



STAFF REPORT

SAUSALITO CITY COUNCIL

AGENDA TITLE:

Appeal to the City Council of the Planning Commission's adoption of Resolution No. 2006-12 denying a Conditional Use Permit and Tentative Map for a Condominium Conversion for Application No. TM/UP/EP 05-033 to convert the existing duplex into two condominium units with surrounding common area, and a Conditional Use Permit and an Encroachment Permit to allow the existing tandem parking configuration on the site which extends into the public right-of-way located at 108-110 Edwards Avenue.

RECOMMENDED MOTION:

Staff recommends that the City Council adopt the attached draft Resolution of the City Council of the City of Sausalito Denying the Appeal of Gary T. Ragghianti and Upholding the Planning Commission's Denial of Conditional Use Permit, Tentative Map, and Encroachment Permit Application No. TM/UP/EP 05-033 for 108-110 Edwards Avenue.

SUMMARY

Appellant Gary T. Ragghianti, on behalf of the property owners Robert W. Simpson and Valerie S. Fox, is appealing the Planning Commission's Resolution of Denial No. 2006-12, adopted on April 26, 2006. The Planning Commission's denial would not allow conversion of the existing duplex into two condominium units with surrounding common area and permit the existing tandem parking configuration on the site which extends into the public right-of-way to serve the condominium units.

The appeal was filed based on two reasons, as outlined in the attached letter of appeal (Attachment 3), generally stating that the Planning Commission erred in not making the requisite findings and refusal to allow the existing tandem parking to be used to support the proposed condominium conversion violates the Ellis Act.

BACKGROUND

The existing duplex was originally constructed in 1961 at which time an encroachment permit was issued for the driveway and ramp which extend into the public right-of-way. In 1977, another encroachment permit was issued by the City to repair the dry rot on the parking deck and install a guard rail. Additionally, in 2002 an encroachment permit was issued in 2002 to replace the wood parking deck with steelpan and concrete. When the original structure was built, only one parking space was required for each dwelling unit. In 1963, the parking requirement changed to two parking spaces per dwelling unit. With

this modification to the parking regulations, the existing two-car parking deck on-site became legal non-conforming.

An application was filed on June 23, 2005 by the applicant, Linda Carruthers, on behalf of the property owners, Robert W. Simpson and Valerie S. Fox requesting approval of a condominium conversion to create individual ownership opportunity for the two existing dwelling units including a Tentative Map and Conditional Use Permit, and a Conditional Use Permit and Encroachment Permit to approve the existing tandem parking configuration that extends partially into the public right-of-way.

The proposal was scheduled for a Planning Commission public hearing on April 26, 2006. After reviewing the project staff report, plans and materials, site visits, considering public and written testimony, and discussion, the Planning Commission voted (4-1) to adopt Resolution 2006-12 to deny the application. Refer to the Attachment 5 for the Planning Commission Meeting Minutes.

On May 4, 2006 property owners, Robert Simpson and Valerie Fox, appealed the Planning Commission's decision to deny Resolution 2006-12 to the City Council. Subsequently, a letter prepared by Gary T. Ragghianti and dated September 19, 2006, was submitted to the City (refer to Attachment 3).

ANALYSIS

This staff report focuses on the issues raised in the appellant's letter submitted September 19, 2006 (Attachment 3). Staff has paraphrased the issues in *italics* and provides a response immediately following each issue.

Appeal Letter – dated September 19, 2006

1. *The requisite findings to support issuance of the applied-for permits can be made (citing Condominium Conversion Permit Finding H and Encroachment Permit Findings B and E).*

Condominium Conversion Permit Finding H states, *“All provisions of this article are met; or the minimum number of parking spaces required by this article is being met, any existing nonconformities are not being increased, and to the greatest extent practicable, some existing nonconformities are being decreased.”* The Planning Commission's decision for denial of the condominium conversion included that the project was not in conformance with Conditional Use Permit Finding H due to the size, shape, slope and existing development on the property, and the tandem parking is not able to be contained entirely on the private property. As the original approval of the duplex structure was for one parking space for each dwelling unit and parking regulations changed in 1963 after the approval of the duplex structure, the parking deck became legal non-conforming. The existing nonconformity would be increased with the approval of tandem parking encroaching into the right-of-way. To meet the current parking standard of two cars per dwelling unit, cars would need to park in tandem. However, tandem spaces would encroach into the public right-of-way approximately 10 feet in depth. Thus, the subject property was not deemed adequate to accommodate the parking on-site and a legal non-conformity would be increased with tandem parking.

