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**SAUSALITO PLANNING COMMISSION**  
**Wednesday, April 25, 2012**  
**Approved Summary Minutes**

**Call to Order**

Chair Keegin called the meeting to order at 6:30 p.m. in the Council Chambers of City Hall, 420 Litho Street, Sausalito.

Present: Chair Stafford Keegin, Vice Chair Joan Cox,  
Commissioner Richard Graef, Commissioner Bill Werner

Absent: Commissioner Stan Bair

Staff: Community Development Director Jeremy Graves  
City Attorney Mary Wagner, Associate Planner Lilly Schinsing,  
Assistant Planner Alison Thornberry-Assef,

**Approval of Agenda**

**Vice Chair Cox moved and Commissioner Werner seconded a motion to approve the agenda. The motion passed 4-0.**

**Public Comments On Items Not on the Agenda**

None.

**Approval of Minutes**

April 11, 2012

**Commissioner Werner moved and Vice Chair Cox seconded a motion to approve the summary minutes as amended. The motion passed 4-0.**

**Public Hearings**

**Declarations of Public Contacts**

**Commissioner Werner disclosed he had visited Item 1 and Item 2 sites and spoke only a greeting to a neighbor of 33 Filbert Avenue.**

**Chair Keegin disclosed he had visited Item 1 and Item 2 sites and spoken to no one.**

1. **DR/EA 11-273, Design Review Permit, Encroachment Agreement, Oates and Knowles, 33 Filbert Avenue.** Design Review Permit for the demolition and reconstruction of an existing detached garage located partially in the Filbert Avenue public right-of-way and an Encroachment Agreement. Continued from the April 11, 2012 meeting.

The continued public hearing was re-opened.

1 Assistant Planner Thornberry-Assef presented the Staff Report.

2  
3 The public testimony period was opened.

4  
5 Presentation was made by Geoffrey Butler, the architect.

- 6 • The lot is only 4,300 square feet in area and has very little level space. These  
7 are the reasons the owner would like to have a deck on the proposed garage.  
8

9 Commission questions and comments to Mr. Butler and Andrew Spearing of Terra  
10 Firma Landscapes.

- 11 • What is your feedback on staff's proposed Condition of Approval? *Mr. Butler*  
12 *responded because the encroachment is almost 50% of the existing garage,*  
13 *holding it back that much puts a major damper on using that space and there is*  
14 *still the issue of looking at the roof. He agrees with staff that a skewed railing*  
15 *would look odd.*
- 16 • Could the railing be squared to the garage? *Mr. Butler responded yes, but it is*  
17 *a matter of where it would be squared to, how much space. It could be squared*  
18 *to the garage, and maybe there is a compromise to mitigate some of the 42-*  
19 *inch railing such as a planter at the front garage roof and step the railing back*  
20 *so it is not right on the street.*
- 21 • The issue is that one of the findings the Planning Commission has to make for  
22 the Encroachment Agreement is that the encroachment is necessary to the  
23 reasonable use and enjoyment of the property and the extent of the  
24 encroachment is justifiable. Staff makes the point that certainly the use of the  
25 garage is necessary to the enjoyment of the property, but having a roof deck  
26 has not historically been deemed to be necessary to the reasonable use and  
27 enjoyment of the property, making it a challenge for the Commission to make  
28 that finding.  
29

30  
31 Commission question to staff:

- 32 • The applicant's geotechnical report recommends site drainage monitoring. Is  
33 that built into the Conditions of Approval? *Staff responded that will be*  
34 *monitored by the Engineering staff and will be reflected during the Building*  
35 *Permit stage.*  
36

37 Commission comment:

- 38 • Drainage monitoring should be a Condition of Approval since the geotechnical  
39 engineer specifically called out the importance of it.  
40

41 The public made no comments.

42  
43 The public testimony period was closed.

44  
45 Commission comments:

- 46 • The introduction of the deck as a private use of the public right-of-way is not as  
47 troubling as it would have been if it were a set of Variance findings that were  
48 going to be made. An Encroachment Agreement is less definitive in the long  
49

1 run than the Variance would be and an Encroachment Agreement can be  
2 terminated.

