

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
SALVATORE ROMANO,)
Appellant(s))
vs.)
SAN FRANCISCO PUBLIC WORKS)
BUREAU OF URBAN FORESTRY,)
Respondent)

Appeal No. **21-026**

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on March 29, 2021, the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the ISSUANCE on March 26, 2021 to 1234 Lombard HOA, of an Order - Removal by Private Entity (Approval to remove one significant tree on private property without replacement; the tree is a clear safety hazard as it threatens structures immediately adjacent to it and numerous utility lines) at 1234 Lombard Street.

APPLICATION NO. 204540

FOR HEARING ON May 19, 2021

Address of Appellant(s):

Address of Other Parties:

Salvatore Romano, Appellant(s)
1242 Lombard Street
San Francisco, CA 94109

1234 Lombard HOA, Determination Holder(s)
Karen Donovan, Determination Holder(s) agent
1234 Lombard Street, Unit 1
San Francisco, CA 94109



Date Filed: March 29, 2021

**CITY & COUNTY OF SAN FRANCISCO
BOARD OF APPEALS**

PRELIMINARY STATEMENT FOR APPEAL NO. 21-026

I / We, **Salvatore Romano**, hereby appeal the following departmental action: **ISSUANCE** of **Order No. 204540** by the **San Francisco Public Works, Bureau of Urban Forestry** which was issued or became effective on: **March 26, 2021**, to: **Karen Donovan**, for the property located at: **1234 Lombard Street**.

BRIEFING SCHEDULE:

The Appellant may, but is not required to, submit a one page (double-spaced) supplementary statement with this Preliminary Statement of Appeal. No exhibits or other submissions are allowed at this time.

Appellant's Brief is due on or before: 4:30 p.m. on **April 29, 2021**, (**no later than three Thursdays prior to the hearing date**). The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy should be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, chris.buck@sfdpw.org and donovankaren@gmail.com.

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **May 13, 2021**, (**no later than one Thursday prior to hearing date**). The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy should be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, chris.buck@sfdpw.org and romano.sal@icloud.com.

The Board's physical office is closed to the public and hard copies of the brief do NOT need to be submitted.

Only photographs and drawings may be submitted by the parties at the hearing.

Hearing Date: **Wednesday, May 19, 2021, 5:00 p.m.**, via Zoom. Information for access to the hearing will be provided before the hearing date.

All parties to this appeal must adhere to the briefing schedule above, however if the hearing date is changed, the briefing schedule MAY also be changed. Written notice will be provided of any change to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should email all documents of support/opposition no later than one Thursday prior to hearing date by 4:30 p.m. to boardofappeals@sfgov.org. Please note that names and contact information included in submittals from members of the public will become part of the public record. Submittals from members of the public may be made anonymously.

Please note that in addition to the parties' briefs, any materials that the Board receives relevant to this appeal, including letters of support/opposition from members of the public, are distributed to Board members prior to hearing. All such materials are available for inspection on the Board's website at www.sfgov.org/boa. You may also request a copy of the packet of materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

The reasons for this appeal are as follows:

Reason will be provided in the brief.

Appellant: Salvatore Romano (filed by telephone)



San Francisco Public Works
General – Director's Office
49 South Van Ness Ave., Suite 1600
San Francisco, CA 94103
(628) 271-3160 www.SFPublicWorks.org

Public Works Order No: 204540

The Director of Public Works held a Public Hearing on Monday, February 22nd, 2021 commencing at 5:30 PM via teleconference to consider several items related to tree removals. In accordance with Gov. Gavin Newsom's statewide order for all residents to shelter in place and the numerous local and state proclamations, the hearing was held through videoconferencing to allow remote public comment.

The hearing was to consider Order No. 204322, permit 787860, the removal of (one) 1 significant tree on private property without replacement, at 1234 Lombard St. Staff has approved the removal and the public has protested.

Findings:

This tree is a clear safety hazard. It threatens the structures immediately adjacent and numerous utility lines. The public in attendance expressed displeasure in the address recorded in the online database but did not convey issue to the removal itself.

