



# SAN FRANCISCO BOARD OF APPEALS ANNUAL REPORT FY20



# MISSION

---

*To provide an efficient, fair and expeditious public hearing and decision-making process before an impartial panel.*

- Created in 1932 under the San Francisco Charter.
- Quasi-judicial body.
- Provides the final administrative review for a wide range of City determinations.
- Appeals may be taken on decisions to grant, deny, suspend, revoke or modify permits, licenses, and other use entitlements issued by most of the departments, Commissions and other entities of the City and County of San Francisco.



# BOARD MEETINGS

---



- Open to the public and broadcasted on the City’s government television channel and on the Board’s website.<sup>1</sup>
- Held on most Wednesdays starting at 5:00 p.m. in City Hall. Since March 2020, due to COVID-19, meetings are taking place via the Zoom video platform.
- Conducted in accordance with the Rules of the Board of Appeals.
- Closed-captioned on TV.

Meeting agendas, minutes, and appellants’ and respondents’ briefs and other materials associated with the cases heard are posted on the Board’s website.<sup>2</sup>

---

<sup>1</sup>SFGovTV: [http://sanfrancisco.granicus.com/ViewPublisher.php?view\\_id=6](http://sanfrancisco.granicus.com/ViewPublisher.php?view_id=6)

<sup>2</sup>[www.sfgov.org/boa](http://www.sfgov.org/boa)

# BOARD MEMBERSHIP

The five-member Board is comprised of three members appointed by the Mayor and two by the President of the Board of Supervisors. All appointments are to staggered, four-year terms and require approval by the Board of Supervisors.

<i>Commissioner</i>	<i>Appointing Authority</i>	<i>Appointment Date</i>	<i>Term Expires</i>
<i>President Ann Lazarus</i>	Mayor	July 25, 2012	July 1, 2022
<i>Vice President Darryl Honda</i>	Mayor	December 4, 2012	July 1, 2024 <sup>3</sup>
<i>Rick Swig</i>	Board of Supervisors	April 2, 2015	July 1, 2024 <sup>4</sup>
<i>Rachael Tanner</i>	Board of Supervisors	October 30, 2018	July 1, 2022 <sup>5</sup>
<i>Eduardo Santacana</i>	Mayor	July 31, 2019	July 1, 2024 <sup>6</sup>



(L to R) President Ann Lazarus, Vice President Darryl Honda, Commissioner Rachael Tanner, Commissioner Rick Swig and Commissioner Eduardo Santacana.

<sup>3</sup> For FY20, Vice President Honda was an appointee of the Mayor. For FY21, he is an appointee of the President of the Board of Supervisors (Norman Yee).

<sup>4</sup> For FY20, Commissioner Swig was an appointee of the President of the Board of Supervisors. For FY21, he is an appointee of the Mayor (London Breed).

<sup>5</sup> Commissioner Tanner resigned from the Board of Appeals on October 29, 2020 because she was appointed by Mayor Breed to the Planning Commission.

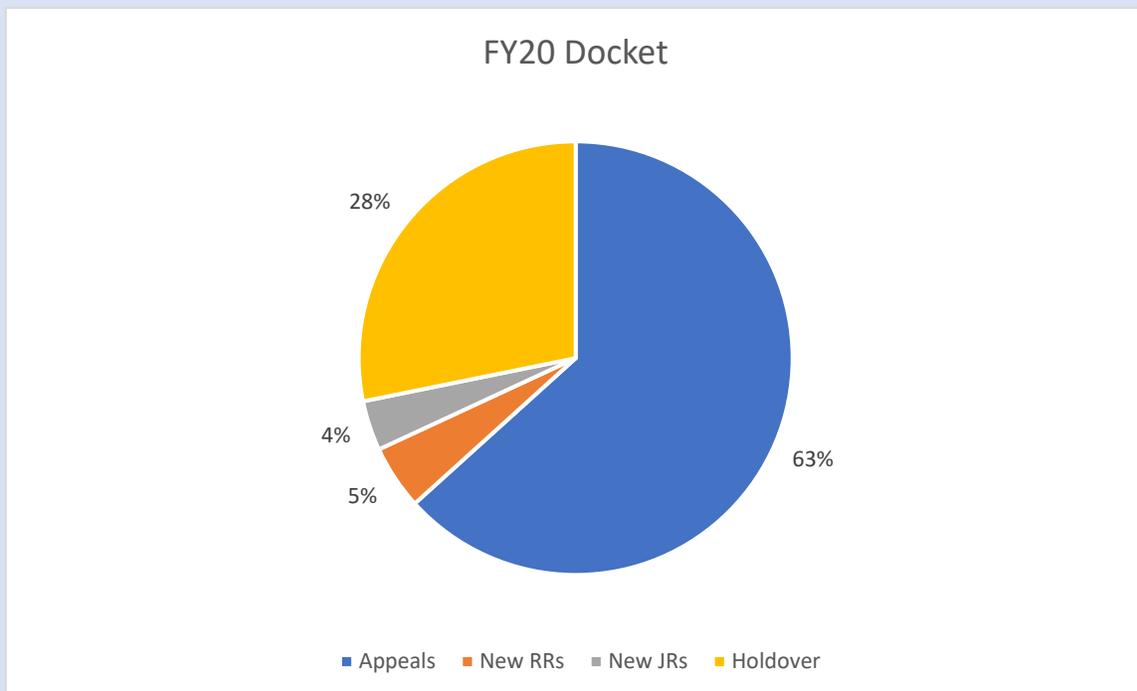
<sup>6</sup> Commissioner Santacana was initially appointed to complete former President Frank Fung's term which expired on July 1, 2020. For FY21, Commissioner Santacana was reappointed by Mayor London Breed for a term that ends July 1, 2024.

# APPEAL EXPERIENCE

---

**188** matters were on the Board's docket during the year:

- New matters filed:
  - 119 appeals.
  - 9 rehearing requests (RRs).
  - 7 jurisdiction requests (JRs).
- 53 pending or continued matters carried forward from prior years (51 appeals, 1 RR and 1 JR).

