SAUSALITO PLANNING COMMISSION
Wednesday, January 6, 2010
Approved Minutes

Call to Order
Chair Keller called the meeting to order at 6:30 p.m. in the Council Chamber of City Hall, 420 Litho Street, Sausalito.

Present: Chair Bill Keller, Vice Chair Stan Bair, Commissioner Joan Cox, Commissioner Stafford Keegin
Absent: Community Development Director Jeremy Graves
Staff: Associate Planner Heidi Burns, Associate Planner Lilly Schinsing, Assistant Planner Alison Thornberry, City Attorney Mary Wagner

Approval of Agenda
Chair Keller moved and Vice Chair Bair seconded a motion to approve the agenda. The motion passed 4-0.

Approval of Minutes
None.

Public Comments
None.

Public Hearings

1. **TM/CCP/EA 09-161, Tentative Minor Subdivision Map, Condominium Conversion Permit, Encroachment Agreement, Higgins/McArdle, 396/398 Sausalito Boulevard.** A Tentative Minor Subdivision Map and Condominium Conversion Permit to convert an existing duplex at 396/398 Sausalito Boulevard into two one-family condominium units. Recommendation of City Council approval of an Encroachment Agreement to allow existing wooden parking decks, concrete retaining walls, driveway apron, stairs, and two parking spaces in the Sausalito Boulevard right-of-way.

The public hearing was opened. Associate Planner Lilly Schinsing presented the Staff Report.

Commission questions to staff:

- The Soils Report says there will be no cutting-and-filling and no retaining walls required, but the Physical Elements Report talks about tiebacks from the parking deck to the concrete retaining wall. *Staff responded the Soils Report was prepared in 2006, and a Condition of Approval requires an updated Soils Report be provided.*
- The Soils Report said ground water would not be an issue because they had bored 4 feet, but when they talk about drilled piers for the foundation they talk about going down 10 feet. *Staff deferred the question to the applicant. Sean McArdle responded the Soils Report was from when they pulled down and*

rebuilt the car deck at 396 Sausalito Boulevard in 2006. Per staff's direction they intend to get an updated soils report not so specific to just the car deck.

The public testimony period was opened.

Chuck Donald, 254 Spencer Avenue, indicated the following:

- He is against the project and does not favor granting an Encroachment Agreement to park two cars on the street. It is not safe to drive down Sausalito Boulevard with all the cars parked there.

Staff comment:

- The applicants are asking to convert a 1960s Encroachment Permit into an Encroachment Agreement to legalize the parking spaces that were legally permitted through an Encroachment Permit.
- The number of units onsite will remain at two if the Commission approves the Condominium Conversion Permit.

Commission questions and comments to staff:

- What is the side yard setback requirement for the parking deck on the east side? *Staff responded the setbacks should be 5 feet, but the existing setbacks are 1 foot to the east side and 2 feet to the west side because of the project's Legal Nonconforming status since it was built prior to adoption of the Zoning Ordinance.*
- Does that Legal Nonconforming right continue during a condominium conversion? *Staff responded the applicant does not propose alteration to the parking deck and would not need a Nonconformity Permit. There is a finding for condominium conversions requiring any non-conformities will not be increased and existing non-conformities will be decreased to the extent possible.*
- The staff report says no structural and/or exterior modifications are proposed, but the Conditions of Approval require that they upgrade the exterior as necessary to achieve a high degree of appearance. The Staff Report said the house has a high degree of appearance because of the newly applied stucco painting. *Staff responded that condition could actually be eliminated if the Planning Commission feels the duplex currently achieves a high degree of aesthetics.*
- Are any overhead utilities going to be undergrounded? *Staff responded that is not required, as the Underground Ordinance is not being triggered in this case.*
- As a condition to a condominium conversion can it be required that utilities be undergrounded for safety reasons, among others? *Staff responded yes, if the Commission had reasoning behind requiring it on this property.*
- The wires coming off the front of the building are noticeable and low to the ground and from a safety standpoint could impede fire access to the roof and that side of the building.

Trisha Higgins, Applicant, 396 Sausalito Boulevard, indicated the following:

- The requirements regarding undergrounding the utilities state if they are upgrading the electrical or moving the box they are required to underground, but they are not doing that. They hope they will not be required to underground the utilities as that would cost over $7,000.

Commission question to Ms. Higgins:

- If the Commission imposes the condition of undergrounding the utilities, where would that leave you? *Ms. Higgins responded she could not speak for Mr. McArdle, but this has been a long, expensive process and an additional $7,000 would be a hardship.*

Commission comment:

- An appropriate condition would be to have separate meters installed in place of the current central water meter.