Sausalito Zoning Ordinance Section 10.40.120 (Design and Improvement of Parking) outlines the City's parking design and development standards and stipulates that *“required*

parking and areas shall be located on-site and designed as provided by this section.” Part B of this code section provides for exceptions to the design and layout of parking spaces and requires a Conditional Use Permit to achieve a tandem parking arrangement for two and multiple family dwellings. In accordance with the code, the property owners applied for a Conditional Use Permit and an Encroachment Permit for parking in tandem and encroaching into the public right-of-way.

The Planning Commission could not affirm Encroachment Finding B, *“The encroachment will not adversely affect the usability or enjoyment of adjoining parcels nor create or extend an undesirable land use precedent”*, because the approval of the tandem configuration sets a precedent for not requiring the minimum on-site parking spaces as required by the Sausalito Municipal Code. The Planning Commission expressed concern with projects that privatize the use of the public right-of-way and has worked to minimize such encroachments. The Commission further indicated that it is likely that the City will see condominium conversion applications for more of the existing duplexes in the future with required parking configured in tandem on existing parking decks and extending into the public right-of-way. If granted, the Encroachment Permit and associated tandem parking may extend an undesirable land use precedent in terms of using the public right-of-way as required parking for private properties in the area.

The Planning Commission could not make Encroachment Finding E, *“The value of the proposed improvements will not prejudice a policy decision to terminate the encroachment nor preclude or make difficult the establishment or improvement of streets or pedestrian ways”*. The requested Encroachment Permit is necessary to approve the requested Conditional Use Permit, which is in turn required to meet the required findings for a condominium conversion. The Planning Commission found that if the Encroachment Permit was approved and the associated Conditional Use Permit for approval of tandem parking was approved, that the condominium conversion would be approved based on the required parking being met in tandem spaces encroaching into the public right-of-way. This approval would legalize the tandem parking in the public right-of-way. If the City wanted to terminate the encroachment in the future for whatever reason, they would displace additional parking onto the public right-of-way in the surrounding neighborhood. Additionally, if in the future the City wanted to leverage a fee for use of the public right-of-way or make improvements that necessitated use of the public right-of-way outside of the existing improved roadway, there would be obstacles because the City would have already approved the tandem parking in the right-of-way in front of 108-110 Edwards Avenue.

- 2. The City has twice before issued encroachment permits for the exact same area and has never had a problem making the requisite findings before.*

While the City has issued encroachment permits for this site in the past, these permits were for the driveway access to the parking deck, subsequent deck replacement and repairs. The findings for these permits were associated with the parking deck, replacements and repairs. These encroachment permits do not constitute approval of parking that extends beyond the property in the public right-of-way. Approval to install a driveway apron for access to the driveway does not imply that one can park on the driveway apron in the public right-of-way without the appropriate approvals.

- 3. The Commission’s conclusion that granting an encroachment permit sets a bad precedent because it authorizes the use of the public right-of-way is counterintuitive*

given that the very purpose of an encroachment permit is to authorize use of the public right-of-way.

The Planning Commission has the discretion to consider what types of uses would be allowed in the public right-of-way on a case by case basis. The Planning Commission considered this matter in their discussion regarding the precedent for tandem parking encroaching in the public right-of-way. They asserted that access to a parking deck on private property via a driveway apron is necessary and a reasonable encroachment. Access to a parking deck on private property does not place an obstruction in the street. The purpose of the driveway apron is not for parking, its purpose is for access to the parking area. Furthermore, permitting tandem parking to encroach into the public right-of-way, and in this case approximately 10 feet in depth, limits the City's ability to make future roadway improvements. A large portion of a car would be in the right-of-way (10 feet in depth), and if roadway modifications were made, the City would be limited to the portion of the street that could be used.

4. *The Commission was unable to make Finding B of the Conditional Use Permit. Finding B requires that the proposed use is consistent with the General Plan, the purposes of the zoning ordinance, and the purposes of the applicable zoning district. The Commission concluded that the proposed use was not consistent with Section 10.40.120 related to parking because the parking is not on-site. However, Section 10.40.120(B)(1) specifically provides tandem parking as an exception to the general parking provisions, and the City's encroachment permit provision specifically provide a means by which a portion of the public right-of-way may be used where the owner demonstrates "physical need".*

While the Planning Commission considered the property owner's' physical need for additional space, the Planning Commission could not make the Conditional Use Permit Finding B because the proposed tandem parking arrangement extends outside of the subject property boundaries and into the public right-of-way for a depth of approximately 10 feet. This amount of encroachment for parking was considered not to be a small portion of the public right-of-way. Therefore, the Planning Commission found that the project not to be in conformance with Zoning Section 10.40.120.