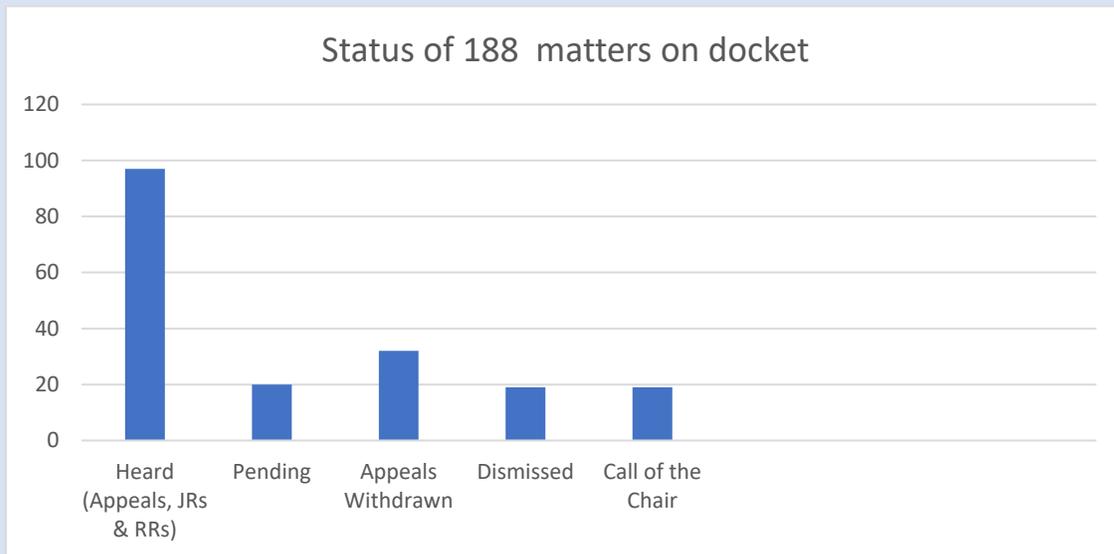


**97** matters were decided by the Board:

- 79 appeals.
- 10 rehearing requests.
- 8 jurisdiction requests.

**91** matters were not heard:

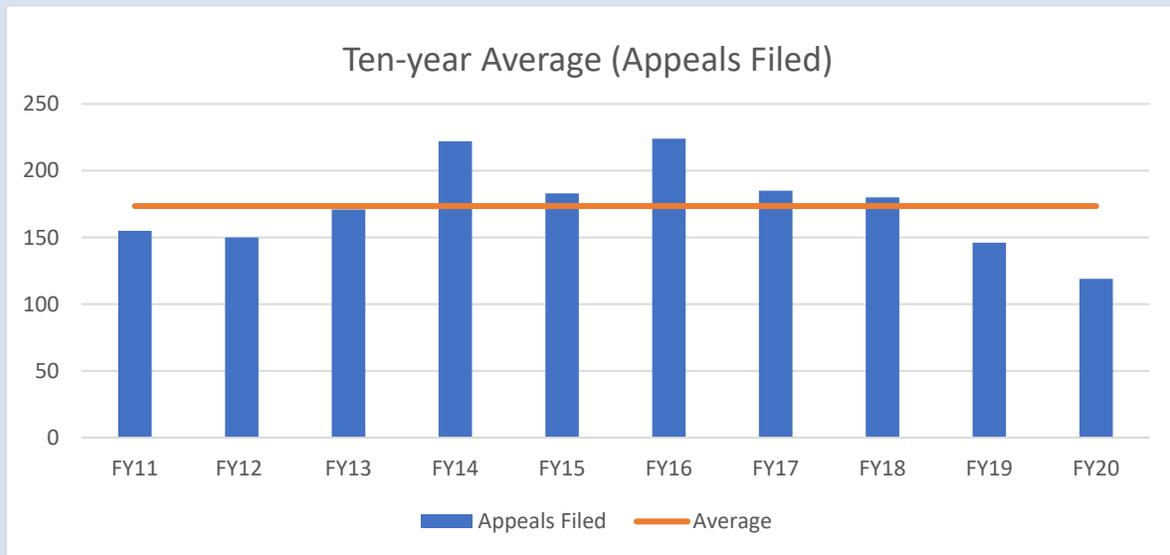
- 20 pending appeals.
- 31 appeals withdrawn.
- 19 appeals remained or were placed on Call of the Chair.
- 19 appeals were dismissed (the appeal was moot because a permit was canceled or a suspension was released).



# Appeal Volume

**119** new appeals

**Below** the ten-year average of 174 appeals per fiscal year.



10-year average = 174 appeals

Changes in appeal volume from year to year can be attributed to a variety of causes, such as fluctuations in the health of the City’s economy, new permitting legislation or business trends that trigger a spike or drop in a particular type of appeal, and specific.

On March 17, 2020, the City was ordered to Shelter-In-Place due to COVID-19. This resulted in significantly fewer appeals being filed in the 4<sup>th</sup> quarter of FY20:

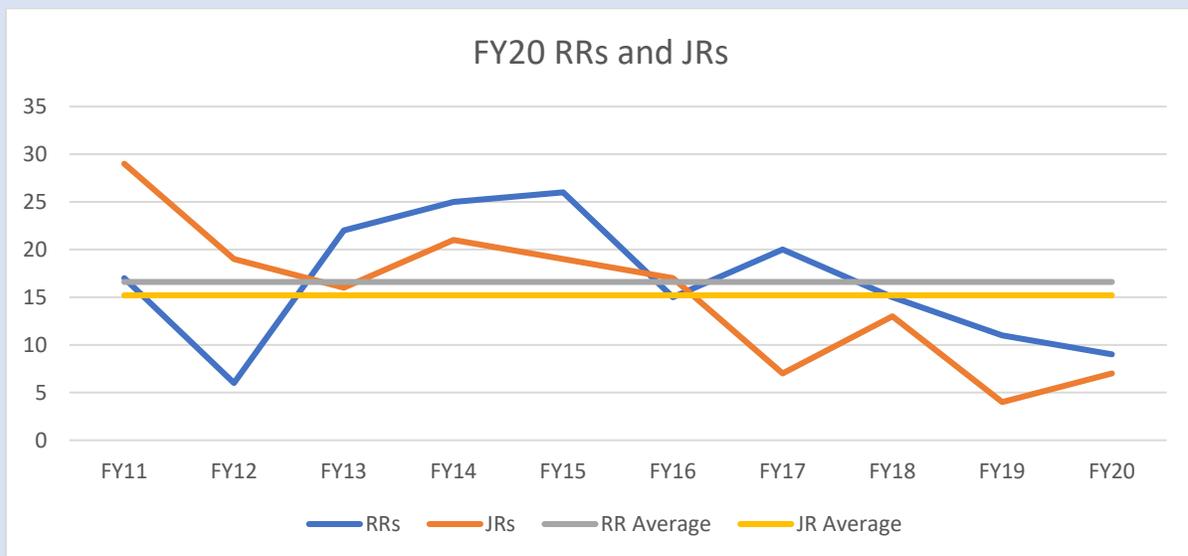
- Q1: 40 appeals filed
- Q2: 36 appeals filed
- Q3: 33 appeals filed
- Q4: 10 appeals filed

# Rehearing & Jurisdiction Requests Volume

Rehearing Requests (RRs) ask the Board for a new hearing to reconsider a hearing decision. The Board may grant a Rehearing Request only upon a showing that there is new evidence that could have affected the outcome of the original hearing or to prevent manifest injustice.