Sean McArdle, 398 Sausalito Boulevard, indicated the following:

- The gas and electric are already separately metered. There is one line of water coming in, but it is fairly low usage they have a sharing agreement in the CC&Rs to pay for the cost of the shared water.

Staff comment:

- It could be included as a Condition of Approval that the building be restored or refurbished. If the car deck were taken down more than 50% it would require a Nonconformity Permit that would come back to the Planning Commission for review.

The public comment period was closed.

Commission comment:

- We will likely see more condominium conversions, many with the same issues as this project.
- I would not be in favor of this condominium conversion were it not for the fact that there is an Encroachment Permit already in place, particularly since they are asking to be granted two parking places and a stairway in the public right-of-way as part of the Encroachment Agreement.
- We have to think of this in the context of setting precedent. Encroachment Agreements are to provide the ability to access property across public property, but we are being asked to in effect deed property to them to use in perpetuity as their own parking space.
- We should condition undergrounding of the utilities. Undergrounding will cost $7,000, but they get two more parking places for free that cost other people hundreds of thousands of dollars. We need to think in that context, particularly given the likelihood of applications coming before us over the next couple of years.
- We are reluctant to grant Encroachment Agreements, but here we are confirming someone else's decision 50 years ago. The parking decks are a better alternative than cars parked on the street.

- Undergrounding the utilities is a safety and development issue important for Sausalito as a whole. It is a fair tradeoff to promote Sausalito's overall interests in conditioning undergrounding when granting this encroachment in perpetuity.
- The $7,000 expense for utility undergrounding is less than half a percent of the project cost and it is good for Sausalito. We should support the project with the undergrounding condition. It is a useful precedent to set, because the neighbors will see undergrounding is going to happen for future condominium conversions and remodels.
- The concrete driveway across the front is actually creating additional parking along the concrete driveway, which is also an encroachment. There wouldn't be parking there otherwise without that concrete deck. *Staff responded that is covered by the existing Encroachment Permit. The existing parking is not to be extended.*
- We look more favorably on this project because the applicants are in compliance and everything has been permitted as opposed to how we might view projects with encroachments not previously approved.
- This is a winding street and the Encroachment Permit was approved 50 years ago when traffic on Sausalito Boulevard was less than today. This project would get four cars off the street, although two would potentially be in the public right-of-way.
- A condition should be added for the undergrounding of utilities to such place as PG&E designates.

Staff comment:

- The parking provided for these units is one space per unit, because it was established prior to the Zoning Ordinance. The requirement is two parking spaces for the project site.

Chair Keller moved and Commissioner Cox seconded a motion to approve a Tentative Minor Subdivision Map and Condominium Conversion Permit to convert an existing duplex at 396/398 Sausalito Boulevard into two one-family condominium units and recommendation of City Council approval of an Encroachment Agreement for existing wooden parking decks, concrete retaining walls, driveway apron, stairs, and two parking spaces in the Sausalito Boulevard right-of-way with the addition of the undergrounding condition as stated. The motion passed 4-0.

2. **CUP/MUP/EP 09-234, Conditional Use Permit, Minor Use Permit, Encroachment Permit, Sausalito Restaurant, 39 Caledonia Street.** A Conditional Use Permit to allow a restaurant with alcohol service at 39 Caledonia Street (APN 065-056-02). A Minor Use Permit and Sidewalk Dining Encroachment Permit to allow an outdoor dining area in the public right-of-way. Recommendation of City Council approval for alcohol services in the outdoor dining area in the public right-of-way.

The public hearing was opened. Assistant Planner Alison Thornberry presented the Staff Report.

Commission questions and comments to staff:

- What type of restaurant is planned for this space? *Staff responded the restaurant will be named "Courses" and will run by two restaurateurs from San Francisco.*
- Regarding safe passage for outside dining, what did you mean by 4 feet at its narrowest point? *Staff responded the closest point of the table to the closest point of the curb is 4 feet.*
- Many times people pull the tables out from the wall and sit around the tables. My experience at that space is it can get crowded on that sidewalk with the outdoor dining. *Staff responded the seat in the area that goes down to the narrowest point of 4 feet could be removed or moved to another area.*
- Is there a 4 feet constraint where the tree is? *Staff responded yes, the law states if there is a tree there has to be at least 48 inches for people to get around the tree.*
- Will there be food service in the back area? *Staff responded the applicant does not intend to do that. If the applicant wanted outdoor dining service in the rear it would require a Minor Use Permit, which generally would go to Administrative Design Review. If it is something the Planning Commission would like to see, that could be conditioned accordingly.*
- Did the previous restaurant, Rustico, also have 56 seats? *Staff responded the maximum number of seats has always been 56, but staff is not sure how many seats Rustico had because they did not need an additional Conditional Use Permit. Six months have lapsed since Rustico closed and a new CUP is required.*
- Do the 56 seats include the outdoor sidewalk seats? *Staff responded it does not include the outdoor dining in the front. Outdoor dining in the public right-of-way does not add to the required parking spaces, so staff does not count it as part of the seats.*
- Are we talking about 66 seats then, not 56? *Staff responded the restaurant would be permitted for 56 indoor seats. The ten outdoor seats in the public right-of-way are not included in the 56.*

Presentation was made by Matt Kahn, the applicant.