The owner of 1234 Lombard St. applied for the removal permit because the tree trunk originates on their property, as clearly shown in the photos. The original physical posting stated the removal was occurring at "1234 Lombard St." Due to an addressing error in BUF's database the tree was labeled as "1240 Lombard" and therefore was posted on the public removal notification website as "1240 Lombard". However, due to the fact there is only one *Corymbia ficifolia* located on the property line of 1234-1240 Lombard St. this miss-addressing in no way lessened the degree to which the public was notified of the tree's removal. The address of the tree has since been changed to "1234 Lombard" in BUF's database.

The public commented that the owner should be made to replant a new street tree nearby.

Recommendation

After consideration of correspondence and testimony provided, the recommendation is to uphold approval to remove one (1) significant tree without replacement, and approve removal permit 787860.

Appeal:

This Order may be appealed to Board of Appeals within 15 days of March 26th, 2021.

Board of Appeals
49 South Van Ness Ave. suite 1475 (14th Floor)
San Francisco, CA 94103
Phone: 628.652.1150 Email: Boardofappeals@sfgov.org
NOTE: Board of Appeals office is closed until further notice, due to COVID-19

Due to COVID-19 social distancing measures, more information about how to file an appeal can be obtained by calling 628-652-1150 or by emailing the Board of Appeals at Boardofappeals@sfgov.org. For additional information on the San Francisco Board of Appeals and to view the Appeal Process Overview, please visit their website at <http://sfgov.org/bdappeal/>

X

DocuSigned by:

Alvaro Degrafinhed

Degradfinned, Alvaro
Acting Director

BRIEF SUBMITTED BY THE APPELLANT(S)

From: [Salvatore Romano](#)
To: [Rosenberg, Julie \(BOA\)](#); [Robert Aydtlett](#); [Pamela Roussos](#); [Spencer Fleischer](#)
Cc: [donovankaren0408@gmail.com](#); [CROSSMAN, BRIAN \(CAT\)](#); [Buck, Chris \(DPW\)](#); [Lau, Anita \(BOA\)](#); [Longaway, Alec \(BOA\)](#); [Mejia, Xiomara \(BOA\)](#); [RUSSI, BRAD \(CAT\)](#); [Short, Carla \(DPW\)](#); [Walters, Cerise \(DPW\)](#)
Subject: Re: APPEAL FILED NO. 21-026 @1234 LOMBARD STREET
Date: Sunday, April 18, 2021 9:59:55 PM

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

Ladies and gentlemen

The reasons for our appeal as respects this tree are as follows:

1-This tree provides our neighborhood with needed beautiful foliage and should not be cut down.

2-This tree provides privacy to five units.

3-No one in this 1234 H O Association has shown any neighbor any documents that state from a professional that this lovely tree is damaging 1234 H O Association's property .

There are no forensic documents that we know of that state this tree is damaging property.

No one has ever shown us any documents,whatsoever.

4-This 1234 H O association met with neighbors a year ago plus ,and it was decided to not cut down this tree by this very association ,that now submits for a permit to destroy this tree.They trimmed the tree which we were in agreement with.

Again,there remains the absence of any professional documents that this tree is damaging property.

5-This block of Lombard Street has only three trees on the entire south side of the street.

6- This HO association has acted ,not as we San Franciscans act toward one another as neighbors,but rather as a group that acts unilaterally even after meeting and agreeing with their neighbors and members of their own H O association who did not want this tree removed.

This H O association actually waited ,till one of their fellow H O association members wife , (who did not want this tree removed) of 30 years ,dies suddenly ,to submit documents for the tree removal..

Completely staggering shameful and shocking to us and the new widower in their own H O association who is left behind.

He is a gentleman who continues to not want this desecration to proceed.

Chiefly because, it is just another large change in this new widowers life and environment, as the tree provides this widower with foliage to his two bedrooms .

One that he shared with his deceased wife.

We are not ccing this grieving member as a courtesy.

We have made clear to the 1234 HO association members ccd here that we are not interested in hearing from them any longer on this or any other matter!

We look forward to hearing from the appeals board who can hopefully right this tragic wrong from being committed.

Perhaps as much for the 1234 HO association member not ccd here as the rest of the neighborhood.

Respectfully

Salvatore Romano Claudia Roarke

Owners 1242 Lombard street

San Francisco California 94109

Sent from my iPad

On Mar 29, 2021, at 12:38 PM, Rosenberg, Julie (BOA)
<julie.rosenberg@sfgov.org> wrote:

Julie Rosenberg
Executive Director, San Francisco Board of Appeals
49 South Van Ness Avenue, Suite 1475
San Francisco, CA 94103

Please note that the Board's physical office is closed to the public until further notice.

