SAUSALITO PLANNING COMMISSION
Wednesday, April 14, 2010
Approved Minutes

Call to Order
Community Development Director Graves 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 (for Items 2-3), Commissioner Joan Cox, Commissioner Stafford Keegin, Commissioner Bill Werner
Absent: Chair Bill Keller (during Item 1), Vice Chair Stan Bair
Staff: Community Development Director Jeremy Graves
Associate Planner Lilly Schinsing, Assistant Planner Alison Thornberry, City Attorney Mary Wagner

It was indicated Chair Keller would arrive late to the meeting. By consensus, Commissioner Cox was selected as Interim Chair.

Approval of Agenda

By consensus, the agenda was amended to consider Item 3 prior to Item 2.

Approval of Minutes

Commissioner Cox moved and Commissioner Werner seconded a motion to approve the Minutes of March 24, 2010 with the amendments noted on Pages 1 and 4. The motion passed 3-0.

Public Comments
Jacques Ullman, 423A Litho Street, indicated the Planning Commission should ask the staff to prepare a base map of the downtown showing current projects so they can be seen in relationship to each other. Any future proposals should be overlain on the base map.

The Commission requested staff to invite the Public Works Department staff to give the Planning Commission a presentation on the downtown projects and on Mr. Ullman's suggestion regarding a map of the projects. Notification of the presentation should be sent to Mr. Ullman.

Public Hearings

1. **DR/VA 09-207, Design Review Permit, Variance, Sands and Linde, 270 Glen Drive.** Design Review Permit to demolish an existing single-car garage and single-car carport and construct a two-car, two-story garage that includes a workshop, patio, and storage room on the lower level at 270 Glen Drive (APN 065-102-13), and a Variance to allow the height of the proposed garage to exceed the maximum height for accessory structures (i.e., 15 feet) by 6 feet 3 inches.

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

Presentation was made by Ned White, the architect and applicant:

Commission comments and questions of Mr. White:

- There are only two other two-car garages within any proximity of the project, making this project's two-car garage incompatible with the neighborhood. To grant the Variance for the applicant's two-car garage would be granting a privilege that other members of the neighborhood do not have.
- Have you considered replicating the existing garage, which you are allowed to do, which would not have a zoning or variance concern? *Mr. White responded they did consider that, but the existing garage is substandard in size and it does not conform with the side yard setbacks as they currently stand; it is 2.5 feet off the property line versus 5 feet.*

Commission question of staff:

- Is it true that if one does a replication of a structure they can rebuild it without a Variance? *Staff responded if it is a voluntarily demolition and they are rebuilding it like for like, they would be required to obtain a Non-conformity Permit, not a Variance. If the new structure was the same design but is expanded, a Variance would be required.*

Commission questions of Mr. White:

- Are you reusing any of the existing structure, such as the foundation, in this project? *Mr. White responded it is likely there are some grade beams and piers that may be usable. The rest of the structure was built in 1955 and has not been maintained, so the wooden part of the structure would not be reusable.*
- Will the foundation be new? *Mr. White responded it would likely require new piers, because the current seismic rules are much stricter.*
- Is tearing down the garage how you are able to move it away from the side yard, and does that give you flexibility as to where it would be placed in an east/west position? *Mr. White responded yes, they would not be allowed to build it in its current location, and that does allow some flexibility, but it cannot go much closer to the house.*
- Do you have any issue with staff's recommendation that the dormer be deleted? *Mr. White responded if that were a Condition of Approval they would go along with it.*
- Do you have any issue with possibly having a flat roof instead of a pitched roof? *Mr. White responded they had not considered that as an option and would need to discuss that, although it does seem incompatible with the property.*
- Is it accurate that the Height Variance you seek is necessitated by the door height of the garage and the slope of the driveway, based on where it is positioned, not because of the downstairs workshop? *Mr. White responded it is necessitated because the lot is so steep that when you measure 15 feet from the middle of the building you are only left with 6 feet above driveway level to*

work with, and the smallest garage door that can be bought is 7 feet. They have made the driveway as steep as possible to lower the structure.