- 3 • Aesthetically the design is more pleasing as depicted in the plans than it would  
4 be if it were pulled back halfway across the roof.
- 5 • The applicant mentioned that the lot is only 4,300 square feet in area and has  
6 very little level space.
- 7 • Most of residences on Filbert Avenue do not have an active porch right on the  
8 street. The applicant is encouraged to make the roof green and put a fence, if  
9 needed, back behind the property line.
- 10 • The overall design works, but allowing that particular use of the right-of-way is  
11 troubling. If the walkway that goes across the back of the side of the deck were  
12 incorporated into the deck and the fence pulled back appropriately there would  
13 be almost as much usable deck space and with some kind of a green treatment  
14 to the front. Somewhere in there is a probably a compromise that could work  
15 as opposed to the full use of the roof as a deck.
- 16 • The handrail running all the way around and at the face of the structure looks  
17 nice and could frame whatever planting is out there and not have to be pulled  
18 back if only using part of the roof. Perhaps a compromise that pushes the  
19 usable deck area back against the planter that is up against the house could  
20 achieve the desired results.
- 21 • If the railing stays where it is, then the deck ought to stay there too. That is why  
22 the railing is there.
- 23 • It does not make sense to only remove part of the deck from the public right-of-  
24 way. All of the deck in the public right-of-way should be removed.
- 25 • Putting the green out towards the street and the hardscape back towards the  
26 house and getting rid of an artificial fence at the edge that has no function  
27 makes the design better.
- 28 • The scale and proportion of the garage's elevation is still good even without the  
29 fence.
- 30
- 31

32 **Chair Keegin moved to continue the public hearing for 33 Filbert Avenue to the**  
33 **meeting of May 9, 2012 and with direction to staff to prepare a resolution**  
34 **incorporating the additional Conditions of Approval.**

35  
36  
37 Additional Conditions of Approval:

- 38 • The site drainage shall be monitored with additional drainage measures  
39 possibly required depending upon the actual site drainage.
- 40 • There shall be a redesign replacing the railing entirely within the property line  
41 of the roof over the garage and the portion of the garage between the railing  
42 and the street shall be a "green" roof.

43  
44 **The motion failed for lack of a second.**

45  
46 **Vice Chair Cox moved to approve a Design Review Permit and Encroachment**  
47 **Agreement for 33 Filbert Avenue subject to the additional Conditions of Approval.**

1 Additional Conditions of Approval:

- 2 • The site drainage shall be monitored with additional drainage measures  
3 possibly required depending upon the actual site drainage.
- 4 • That portion of the garage rooftop located within the public right-of-way shall be  
5 used as a green space and not as a hardscape deck.

6  
7 **The motion failed for lack of a second.**

8  
9 **Commissioner Graef moved and Commissioner Werner seconded a motion to**  
10 **approve a Design Review Permit and Encroachment Agreement for 33 Filbert**  
11 **Avenue subject to the additional Condition of Approval.**

12 Additional Condition of Approval:

- 13 • The site drainage shall be monitored with additional drainage measures  
14 possibly required depending upon the actual site drainage.

15  
16 Commission comment:

- 17 • The concern is with whether the encroachment of the roof deck is necessary to  
18 the reasonable use and enjoyment of the property and setting a precedent for  
19 using the public right-of-way for a non-necessary private use.

20  
21 Staff comment:

- 22 • The Planning Commission is not technically setting a precedent. Each Planning  
23 Commission decision is made based upon the physical conditions and facts of  
24 that case before the Commission. The Commission has mentioned the specific  
25 reasons that the deck is appropriate –the layout of the project and the slope of  
26 the property. The Commission is not bound to do that in the future.

27  
28  
29 **The motion passed 4-0.**

30  
31 The public hearing was closed.

- 32  
33 **2. VA 12-036, Retroactive Variance, Puntsag and Bazarsad, 147 Edwards**  
34 **Avenue.** Retroactive Variance to allow two A/C condenser units and a three-  
35 foot pier in the north and south sideyard setbacks (APN 065-292-04).

