

# MINUTES APPROVED AT THE HPC MEETING ON FEBRUARY 8, 2022

## Historic Preservation Commission Meeting Virtual Special meeting

January 11, 2022  
5:30 p.m.

### MINUTES

#### Roll Call:

Chair McNamara called the meeting to order at 5:30 p.m.

Present: Chair Robin McNamara; Vice Chair Joann Pavlinec; Commissioners Fatema Crane, Jonathan Haeber, Caitlin Hibma and Michael Hibma

Absent: Commissioner Gretchen M. Stromberg

Staff: Jonelyn Whales

#### Approval of Minutes:

December 14, 2021

Vice Chair Pavlinec recommended adding after neighborhood on Page 2 in the third from the bottom paragraph “as stories they would like to share”. Also, to delete the sentence “she understood that being part of their normal business discussion and was not part of the project”. She remarked that the neighborhood council’s discussion could fall under history and associations as patterns associated with an illustrative of broad patterns of the cultural, social, political-economic, or industrial history of the development of the City or district or ethnic groups or a particular well-defined area. On Page 3 she suggested adding the word “consultant” in the sentence discussing recommendations made by Supervisor Gioia’s assistant. Also, to clarify that the suggestion was that Supervisor Gioia’s Office may be able to assist HPC in contacting the County Tax Assessor. On Page 4, in the first sentence in the fourth paragraph, she recommended changing the sentence to read “Vice Chair Pavlinec thought that the chimney had been deconstructed”.

Commissioner C. Hibma mentioned that she corrected the October 12, 2021 minutes but it was misinterpreted. She stated the name of the brick company is Los Angeles Pressed Brick Company.

ACTION: It was M/S/C (Pavlinec/Crane) to approve the minutes for December 14, 2021 as amended; approved by voice vote: 6-0 Ayes: McNamara, Crane, Haeber, C. Hibma, M. Hibma, Pavlinec; Noes: None; Absent: Stromberg
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#### Meeting Procedures:

Chair McNamara stated that any decision approved may be appealed in writing to the City Clerk within ten (10) days, or by Friday, January 21, 2022, by 5:00 p.m.

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### Public Forum:

CORDELL HINDLER remarked that Historic Preservation Commission (HPC) needs a younger person's perspective and that he would be reaching out to a specific person to encourage them to apply. He invited the Commission to attend the performance of As You Like It.

### Liaison Reports:

There was no liaison present and no reports.

### Consent Calendar:

None

### Public Hearing:

None.

### Commission Business:

<b>1. PLN21-160</b>	<b>BRICKYARD LANDING CHIMNEY/KILNS STABILIZATION AND PRESERVATION PROJECT</b>
Description	PUBLIC HEARING TO CONSIDER A REQUEST FOR MODIFICATION TO A DEMOLITION PERMIT TO DEMOLISH AN ADDITIONAL 27 FEET OF THE CHIMNEY TO A HEIGHT OF 10 FEET FROM THE GROUND AND APPROVE A PROPOSAL TO STABILIZE AND PRESERVE THE HISTORIC BRICKYARD CHIMNEY AND KILB STRUCTURES OF THE BRICKYARD LANDING HOMEOWNER'S ASSOCIATION.
Location	1223 BRICKYARD COVE LANE
Zoning	PA, PLANNED AREA DISTRICT
APN	560-480-011
Applicant	MICHAEL CARNALL, BRICKYARD LANDING HOMEOWNER'S ASSOCIATION
Staff Contact	JONELYN WHALES Recommendation: CONDITIONAL APPROVAL