Jurisdiction Requests (JRs) ask the Board to allow an appeal to be filed late on the basis that the City intentionally or inadvertently caused the requestor to be late in filing an appeal.

**9** new Rehearing Requests    **7** new Jurisdiction Requests



The volume of rehearing requests and jurisdiction requests has remained relatively low each year.

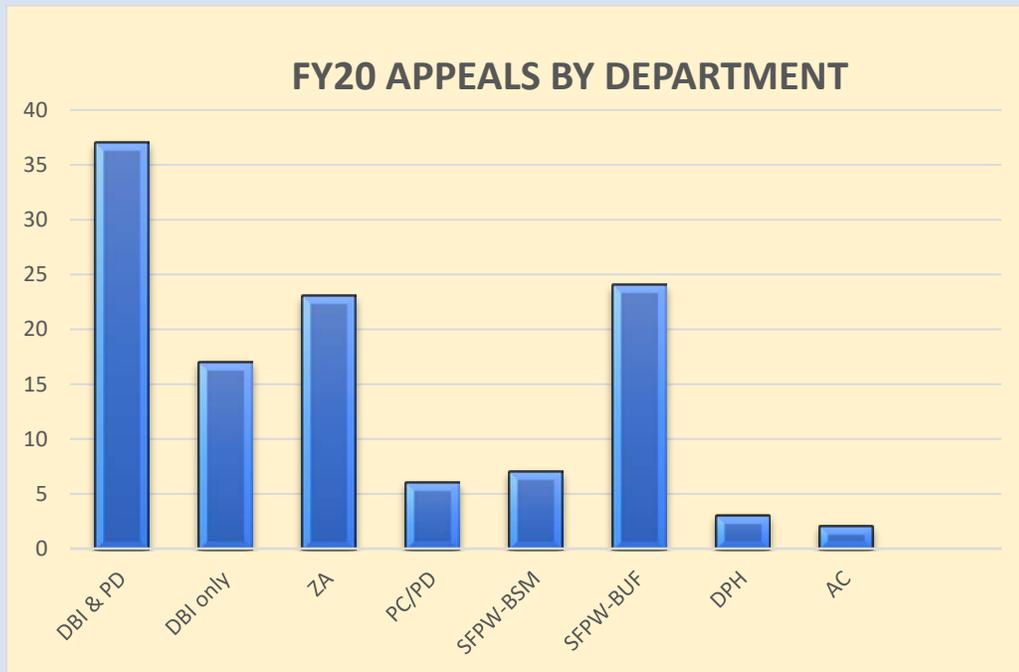
- The ten-year average for rehearing requests: **17**
- The ten-year average for jurisdiction requests: **15**

# Subject Matter

70% of appeals filed were of land-use decisions made by the Department of Building Inspection (DBI), the Planning Department (PD) the Planning Commission (PC) and Zoning Administrator (ZA).

Other permit appeals came from:

- San Francisco Public Works (SFPW): 26%
- Department of Public Health (DPH): 3%
- Arts Commission (AC): 1%





Typical land use cases involve:

- Building Permits (site and alteration permits)
- Accessory Dwelling Units
- Zoning Administrator Decisions:
  - Variances
  - Letters of Determination regarding permitted uses
  - Notices of Violations and Penalties
  - Requests for Suspension of Building Permits
- Planning Commission Actions



**37** appeals filed were of decisions made jointly by DBI and the Planning Department:

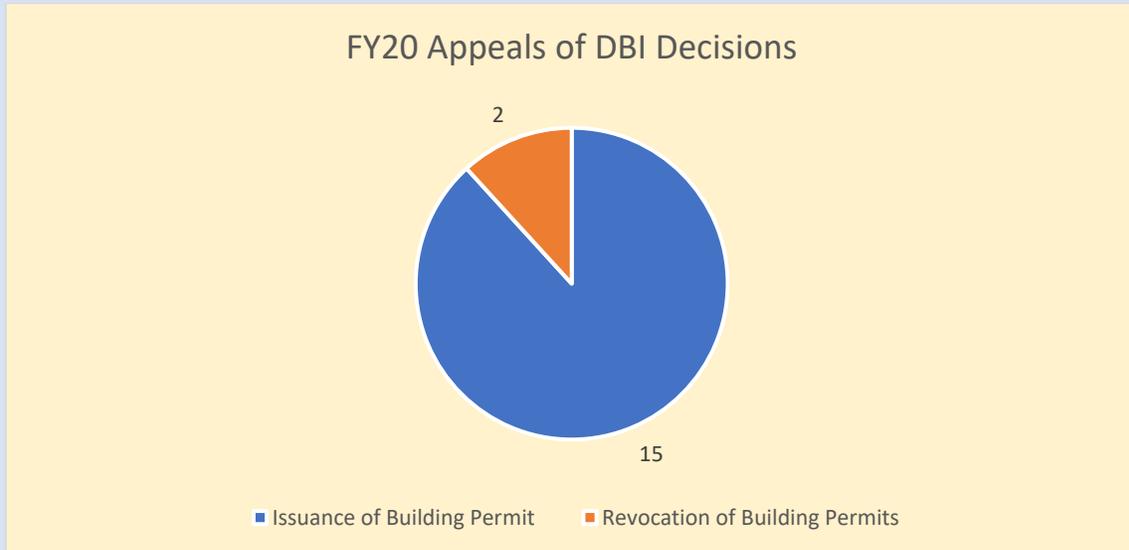
- 37 appeals protested the issuance of building permits; these appeals are typically filed by individuals or groups of neighbors concerned that proposed construction will negatively impact their property or neighborhood.
- No appeals were filed for the denial of a building permit.