36  
37 The public hearing was opened.

38  
39 Associate Planner Schinsing presented the Staff Report.

40  
41 Commission question to staff:

- 42 • What would be the solution if the Commission denies the Variance for the pier  
43 in the northern sideyard setback? *Staff responded that the pier would need to*  
44 *be cut down to grade.*

45  
46 The public testimony period was opened.

47  
48 Presentation was made by Rich Brunelle, the applicant.

1 Commission questions to Mr. Brunelle:

- 2 • Was that pier in the initial drawings that the Planning Commission approved?  
3 *Mr. Brunelle responded yes, it was.*
- 4 • The pier on the plan was that height and in front of the house in that manner?  
5 *Mr. Brunelle responded he did not know if they brought it all the way up to the*  
6 *height of the wall. That was done by the structural concrete person.*

7  
8 Commission question to staff:

- 9 • Was the pier in the original plans? *Staff responded to their recollection it was*  
10 *not in the plans approved by the Planning Commission.*

11  
12 Commission questions to Mr. Brunelle:

- 13 • When did construction begin on this project? *Mr. Brunelle responded they got*  
14 *the permit in July 2010 and began construction in October of that year.*
- 15 • When was the concrete being poured? *Mr. Brunelle responded they had most*  
16 *of it down in the piers before October 15, 2010.*
- 17 • At that time did you recognize the fact that this pier was in the setback? *Mr.*  
18 *Brunelle responded no, but the pier is exactly where is it supposed to be, it is*  
19 *just supposed to be shorter, either at grade or having the grade come up.*
- 20 • So the pier was not built the way it was supposed to be built? *Mr. Brunelle*  
21 *responded correct. Somehow the structural concrete guy brought it all the way*  
22 *up to the same height as the wall.*
- 23 • Were you the project manager at that time? *Mr. Brunelle responded not for that*  
24 *portion of the project.*
- 25 • Was there an architect involved and was he watching out for what was going  
26 on? *Mr. Brunelle responded Robert Hayes was the architect, but he was not*  
27 *aware of Mr. Hayes' level of awareness because he was working on another*  
28 *part of the project.*
- 29 • Was the pier in place before the structure was built? *Mr. Brunelle responded*  
30 *yes.*
- 31 • So the issue with the pier could have been remediated without any damage to  
32 the structure had it been done before the structure was built. *Mr. Brunelle*  
33 *responded the first retaining wall was put up with the piers. There are two*  
34 *retaining walls: the piers with the temporary retaining wall, then another*  
35 *retaining wall on the interior.*
- 36 • Do the air conditioner condenser units provide heat as well? Are they heat  
37 pumps that send warm or chilled water? *Mr. Brunelle responded these are*  
38 *heat/air conditioning units that provide both heat and air.*
- 39 • Were the condenser units installed because you could not do what you wanted  
40 to do in the first place with the furnaces? *Mr. Brunelle responded yes.*
- 41 • Were air conditioning units considered initially or did they come about when  
42 you had to bring in a heat pump? *Mr. Brunelle responded air conditioners were*  
43 *never considered initially.*
- 44 • Do you believe the heat pumps are a redundancy that will never be used? *Mr.*  
45 *Brunelle responded he cannot see them being used very often because it is not*  
46 *that cold in Sausalito. Perhaps if the radiant heat failed or there was a serious*  
47 *cold spell they might be useful.*
- 48  
49  
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- All along the way there were errors and omissions by professional contractors, subcontractors, architects, engineers, and steel and concrete people. No one was paying any attention to the end goal.
- It would have been better if you had involved in these decisions, because now you are coming to us with an after-the-fact issue and telling us there is no other solution because you did not come to us at a time when a solution could have been devised. *Mr. Brunelle responded he thought he had mentioned it to the City and told them he did not think they had any other solution.*

Commission comment:

- The granting of a Variance has to be as a result of some peculiarity of the property, not as the result of some alteration to the property that the property owner has made. The Planning Commission would have a particularly difficult time in approving a Variance where the purpose of the request is to remediate an action taken by the owner of the property itself rather than a peculiarity of that property.