Michael Carnall, Board of Directors for Brickyard Landing Homeowner's Association (BYLOA) reported that the Brickyard chimney was reduced in height roughly a week ago from its 72-foot height to roughly 32-feet. A clam bucket was used to disassemble the chimney due to California Occupational Safety and Health Administration (CalOSHA) denying the permit to dismantle the chimney by hand. The kilns were protected during the process by using a chain link curtain. Once the chimney was dismantled to 35-feet, the contractor discovered that the mortar was crumbling and had little compression strength length. Also, the contractor discovered at 50-feet that there is an inner flue inside the outer chimney that was not documented on the construction plans. After reaching 35-feet in height, the chimney was dismantled by hand down to 32-feet. The bricks were placed in 3,000-pound demo bags for processing and storage. The bricks on the inner flue were smaller in size, brighter in color, but the mortar on the inside of the flue was deteriorating. The flue was estimated to be 8- to 9-feet in height. While dismantling the outer chimney, several bricks fell between the flue and the outer chimney. A barrier and other safety measures are still required to block off the pool area due to the chimney still being a falling hazard. He requested a modification be made to the permit to deconstruct the chimney and the inner flue down to 10-feet in height. The lower 10-feet of the chimney was repaired in 1994 and is stable. Any work on the kilns cannot happen until the chimney is reduced in height to 10-feet. He emphasized that BYLOA is not committed, through the Conditions of Approval or otherwise, to rebuild the chimney. Also, the BYLOE Board of Directors cannot make such a commitment because the cost of that type of

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commitment must receive a majority vote from the 310 homeowners in Brickyard Landing. Regarding Condition of Approval #3, he requested it be changed from 27-feet to a 23-foot reduction. Regarding Condition #4, he requested flexibility in the 10-foot height limit to allow any further safety mitigations if needed. Regarding Condition #8, he requested that it allow cabling to be installed over the metal bands of the kiln to relieve tension.

Chair McNamara inquired who must maintain a safe environment at Brickyard Landing. Brett Gladstone, attorney for BYLOA, explained that the Board of Directors has a fiduciary duty to make decisions that protect the health and safety of people and property. If the Board of Directors relies on qualified consultants, then the Board Members are not liable for a break of fiduciary duties. The current Board of Directors cannot be sued over actions that were taken from a previous Board of Directors. Chair McNamara summarized that the homeowners could vote not to act on the chimneys, but the Board of Directors has the discretion to say that work has to be done because of safety reasons.

Commissioner C. Hibma asked at what point does the situation become a non-emergency and when is it no longer exempted from the California Environmental Quality Act (CEQA). Ms. Whales answered that she will submit a request for a legal opinion regarding those questions.

Commissioner Crane inquired if the work that has occurred has addressed the immediate safety concern. Mr. Carnall clarified that the performed work was the first step to addressing the hazard, but the chimney must be reduced further to eliminated the safety hazard. Commissioner Crane asked what the existing height of the chimney was and what is the chimney at now. Mr. Carnall answered it was 72-feet tall and is now at 33-feet. Commissioner Crane recalled that Mr. Carnall shared with the Commission in a prior meeting that reducing the chimney to half its height would reduce the safety hazard. Mr. Carnall answered that is correct. Commissioner Crane wanted to know if there is a new hazard now or if it is the same hazard. Mark Moore, ZFA, clarified that the original intent was to reduce the chimney to the half way point to assess the situation. Upon inspection at the halfway mark, the mortar was in far worse condition and the existing hazard remains in effect until the chimney is reduced to 10-feet. The Building Official has stated that the area around the chimney cannot be used, including the pool area, because the chimney still has a falling hazard.

Commissioner Crane inquired if the Commission received a copy of the Building Official's order. Ms. Whales answered no, it is not included in the packet. Commissioner Crane asked if it is a different order than what was issued in the summer of 2021. Ms. Whales replied that she is not sure. Mr. Moore added that the Building Official recommended that the applicant continue the dialog and receive direction from HPC, but indicated not to relax the red tag status until the chimney is secure.

Commissioner Haerber understood that the shoring up of the kilns and the assessment of the kilns cannot occur until the chimney is reduced to a safe height. Mr. Carnall answered that is correct. Mr. Moore expressed his disappointment that he had to use a clamshell bucket to dismantle the chimney. The interior of the chimney and how it functioned cannot be explored until the bricks that fell in between the flue and the outer layer are removed. Once the chimney is down to 10-feet, assessments will take place on how to rebuild the interior of the chimney. Commissioner Haerber asked what is BYLOA's plans for the remaining pieces of the historic structure. He did not want the project to become a piecemeal project. Mr. Carnall responded that a committee is in place to explore all the available options, cost, how to implement each option, and what the best way is to use the resource. Mr. Gladstone shared that the committee intends to explore whether there's a teachable experience that can be created for folks who are interested in the history of

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the complex. Any alternative that is chosen will be evaluated by Page and Turnbull and will be referred to a general contractor for an accurate estimate.