Joseph Duffy, Acting Chief Building Inspector, DBI



17 appeals filed were of decisions made solely by DBI:

- 15 appeals protested the issuance of alteration permits.
- 2 appeals protested the revocation of building permits.



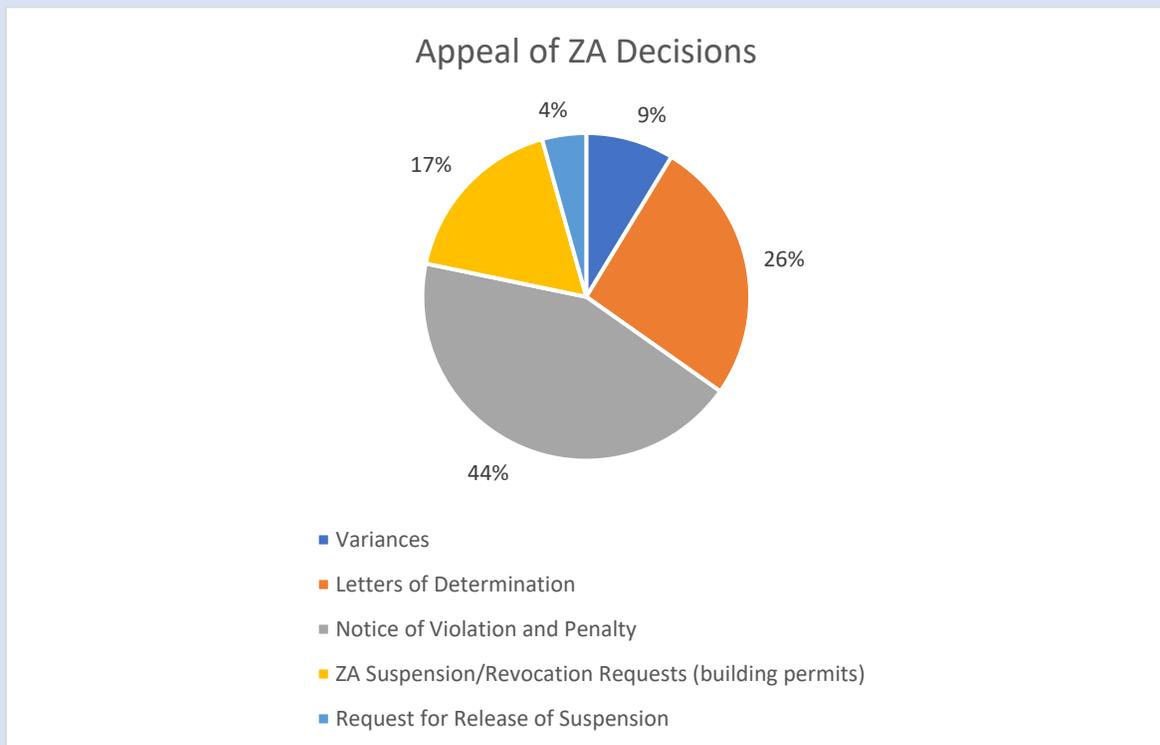


**23** appeals filed were of decisions by the Zoning Administrator:

- 10 appeals protested Notices of Violation and Penalty.
- 6 appeals protested Letters of Determination.
- 4 appeals protested the ZA's Requests to Suspend or Revoke building permits.
- 2 appeals protested the issuance of Variance decisions.
- 1 protested the ZA's Request for Release of Suspension of a building permit.



Scott Sanchez, Deputy Zoning Administrator, San Francisco Planning Department



6 appeals were of Planning Commission/Planning Department decisions:

- **Planning Commission**
  - 2 Section 329 Large Project Authorizations.
  - 2 Section 328 Home-SF Project Authorizations.
  - 1 Section 321 Office Allocation.
- **Planning Department**
  - 1 Request for Suspension of Building Permits.





## Typical Cases from San Francisco Public Works (SFPW)

SFPW Bureau of Street Use and Mapping:

### Wireless Facility Permits



### Mobile Food Facility Permits



## SFPW Bureau of Urban Forestry: Tree Removal Orders



Chris Buck, Urban Forester, SFPW-BUF

Two appellants in FY20 who filed appeals of tree removal orders:



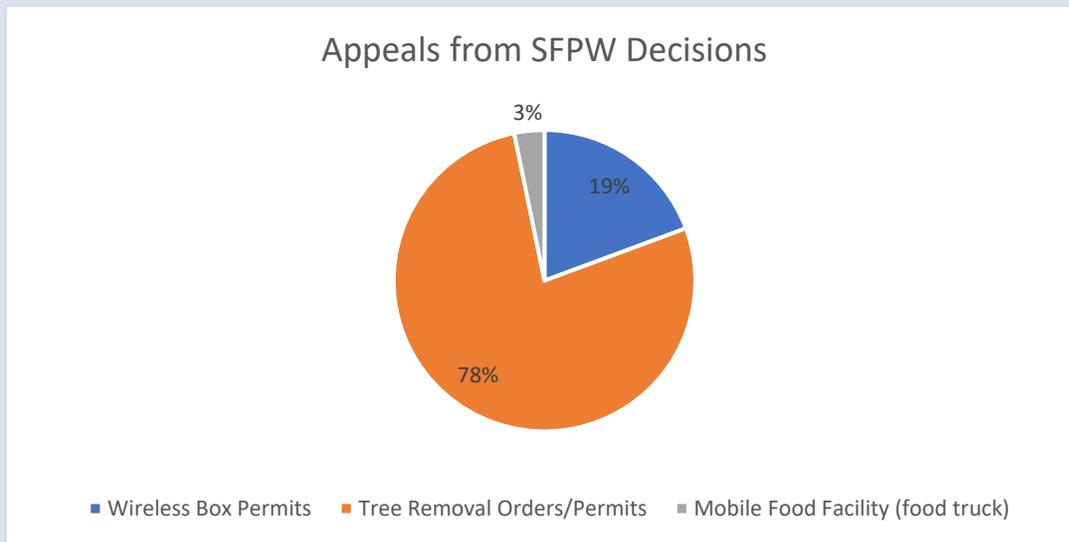
Joshua Klipp



Zach Karnazes

## 31 appeals filed were of decisions made by San Francisco Public Works:

- 24 appeals protested the issuance or denial of orders or permits related to tree removal.
- 6 appeals protested the issuance of Wireless Box Permits for the installation of cellphone equipment in the public right-of-way.<sup>7</sup>
- 1 appeal of a Mobile Food Truck Permit.