5. *In regards to Conditional Use Permit Finding F, the City should find that the granting of the encroachment permit provides the owners of 108-110 Edwards adequate space upon which to provide the necessary parking and therefore supports the granting of the CUP.*

Conditional Use Permit Finding F provides that *"the size and shape of the subject property is adequate to provide features needed ensure reasonable compatibility with land uses normally permitted in the surrounding area"*. While the property owners have demonstrated that there is a physical need for the tandem parking to encroach in to the public right-of-way, as stated above, the Planning Commission discussed the merits of the project and found that the amount of encroachment, approximately 10 feet in depth, is too large to grant the permit as the condominium conversion would be approved based on the required parking being met in tandem spaces encroaching into the public right-of-way. This approval would legalize the tandem parking in the public right-of-way. If the City wanted to terminate the encroachment in the future for whatever reason, they would displace additional parking onto the public right-of-way in the surrounding neighborhood. Additionally, if in the future the City wanted to leverage a fee for use of the public right-of-

way or make improvements that necessitated use of the public right-of-way outside of the existing improved roadway, there would be limitations because the City would have already approved the tandem parking in the right-of-way in front of 108-110 Edwards Avenue.

6. *The City's denial of the current application violates the Ellis Act.*

Passed by the State Legislature in 1985, the Ellis Act (Gov. Code section 7060, et seq.) provides that a city cannot require a rental property owner to continue to offer their housing for rent:

“No public entity ... shall by statute, ordinance, or regulation, or by administrative action implementing any statute, ordinance or regulation, compel the owner of any residential real property to offer, or to continue to offer, accommodations in the property for rent.” (Gov. Code section 7060.)

Government Code Section 7060.7 expressly indicates that the Ellis Act was adopted in response to a decision of the California Supreme Court and that it is the intent of the legislature to “permit landlords to go out of business.” This does not mean however, that the Ellis Act prohibits the City from applying applicable City regulations. Quite the contrary actually, as Section 7060.7 also clearly states that the Ellis Act is **not** intended to do the following:

- “(a) Interfere with local governmental authority over land use, including regulation of the conversion of existing housing to condominiums or other subdivided interests or to other nonresidential use following its withdrawal from rent or lease under this chapter.
- (b) Preempt local or municipal environmental or land use regulations, procedures, or controls that govern the demolition and redevelopment of residential property.”

(Gov. Code section 7060.7)

Here, the City is not “requiring” the applicant to stay in the rental property business. Instead, the City is exercising traditional land use controls to require parking consistent with the Sausalito Municipal Code and to discourage permanent encroachments within the public right-of-way. The Ellis Act expressly preserves these functions and, by the Act’s own terms, is not intended to “interfere” or “preempt” the City’s land use authority.

PUBLIC NOTICE AND FEEDBACK

Ten (10) days prior to the hearing date, notice of this proposal was posted on site and was mailed to residents and property owners within 300 feet of the subject parcel.

Since the preparation of this report, one email message was received from the public which is provided in Attachment 6. The message indicates that the project should not be allowed to restrict traffic and parking on Edwards Avenue as the public right-of-way is already congested and dangerous.

STAFF RECOMMENDATIONS

Staff recommends that the City Council adopt the Resolution of the City Council of the City of Sausalito Denying the Appeal of Gary T. Ragghianti and Upholding the Planning

Commission's Denial of Conditional Use Permit, Tentative Map, and Encroachment Permit Application No. TM/UP/EP 05-033 for 108-110 Edwards Avenue.

ATTACHMENTS

1. City Council Draft Resolution
2. Planning Commission Resolution No. 2006-12 with Attachment A – Findings, Attachment B – Reduced Plan Set
3. Appeal letter prepared by Gary T. Ragghianti, dated September 19, 2006
4. Planning Commission Staff Report – April 26, 2006
5. Planning Commission Meeting Minutes – April 26, 2006
6. E-mail message from Clare Jackson, dated December 31, 2007

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