Vice Chair Pavlinec asked if BYLOA has a contract already with Page and Turnbull to do the next step of analysis and to come up with a stabilization plan for both the south kiln and the chimney. She stated that is a necessary piece for the BYLOA's committee to study what the feasibility is. Mr. Carnall confirmed that the committee has already discussed hiring an architectural firm to provide all the available options. Mr. Moore stated that he has a contract with BYLOA to provide solutions to preserve the kilns as well as a contract to develop options to preserve the chimney.

Peter Birkholz, Page and Turnbull, understood that Vice Chair Pavlinec was requesting that the applicant contract with a professional historic preservation company to draft an interpretive plan design as well as a stabilization plan for the remaining structures. He confirmed that that specific contract has not been established between the applicant and Page and Turnbull. Vice Chair Pavlinec noted that the project demands specific expertise in many different areas. At the minimum, she requested that the applicant provide a stabilization plan.

Chair McNamara recalled that at the last meeting the HPC specifically stated that a plan must be established. Mr. Moore restated that the chimney has to be brought down to a safe height before a plan can be drafted. Mr. Carnall proclaimed that BYLOA has the right to request proposals on drafting a plan and how much that work will cost.

Commissioner M. Hibma articulated that the next discussion will be about the long-term management of the resource. He was interested in hearing the answer to Commissioner C. Hibma's question about when CEQA will be triggered for the project. After hearing the comment that BYLOA is not committed to rebuilding the chimney, he understood that BYLOA is not interested in rebuilding the chimney at all. He agreed with Vice Chair Pavlinec that the HPC needs some demonstrated sense of commitment on the part of BYLOA to put the chimney back together. He inquired how long does it take to set up an election with the 310 homeowners. Mr. Carnall answered a month to set it up and then a month or two months to run the election. The resolution cannot be passed if only half of the homeowner's vote. Commissioner M. Hibma asked if an election must be held to acquire a \$300,000 surety bond and Mr. Carnall answered no. He disclosed that BYLOA is still trying to understand what the conditions are for a surety bond. Mr. Gladstone noted that the Commission voted that BYLOA has up to a year to obtain a surety bond and that BYLOA has been focusing on eliminating the danger of the chimney. Commissioner M. Hibma encouraged BYLOA to pursue moving forward with the process for a surety bond and he requested the applicant provide an update at the next meeting. Commissioner M. Hibma requested that Mr. Moore explain how the cabling will work for the kilns. Mr. Moore explained that the deteriorated bands will be removed, but the bands that hold the dome in place will be preserved. Pressure-treated framing with cabling will be installed around the kiln and the cables will be tightened in a sequence to take the tension off the bands.

Mr. Birkholz interjected that the deteriorated bands on the kilns do not need to be removed and should remain in place. Mr. Moore clarified that only the bands that are in the way will be removed.

Vice Chair Pavlinec appreciated that BYLOA has hired a well-educated structural engineer. She mentioned that expertise should be paired with a historic preservationist. She announced that she is not comfortable approving the next step until BYLOA has a contract in place with a historic preservation contractor. Mr. Moore agreed with Vice Chair Pavlinec but noted that he has been and will continue to work closely with Mr. Birkholz from Page and Turnbull on the project. He mentioned that Mr. Birkholz has a contract to continue monitoring the stabilization work but does

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not have a contract for the permanent preservation of the project. Vice Chair Pavlinec clarified that Mr. Birkholz does not have a contract to explore the best way to historically stabilize the chimney that will produce a solution that will enable permanent preservation of the chimney. Mr. Moore restated that the stabilization is only temporary and Mr. Birkholz has a contract to evaluate the short-term work. He articulated that the Commission could require that Mr. Birkholz review any interim stabilization before it is implemented.

Chair McNamara summarized that the Commission wants assurance that the temporary measures are the best for the resource and not just expedient.

Vice Chair Pavlinec disclosed that she does not understand the difference between shoring and stabilization. She clarified that she wants long-term stabilization because the structure will be in the stabilization phase until restoration happens.