The public testimony period was opened.

Malcolm Gefford, 151 Edwards Avenue, indicated the following:

- He owns the property north of the subject property. He opposes the Variance request and has sent a letter to the City.
- His primary concerns are regarding visibility. One of the units is visible right outside their dining room window.
- His other concern is the noise. He has never heard a quiet air conditioner yet. The noise in this instance will be reflected and magnified between the two houses and will not dissipate.
- All the bedrooms in their home are on the side facing the air conditioning units. On hot nights they would have their windows open and would hear those units.
- He wanted to clarify that there are two piers on the property. There is another shorter one behind the first one. It sticks up about a foot-and-a-half and was not on the plans.
- The two planter boxes on the side of the house are also not on the plans, although they are match the house and are not unattractive.

Chris Mumford, Mill Valley, indicated the following:

- He is speaking on behalf of his son, Martin Mumford, and his daughter-in-law who own the residence at 145 Edwards, directly to the south of the subject property. Martin and Jamie Mumford have sent correspondence to the City.
- The air conditioners are a concern to his son and daughter-in-law and they have not been contacted about them. The family room and master bedroom of their home face the A/C units. They are concerned about noise and the possible impact on their property value.
- These units could have been placed on the back patio so as not to inconvenience the neighbors.

1 Applicant rebuttal:

- 2 • If the units were not into the setback it would not be an issue. He could do all  
3 he wanted to as long as it was not into the setback. Even with them there they  
4 have three-and-a-half feet of setback and the Mumfords have three feet.  
5

6 The public testimony period was closed.  
7

8 Commission comments:

- 9 • The after-the-fact nature of this application is very dismaying because the  
10 applicant comes to the Planning Commission when it is too late for the  
11 Commission to have any meaningful input other than to enforce the Zoning  
12 Ordinance.  
13 • The required findings cannot be made in order to grant a Variance. Of the six  
14 findings the Commission is unable to make five of them.  
15 ○ Cannot make Finding A that there are exceptional or extraordinary  
16 circumstances or conditions applying to the property or to the intended  
17 use of the property that do not apply generally to other property or uses in  
18 the same district.  
19 ○ Cannot make Finding B that owing to such exceptional or extraordinary  
20 circumstances the literal enforcement of the provisions of the title would  
21 result in practical difficulty or unnecessary hardship.  
22 ○ Cannot make Finding C that the Variance is necessary for the  
23 preservation of a substantial property right of the petitioner possessed by  
24 other property in the same district. While the Commission is mindful that  
25 there is a very small recreation space for the applicant, it was the  
26 applicant who chose to design and build a structure that extended out to  
27 the very edges of the setbacks. The owner had an opportunity when these  
28 issues arose to modify his designs in order to accommodate the utility  
29 needs without infringing on the setback.  
30 ○ Cannot make Finding E that the granting of the Variance will not constitute  
31 a grant of special privilege inconsistent with the limitations on other  
32 properties classified in the same zoning district. The purpose of a setback  
33 is to provide light and open space between structures on adjoining lots.  
34 Mechanical equipment is required to be located to minimize visual, noise,  
35 and air quality impacts. That has not been done here. Approval of this  
36 Variance would constitute a special privilege.  
37 ○ Cannot make Finding F that the granting of such Variance will be in  
38 harmony with the general purpose and intent of this title and General Plan.  
39 Granting this Variance will be exactly contrary to the purpose of the  
40 setback, which is to preserve light and open space between structures.  
41 • The removal of the piers is a concern. At the time the Commission approved  
42 this application there were serious concerns regarding slope stability and  
43 seismic issues, therefore it should be confirmed that the removal of the piers is  
44 feasible from a safety perspective. It would be reasonable that it be at the  
45 applicant's expense.  
46 • One of the fundamental issues in the granting of Variances is that self-induced  
47 hardships do not qualify as hardships. This matter has been a series of solving  
48 inconveniences by ignoring the rules.  
49  
50

- 1 • The application should be denied and the Commission should add some teeth  
2 to it by strengthening the Resolution:
  - 3 ○ Include a 30-day timeframe in which to remove the planter and heat  
4 pumps, and 60 days to solve the problem of the pier to the point that it can  
5 be removed as well.
  - 6 ○ Any relocation of those heat pumps shall be the subject of a Design  
7 Review approval by the Planning Commission.