<Special Instructions for Parties.pdf>
<Appeal No. 21-026 @ 1234 Lombard Street.pdf>

BRIEF SUBMITTED BY THE PERMIT HOLDER(S)

**BOARD OF APPEALS
CITY AND COUNTY OF SAN FRANCISCO**

In the Matter of Appeal No. 21-026 - Tree Removal Permit No. 204540 for Tree at 1234 Lombard Street) Brief of 1234 Lombard Street in support of the Department of Public Works determination and opposing the appeal in <i>Romano v. SFPW-BUF</i>
--	--

Submitted on: May 12, 2021

INTRODUCTION

This brief is submitted by the tree removal permit applicant, 1234 Lombard HOA, in support of the Department of Public Works decision granting Permit No. 204540 to remove one tree at 1234 Lombard Street. 1234 Lombard HOA is a small, self-managed HOA for the four-unit building at 1234 Lombard Street, between Polk and Larkin Streets on Russian Hill. This portion of Lombard Street is steep and is 1 ½ blocks from the Crooked Street overlook at Hyde and Lombard Streets. The owners of three of the four units purchased their units almost twenty years ago, and owner of the fourth unit has owned their unit for more than five years. All of the units are generally owner-occupied, although the owner of one of the units is currently living outside the City as a result of the shelter-in-place working arrangements. Stated simply, we live on this block and care deeply about this neighborhood and its amenities, including the street trees and the nearby parks.

In November 2020, Karen Donovan, a resident of 1234 Lombard Unit #1, applied for a permit on behalf of the HOA to remove the large *Corymbia ficifolia*, commonly known as a red flowering gum, that was planted many decades ago adjacent to the building on the western (downslope) side of the driveway. This is the area to the left if you are standing on Lombard and facing our

property. The removal of this tree has been under discussion for several years, and we have tried in the past to negotiate an arrangement for its removal with the neighboring property owner. Mr. Romano objected to the removal and refused to indemnify us for any damage that may result from keeping the tree in place. The tree is currently touching our structure and the adjacent structure. [Exhibit A]. Previously, about 10 years ago, we submitted an application to remove both this tree and the tree on the opposite, upslope side of the driveway. The eastern (upslope) tree was removed at that time. It had damaged the adjacent structure at 1210 Lombard and our HOA was required to reimburse the property owner for some of the damage. Due to the expense of the repairs and other issues, at the time the HOA did not remove the tree that is the subject of this application and appeal. We only recently discovered that there was some residual damage to our building from the roots of the upslope tree and hired a contractor to remove the remaining stump portions and conduct some repairs to prevent water intrusion.

The application to remove the large *Corymbia Ficifolia* at issue was submitted following a vote of the HOA at a meeting last Fall where all residents were present via Zoom due to the need to maintain physical distance. [Exhibit B]. The 1234 Lombard HOA voted for this because of our concerns that there was an immediate threat to our building and we could incur significant repair costs if the tree damages our structure. In February, at the Department of Public Works protest hearing, we presented photos to support our argument that the tree must be removed. [Exhibit C]. Appellant did not appear at the Department of Public Works protest hearing, and although one speaker noted that the notice did not identify the correct property, no speakers at the hearing stated that the tree should not be removed.

Following the February hearing, the Department of Public Works found that the tree is a clear safety hazard that threatens adjacent structures.

ARGUMENT

The finding by the Department of Public Works denying the protest and granting our application to remove the tree should be upheld. No person, with the possible exception of the appellant, has looked at this tree and opined that it is not a threat to our structure and a potential hazard to tourists and residents walking on the sidewalk. We have also submitted an assessment by an arborist who opined that the tree is a hazard. In San Francisco, the *Corymbia ficifolia*, which is native to Australia, is fast growing and has been known to reach a trunk circumference of over 100 inches. The tree also overhangs Lombard Street at an acute angle, and there is the potential for branches and pieces of bark, and even large portions of the tree, to fall on pedestrians traveling on the sidewalk to or from the Crooked Street overlook at Lombard and Hyde Streets. This block gets a lot of pedestrian traffic on weekends, with tourists regularly going past every day during the summer.