Commissioner M. Hibma suggested that part of the motion should state that BYLOA hold an election to put out to bid for a long-term consultation service by a qualified professional versed in the Secretary of Interior Professional Qualification Standards.

Vice Chair Pavlinec motioned that Brickyard Landing come back to the Historic Preservation Commission within 3-months with a signed contract with a historic preservation firm that is going to investigate and come up with a plan for long-term stabilization of minimally what is left of the chimney and the south kiln.

Mr. Moore predicted that any historical preservation firm will ask what the structural engineer discovered at the base of the chimney. Vice Chair Pavlinec clarified that her motion is a Condition of Approval and is not stopping the project from moving forward.

Vice Chair Pavlinec inquired if the proposed Condition of Approval would prohibit further deconstruction. Commissioner M. Hibma answered that the motion includes taking the chimney down to 10-feet.

Commissioner M. Hibma inquired if an election has to be held to retain a consultant. Mr. Carnall answered that it depends on the dollar amount and the BYLOA needs some type of control of what that consultant will be doing. He emphasized that the BYLOA Board of Directions will not allow the HPC to dictate the exact process. Commissioner M. Hibma informed that the HPC's purview is to manage cultural resources and historic properties in Richmond. He emphasized that the HPC is not trying to forcibly bind the BYLOA, but rather working collaboratively to find the best path forward.

Chair McNamara disclosed that she is confused about what the BYLOA wants to do. She inquired if BYLOA will follow Mr. Moore's recommendations or will BYLOA need to take a vote on what the next step is. Mr. Carnall clarified that the Board of Directors is not amenable to being told which contractors must be hired and that there be a contract in place outlining what work that contractor will be performing. He restated that to move forward, the chimney must be deconstructed to 10-feet. Chair McNamara summarized that there is no good faith commitment from the BYLOA at this time and Mr. Carnall answered that the BYLOA is committed to moving forward.

Vice Chair Pavlinec remarked that if the BYLOA is committed to moving forward, then it should not be a problem to obtain a contract with a licensed historical contractor in 3-months. To move forward, the project needs a licensed professional versed in the Secretary of Interior Professional Qualification Standards to work with the structural engineer.

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Mr. Moore appreciated Vice Chair Pavlinec looking for a contracted commitment for the long-term stabilization.

Vice Chair Pavlinec asked Mr. Birkholz if his existing contract will be in place for the next 3-months and does it cover drafting a long-term stabilization analysis and plan. Mr. Birkholz noted that implementing the plan that goes beyond temporary stabilization will be the costliest component and that will most likely require a vote from the 310 Brickyard homeowners. Vice Chair Pavlinec stated that if BYLOA is not willing to support a long-term stabilization analysis and plan. Then the project will be piecemealed.

Commissioner Crane asked if staff had any concerns or comments about the changes that the applicant has proposed for the Conditions of Approval. Ms. Whales could not recall which Commissioner had proposed shoring for the south kiln. Vice Chair Pavlinec answered that it was discussed at the subcommittee and it was stated that the south kiln was going to be stabilized. Commissioner Crane asked if staff's recommendation has changed since seeing the applicant's proposed changes. Ms. Whales answered no, staff's position has not changed.

Vice Chair Pavlinec expressed that her fear was reaffirmed when Mr. Birkholz mentioned that it will cost several hundred thousand dollars to repair the chimney. She acknowledged that the BYLOA will have difficulty reaching a majority vote from its residents to pay for reconstruction. She stated that makes permanent long-term stabilization more important.

Commissioner M. Hibma supported the request to deconstruct the chimney to 10-feet while the BYLOA solicits a consultant to draft a long-term stabilization plan and implementation of that plan. He restated Vice Chair Pavlinec's motion and invited Vice Chair Pavlinec to provide language for the kilns.

Vice Chair Pavlinec recalled that the north kiln is in very grim condition and the south kiln has the potential to be stabilized and saved.

Commissioner M. Hibma suggested that both kilns be included in the motion. He supported the Commission's will to not piecemeal the project. He remarked that BYLOA does not need a vote to send out bids for a consultant but needs a vote to hire the consultant. He predicted that BYLOA can move forward, dismantle the chimney to 10-feet, and then return to HPC with a list of consultants who will be voted on by the homeowners.