8  
9 Commission question to staff:

- 10 • Has staff considered the issue of the planters as far as their being located in  
11 the setback? *Staff responded the planters are not allowed in the setback and*  
12 *need to be removed.*

13  
14 **Chair Keegin moved and Vice Chair Cox seconded a motion to reopen the public**  
15 **testimony to allow the applicant to address the issue of why the planter is there.**  
16 **The motion passed 4-0.**  
17

18 The public testimony period was reopened.

19  
20 Applicant comments:

- 21 • The planter is for one of the replacement trees required because of the oak  
22 trees they cut down. The dirt is not deep enough without going into the  
23 drainage, so a built-up box was put around it.
- 24 • If they have to remove the planter they have to remove the required  
25 replacement tree. They were going to put a tree in that area anyway; but  
26 putting the box there to build the dirt up gave the tree a better chance. The  
27 landscaper thought that location would be the best to give it that chance.

28  
29 Commission questions to Mr. Brunelle:

- 30 • Was the drainage placed there by this property owner? *Mr. Brunelle responded*  
31 *the concrete structural guy placed the drainage there at the beginning.*
- 32 • How big is the planter? Can it be more than two feet wide? *Mr. Brunelle*  
33 *responded he has not seen the planter, but he does not believe it would be*  
34 *wider than two feet.*

35  
36 The public testimony period was closed.

37  
38 Commission comment

- 39 • The property owner should pay for the City Engineer to have a report prepared  
40 that evaluates the feasibility of the removal of the pier along with an opinion  
41 that the removal will not adversely affect the structural integrity of the structure  
42 or the property. But if the engineer's report states cutting the top off the pier is  
43 a mistake, then some sort of masking solution or mitigation of that issue should  
44 be provided. The engineer's report could also identify other options.

45  
46  
47 **Vice Chair Cox moved and Commissioner Werner seconded a motion to deny a**  
48 **Variance for a planter and heat pumps and require they be removed within 30**  
49 **days, and to continue the public hearing on the request for a Variance for the**  
50



1 piers for 90 days until staff obtains an engineering report, at the applicant's  
2 expense, regarding removal of the piers at 147 Edwards Avenue.

3  
4 **The motion passed 4-0.**

5  
6 The public hearing was closed.

7  
8 **Old Business**

9 None.

10  
11 **New Business – Schedule for Addressing HCD Comments on Draft Housing**  
12 **Element.**

13  
14 Associate Planner Schinsing presented the Staff Report.

15  
16 **Staff Communications**

- 17
- 18 • Staff is in the process of identifying the general fund costs for close to 60  
19 projects as well as the timeframes in which those projects can be  
20 accomplished. Staff will then recommend whether these projects should be  
21 prioritized or not. This information will be provided to the City Council at their  
22 next meeting.

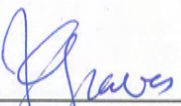
23  
24 **Planning Commission Communications**

- 25
- 26 • The Government Code sets forth the requirements for a Variance, including  
27 comparing the request for a Variance with privileges enjoyed by other property  
28 in the vicinity and under identical zoning classification. Our Section 10.68.01  
29 says essentially the same thing, but our findings under Section 10.68.050  
30 leave out the notion of “in the vicinity” and that should be repaired.

31 **Adjournment**

32  
33 **Vice Chair Cox moved and Commissioner Werner seconded a motion to adjourn**  
34 **the meeting. The motion passed 4-0.**

35  
36 The meeting was adjourned at 9:38 p.m.

37  
38   
39 \_\_\_\_\_  
40 Submitted by  
41 Jeremy Graves, AICP  
42 Community Development Director  
43

44   
45 \_\_\_\_\_  
46 Approved by  
47 Stafford Keegin  
48 Chair  
49

50  
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