

# **BOARD OF APPEALS**

## **CITY & COUNTY OF SAN FRANCISCO**

### **MEETING MINUTES - WEDNESDAY, MARCH 10, 2021** **REMOTE MEETING VIA ZOOM**

PRESENT: President Darryl Honda, Vice President Eduardo Santacana, Commissioner Ann Lazarus, Commissioner Rick Swig and Commissioner Tina Chang.

Brad Russi, Deputy City Attorney, Office of the City Attorney (CAT); Scott Sanchez, Deputy Zoning Administrator, Planning Department (PD); Joseph Duffy, Acting Deputy Director, Department of Building Inspection (DBI); Carla Short, Superintendent, San Francisco Public Works, Bureau of Urban Forestry (SFPW-BUF); Julie Rosenberg, Executive Director; Alec Longaway, Legal Process Clerk.

#### **(1) PUBLIC COMMENT**

At this time, members of the public may address the Board on items of interest to the public that are within the subject matter jurisdiction of the Board except agenda items. With respect to agenda items, your opportunity to address the Board will be afforded when the item is reached in the meeting with one exception. When the agenda item has already been reviewed in a public hearing at which members of the public were allowed to testify and the Board has closed the public hearing, your opportunity to address the Board must be exercised during the Public Comment portion of the calendar. Each member of the public may address the Board for up to three minutes. At the discretion of the Board President, public comment may be limited to two minutes. If it is demonstrated that comments by the public will exceed 15 minutes, the President may continue Public Comment to another time during the meeting.

SPEAKERS: None.

#### **(2) COMMISSIONER COMMENTS & QUESTIONS**

SPEAKERS: None.

#### **(3) ADOPTION OF MINUTES**

Discussion and possible adoption of the March 3, 2021 minutes.

ACTION: Upon motion by Commissioner Swig, the Board voted 5-0 to adopt the March 3, 2021 minutes.

PUBLIC COMMENT: None.

**(4) SPECIAL ITEM:**

Discussion and possible action regarding presentation by representatives from San Francisco Public Works, Bureau of Urban Forestry, on the fines imposed for illegal tree removal. The presentation will include the legal authority and amount for the fines, the process for imposing fines once Public Works is made aware of illegal tree removal, and the process for changing the fine amounts. Additionally, the Bureau of Urban Forestry will discuss other legal remedies available for illegal tree removal.

**Note: On September 2, 2020, upon motion by Vice President Honda, the Board voted 5-0 to continue this matter to December 16, 2020, with the expectation that the Bureau of Urban Forestry report back on the following items addressed by the Commissioners: (1) the feasibility of instituting bonds as a means of holding contractors and developers accountable, (2) the proposed amendments to the Public Works Code that were shared with members of the Board of Supervisors and the status of these proposed amendments, (3) a review of the fine structure, in general, with the goal of increasing fine amounts and the bases for increasing these amounts, and (4) the legal limitations on imposing punitive fines. Prior to the December 16, 2020 meeting, the matter was rescheduled to January 6, 2021. On January 6, 2021, upon motion by President Lazarus, the Board voted 5-0 to continue this matter to March 10, 2021 to allow time for the preparation of a draft letter by the Executive Director, in collaboration with the Bureau of Urban Forestry, on the topic of additional deterrence for illegal tree cutting. The Board would review this draft letter and consider sending it to the Board of Supervisors.**

**ACTION:** Upon motion by Commissioner Swig, the Board voted 5-0 to adopt the draft letter prepared by the Executive Director in collaboration with the Bureau of Urban Forestry, and further directed the Executive Director to send it to the Board of Supervisors.

**SPEAKERS:** Carla Short, SFPW-BUF.

**PUBLIC COMMENT:** Joshua Klipp, John Nulty, Deetje Boler and Lance Carnes spoke in support of the draft letter.

**(5) JURISDICTION REQUEST NO. JR-21-2**

**Subject property at 4840 Mission Street.** Letter from Vivian Padua and Ivonne Vasquez, requestors, asking that the Board take jurisdiction over Site Permit No. 2019/03/19/5605, which was issued on June 10, 2020. The appeal period ended on June 25, 2020, and the jurisdiction request was filed at the Board office on February 22, 2021. **Permit Holder:** Bridge Housing Corporation. **Permit Description:** 100% affordable housing; erect four stories, one basement, type V-A, 137 residential units and clinic building.

