

**ZONING HOUSING AND BUILDING CODES APPEALS BOARD  
MINUTES – MARCH 17, 2022**

**IN ATTENDANCE:**

**Board Members**

Blake Schatz (BS)  
Neil Rabitoy (NR)  
Ed Schulze (ES)  
Dale Faust (DF)  
Vacant Seat

**Building Division**

Chief Building Official, Jay Bradford (JB)

**Code Enforcement Staff**

Supervising Code Enforcement Officer, Gary Beretta (GB)

**Fire District Staff**

Lynn Osgood (LO)  
John Dicochea (JD)

**City Attorney**

John Abaci (JA)

**Appellant/Interested Parties**

Tianyun Wu (Joy)  
Thomas Lutge (TL)  
Herman Franck, Attorney (HF)

**Meeting called to order at 9:00a.m.**

**Supervising Code Enforcement Officer Gary P. Beretta (GB) introduced the hearing.**

**A.** GB called the meeting to order; Roll call

**B.** Approval of Final Agenda  
\_\_\_ Motioned to approve  
\_\_\_ Seconded  
Motion carried

**C.** Public Comment: None

**D.** Consent Item: None

**E.** Unfinished and other business: Nomination and appointment of Chair and Vice-Chair  
**NR** Motioned to nominate Blake Schatz as Chair  
**ES** Seconded  
Motion carried

**BS** Motioned to nominate Neil Rabitoy as Vice-Chair  
**ES** Seconded  
Motion carried

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*Action minutes, contents of statements have been paraphrased for length and clarity.*

### **Item F.1. Citation Appeal Hearing**

**Tianyun Wu**  
**18 Cherry St**  
**APN 143-680-06**  
**Appeal of Citation**

GB: Staff Liaison, Gary Beretta summarized the staff report in that the property is landlocked and owner was given permission via deed for access. Work on property was done without permits, gatherings held without permits, and fire pits built without Fire Department approval.

Chair BS: Opened hearing to Appellant for discussion.

Joy: Stated that she did not violate any City Code. They purchased the property in 2017 and the Fire Department gave permission to clear the property. In 2018, Joy declared she spoke to Denise at the Fire Department, and she received information regarding making the firepit. In 2021, Joy said she talked to Planner Vivek, and noted that they have gatherings, and did not mention it was not allowed. Joy stated the garden shed is needed for work on property and fire protection. Joy noted that she is an acupuncturist and religious organization. She held a gathering on June 6, 2021, and stated she sent Vivek a plan on what a religious organization is comprised of.

Trish: Spoke on behalf of Joy Wu. She said people are trespassing on the property. She declared that Joy does get the right to specific religious freedom and the City is violating her privacy.

Kyle Carbajal: He stated he is a neighbor, and the neighborhood and parcel are high fire hazards. He noted that he is concerned about the soils as 90% of parcel has expansive soils and landslides could occur. Ms. Wu is putting the neighborhood at risk with the project.

Steven Cartacki: He stated that he agrees with Trish and the community is behind Joy. He said there has been clearing of debris and the City and Fire Department should be happy with her cleaning up the property. He would like to see the City find solutions to work together for her religious organization and having a safe space for people to go to. Steven noted that Joy's dossier explains the project beautifully and communication may be difficult as there may be a language barrier.

Aaron Clark: Aaron noted that he is a homeowner on Cherry Street and does not think it is a good project. The fires should not be allowed.

Sandi: Sandi stated that Dr. Joy is improving her property and the organization has been approved. She noted that Dr. Joy would never leave fires/candles unattended as her plan demonstrates safety first.

Joseph: Stated that he is an Architect. He does not feel the work has caused any issues. The fire control and remediation were done working with the Fire Department. He declared he did not believe Joy would leave fires unattended. He requested not to use City resources against Dr. Joy.

Chair BS: Does Fire District have any information/anything to add?