- So even if you were to delete the lower level, you would still be requesting the Height Variance? *Mr. White responded yes, the lower level is just there because the garage needs to be up at street level, so they are making use of space that is going to be there anyway.*
- What is the purpose of the dormer? *Mr. White responded the dormer is a mirror image of the dormer on the main portion of the house and is an aesthetic feature. It also faces south and would bring light into the garage.*

The public comment period was opened. Being none, the public comment period was closed.

Chair Keller arrived at 7:15 p.m.

Commission comments:

- A project of this type, size, magnitude, and purpose is not consistent with the neighborhood and it would be a problem granting a Variance.
- There is a problem with the project because it is Heightened Review and the story poles reveal there is quite a substantial view blockage.
- The issue of view is not only an issue from adjacent buildings; it also has to do with the streetscape. What would be taken away in order to provide a garage in terms of a sense of openness and not being blocked in by a narrow corridor of buildings is disturbing.
- If this were an open parking deck no Variance would be required and it would be more congenial to people walking on the street because there would be no blockage.
- This garage is 300-plus square feet with a great view and light. It is not appropriate to give a Variance of 40% over an allowable height for the storage of cars.
- The apron that is provided in this project does not provide adequate depth for cars to be parked without occupying part of the public right-of-way and making it hazardous to drive on Glen Drive.
- Finding C for the Variance, "Such Variance is necessary for the preservation of a substantial property right of the petitioner possessed by other property in the same district," cannot be made for two reasons:
    - This project does not propose to preserve an existing property right, which is a one-car garage. It proposes to increase that property right to the privilege of a two-car garage.
    - This finding requires the Commission to find that the substantial property right is possessed by other properties in the same district, and the vast majority of other properties in the same district do not possess this property right.
- The Commission suggests the applicant consider either an open parking deck, so as to not obstruct the view for walking traffic, or replicate the one-car garage structure and apply for a Non-conformity Permit.

Commissioner Cox moved and Commissioner Werner seconded a motion to continue the public hearing for 270 Glen Drive to a date uncertain. The motion passed 3-0.

Commissioner Cox indicated she would turn the meeting over to Chair Keller.

New Business

3. **DR/VA/EA 10-063, Sanitary District Pump Station, City of Sausalito and Turney Street Properties, 1300 Block of Bridgeway.** Study session for a Design Review Permit, Variance, and Encroachment Agreement for the construction of a replacement wastewater pump station at the southeast corner of Bridgeway and Locust Street (APN 065-032-03).

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

Presentation was made by Bob Simmons, General Manager, Sausalito-Marin City Sanitary District, the applicant.

Commission questions of staff:

- The applicant's original idea was to come up with a design that somewhat mirrors the Ice House Visitors Center. Why is that now not possible? *Staff responded an enclosed building would count as floor area for the whole parcel, and the whole parcel is already over the allowable floor area ratio. A Variance is not possible since the Fair Traffic Initiative precludes variances in the Commercial Waterfront District.*
- What if the structure were to stay where it is currently located? *Staff responded the above-ground utility building is outside of the private property at 300 Turney Street and is actually located in the City's right-of-way.*
- Is the motivation to move the above-ground utility building to get it out of the bicycle path? *Staff responded the Sanitary District, with the support of the City's Department of Public Works, is requesting to relocate that structure in order to make the sidewalk along the bay side of Bridgeway available for a multi-use path for pedestrians and bicycles.*
- How many parking spaces are being lost and what is the significance of that to the property at 300 Turney Street? *Staff responded Mr. Mallick, the property owner of 300 Turney Street, has submitted an application to redesign the parking lot. The re-design would increase the parking lot capacity by 11 spaces.*

Commission questions of Mr. Simmons:

- Will all of the pumping equipment be underground? *Mr. Simmons responded all the pumps would be underground with the above ground utility building housing the electrical components.*
- What is the purpose of the lighting? *Mr. Simmons responded the lighting is for illumination when a pump needs to be pulled out during nighttime emergency situations; they typically would not be used for normal operations.*

- Is it possible for the electrical meter to be located behind the wall with a window on the outside to allow PG&E to see it for reading? *Mr. Simmons responded they would discuss that option with the electrical engineer.*

Staff questions of Mr. Simmons:

- Is your proposed antenna of the same height and scale as the existing antenna or is there a change? *Mr. Simmons responded the antenna is a relay station that picks up signals from Whiskey Springs, Marin City, and Tam Valley pump stations, so the higher the better. The existing antenna is about 5 feet, which seems adequate from the height of the existing access portal, but ten feet would assure better reception. It could possibly be lowered, but that would have to be tested.*
- Are there some different design options for the exterior floodlights so they blend in more when not in use? *Mr. Simmons responded the new design of the building shows the lights more recessed underneath the canopy.*

The public comment period was opened.

Chuck Donald, 254 Spencer Avenue, indicated the following:

- Under the present regulations if someone changes a facility they have to underground the services, but he would be interested in knowing how they intend to do it, because the closest pole is across Locust Street. There should be a new pole set somewhere on the south side of Locust Street for this facility.
- The generator could be mounted on a trailer and brought in when there is an emergency, rather than having the outside generator at this site.

Vicki Nichols, 117 Caledonia Street, indicated the following:

- Does this facility actually need 300 square feet? Can it be smaller?
- The use of bricks for a wall along the waterfront is inappropriate.
- Could this facility be placed on the north side of Locust Street, which the City owns?

Comments by Mr. Simmons:

- Regarding the generator, this pump station handles about 5 million gallons a day during peak wet weather flow. When power is lost it must get back on-line immediately. They would not be able to respond in a timely manner with a portable generator.
- They considered placing the pump station on the north side of Locust Street, but the current location is more appropriate. They have an arrangement with Mr. Mallick and his redesign of his parking area where Mr. Mallick will give the easements to them at no cost. The City benefits in that the facilities are outside of the right-of-way and not conflicting with the planned bicycle path. The applicant benefits in that this solution is an economic alternative for the project. Mr. Mallick benefits in that the parking situation is solved.

Commission comments to Mr. Simmons:

- The project should consider at what height the antenna would still provide the relay station facility but be as unobtrusive as possible.

- The suggestion to conceal or move the PG&E meter should be considered so it is not as visible and imposing.
- The CMU block is an aesthetically pleasing design for this type of structure and has good variety.
- The applicant should provide an alternative to the black vinyl chain link fence, which does not suit the area, such as:
  - A more appealing fence could be made from vertical pickets or metal mesh.
  - One alternative can be seen at the backside of 30 Liberty Ship around the HVAC units, a metal picket fence with 1x1 bars.
  - Horizontal and vertical square shapes can be installed between vertical members that give a sense of scale that a chain link fence does not.
  - A fence design related to the design scheme of the block wall.

  Mr. Simmons responded brown vinyl slats would go into the fence as well, so it would not just be fence. He can bring a sample of what they propose to do to the next meeting and they will look at alternatives.

Commissioner Cox moved and Chair Keller seconded a motion to continue the public hearing for the pump station at 1300 block of Bridgeway to the meeting of May 12, 2010. The motion passed 4-0.

Public Hearings (continued)

2. **AP 09-094, Appeal of an Administrative Decision, Clipper Yacht Harbor, 350 Harbor Drive.** Appeal of an Administrative Decision that 1) the seating for Fish restaurant at 350 Harbor Drive (APN 063-030-01) must comply with City Council Resolution No. 4723 which allows for 22 outdoor seats and 48 indoor seats, and 2) a single-seat bench should be no longer than 24 inches. This hearing was continued from the March 10, 2010 hearing.

