SPECIAL INSTRUCTIONS FOR PARTIES

APPROVED PLANS

Permit holders whose building permits have been appealed are strongly encouraged to submit electronic copies of the City-approved plans for the subject project no later than one Thursday prior to the scheduled hearing. If plans are not submitted and the Board needs the plans to make its decision, the resolution of the appeal may be delayed. The Board's physical office is closed to the public and hard copies of the brief or the City-approved plans do NOT need to be submitted.

An electronic copy should be sent to: boardofappeals@sfgov.org.

WRITTEN & ORAL ARGUMENTS

Parties are strongly encouraged, but not required, to submit a written statement (called a "brief") to the Board describing the dispute at issue, outlining their arguments and what action they'd like the Board to take. At the hearing, parties are given time to present their arguments orally to the Board.

Please consider the following information and instructions for written and oral arguments, and written submittals:

Keep in mind the correct standard of review the Board will use in deciding the case.

- For most appeals, the Board applies *de novo* review, which means it hears the case fresh and does not need to defer to the findings of fact or determinations made by the underlying decision-maker.
- Decisions by the Zoning Administrator (ZA), other than Variance decisions, require that the Board defer to the ZA unless the Board finds that the ZA erred or abused his or her discretion. Variance decisions are decided under the *de novo* standard described above.
- In deciding a case, the Board may only uphold, overturn or place conditions on a departmental decision; it cannot remand (send back) a decision to the underlying department for further review or action.
- Jurisdiction Requests: To grant late jurisdiction, the Board must find that the City intentionally or inadvertently caused the requestor to be late in filing the appeal. If a Jurisdiction Request is granted, the requestor will have five days from the date of the Board's decision to file an appeal.
- Rehearing Requests: The Board may grant a rehearing in extraordinary cases to prevent manifest injustice, or where new or different facts or circumstances have arisen that if known at the time of the original hearing could have affected the outcome of the hearing. The written request should state the nature and character of the new facts or circumstances, the names of the witnesses and/or a description of the documents to be produced, and why the evidence was not produced at the original hearing.

Consider the votes needed.

- Appeals: In most cases, an appellant must get four out of the five Board members to vote to overturn or modify a departmental decision. That means it takes the vote of two Board members for the underlying departmental decision to remain unchanged.
- Jurisdiction Requests and Rehearing Requests: Four out of five votes are needed to grant a Jurisdiction Request or Rehearing Request.

Explain what action you'd like the Board to take. The type of action requested will depend upon the nature of the appeal and the party submitting the brief. Some examples include:

- Protest Appeals – when someone objects to a permit or other entitlement issued to someone else:
  - An appellant in a protest appeal typically requests either that the entitlement be denied, or new conditions be placed on the entitlement so that the project is changed in some way (example: new construction be set back further from the appellant's property line).
  - A permit holder in this type of case typically requests that the Board uphold the entitlement as is, with no new conditions.
- Appeals of a Denial, Revocation, Condition, Suspension or Penalty:
  - An appellant who appeals the denial or revocation of his or her own permit typically asks the Board to overturn the denial or revocation.
  - An appeal of conditions placed on a permit seeks to eliminate or modify the conditions.
  - An appeal of a permit suspension or penalty seeks to eliminate or reduce the length of the suspension or the amount of the penalty. Note that in many cases, there is a statutory limit that prevents the Board from completely eliminating a penalty.

Follow the Board's formatting requirements for written submittals. The Rules of the Board of Appeals set out very specific requirements with respect to the length of briefs for different types of cases and how they need to look on the page. Briefs that don't meet these requirements may be rejected.

- All briefs, whether handwritten or typewritten, must be double-spaced. Typewritten submittals shall be in a font size no smaller than twelve (12) point.
- Length:
  - Appeal briefs must not exceed twelve double-spaced pages in length and may include an unlimited number of exhibits.
  - Briefs associated with Jurisdiction Requests and Rehearing Requests must not exceed six double-spaced pages in length and may include an unlimited number of exhibits.
  - At the time an appeal is filed, an appellant may submit a supplementary statement that must not exceed one double-spaced page in length. No exhibits are allowed at that time.
- Exhibits may include photographs, maps, plans, drawings, letters of support or opposition, or any other information or material relevant to the appeal.
- Exhibits may not include additional pages of argument.
- Board members are given an electronic copy of the determination being appealed, the Preliminary Statement of Appeal, and the appellant's initial statement; these documents do not need to be included as exhibits.

- Typewritten briefs must be in a font size no smaller than 12 point.
- Double-sided printing is encouraged, especially for long documents. Do not bind double-sided documents at the top of the page.
- The parties do not need to submit hard copies of their briefs.
- Late or overlong submittals will be rejected. Please contact the Board at least 24 hours in advance of your deadline if you wish to request permission to file a late or longer brief.
- Where exhibits exceed ten pages in length, the Board encourages the submitting party to separate exhibits with tabs and provide a table of contents.