<sup>7</sup> The lower volume in wireless box permit appeals (relative to previous fiscal years) can be attributed to the legislative changes to Article 25 of the San Francisco Public Works Code. Article 25 sets forth the local regulations governing wireless facility permits. On June 30, 2019, in Ordinance No. 19-019, the Board of Supervisors amended Article 25 and made significant changes (effective September 9, 2019): Carriers are no longer required to get a permit from Public Works to install wireless facilities on SFPUC and SFMTA poles. The use of these poles will be through a license which is not appealable to the Board of Appeals. Public Works will only issue permits for facilities on PG&E poles. Appeals of these permits must be made directly to the Board of Appeals as Public Works is no longer required to hold a public hearing for these wireless permits.

## Appeals from Determinations of Other City Departments:

### Department of Public Health

- 2 appeals related to Tobacco Sales Establishment Permits.
- 1 appeal of a Cannabis Consumption Permit.

### Arts Commission

- 1 appeal regarding the revocation of a Street Artist License.
- 1 appeal regarding the suspension of a Street Artist License.



# Outcome: 79 Appeals Decided

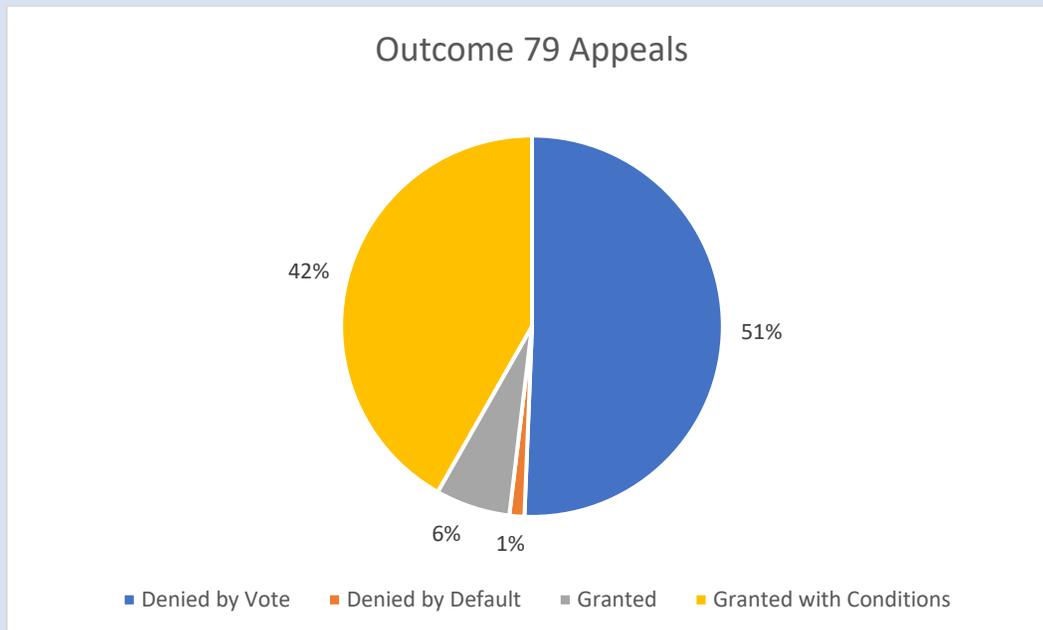
Given the supermajority vote required to grant an appeal, the Board typically denies more appeals than it grants.

**40** appeals were denied by vote resulting in the underlying departmental decision being upheld.

**33** appeals were granted with conditions by the Board: The underlying departmental decision was conditioned or modified in some way.

**5** appeals were granted by the Board with the underlying departmental decision completely overturned.

**1** appeal was denied by default when the Board was unable to muster sufficient votes to pass a motion that would grant or deny the appeal (underlying departmental decision upheld by operation of law).



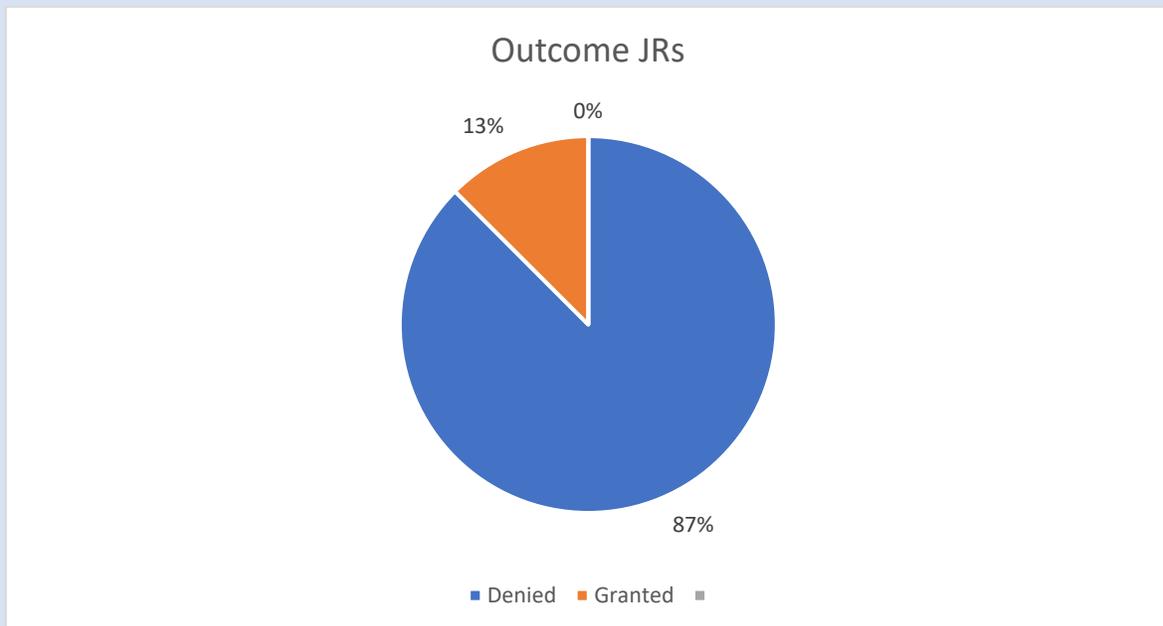
# Outcome: Rehearing & Jurisdiction Requests

10 Rehearing Requests were on the Board's docket in FY20:

- 10 denied.