Commissioner Werner disclosed that he had met with Bill Ziegler on April 12, 2010 to discuss the history of Fish's seating issues. Commissioner Werner stated he had reviewed the Staff Report and past meeting minutes regarding Fish and expressed to Mr. Ziegler he believed there was a lack of consistency and clarity in that record and hoped they could arrive at a solution that would not undermine the responsibilities and authority of staff while enforcing Council's decision.

Commissioner Cox disclosed she had had a brief conversation with Mr. Ziegler on April 12, 2010 and agreed to speak with him again the next day. She then realized this is a quasi-judicial proceeding, because they are reviewing administrative action by the Community Development Director, and advised Mr. Ziegler she would hear his comments at this evening's meeting.

The continued public hearing was re-opened. Associate Planner Schinsing presented the Staff Report.

Commission questions of staff:

- There are three potential procedures for CUP amendments listed in the Staff Report. Are they separate from the issue that staff will be consulting the City Attorney about regarding the Planning Commission's jurisdiction? *Staff responded they are separate issues. The list in the Staff Report describes the process any applicant would take in amending a Conditional Use Permit. The issue that the City Attorney will review is regarding the ability of someone to appeal the letter written by staff in June 2009, which was regarding a resolution adopted by the City Council in 2004.*

Presentation was made by William Ziegler, the Appellant.

Commission comment to Mr. Ziegler:

- Fish restaurant may have failed to make the City aware of their particular needs when Fish filed their application for an exception to the Marinship Specific Plan. By filing the application with these particular seats designated where they were it was reasonable for the City Council to believe that is what Fish wanted, and this is what the City Council granted. If this actually does not work for Fish, then it would be appropriate for Fish to go back to the City Council to let them know that what was decided five years ago does not work.

Staff comments:

- The City Council resolution adopted in 2009 specifically states, "The City Council denies an exception to the Marinship Specific Plan to allow eight additional indoor and 42 additional outdoor seats, for a total of 56 indoor seats and 64 outdoor seats, at Fish restaurant." To staff that is evidence of the Council's interpretation of its action in 2004, because they are specifically allocating how the proposed amendment would change the existing seating plan.
- When Mr. Ziegler notified staff he wanted to appeal staff's decision he was told that staff did not make a decision or interpretation, staff simply told him what the City Council said. Mr. Ziegler disagreed and said he would appeal staff's decision on not letting him appeal the staff's restatement of the City Council resolution. It is procedurally incorrect for the Planning Commission to interpret a City Council action.

Comments by Mr. Ziegler:

- The Community Development Director said what he meant, which is why it can be appealed. That is the issue. There can be any number of Conditional Use Permits, but if they are not clear it is going to be the Community Development Director who states what it says, and one does not run back to the City Council every time that happens. It is either appealed or it has a hearing and goes to the Planning Commission for a decision.
- This is not about the Conditional Use Permit; it is about the exception to the Marinship Specific Plan the Council gave. There is no condition in the Conditional Use Permit at issue here. What is at issue is Council's resolution granting the exception. This is in effect a Variance to the MSP granted by the City Council. The question now is what does that Variance mean?

- There is no need to apply for a new CUP. All that is needed is clarity on what the Council said and meant. There are two procedures here that are trying to be merged into one. The Conditional Use Permit was granted in 2003. The exception to the MSP was not granted until 2004 and grafted on top of the CUP. What did Council do when they made that exception? That is a question of interpretation.

Staff comments:

- Staff is not stating Fish should have less than 70 seats. Modifying the CUP is not to open up that issue.
- A CUP amendment should have come along with the request for an exception to the Marinship Specific Plan in 2004, but it did not, and so staff tried to do it right when the applicant came back for an exception request in 2009. Staff is trying to make the planning approvals match up.
- Fish should apply for a modification of the existing exception to the Marinship Specific Plan. The Planning Commission would give the City Council a recommendation whether the seats should be movable. Then the request would go to Council where Council can say where they think the seats should go.