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- LO: Lynne of the Fire Department thanked Dr. Joy. She declared that the Fire Department did ask her to remove vegetation from the fence, according to code, which she did. Lynne noted that any fires are required to have a permit as the property is in a high fire jurisdiction.
- JD: John of the Fire Department stated that he was called out to the property regarding smoke from a fire. The Fire Department went out and found an unattended fire in pit that was smoldering. The property is a south facing slope and vegetation is mostly oak woodlands, with low humidity, and ongoing drought. The top of property is landlocked, and it is concerning to have fires unattended.
- ES: He stated that one of the concerns is trespassing on the property. He questioned if Fire Department has the right to go on property. He questioned if Joy complied with the no fires request.
- JD: He noted the Fire Department report said the fire was extinguished. I spoke with Dr. Wu and advised her fires not allowed.
- DF: She noted that she is concerned with the fires.
- BS: He stated there was talk of approving a project. Permits are required for fires. He questioned if any permits were obtained.
- LO: Lynne answered that no permits were obtained. She noted that bonfires are not allowed within 50 feet of a structure, and it requires a permit so the Fire Department can provide safety precautions.
- NR: Neil asked if it is 50 feet from the pit to a structure or flammatory material?
- LO: Lynne confirmed that is correct as this is a high-fire zone, and we would go out to the property of see if we can approve the permit. Most likely would not approve permit.
- JD: John noted that approval depends on the County regulations, weather, etc.
- ES: Ed questioned if any permits have been requested. City there to help people.
- GB: Gary confirmed that permits are required for grading and design review approval. He stated the appreciation for the fire measures implemented. 'Draft' submittal for approval of a project was submitted. No actual permit/DR approval asked.
- BS Reiterated for clarity City's position.
- DF: Questioned what the issues are: One is the fires, and one is unpermitted alterations and use.
- NR: Neil noted the citations have been outstanding for some time. He asked if any permits were applied for. Requested and denied?
- Joy: Joy expressed her appreciation for the Fire Department. She stated that as the new owner of property since 2018, she has been talking to Denise and clearing for fire-defensible space. Has picnics and gatherings. In 2019, she talked to her regarding the firepits. NFD came in June, looked around. When the Fire Department came out to the property, they said fire pits was allowed as long as weather was okay. Had two-hour Chinese new year.

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celebration with fire to warm food. She noted that she followed order to clear vegetation and keep everything safe.

ES Repeated question of permits.

Joy: She said she talked to Planner about how to use the property. Claims NFD never told her a permit needed. Followed NFD recommendation of clearing for fire. If they tell me to apply for a permit, I will. I want to use the property as a garden now and we have a meditation group outdoors during the pandemic. Have regular meditation group there/Tai Chi.

Bill: Bill (retired PD Chief of University of California Notre Dame) noted that he is the retired chief of police and has been on the property. He stated these parties of about 8 are for peace & quiet, no music. The fire pit is a small commercial firepit and is more than 50 feet from any structure; no potential fire hazards and steps taken to alleviate fires. He noted that water was for the garden and was removed per the City. The existing shed is needed for work on the property to store tools. The City benefits for meditation and religious purposes, healing, and clearing of property for fire safety.

NR: Neil questioned whether any permits were applied for. Questioned not answered. Why no response to specifics of admin orders, independent of fire issues.

Trish: Trish does not believe there are any violations here and we wish to provide solutions. Contained fire, not 'bon fire'. Joy was told that she could have a fire pit according to the Fire Department. She noted there was trespassing on the property before it was purchased by Joy and there has been harassment.

BS: Blake stated he is trying to understand what is required. We do appreciate the work Joy has done for fire prevention. There were some activities that needed permits and were not applied for. We would like some solutions as well. Open to board for motion and or discussion.

DF: Dale questioned as to why a fire pit was needed on the property. Still concerned lack of permits. And asked if a waterline was installed without permits. Thinks intentions well, just need to obtain permits.

ES: Ed answered it could be so Joy can warm food at one time/point. He noted that permits are also needed for grading.

NR: Neil stated that Joy was reminded that she needs to get permits and questioned if the citation amount was \$2100.

BS: Blake read the City's recommendation in the Staff Report. He requested Gary to expand on the requirements for the gate.

ES: Time period to correct attached to recommendation?

GB: Reminded board what the board is here for. Read staff recommendations. Clarified permit, gate, expanded on gate/fence.

ES: Any way they can have a smaller structure at all.

GB: No.

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NR: Can any shed be permitted.

GB: No. Verbally approved only after the fact. Accessory structure requires primary structure (home).

BS: Can they leave tools, etc. at the property?

GB: Recommend not to leave due to liabilities.

BS: Can she install fence with lock for NFD?