Commission questions and comments to the applicant:

- What is your vision for this restaurant? What kind of food would you specialize in? *Kim Alter, the chef, responded the restaurant would not be an ethnic restaurant, more Nouveau American. The focus would be a local and organic produce and the food would be simple, affordable comfort food with techniques drawn from her classical French training using seasonal and unusual produce. It would be like Manresa restaurant in Los Gatos, but not as expensive.*
- Your hours go until midnight. Would you be serving food until that time? *Ms. Alter responded no, it would be dinner from 5:00pm to 10:00pm and possibly a bar menu, but they do not intend to cook the full menu until midnight.*
- Do you expect to have entertainment? *Mr. Kahn responded there would be no entertainment, just the house recorded music.*
- There was a piano in there. Will you still have that? *Mr. Kahn responded no.*

- Would you be opposed to a limit on serving alcohol outside after 10:00pm? *Mr. Kahn responded they would be against any kind of limits and want to be treated fairly.*
- Even if you are limited on serving alcohol outside after 10:00pm you would still be treated better than anybody else on the street and as well as anybody on Bridgeway.

The public comment period was opened.

Dorothy Gibson, Johnson Street, indicated the following:

- She has lived on Johnson Street since 1974.
- The dictionary states sidewalks are for pedestrians and does not mention any other uses. By what right are sidewalks used for other purposes? Are there laws stipulating other uses?
- Is this business responsible for anyone being hurt from bumping into the outdoor furniture on the sidewalk or slips on food or drink?
- This site has had noisy outdoor dining in the past.
- Outdoor dining is a hazard to those who like to walk.

Commission question to Ms. Gibson:

- If the outdoor dining were done tastefully and professionally would you have a problem with that? *Ms. Gibson responded it cannot be done tastefully and professionally when there are tables going to the curb, dogs tied up, people drinking and spilling, and a lot of commotion and activity.*
- Would you be more agreeable to tables against the outside wall of the restaurant than tables in the middle of the sidewalk? *Ms. Gibson responded yes.*

Chris Hammond, 410 Johnson Street, indicated the following:

- He lives in the first house around the corner from Caledonia Street.
- He generally supports the project, but is concerned this could eventually morph into outside dining in the back. His house is right behind the restaurant's back fence and outdoor dining is very loud, as well as the dish washing and cleanup after closing.
- He wants it in the public record that outdoor dining in the back is not part of the project and it is not part of any permitting.
- He is not concerned about outdoor dining in the front if they keep the tables against the outside wall. The reality though is there is no enforcement so customers bring out more tables in the evening and the owner is reluctant to tell them not to, and they end up occupying the sidewalk.

Chuck Donald indicated the following:

- The general uses proposed here are fine, but there needs to be enforcement against infractions.

Commission comment:

- The history of enforcement in Sausalito of conditions, imposed by the Planning Commission at least, is not good. While there have been assurances that

"something will be done about it," little is done. You cannot call the police, because they will say it is not their department and at night when the problem is going on there is no one at City Hall to check it out.

- One way to address the issue would be for the tables to be fixed in place to keep them alongside the face of the building.

Mike Monsef, 211 Fourth Street, indicated the following:

- He operated this restaurant when it was Gatsby's and now manages the property.
- When he converted the bar to the bistro they never had the type of clientele that could create that kind of nuisance on the sidewalk, which can also be seen in front of other Sausalito restaurants.
- He objects to the fifth table in the front; it should be against the wall where there will still be room for five tables.
- The outside seating area should be separated with flowerboxes or something to identify the area.

Commission question to Mr. Kahn:

- Do you intend to put any type of awning over the outdoor dining tables, and also any type of outdoor heater? *Mr. Kahn responded not initially, although maybe an outdoor heater someday with the proper permits.*

Staff comment:

- Awnings and plantings would require an Encroachment Agreement from the City Council.