We do not dispute that this tree provides the environmental benefits offered by street trees in San Francisco, although these benefits could be outweighed by the environmental impacts of repairing our structure if we were forced to do so. The bright flower clusters that form in late summer are pleasing to view, although they drop to the sidewalk as dry fruit, along with the leaves and occasionally portions of branches. We have trimmed the tree repeatedly over the years and have sought advice on how to control its growth. While we would like to replace the tree, there are a number of utilities in the vicinity that are threatened by the tree and it does not appear that replacement with another tree in that exact location is feasible. [Exhibit D]. These utilities are actually another reason that the tree must be removed. We are willing to make a contribution to Friends of the Urban Forest and to consider a planter box or other green arrangement that will provide aesthetic and environmental benefits to our property and the

neighboring property. It is also important to note that there is another street tree located at our property, closer to the street and upslope of the driveway. We are not proposing to remove that tree and intend to keep in place and to try to ensure that it remains healthy and provides the important benefits of street trees in the City. In addition, there is a significant remodel being undertaken by the upslope property at 1210 Lombard which has involved the removal of trees from the back of the parcel, and we are assuming that the project will appropriately contribute to the greening of the City. We are not opposed to street trees, but we cannot continue to have this tree, because it is a manifest danger creating a significant potential for damage to our structure. Granting the appeal and requiring that the tree remain in place would perpetuate a nuisance and damage our homes. In fact, it is possible that the lengthy delays have already done this.

CONCLUSION

We urge the Board to uphold the Department of Public Works determination without any additional conditions and deny this appeal.



EXHIBIT A

EXHIBIT B – Minutes of 1234 Lombard HOA meeting – November 5, 2020

APPROVED 01/05/2020

11/05/20 - HOA meeting minutes for 1234 Lombard

Meeting Date: 11/05/20

Members Present: ALL

Unit 1: Karen Donovan and Robert Aydlett

Unit 2: Sheldon and Sofy Burke

Unit 3: Sophia, Calla, and Spencer Fleischer

Unit 4: Pamela Roussos

Meeting open

INSURANCE:

- Karen: review travelers policy, spencer to connect Karen w/ John o'Neil, Karen to review any outstanding questions w/ John
- Action: at next HOA meeting, review outcome of research and decide if need to adjust policy

ARCHITECTURAL: Related to 1210 Lombard Construction:

- Basement seems to be drier given construction work done up hill
- For proposed work done on unit 2 and 3 fireplaces:
 - Need detailed drawing of where the chimney meets the fireplace
 - Need to make sure that if they put in framing to support fireplaces that they don't compromise the sound insulation (sound proofing) ... what is happening there?
 - There is some sort of well for the chimney that goes into unit 1 - should make sure Oarcon is aware. Does proposed work impact that space?
 - Lots of items that are causing concern due to the massive renovation. Need to make sure those are going be addressed. e.x. the cracks in Unit #2's walls, front door shifting and not closing, possible pipe issue?. Ensure they are on the final Oarcon list for repairs
- Next Steps: Robert to share key questions with the HOA for review/iteration, to be shared then with Oarcon

TREE:

- Discussion of tree on front side of property, growth rate over past year and current status of root system/ risk evaluation
- Unanimous vote to remove the Tree Abutting the building. Group deems tree to be a significant risk to persons and property and would all like to have it removed. Once process started, see what potentially could be put in to replace it, that would not have the same growth risk
- Unit 3 to work with Chris Wade on identifying the specific process and to connect with Karen. After next steps have been determined, will connect with neighbors to give them an update on our plan. Desire to identify process first.

- Next steps: Fleischer's to get the next steps from Chris Wade, to share with Karen who will start chasing next steps
 - After that will have an arborist / structural engineer determine if an arborist can do it
 - May also want to have the property surveyed prior to extraction, to determine any if any damage is a risk for fault