NFD: Yes, 'daisy' chain lock.

BS: Process to make that available (yes).

LO: Roadway requirements if home there with turn around.

GB: Access easement does show width and a turn around.

BS: Any motion should clarify fire and shed, gate/fence.

NR: Those items covered in staff recommendations.

GB: Yes, and any other agency.

**Neil Rabitoy Moved to Uphold Fine/Staff Recommendations**

**Ed Schulze Seconded**

**Ayes: Dale Faust, Neil Rabitoy, Blake Schatz, and Ed Schulze**

**Nays: None**

**Abstain: None**

**Motion Passed 4-0-0**

### **Item G.1. Public Nuisance**

**812 Tamalpais Ave**

**APN 140-111-75**

**Case CE-C19-0148**

GB: Staff Liaison, Gary Beretta summarized the staff report and violations for 812 Tamalpais Avenue.

JA: Attorney John Abaci explained that there are two separate procedures. Public nuisance is one where the property owner was notified and a separate procedure for the citations. The hearing today is only on the public nuisance.

GB: Gary read the recommendations from the Staff Report.

DF: Dale noted that the property is completely fenced and there are homes on each side. She questioned if Mr. Lutge has a contractor's license.

GB: Gary stated that some of his building permits have been applied, approved and expired. Not sure if BL with city. He is an engineer.

DF: Dale questioned how a public nuisance is resolved.

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- GB: Gary noted that they will need to comply with the Board's order.
- BS: Blake asked how we calculated the amount of fee violation.
- GB: Gary answered that from January of 2021, the fee was calculated at \$100 per month, per violation, with four violations.
- DF: Dale asked if the owner is aware of this.
- GB: Gary answered that that is correct. Clarified violation/fine started January of 2020
- BS: Clarification from JA regarding difference between first case and this case
- JA: Attorney John Abaci confirmed that the Board would need to take action to abate the violations.
- BS: Chair Blake Schatz opened the hearing to the property owner.
- HF: Herman Franck, Attorney for property owner, wanted to point out that there was no pledge of allegiance done. Asked if he missed it. He referenced Civil Code 3479 Public Nuisance – It needs to be shown that the nuisance affects a substantial number of people. He also wanted to point out that the City has not complied with State law. We have submitted many exhibits and hope that you have received those. He noted that Mr. Lutge submitted an application for Design Review and the prior Building Official put the permits in the trash – The job was approved. He stated that photos were submitted, see Exhibit D. The neighbor that is complaining has the same storage containers on his property.
- Our request is that this be reinvestigated. The people coming out of the house are worker that live there. No business is being done there. You have blocked his emails and that is not legal. Please receive and look through the exhibits provided. This does not qualify to be a public nuisance as provided by statute.
- JB: Jay Bradford, current Building Official, gave a background on the permitting process. And for this property. Planning and Building approvals were received in 2015 and 2017. We requested additional materials on April 10, 2017, no response was received, and the permits expired.
- TL: Brief history of why he purchased property in Novato. Thomas Lutge stated that he responded to all permits and Anna (Annette) Chavez threw away my permits. Gary told me many months ago that if you just clean up your property. I have the permits if you would like to look at them. Anna (Annette) Chavez said that my permits were ready to issue but that I could not have a well on the property and so you are not getting any permits. Spoke about crimes against his child, other case in Sonoma County, abused kids. Once his 'foot went up your butts' the MSAT school was closed. GB well aware of issue. Property is perfect. Novato has flood problem. Has to lift house up. Has pounded and pounded regarded issues with home and other issues of crimes. Noted other properties. Just trying to make house safe for his child and her friends who have been pounded. Noted Novato just 'loves' Novato cops to rape little kids in schools. Will go through administrative remedies because he cannot go to Federal court until he does.
- GB: Due to time, Mr. Lutge cut off, asked BS if he would like to give Mr. Lutge more time and to stay on subject/nuisance at hand.