Mr. Carnall restated that BYLOA intends to hire a consultant and he understood from the motion that the HPC is dictating what options the BYLOA can explore. He remarked that the HPC was requiring that BYLOA explore long-term stabilization only and he did not support that.

Commissioner Crane called the question and requested that the Chair call order and not allow the applicant to speak because the Commission was in deliberation.

Vice Chair Pavlinec inquired if the Commission supports the changes that the applicant has made to the Conditions of Approval. Chair McNamara recalled that staff stated they were not supporting the adoption of the applicant's proposed changes. Ms. Whales clarified that staff has no opposition to the proposed changes to the conditions.

After reviewing the applicant's proposed changes, Commissioner M. Hibma announced he found the changes acceptable for Condition #8. Commissioner Haeber suggested that instead of the

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language saying “propose shoring”, it should say “the applicant shall shore” for Condition #8. Commissioner Crane recommended striking the last sentence in Condition #8 and the last sentence in Condition #4 and Chair McNamara agreed. Chair McNamara suggested that the word “approximately” be removed from Condition #4. Vice Chair Pavlinec recommended that the second sentence in Condition #4 read “if it is found that the chimney needs to be demolished further, approval for a lesser height shall be reviewed by the Historic Preservation Commission”.

Mr. Moore suggested that the first sentence of Condition #4 read “the applicant shall ensure that the finished height of the chimney does not reach a height lower than 10-feet to where it was previously repointed”. He clarified that the bottom portion of the chimney was reappointed and he wished to retain that section. He remarked that the inner chimney is in the way of retrieving the bricks that fell between the inner chimney and the outer chimney. Those bricks will also be in the way of investigating the inner chimney as well as the construction of a permanent structure that will go on the inside to preserve the outside chimney.

Chair McNamara predicted that removing the inner chimney will eliminate the investigation of how the chimneys work together. Mr. Moore explained that the bottom feet of the interior chimney would be retained and will preserve the original smoke path.

Commissioner Haeber asked Mr. Birkholz his opinion if removing the interior chimney is going to impact the historic resource. Mr. Birkholz noted that the more that is removed, the more impacts there will be to the structure.

Commissioner Haeber commented that the Conditions of Approval provide flexibility so that the professionals can do their job well without losing the historic resource entirely. He wanted to understand how important the interior chimney is for the other Commissioners. Commissioner M. Hibma supported removing the inner chimney so that the fallen bricks can be accessed. He explained that the word “chimney” in the Conditions of Approval is one unit and includes both inner and outer chimney. Commissioner C. Hibma agreed with Commissioner M. Hibma that the inner flue is an interesting feature but is not critical to the physical project.

Mr. Carnall noted that Mr. Moore and Mr. Birkholz work for BYLOA. If BYLOA prefers to keep the inner chimney intact and open it for display, that is up to BYLOA to decide, and not the Commission’s decision.

Commissioner Haeber stated that historical resources are public resources and whether or not Brickyard Landing homeowners control the piece of property is a different matter. In terms of the inner chimney, he explained that the Commission was trying to provide flexibility. He suggested changing the first sentence of Condition #4 to read “the applicant shall ensure that the finished height of the outer chimney does not reach a height lower than approximately 10-feet”.

Commission M. Hibma reminded the applicant and the Commission that the applicant can appeal to Council if they so choose.

**ACTION:** It was M/S/C (Pavlinec/C. Hibma) to adopt the changes to the Conditions of Approval as discussed and the addition of one more Condition of Approval stating that Brickyard Landing will seek bids from a firm that meets the Secretary of Interior Professional Qualification Standards for a long-term plan for stabilization and implementation of the plan for the chimney and the two kilns and return within 3-months to the Historic Preservation Commission with a signed contract and approve the proposal to reduce the chimney to 10-feet; approved by voice vote: 5-0-1 Ayes:

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McNamara, Haeber, C. Hibma, M. Hibma, Pavlinec; Noes: None; Absent: Stromberg; Abstain: Crane.

**Adjournment** - The Commission adjourned at 7:30 p.m. to February 8, 2022.