Meeting closed

EXHIBIT C

1234 Lombard

Removal of tree threatening structure



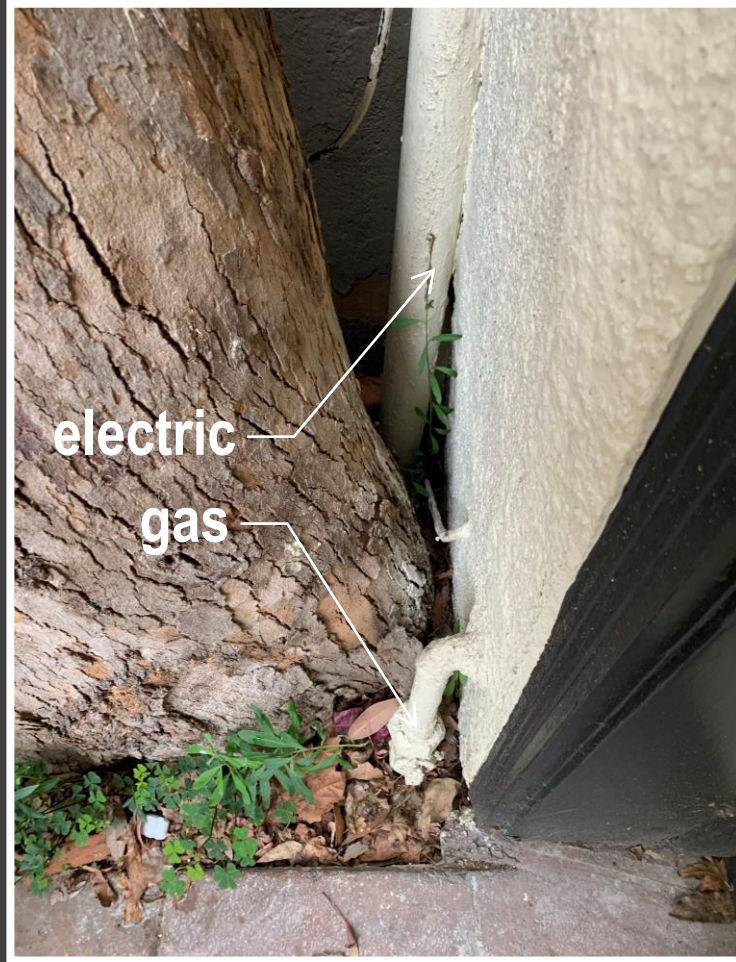
Tree Trunk stands wholly upon the land of 1234 Lombard where it exits ground (See Civil Code §833)



Tree trunk is 1 (+/-) inch from the 1234 Lombard structure and 2.5 (+/-) inches from the 1242



Tree extends over sidewalk on Lombard



Tree is close to pressing against structures



Arborist concluded
that there are
hazards
associated with
proximity to
building and
weight and
distribution of
crown

Arborist stated that if tree remains can
"expect cracking or upheaving of the
building, which can become a safety hazard"



Pruning has occurred in past, but crown is still very full



BRIEF(S) SUBMITTED BY RESPONDENT DEPARTMENT(S)



Appeal No. 21-026 Department's Brief

1234 Lombard St. / Tree Removal Permit No. 787860

RE: Removal without replacement of one (1) significant tree on private property

London N. Breed
Mayor

Alaric Degrafinried
Acting Director

Carla Short
Superintendent

Urban Forestry
49 South Van Ness Ave
Suite 1000
San Francisco CA 94103
Tel 628-652-8733

sfpublicworks.org
facebook.com/sfpublicworks
twitter.com/sfpublicworks

May 13, 2021

The subject tree is a Significant red flowering gum tree (*Corymbia ficifolia*) located on private property at 1234 Lombard St., within 10' of the public right-of-way. A Significant tree is designated in San Francisco's Urban Forestry Ordinance, Article 16 of the Public Works Code, as any tree on private property located within 10' of the public right-of-way that also meets one of the following three size criteria: height greater than 20', canopy width greater than 15', and a trunk diameter greater than 12" at 4.5' above grade.

The subject tree is 5" to 6" inches from the public right-of-way, easily qualifying it as a significant tree. Significant trees have the same permitting requirements as street trees.

The application for tree removal (787860) was submitted on behalf of 1234 Lombard St. There are four individually owned units within the building.

The application for removal was approved at the staff level by the Bureau of Urban Forestry because the tree is causing damage to two properties and is damaging both the gas line and the line providing electricity to 1234 Lombard St.