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- ES: Yes, stay focused on the issue please.
- BS: How does the board feel about more time.
- ES: As long as he stays focused, maybe three four more minutes max.
- TL: Perfect permits, submitted were tossed in garbage by Anna (Annette) Chavez. Feels responses to all aspects of job all flawlessly all perfect. Says no letters sent. Anna (Annette) Chavez to his 'eyes' that due to well, must be removed before permits approved. States city officials are taking taxpayer money and takes off running. States GB said permits will be issued if property cleaned up. Feels GB working with Sonoma County Code Enforcement. Reiterated 'perfect' permits and well issue.
- JA: John Abaci suggested that the Chair close the public hearing, deliberate, and take action due to comments from Mr. Lutge are no longer relevant.
- HF: Herman Franck asked if the proceedings are recorded and can we get a copy.
- GB: Gary replied affirmatively.
- BS: Chair Blake Schatz asked if there are any questions from the Board.
- ES: Ed concerned about notices being returned. Asked if we sent the owner notices via certified mail.
- GB: Clarified how notices, orders, citations are mailed. First and cert. Only certified came back.
- ES: That means he received.
- BS: Neil do you have questions.
- NR: No.
- DF: Dale stated that she was confused. The owner claims he doesn't run a business, but people are living there.
- BS: Blake questioned as to the approved permits mentioned for Building Official. Since there was no final inspection, they expired. Asked for clarification of each permit, inspections.
- JB: Jay responded affirmatively. The permit in 2017 was for dry rot and non-structural repairs. It was approved but not sure why it did not move forward and expired. The first permit Mr. Lutge noted was reviewed but did not receive a response or the response was unsatisfactory, remained nonconforming with plans/specifications, cannot see why it did not move forward, just ancillary to main request which was to raise the home, different application. The permit that was submitted in 2020 came in with no documentation for the expired permit. He stated that if there is no communication for a period of time, the permit expires. Clarified permit applications, why expired whether approved or not.
- BS: Blake asked if the permit expires, is a new application and documentation required.
- DF: Asked about expired permit, bring back to compliance.
- JB: Clarified.
- DF: So just not a fine, you just have to go through the whole process again (for expired permits).

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- JB: Jay replied affirmatively. A new application and documentation are required as the Building Code cycle updates every three years. If expired and for reapplying, would have to meet current code at that time if code cycles have changed.
- ES: Ed asked if the property is in the process of being sold and does the City need to clear any violations and reinstate permits before sale of the property.
- GB: Gary answered that if there is noncompliance on the property, the buyer will be notified prior to the sale of the property.
- BS: Comment regarding Resale inspection, does not hold up sale of property. Blake reads the City Code definition of a public nuisance, in part. (1-6.2 *Public Nuisances*. Any condition caused or permitted to exist in violation of the provisions of the Novato Municipal Code, resolution of the city council, or statute of the State of California, shall be deemed a public nuisance).
- JA: John Abaci declared that the Government Code gives the City the ability to declare a public nuisance.
- BS: Asked if there are any motions/discussions.
- NR: Neil requested clarification on the procedure.
- GB: Not sure what he is referring to.
- JA: John confirmed that the Chair is entertaining a motion for staff's recommendation. Can approve staff recommendation, property is a Public Nuisance. You may refer to the Public Nuisance Municipal Code 1-6.2. Order to abate nuisance or other as long as just or proper.
- BS: Blake noted that looking at photos from 2018-2020, it appears materials are being stored on-site including, generators, earth moving equipment, etc.
- GB: Gary stated that if there are no valid building permits, materials cannot be stored on-site.
- BS: Described photos taken from complainant of 18-wheeler truck, small tractor being driven on sidewalk...variety of things.
- ES: Ed asked what a safe house has to do with/deal with the violations.
- BS: Blake answered that the owner was off topic on that matter. Do not necessarily address the topics being discussed.
- ES: Does not see the relevance of those subjects.
- DF: Feels he was just venting.
- ES: Really disagree with making personal attacks on staff, inappropriate.
- BS: To Gary, statement of appeal read when?
- GB: After the ruling.



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**Neil Rabitoy Moved to Approve Staff Recommendations  
Ed Schulze Seconded**

**Ayes: Dale Faust, Neil Rabitoy, Blake Schatz, and Ed Schulze**

**Nays: None**

**Abstain: None**

**Motion Passed 4-0-0**

BS: Blake read: Any person having any record or legal interest in the property may appeal the finding(s) of the Appeals Board to the Novato City Council, provided the appeal is made in writing, together with the established fee and filed with the City Clerk within ten (10) days from the date of this hearing.

Meeting adjourned at 11:38am.