa stated that he has not looked into moving the MetEd meter because the MetEd supervisor dictated the location of the meter because the wires come directly off of the transformer. MetEd also required the closure of some of the rear windows due to the 600 amps carried by the lines.

Mr. Figueroa explained that he purchased the splits from Blue Ridge and they explained that the interior unit and exterior condenser could not be more than 30 feet apart.

Mr. Becker entered the Blue Ridge specs as exhibit 8 and the splits and generators as exhibit 9. There was no objection from Ms. Mayfield or Mr. Gombar.

In response to a question from Mr. Gombar, Mr. Figueroa stated that he sought out a conversation with Mr. Abodalo after he received the decision and after another City employee suggested the connection. He stated that Mr. Abodalo did not mention an appeal as an option. He expressed the belief that Mr. Abodalo has seen the type of work he performs thus Mr. Abodalo was confident that that same work product would be applied at this property. He stated that Mr. Abodalo only said that he would speak with Ms. Johnson about the need to let him move forward. He added that he remained in conversation with Amy and she visited the property several times, on his invitation. He noted that he received the required Building/Trade permits.

In response to a question from Mr. Gombar, Mr. Figueroa stated that Mr. Abodalo also excused the need for him to obtain a sewage planning module. However, when Mr. Abodalo left the City's employ, Mr. Abodalo's promises fell through and he was forced to take an alternate path.

In response to a question from Mr. Gombar, Mr. Figueroa stated that he owns one additional property at 5th and Windsor, in the Centre Park Historic District. He explained that some of his confusion with the HARB decision was caused by the prior HARB approval he received for vinyl windows and the installation of 2nd floor splits.

In response to a question from Ms. Campos, Mr. Becker reiterated that compliance with the HARB recommendation for wooden windows at the rear of the building would require an additional investment of over \$60,000. Mr. Figueroa is unable to make any alteration to the location of the electric and he cannot relocate the splits in a way that would exceed the specifications for the units.

In response to a question from Ms. Mayfield, Mr. Figueroa stated that the initial quote for wooden rear windows was \$40,000 and he is estimating an additional \$20,000+ for the cost to

remove the existing windows, install the new windows, rip out the drywall and trim them out.

Mr. Gombar entered exhibits 8 and 9 into the record with no objection by the attorneys present.

Testimony from the City

Ms. Mayfield stated that she will continue using the order of proof style testimony. The court reporter administered the oath to Ms. Johnson.

Ms. Mayfield stated that HARB is charged with enforcing the City's Historic District ordinance and compliance with the preservation of the properties within those districts, along with the various policies and procedures adopted by the HARB. She stated that HARB did not have the ability to consider the vinyl replacement windows, as nothing was presented at the original meeting, at the HARB appeal or at this hearing. She noted her understanding of the MetEd directive for the meter, and with the placement of the splits as something similar occurred at the former Red Cross building; however, they are still violations. She asked Council to consider requiring the painting of the electrical wires to match the building, if that portion of the appeal for the box is granted. She noted the existence of a window and door policy.

In response to questions from Ms. Mayfield, Ms. Johnson affirmed the similarity at the former Red Cross building with the location off the splits; however, the owner of the building relocated the splits further down the side of the building so they would be less visible.

Ms. Mayfield entered the window policy as exhibit 10 and two photos of the former Red Cross building from January 2024 as exhibit 11. There was no objection by Mr. Becker or Mr. Gombar.

Mr. Gombar entered exhibits 10 and 11 into the record.

In response to questions from Mr. Gombar, Ms. Johnson stated that Mr. Figueroa did not attend the HARB meeting in February 2024 and the HARB ordinance does not require the applicant to attend and it does allow HARB to consider the application if the applicant is absent. Regarding approvals for Mr. Figueroa's Centre Park property, Ms. Johnson stated that she would need to review the HARB resolution and she noted her recollection that the replacement windows and AC units were installed at the rear of the building and outside view from the public right-of-way.

Mr. Gombar asked Ms. Johnson if Mr. Abodalo had a conversation with her about this application. Ms. Johnson stated that Mr. Abodalo came to her office and told her that he met

with Mr. Figueroa and he asked her for information about the application and the HARB decision. She stated that she explained what occurred and the decision HARB made and he did not provide any other comment on the matter and he never spoke about the issue with her again.

In response to a question from Mr. Miller, Ms. Johnson stated that the Secretary of the Interior requirements have no regulation or instruction about air conditioning units, mini-splits, etc.

In response Mr. Miller questioned what the HARB uses to determine the placement of air conditioning units. Ms. Johnson stated that the HARB works with the applicant to minimize the visibility of the unit on the exterior of the property. She noted that with this appeal the HARB approved all but the two units being contested. The units approved are less visible, as Mr. Figueroa followed the HARB order. She added that the architect on the HARB recommended relocating the two units in question to the roof.

Ms. Reed asked Ms. Johnson if she had frequent conversations with Mr. Abodalo about other properties under HARB's consideration. Ms. Johnson stated that Mr. Abodalo spoke with her only about Mr. Figuero's property after Mr. Figueroa received the violation notice.

Public Comment

Mr. Gombar opened the public comment period, noting that there are no members of the public present and that there are no members present virtually. Ms. Kelleher confirmed that there was no written public comment submitted. He closed the public comment period.

Rebuttal from Applicant

Mr. Becker stated that from his long conversations with Mr. Figueroa, he learned that Mr. Figueroa wishes that he had taken a different approach and that he recognizes that he should not have relied on the guidance from Mr. Abodalo. He asked Council to consider this issue and grant Mr. Figueroa the relief he has requested.

Mr. Figueroa apologized for his missteps causing the need for this appeal. He explained that he assumed that HARB would approve his plan for this building because it was so similar to the plan he used for his 5th and Windsor property. He also now realizes that he should have never trusted the information provided by Mr. Abodalo. He noted his intent was to create a beautiful building within this historic district. He apologized again.

Ms. Reed thanked Mr. Figueroa for coming forward and for the work he has performed within the City's historic districts. She stated that Council appreciates Mr. Figueroa's sincerity.

Mr. Gombar stated that the evidentiary portion of the meeting has concluded. He stated that Council will render a decision via a resolution at the August 11th or 25th regular meeting.

Adjourn – on motion of Mr. Miller and a second from Mr. Butler at approximately 6:15 pm.

Respectfully submitted by Linda A. Kelleher CMC, City Clerk