Commission question to staff:

- Do portable outdoor heaters require an Encroachment Agreement? *Staff responded standing heaters that are brought in at night do not require an Encroachment Agreement. Heaters attached to the building that project into the right-of-way would be the same thing as an awning and would require an Encroachment Agreement.*

The public comment period was closed.

Commission comments:

- The fifth table outside will end up in the middle of the sidewalk or on the curb and should go along the outside wall with the other four tables. If it cannot fit there, the restaurant should have four tables outside instead of five.
- In fairness to the applicant, we should get a report as to what is allowed on Caledonia Street for the other restaurants with outdoor dining, what they're permitted for and what they're doing illegally.

Commission question to staff:

- Has staff looked at the issue of whether five tables could fit along the wall? *Staff responded it would depend on the type of tables and chairs used. The original plan was for smaller, round café tables, so if the furniture is not bulky they may fit five because it is a longer store frontage.*

Commission comments:

- We should leave the number of outside tables between the architect and staff and approve five tables and ten seats outside.
- It is important to make the distinction of two seats per table so chairs cannot be brought out from inside to fit more people at a table.
- We should consider limiting the outside service to 10:00 pm instead of midnight. It will help to keep the neighborhood quiet when people are going to bed.
- The number of times they are likely to be serving food outside after 10:00 pm is very small based on Caledonia Street's weather, because it will be too cold.
- Most restaurants stop service around 10:00 pm, so a 10:00 pm cutoff for service outside would not impose a hardship on the applicant.

Commission question to staff:

- Has the Commission imposed that sort of limitation on outside service on the other restaurants on Caledonia? I've seen nothing to make me believe this particular establishment should be limited where others are not. *Staff responded they have not seen time limits on outdoor dining at any restaurants downtown or on Caledonia Street. That does not mean the original Conditional Use Permit for the restaurant did not have a time limit for the restaurant, which means outdoor dining ends, but nothing specific for outdoor dining.*

Commission comments:

- A limitation on outdoor service implies a problem we do not have, because it is a new restaurant. We have to assume they will comply with whatever permit they get. Because there have been problems at other restaurants does not mean there will be one here.
- We should require Planning Commission approval of a Minor Use Permit for dining in the back so if dining in back is ever proposed it would not be approved at staff level but would come to the Planning Commission.
- People who bought homes within a block of Caledonia Street knew they were buying within a block of a commercial street. Some of the restaurants and bars have been there since the thirties.
- Limiting outdoor dining to 10:00 pm is a topic that should be discussed at a later date and something the Commission may want to impose as an amendment or ordinance in certain districts so it applies to everyone. If that limitation were imposed uniformly, the Commission would be in favor of it.

Staff comment:

- Because the City Council is the body that approves the outdoor service of alcohol the Commission could make a recommendation to Council that they consider limiting service of alcohol after 10:00 pm. That would give staff the opportunity to review if anyone else has had similar conditions imposed and allow the Commission to move forward and make a decision this evening as to whether or not they choose to impose hours of operation on outdoor service in general.

Commission comment:

- If we're going to do something like limit outside service after 10:00 pm it needs to be considered separate from a specific project. This issue of limiting service outside in some fashion, whether food or alcohol, speaks of a solution that is going to affect all of the restaurants in the same situation similarly.

Staff comment:

- Staff's recommendation that the Commission recommend to Council limiting alcohol service after 10:00 pm was with respect to this specific project. The Commission can also make a recommendation that the Council undertake a more comprehensive review of the outdoor dining permit regulations in total.

Commission comment:

- The minutes from this meeting should be a little more detailed than usual and reflect the dialogue so the City Council will have the benefit of it when making their final decision.
- The outside tables should be fixed so they can't be moved out into the middle of the sidewalk.
- Fixing the outside tables and chairs to the sidewalk would be applying a limitation on this particular restaurant that other restaurants do not have.

New Conditions of Approval:

- Approval of a Minor Use Permit shall be required for outside dining in the back.
- All outdoor tables shall be situated along the restaurant's front wall.

Chair Keller moved and Vice Chair Bair second a motion to approve a Conditional Use Permit, Minor Use Permit, and Sidewalk Dining Encroachment Permit to allow a restaurant with alcohol service and an outdoor dining area in the public right-of-way and recommend City Council approval for the service of alcoholic beverages in an outdoor dining area in the public right-of-way at 39 Caledonia Street with the conditions as amended. The motion passed 4-0.

Old Business – None.

New Business – None.

Communications – None.

Adjournment

The meeting was adjourned at 9:24 p.m.

__/s/ JEREMY GRAVES__	__/s/ BILL KELLER__
Submitted by	Approved by
Jeremy Graves, AICP	Bill Keller
Community Development Director	Chair

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