The public comment period was opened. Being none, the public comment period was closed.

Commission comments:

- One option the Commission has is to pass this matter back to Council with a recommendation. The burden is not just on clarity on the part of the City, but also on the fact that the applicant submitted a document that does not say anything other than "seating plan." It is referenced in the minutes and identified in detail for 13 standard tables; eight inside and five outside, each seating four people, and clearly defining what is shown on the drawing. If this drawing does not depict what the applicant intended, then the applicant should not have presented it. But the applicant did and it is what is being used. Therefore there is no interpretation on the part of the Community Development Director; it simply says this is what was presented and what was approved.
- The Commission should recommend this go back to the City Council and let the applicant ask for what they really want within their 70 seats.
- Fish is an institution and is indicative of what we like to see in Sausalito. They should have the flexibility in light of customer demand for sitting outside and not be bound by a seating plan submitted with the original application five years ago, as long as they stay within 70 seats.
- It is appropriate that the City Council hears and decides this matter.
- Mr. Ziegler can file an application for an amendment to the exception without mentioning the CUP. Fish came in last year to request an additional 50 seats, and that did not put their CUP at risk. They should now ask for a clarification of the existing exception and request permission to have the flexibility to move the existing seats, indoors and outdoors, or have more seats outdoors in the summer.

- The Planning Commission has been put in a difficult position for two reasons.
  - Although staff has stated they would prefer the Commission to wait on consideration of this issue to get an opinion from the City Attorney, the applicant made a presentation on it and then did not give any presentation on the bench size, which is the matter they did want the Commission to hear tonight.
  - The resolution by the City Council makes reference to the seating plan twice, but the most troubling one is the Condition of Approval that says, "Approval of this application is limited to the project plans titled, "Fish Restaurant Seating Plan." The Commission's task is to decide if the opinion of the Community Development Director was correct based on the information he was given. This language makes it difficult for the Commission to overrule his decision. As much as the Commission would like to give Fish that flexibility, this resolution does not.

Commission questions of staff:

- If the Planning Commission denies this appeal, does Mr. Ziegler have the right to appeal the Commission's denial to the City Council directly, at which time he could explain what the problem is? *Staff responded yes.*
- If the applicant appealed the Commission's denial of Mr. Ziegler's appeal, would Council then that evening have jurisdiction to make an amendment to the Marinship Plan exception? *Staff responded no. The best-case scenario would be for Mr. Ziegler to file an application for an exception to the Marinship Specific Plan.*
- How does the Planning Commission get to that best-case scenario, by just not acting? *Staff responded an exception to the Marinship Specific Plan would need to be filed by Fish. The Planning Commission would make a recommendation at a public hearing and then the matter would go up to the Council.*

Staff comments:

- One option is to continue this matter to allow staff to see if there is a desire by Fish to file an application requesting a City Council modification of the exception to the Marinship Specific Plan solely on the issue of whether the seats can move indoors and outdoors. If that is agreeable to them, this issue becomes moot. That is cleanest path to get this done.
- Staff wishes to clarify that the City has not taken any action to limit Fish's ability to move their seats inside and outside while this matter is pending.

Commission comment:

- The Commission wishes to clarify the delay on this matter since last November has been mostly at the request of Mr. Ziegler or his client, not as a result of failure on the part of the City to address this issue.

Commissioner Cox moved and Chair Keller seconded a motion to continue the public hearing for 350 Harbor Drive concerning the issue of indoor/outdoor seats and the issue of the bench size to a date uncertain. The motion passed 4-0.

Old Business
None.

Communications
Staff—At next week's City Council meeting there will be a public hearing on the Akraboff appeal for 600 Locust Street.

Adjournment
The meeting was adjourned at 9:28 p.m.

__/s/ JEREMY GRAVES__
Submitted by
Jeremy Graves, AICP
Community Development Director

__/s/ BILL KELLER__
Approved by
Bill Keller
Chair

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