**ACTION:** Upon motion by Commissioner Lazarus, the Board voted 5-0 to deny the request on the basis that the City did not intentionally or inadvertently cause the requestors to be late in filing an appeal.

**SPEAKERS:** Vivian Padua, requestor; Sarah White, agent for permit holder; Steven Vettel, attorney for permit holder; Scott Sanchez, PD; Joseph Duffy, DBI.

**PUBLIC COMMENT:** Josephine Ascianto and Joanna Vincenzi spoke in support of the requestors. Cindy Heavens (MOHCD), Sarah Ogilvie, Theo Randolph and Sam Deutsch spoke in support of the permit holder.

**(6) APPEAL NO. 20-087**

<p>EDMUND LOUIE and MARY PARKS, Appellant(s)</p> <p>vs.</p> <p>ZONING ADMINISTRATOR, Respondent</p>	<p>482 16th Avenue.</p> <p>Appealing the ISSUANCE on December 9, 2020, to Mark Sole, of a Variance Decision (the proposal is to legalize the construction of a rear deck and stairs; the demolition of the previously existing deck was approved by the Planning Dept. in May 2012, however, the deck was reconstructed to be larger than previously existed and the stairs were shifted from the middle of the lot to the northern property line; therefore both the deck and stairs require legalization; the subject property has a required rear yard of approximately 39 feet and the deck and stairs proposed for legalization are entirely located within the required rear yard; the Zoning Administrator granted the rear yard variance). CASE NO. 2019-005619VAR.</p> <p>FOR FURTHER CONSIDERATION</p> <p><b>Note: On January 27, 2021, upon motion by President Honda, the Board voted 3-1-1 (Commissioner Lazarus dissented and President Santacana absent) to continue the matter to February 10, 2021 so that: (1) the determination holder can correct the errors in the plans including the location of the appellants' bathroom windows (relative to the firewall and staircase), the location of the 45% rear yard lot line, and the height and measurements of the staircase, (2) the parties can discuss measures that will mitigate the impacts of the staircase and firewall if they remain in the current location, and (3) the determination holder can provide a statement explaining the cost and requirements for relocating the staircase. On February 10, 2021, upon motion by President Honda, the Board voted 5-0 to continue this Item to March 3, 2021, at the request of the parties. On March 3, 2021, upon motion by President Honda, the Board voted 4-0-1 (Vice President Santacana absent) to continue this Item to March 10, 2021 so that the parties can come to an agreement on the materials to be used for the proposed riser.</b></p>
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**REGULAR MEETING, BOARD OF APPEALS, MARCH 10, 2021 - PAGE 4**

**ACTION:** Upon motion by Commissioner Lazarus, the Board voted 4-0-1 (President Honda absent) to grant the appeal and uphold the variance on the condition that it be revised to require: (1) corrections to the language as stipulated by the Deputy Zoning Administrator (the removal of the reference to the May 2012 permit in the second sentence of the first paragraph of the variance decision given that the replacement of the deck was not included on that permit; this sentence will now state: "The demolition and reconstruction of the previously existing deck was performed without benefit of permit"), (2) that the property owner obtain a variance for the illegal pop-out, and (3) that the property owner submit revised plans which are accurate and show the schematic of the deck presented at the hearing on March 10, 2021 which was adopted by the Board (Labeled: "Remove and Replace Entire Existing Privacy Screen; Made of Translucent Material"), on the basis that this corrects mistakes in the language of the variance decision, creates additional privacy for the appellants, makes the property code compliant, and the variance decision meets the five findings required under Planning Code Section 305(c).

**SPEAKERS:** Mary Parks, appellant; Adina Safer and Mark Sole, determination holders; Scott Sanchez, PD; Joe Duffy, DBI.

**PUBLIC COMMENT:** None.

**(7) APPEAL NO. 21-007**

501 COLUMBUS LLC, Appellant(s)  vs.  PLANNING DEPT., Respondent	507 Columbus Avenue. Appealing the DISAPPROVAL on February 1, 2021, of a Building Permit (permit was for change of use from limited use restaurant to restaurant, no work; permit was cancelled by the Planning Department because the existing business on site is a Specialty Grocer (2015-012815MIS) and is not eligible for a change of use to Restaurant per PC Section 780.3 and Board of Supervisors action 200673/182-20). PERMIT NO. 2020/12/22/1551. FOR HEARING TODAY.
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**ACTION:** Upon motion by Commissioner Lazarus, the Board voted 4-0-1 (President Honda absent) to deny the appeal and uphold the disapproval of the permit on the basis that the existing business at the property is a Specialty Grocery and is not eligible for change of use to a Restaurant under Planning Code Section 780.3.