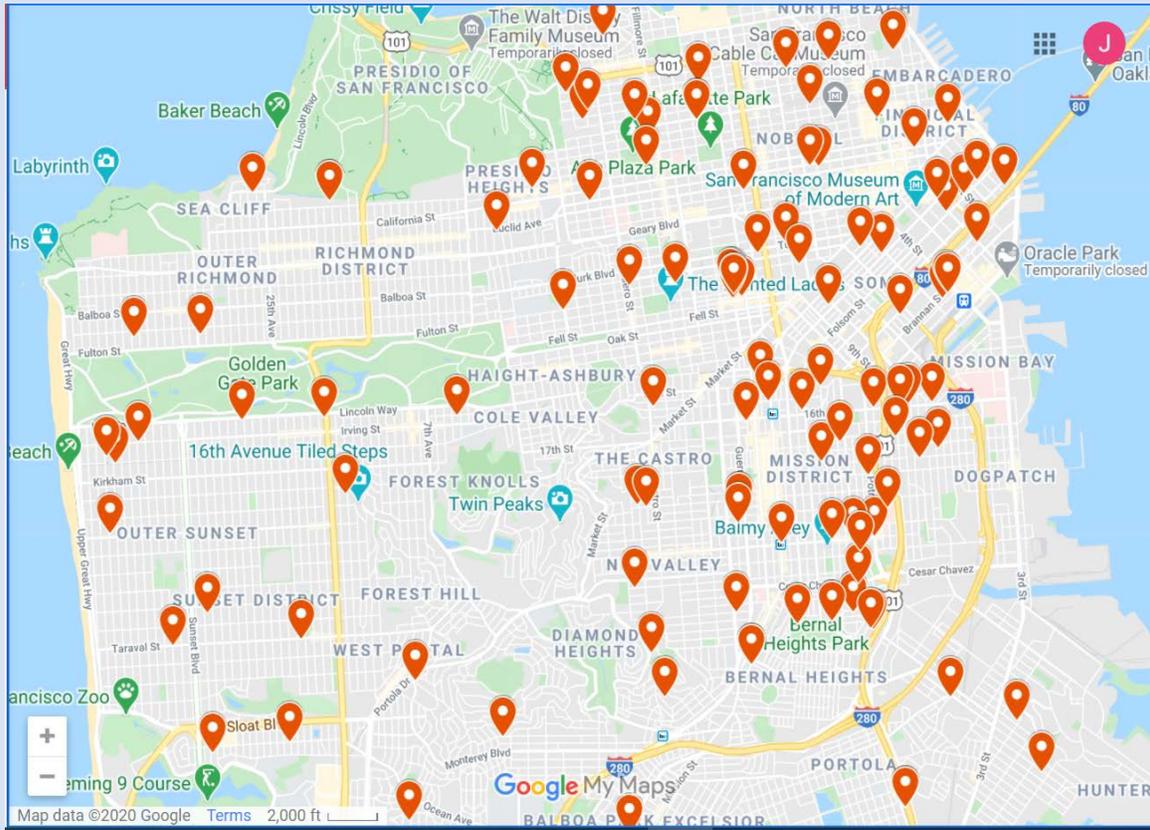
8 Jurisdiction Requests were on the Board's docket in FY20

- 7 denied.
- 1 granted.



# Geographic Distribution

The appeals heard by the Board during the year involve properties located in most of San Francisco's neighborhoods. The highest concentration of appeals is seen in the northeast quadrant.



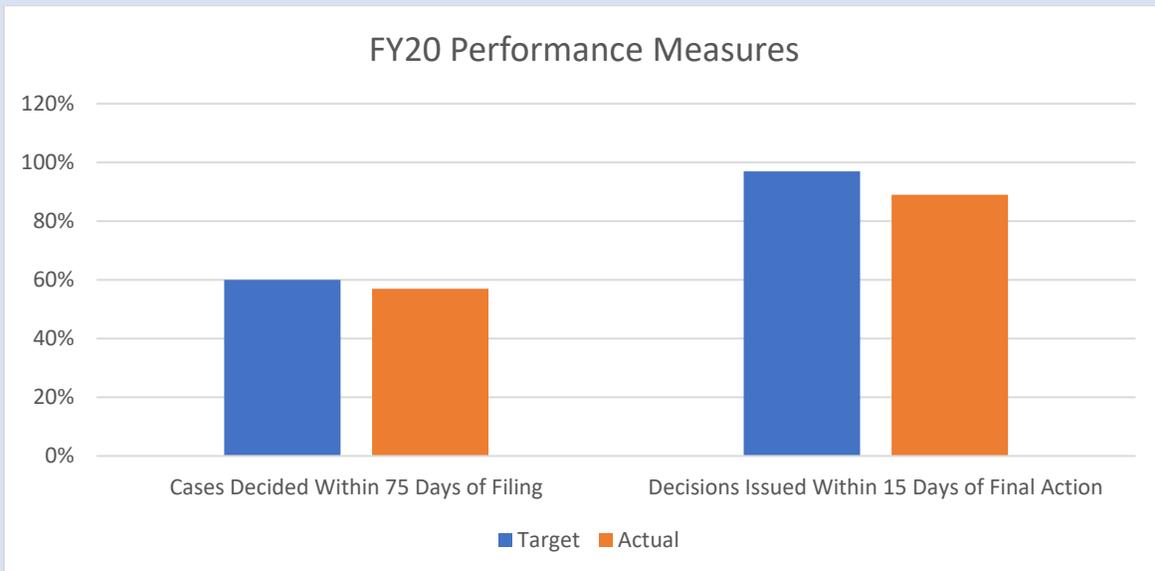
**Geographic Distribution of Appeals Filed in FY20**

## PERFORMANCE MEASURES

City departments are required to report on specific statistical measures as a way of assessing and documenting performance. The two measures unique to the Board look at how long it takes the Board to decide cases and how quickly written decisions are published.

- Measure One: Percentage of appeals that are decided within 75 days of filing (cases decided in FY20).
  - The Board decided 79 appeals in FY20
  - The FY20 target was to decide 60% of the cases within 75 days of filing.
  - The Board did not meet this target: 57% of the cases (45 cases) were decided within 75 days of the appeal being filed.
  - With respect to the 34 cases that were decided more than 75 days after an appeal was filed:
    - The majority were delayed due to rescheduling requests by the parties.
    - Others were delayed because of the COVID-19 Shelter-in-Place Order which became effective on March 17, 2020. This Order resulted in four hearings being canceled before the Board was able to resume with remote hearings via Zoom.
    - Other cases were continued by the Board so that DBI or the Planning Department could conduct site visits and/or work with the parties.
  