The reasons for removal stated on the application were that the tree has outgrown the space and is damaging property and foundation. Urban Forestry staff with the Bureau of Urban Forestry inspected the tree and site and confirmed that the tree is physically growing against, and therefore damaging, the property at 1234 Lombard St. and 1240-1242 Lombard St. The lower trunk is contacting both properties, causing damage, and the trunk, several feet above grade, is also causing damage to 1240-1242 Lombard St. This damage is visible in photos that were presented by staff at the Public Works Tree Hearing on February 22, 2021.

In addition to the damage to both properties, as stated above, the tree is also planted on top of, and has grown around the gas line and electricity line. Removal of the lower trunk and stump of the tree will need to be done carefully, by a qualified professional, taking great care to avoid damaging the gas line or electric line, which presents a public safety concern to the professional individuals involved with such work, to the public, and to both 1234 Lombard St. and 1240-1242 Lombard St.

When trees damage sidewalks, due to displacement and/or cracks caused by tree roots, those repairs are considered relatively routine because the sidewalk can be repaired. The Department does not expect a property owner to be subjected to property damage to the physical structure of their home, due to the growth of a tree's trunk against the structure. Moisture also gathers over time between two objects pressed against each other, and large branches or trunks against buildings are known to cause damage from repeated moisture exposure.

Regarding this species, *Corymbia ficifolia*, it is considered a large stature tree at maturity, and should be planted in very wide sidewalks, not within small, confined areas.

With the placement of the tree directly on top of the gas and electric lines to 1234 Lombard St., the tree hasn't outgrown its available space, there never was sufficient space to plant a tree in this location to begin with. In the final page of the Appendix is an example of the same species located at the NW corner of 9th Avenue and Noriega St. The subject tree is still relatively young or "middle aged" and the trunk will continue to grow laterally, further damaging both properties. It is important to visualize the size and girth of the trunk of the same species there at 9th and Noriega, to understand the level of damage that will continue to occur if the subject tree were to remain in place (p. 17 in Appendix).

Our Bureau understands the many benefits the subject tree provides to the residents of both 1234 and 1240-1242 Lombard St. and to the general public as well. For the tree to have remained in such a confined growing environment for so long, testifies to this fact – that despite very obvious site conflicts, the tree has been allowed to remain to this point because it is highly valued.

Regarding replacement options, there is no room to plant the required replacement tree due to inadequate space from utilities and both structures. There is an existing street tree adjacent to 1234 Lombard St., a mayten tree that is the maintenance responsibility of Public Works as of 7/1/2017. There are no street trees adjacent to 1240-1242 Lombard St. and there is no room to plant a street tree adjacent to that property. The next available planting site closest to the subject tree is a space at the curb adjacent to 1248 Lombard St. See Appendix showing

the location of where a street tree may be planted. Our Ordinance does not direct the property owner of 1234 Lombard St. to replace their significant tree with a street tree within the public right-of-way. We can't direct the property owner of 1234 Lombard St. to plant a street tree adjacent to 1248 Lombard St.

If there is any question regarding an applicant's or HOA's ability or right to submit an application on behalf of the ownership, the City does not interpret private contractual arrangements to determine the status of legal rights. Consequently, the City makes no determination as the existence or priority of private legal rights, conditions, covenants, or restrictions over the permitted activities. Therefore, the permit is issued subject to any other approval that the permittee may need to obtain pursuant to any pre-existing private legal rights. In acting on the permit, the permittee specifically acknowledges and accepts this limitation.

Our Bureau asks that the commissioners deny Appeal 21-026 on the basis that the tree removal was properly permitted and on the basis that damage to both properties exists and allowing the tree to remain will increase the damage to both 1234 and 1240-1242 Lombard St.

Respectfully

Chris Buck

Chris Buck

Urban Forester

Appendix (attached)

PUBLIC COMMENT

From: [Pierre Bleuse](#)
To: [BoardofAppeals \(PAB\)](#)
Subject: Appeal No 21-026. URGENT
Date: Thursday, May 6, 2021 5:17:17 PM

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

Dear Members of the board,

Please, by all means let this tree be removed. It is dangerously leaning and in the way of pedestrians, i know that because i hit it with my head once.

It is also rooting under 2 properties and perhaps more as we only see the tip of the iceberg.

If it is allowed to remain, certainly the city could be liable for allowing this situation to continue; it is definitely a hazard in more ways than one.

Thank you for your consideration.

Pierre Marc Bleuse
20 Culebra terrace SF 94109
415-290-6436

Sent from my iPad