**SPEAKERS:** Nick Colla, attorney for appellant; Scott Sanchez, PD

**PUBLIC COMMENT:** None.

**ITEMS (8A) AND (8B) SHALL BE HEARD TOGETHER**

**(8A) REHEARING REQUEST FOR APPEAL NO. 20-072**

**Subject property at 5024 & 5030 3rd Street.** Lady Benjamin PD Cannon, Appellant, is requesting a rehearing of Appeal No. 20-072, LADY BENJAMIN PD CANNON vs. ZONING ADMINISTRATOR, decided February 10, 2021. At that time, upon motion by Commissioner Lazarus, the Board voted 5-0 to deny the appeal and uphold the Notice of Violation & Penalty Decision on the basis that the Zoning Administrator did not err or abuse his discretion and the determination was properly issued. **Determination Holder: Charles Jadallah (Property Owner). Determination Description:** Subject lot is improved with a building containing ground floor and basement commercial space and 4 dwelling units (5030 3rd St.) that fronts on 3rd Street, and a detached 3-car garage that fronts Revere Ave.; it also contains a one-story, detached, 700 sq. ft. structure (5024 3rd St) located at its interior corner; subject property is in violation of the Planning Code for noncompliance with section 171; including the establishment of an unpermitted internet service exchange within the basement and ground floor of 5030 3rd Street; and Section 317 for having an unauthorized dwelling unit within 5024 3rd Street. **Complaint No.:** 2018-016696ENF.

**ACTION:** Upon motion by Commissioner Swig, the Board voted 4-0-1 (President Honda absent) to grant the request on the basis that there was new evidence presented.

**SPEAKERS:** Scott Sanchez, PD; Charles Jadallah (property owner). The requestor did not appear at the hearing.

**PUBLIC COMMENT:** None.

**(8B) APPEAL NO. 20-072 TO BE CONSIDERED IF ITEM (8A) IS GRANTED**

<p>LADY BENJAMIN PD CANNON, Appellant(s)</p> <p>vs.</p> <p>ZONING ADMINISTRATOR, Respondent</p>	<p>5024 &amp; 5030 3rd Street.</p> <p>Appealing the ISSUANCE on September 30, 2020, to Charles Jadallah, of a Notice of Violation &amp; Penalty Decision (subject lot is improved with a building containing ground floor and basement commercial space and four dwelling units (5030 3rd St.) that fronts on 3rd Street, and a detached 3-car garage that fronts Revere Ave.; it also contains a one-story, detached, 700 sq. ft. structure (5024 3rd St) located at its interior corner; subject property is in violation of the Planning Code for noncompliance with section 171; including the establishment of an unpermitted internet service exchange within the basement and ground floor of 5030 3rd Street; and Section 317 for having an unauthorized dwelling unit within 5024 3rd Street).</p> <p>COMPLAINT NO. 2018-016696ENF.</p> <p>FOR HEARING TODAY.</p> <p><b>Note: See (8A), above, for the procedural posture of this Item.</b></p>
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## **REGULAR MEETING, BOARD OF APPEALS, MARCH 10, 2021 - PAGE 6**

ACTION: Upon motion by Commissioner Lazarus, the Board voted 4-0-1 (President Honda absent) to grant the appeal and overturn the Notice of Violation & Penalty Decision (NOVPD) on the basis that the Zoning Administrator erred because he did not indicate in the NOVPD that there is a potential path to legalize an Internet Service Exchange through the Conditional Use Authorization process.

SPEAKERS: Scott Sanchez, PD; Charles Jadallah (property owner). The appellant did not appear at the hearing.

PUBLIC COMMENT: None.

### **ADJOURNMENT.**

There being no further business, Vice President Santacana adjourned the meeting at 7:15 p.m.

The supporting documents for this meeting can be found at the following link:

<https://sfgov.org/bdappeal//meeting/board-appeals-march-10-2021-supporting-documents>

A video of this meeting, can be found at the following link:

[https://sanfrancisco.granicus.com/MediaPlayer.php?view\\_id=6&clip\\_id=37999](https://sanfrancisco.granicus.com/MediaPlayer.php?view_id=6&clip_id=37999)