- Measure Two: How often written decisions are issued within 15 days of final Board action.
  - The FY20 target was to issue 97% of the written decisions within 15 days of final action. A total of 88 decisions were issued in FY20.
  - The Board issued 89% of the written decisions within 15 days of final action (78 decisions issued within 15 days of final action)

- The Board issued 11% of the written decisions more than 15 days after the final action (10 decisions issued more than 15 days after final action):
  - Four of the ten cases were issued 16 days after final action due to a delay by the Board Office in May 2020.
  - Two out of the ten cases were issued more than 15 days after the final Board action; it was necessary to delay the decisions because they had an associated appeal in which an appellant requested a rehearing.
  - Two out of the ten cases were issued more than 15 days after the final action (issued 20 days after final action) because they were due to be issued on March 17, 2020, the effective date of the Shelter-in-Place order, and were delayed while the Board Office adjusted to the shut-down.



# BUDGET

---

## **REVENUE OVERVIEW**

The Board has two sources of revenue:

- (1) Surcharges placed on permits which are designed to generate the revenue needed to cover operating expenses (96% of the budget)
  - a. Surcharges are collected on new and renewed permits.
  - b. The rates are based on the percentage of cases originating from each underlying department and anticipated permit application volume. These rates are analyzed annually and adjusted if needed.
- (2) Filing fees which are collected when new appeals are filed (4% of the budget).

## **PROJECTED REVENUE**

\$1,163,817 was the projected revenue budget:

- \$1,117,780 in projected surcharge revenue collected by permit issuing departments on new permit applications.
- \$46,037 in projected filing fee revenue collected by the Board when new appeals are filed.

## **ACTUAL REVENUE**

\$785,897 in actual revenue was collected:

- Surcharges: \$718,337.
- Filing fees: \$31,825.
- Federal CARES Act \$35,735.

\$377,920 shortfall from *projected revenue* (32% less than projected).

## **EXPENDITURES OVERVIEW**

### **PROJECTED EXPENDITURES**

\$1,163,817

### **ACTUAL EXPENDITURES**

\$1,249,737 was spent by the Board.

<b>Expenditures</b>		
Operating Budget	Projected	\$1,163,817
	Actual	\$1,082,025
	Savings	\$81,792
Deferred Revenue Account (used for new appeal management system)	Actual	\$167,713
	Total Expenditures	\$1,249,738

Breakdown of Expenditures:

- \$786,043 for salaries and fringe benefits.
- \$259,794 for the services of other City departments, such as the City Attorney, Department of Technology, SFGovTV, and Real Estate (rent).
- \$167,713 final payment for Appeal Management System.
- \$30,025 for specialized services such as neighborhood notification, data production, interpreters; and office management costs such as, photocopier, telephones, and postage.
- \$6,163 for materials and supplies.

**Deferred Revenue Account**

- Given that actual revenue did not meet projections and actual expenditures exceeded actual revenue, the shortfall was covered by a transfer from the Deferred Revenue Account.

<b>FY20 Use of Deferred Revenue</b>	
<b>Actual Revenue</b>	<b>\$ 785,897</b>
<b>Actual Expenditures</b>	<b>\$ 1,249,738</b>
<b>Shortfall which necessitated use of deferred revenue</b>	<b>(\$463,841)</b>

## Surcharges

- The surcharges imposed on appealable permits are intended to recover costs for the Board's expenses.
- Given the surplus in the Deferred Revenue Account, some surcharge fees were lowered in FY18 with the intent to rebalance the Board's cost recovery.
- A reduction in the Deferred Revenue Account is consistent with the goal of rebalancing our cost recovery.
- After conducting an analysis, the Controller's Office only authorized minor increases in certain surcharge amounts for FY20.
- For FY21 there will be small increases in the surcharge amounts for four departments.

### Surcharges

Department	FY17	FY18	FY19	FY20	FY21
Planning	\$25.00	\$18.50	\$18.50	\$19.00	\$20.00
DBI	\$25.00	\$18.50	\$18.50	\$19.00	\$20.00
DPH	\$52.00	\$43.00	\$43.00	\$44.50	\$46.00
SFMTA (TAXI)	\$7.00	\$2.00	\$2.00	\$2.00	\$2.00
SFPW	\$6.50	\$6.50	\$6.50	\$6.50	\$7.00
SFPD	\$26.50	\$6.00	\$6.00	\$6.00	\$6.00
ENT.	\$4.00	\$4.00	\$4.00	\$4.00	\$4.00

## LITIGATION

Parties dissatisfied with a Board determination may seek further review and relief in court. Set forth below is a description of the lawsuits that were filed, pending or resolved during the year, in which the Board is named as a party.

### **New: David Donofrio v. City & County of San Francisco, et al.**

A neighbor challenged the approvals of a home expansion project at 11 Gladys Street in Bernal Heights. After filing a writ petition in the Superior Court, the petitioner has taken no further steps to litigate.

### **Pending: Frear Schmid v. CCSF**

The Historic Preservation Commission granted a Certificate of Appropriateness finding the Arts Commission's proposal to remove a statue entitled "Early Days" from the Pioneer Monument, located in the Fulton Street right of way between the Main Library and the Asian Art Museum, complied with the Planning Code, the Secretary of Interior's Standards for Rehabilitation, and the General Plan. Petitioner appealed the Certificate of Appropriateness to the Board, and the Board denied the appeal and upheld the Historic Preservation Commission's decision. Petitioner filed suit challenging the City's decision to remove the statue on a variety of grounds, including challenging the Board's decision on the appeal of the Certificate of Appropriateness. The Superior Court sustained the City's demurrer to the complaint, finding that the Board did not act in excess of its jurisdiction nor did it abuse its discretion in affirming the Certificate of Appropriateness. The Superior Court entered judgment against Petitioner, and Petitioner appealed. The Court of Appeal heard arguments on November 24, 2020, and we expect a decision within 90 days of the argument.