Meet all deadlines and delivery requirements. When an appeal is filed, Board staff will set a briefing schedule, and notify the parties both verbally and in writing, as to when their brief is due.

- Appeals (For hearings scheduled for 11/17/21)
  - Appellant's Brief is due no later than three Thursdays prior to the hearing. The deadline for submission is 4:30 p.m.
  - Respondent's and Other Parties' Briefs are due no later than Wednesday, November 10, 2021 (due to the Veteran's Day Holiday). The deadline for submission is 4:30 p.m.
  - Electronic copies of the brief with exhibits must be sent via email to the Board office by 4:30 p.m. on or before the date it is due to boardofappeals@sfgov.org.
  - Additional copies must be delivered to the other parties on the same day via e-mail.
  - If you do not receive a brief from the other party on the due date, please contact the Board Office to get a copy of the brief via e-mail.
  - All briefs and written public comment submitted to the Board are considered public documents and will be posted on the Board's website.
  - If the hearing date is changed, the briefing schedule may also change. Notice will be sent out by Board staff with any revised briefing schedule.
- Jurisdiction Requests and Rehearing Requests
  - Requestor's Brief is due at the time the request is filed. Requestors do not need to submit hard copies of their briefs. The Board will distribute copies to the other parties via e-mail.
  - Respondent's Brief is due ten days after the request is filed. Electronic copies of the brief with exhibits must be delivered to the Board office by 4:30 p.m. on or before the date it is due. An additional electronic copy must be delivered to the other parties on the same day. If a deadline falls on a weekend or City holiday, it will move to the next business day unless otherwise specified by Board staff.

HEARINGS

- Hearings are conducted via Zoom video platform.
- All parties or their representatives must be present on the scheduled date of the hearing.

- Parties to an appeal shall have seven minutes for presentation and three minutes for rebuttal. Parties to a Jurisdiction Request or Rehearing Request shall have three minutes for presentation and no rebuttal.
- Appellants or Requestors speak first, then the determination (permit) holder, then the respondent City Department(s) and then public comment. On appeals, the Board will then hear rebuttal testimony from the parties in the same order.
- Members of the public who are not affiliated with a party may speak once for up to three minutes.
- If you are not familiar with the Board's public hearing procedures, it is recommended that you watch a Board meeting before your scheduled hearing date to prepare for your presentation. You may watch meetings on SFGovTV (San Francisco cable Channels 26 and 78), or on-demand on the internet at: www.sfgovtv.org.
- Additional written arguments may not be submitted at the hearing without Board approval; only photographs, maps, plans and drawings may be submitted at that time.
- Computer-assisted presentations are permitted at the hearing. However, parties should have an alternate means of presentation prepared in case the equipment is not working. Parties may request assistance from the Board of Appeals staff to present their materials if they prefer. Parties are encouraged to send any materials to Board staff in advance of the hearing date in order to ensure a smoother meeting process.

RESCHEDULING OF APPEALS

If an appeal is rescheduled prior to hearing, written notification will be mailed to all parties involved. However, if the Board reschedules an appeal at a public hearing, no written notification will be mailed out.

REHEARING REQUESTS

- If the Board does not rule in your favor, you may request a rehearing.
- A Rehearing Request must be filed within ten calendar days from the date of the Board's decision, and may be filed only by the parties to an appeal.
- Only one Rehearing Request may be filed per appeal.
- If the Rehearing Request period ends on a weekend or City holiday, the last day to file the request is the next business day.
- See page 1 of this document for the standard of review applied to Rehearing Requests, or see Rules of the Board, Article V.9.

CONTACT WITH BOARD MEMBERS

The Board of Appeals functions as a quasi-judicial body. In an effort to further the Board's mission to create a forum where appeals are heard and decided in a manner that is fair for all involved, all evidence to be considered on each appeal should be provided as part of the public record through the briefs and other documents submitted to the Board as described above, and through oral testimony at public hearings. Parties to appeals, their representatives, and members of the public should not contact Board members on matters that are pending before the Board.

MORE INFORMATION

More information about the Board of Appeals, including copies of the Rules of the Board, related Charter and Code provisions, and other resource materials are available at the Board office and on the internet at www.sfgov.org/boa.

The supporting documents for the meetings can be found at the following link:
https://sfgov.org/bdappeal/meetings/10

A video of the previous meetings, can be found at the following link:

https://sanfrancisco.granicus.com/ViewPublisher.php?view_id=6

The parties are encouraged to read the Rules of the Board of Appeals for additional information.