### **Pending: Contest Promotions, LLC v. City & County of San Francisco, et al.**

In July 2014, the Board of Supervisors approved a settlement of Contest Promotions' previous lawsuit challenging the constitutionality of Planning Code section 602.3, which defines onsite business signs. The Board of Supervisors then amended section 602.3, which clarified that Contest Promotions' signs in San Francisco do not qualify as business signs, but are prohibited general advertising signs. On January 20, 2016, the Board upheld the Planning Department's denial of 35 sign permit applications. Contest

Promotions contends that San Francisco breached the settlement agreement when it amended section 602.3 and when it denied Contest Promotions' sign permit applications. Federal and state courts have dismissed all of Contest Promotions constitutional claims against the amended section 602.3. On March 26, 2019, the Superior Court granted summary judgment to San Francisco on Contest Promotions' remaining claims for breach of contract. The parties agreed that San Francisco's compensable attorneys' fees through entry of judgment was \$500,000. Contest Promotions appealed the dismissal of its contract claims, and the case is fully briefed before the Court of Appeal, as of July 6, 2020. The next step is for the Court to schedule argument.

**Pending: San Francisco Care Center v. CCSF**

The petitioners in this case allege that the City improperly denied a building permit. In 2000, petitioners entered into a development agreement with the City to build an assisted living facility with 112 units. In 2007 after the project was complete, petitioners made unpermitted improvements to remove several assisted living units and create two master administrator suites. The Department of Building Inspection issued a Notice of Violation in 2017. Petitioners sought a permit to legalize the work. The Planning Commission disapproved the permit, and the Board of Appeals upheld that determination in 2018. The petitioners have requested that the City prepare the administrative record. On February 2, 2019, the City demanded that petitioners provide a deposit for the preparation of the record. Petitioners have not responded.

**Pending: Robert E. Gonzales v. San Francisco Board of Appeals**

A lawsuit was filed in Superior Court by an adjacent property owner challenging the Board's August 26, 2015 decision to uphold a permit to erect a building at 333 Pennsylvania Avenue. On January 6, 2016, the Court denied the petitioner's motion for immediate relief, stating it failed to establish that the Planning Code or Residential Design Guidelines were violated. The petitioner has made no further effort to pursue this matter. After the case has been pending 5 years, San Francisco will move to dismiss the case for failure to prosecute.

**Pending: 1049 Market Street, LLC v. City & County of San Francisco, et al.**

Six lawsuits were filed by the owners of a six-story building challenging, among other things, the Board's April 8, 2015 decision to grant an appeal filed by residential tenants protesting the Zoning Administrator's (ZA) Release of Suspension Request on a permit

to convert live-work units to commercial space, and the Board's April 5, 2017 decisions related to the revocation of that permit. One case was filed in federal court and the others were filed in state court.

The state cases assert claims under CEQA, a vested rights theory and several constitutional claims. The federal case focuses on federal constitutional claims. Because the state and federal suits challenge the same conduct and seek the same damages, the federal court agreed to have the state court resolve the issues of local land use law before it determines whether any federal constitutional issues remain. On this basis, the federal lawsuit has been stayed pending the outcome in state court.

In April 2016, the City won the first of the five state court cases on all issues except the jurisdictional issue relating to whether the Board had properly considered the validity of the permit. The court remanded the matter to the Board for reconsideration of whether the ZA erred or abused his discretion in determining that the property's principally permitted use as an office had not been abandoned, but left the Board the option to apply recently adopted legislation requiring a Conditional Use Authorization. The City has since prevailed in the appeal of this case, and that ruling is now final.

Another of the state court cases, which challenges on CEQA grounds the permanent zoning controls adopted by the Board of Supervisors, is before the Court of Appeal but has not yet briefed. In August 2017, another of the state court cases was rejected based on the petitioner's failure to timely serve. The two most recently filed cases, stemming from the Board's 2017 decisions, are still before the trial court.

The parties have reached a settlement and the execution of the settlement is ongoing.

### **Resolved: Cort v. CCSF**

Petitioner filed this case alleging the City improperly suspended or revoked permits at 2551 Mission Street. The property is an old theater that has been empty since 1987. The owner obtained permits to convert the property to a gym with a climbing wall. When concrete from the façade fell on the Mission Street sidewalk, the owner removed the remaining loose concrete, exceeding the scope of the issued permits. The Zoning Administrator requested that the Department of Building Inspection revoke the building permits, and that decision was appealed to and upheld by the Board. The parties settled the lawsuit with the Petitioner paying the City \$200,000 and agreeing to submit a revised project application with a new design in consultation with the Planning Department.

**Resolved: Michael J. Turon v. SF Board of Appeals et al.**

Petitioner sought a permit from the Department of Building Inspection to document the legal use of 2722-2724 Folsom Street as a two-unit residential building. The Department of Building Inspection denied the permit, on the basis that the building contains three residential units. The Board upheld the denial of the permit. Petitioner filed a writ on February 4, 2019 seeking to overturn the denial of the permit. The Petitioner dismissed the lawsuit on April 17, 2020.

**Resolved: Marc A. Bruno, et al. v. City and County of San Francisco, et al.**

This is a petition challenging CEQA categorical exemption for a building permit authorizing façade restoration and garage removal at 20 Nobles Alley in North Beach. The pro per petitioner alleges that the City used an incorrect CEQA baseline and failed to adequately analyze impacts to historic resources. The petitioner also alleges violations of the Sunshine Ordinance and conflict-of-interest rules. On December 26, 2019, the court granted the permit holder's demurrer without leave to amend the petition, finding the petitioner failed to state a cause of action. On January 15, 2020, the court granted judgment against petitioner and in favor of the City and permit holder.

## **SPECIAL RECOGNITION**

Executive Director Julie Rosenberg would like to recognize Alec Longaway, the Board's Legal Clerk, for his outstanding contributions in FY20.

Mr. Longaway has been with the Board since 2012 and has always been a team player who is hard-working and reliable. In FY20, he worked tirelessly to ensure that the Board continued to operate despite the shelter-in-place order related to COVID-19. He was instrumental in setting up the Zoom hearings and managing the technical aspects. Prior to the hearings, he worked closely with all parties to ensure they had access to Zoom, felt comfortable with the format, and could share documents. Mr. Longaway also helped San Francisco Public Works, the Entertainment Commission and the Zoning Administrator set up their remote hearings on Zoom.

Mr. Longaway is well-liked by members of the public and the Board's office staff. He is always helpful, patient and friendly. He is a true professional and an excellent representative for the Board of Appeals! Many thanks to Mr. Longaway for his public service.



Mr. Longaway working from his remote "office" in his garage.