



STAFF REPORT

SAUSALITO CITY COUNCIL

AGENDA TITLE:

Appeal to the City Council of the Planning Commission's denial of the Variance modifications to allow an additional one (1) foot projection into the side yard setback of the property located at 2 Alexander Avenue, as adopted by Resolution No. 2008-04 denying the Variance modification and approving the Design Review modifications for additional bulk and mass of the garage and an additional bathroom for Application No. VAM/DRM 07-002.

RECOMMENDED MOTION:

Staff recommends that the City Council adopt the attached draft Resolution granting the appeal and approving the Variance modification for Application No. VAM/DRM 07-002 to allow an additional one (1) foot projection into the side yard setback to avoid impacts to adjacent Golden Gate National Recreation Area property owned by the National Park Service.

SUMMARY

Appellant William Zeigler, on behalf of property owner Ed Fotsch, is appealing the Planning Commission's denial of the Variance modification to allow an additional one (1) foot projection into the side yard setback for the stairway structure located at 2 Alexander Avenue. On January 9, 2008, the Planning Commission adopted Resolution No. 2008-04 denying the requested Variance modification for Application No. VAM/DRM 07-002 and approving the requested Design Review modifications for additional bulk and mass of the garage and for an additional bathroom in the under floor area. The Planning Commission's approval was conditioned on the removal of the constructed exterior stairway of the garage structure to bring the stairway into conformance with the one (1) foot side yard setback originally approved for the project (Application No. VA/DR 03-26).

On February 7, 2008, the Community Development Department received correspondence from the National Park Service, stating their concern that the removal and reconstruction of the exterior stairway to conform to the one (1) foot setback will cause significant disturbance to their adjacent property. Based on this information, Staff is recommending the City Council approve the Variance modification for the additional one (1) foot side yard setback projection in order to avoid potentially significant impacts from demolition and reconstruction of the stairway, which was constructed immediately adjacent to Golden Gate National Recreation Area (GGNRA) lands owned by NPS.

BACKGROUND

The Planning Commission initially reviewed Variance Modification and Design Review Modifications Application No. VAM/DRM 07-002 on October 10, 2007, and continued the item to allow for additional information to be brought to the Commission regarding the site survey and encroachments onto GGNRA lands. The Planning Commission completed their review and discussion during the November 28, 2007 meeting, during which the Commission determined they could not make the findings that extraordinary circumstances applied to the property that would result in an unnecessary hardship if the additional one (1) foot projection was not allowed, and that granting the Variance modification would constitute a special privilege by permitting work not in conformance with the approved permits to be constructed. Staff returned to the Commission on January 9, 2008 with a draft resolution of partial denial and partial approval of the application, including a condition requiring removal of the exterior stairway encroaching into the one (1) foot approved side yard setback within 180 days of final adoption of the resolution.

The appellant, William Ziegler on behalf of property owner Ed Fotsch, submitted a timely appeal application on January 17, 2008, to appeal the decision and findings of the Planning Commission's denial of the Variance modification. As the appeal does not address the determination regarding the Design Review modifications approved, the issues of the staff report are focused on the requested Variance modification only.

The attached Planning Commission staff reports provide a more detailed explanation of the project background for 2 Alexander Avenue. Please refer to the October 10, 2007 staff report for a detailed description of the project timeline and description. The draft resolution in the October 10, 2007 staff report (Exhibit A1, Attachment B) also includes the resolutions currently in effect for the project, which are Planning Commission Resolutions No. 2003-51 and 2007-08 and City Council Resolution No. 4907.

NEW INFORMATION – NATIONAL PARK SERVICE CORRESPONDENCE

On February 7, 2008, Staff received a letter from the National Park Service (NPS) stating their concern with the removal and reconstruction of the exterior stairway of the 2 Alexander Avenue garage structure (Attachment 2). NPS concerns are that the demolition of the exterior stairway now located directly adjacent to the property boundary between NPS property and the 2 Alexander Avenue property will cause further ground disturbance to Golden Gate National Recreation Area lands. NPS has stated their policy does not permit third party use of park property to stage off-site construction, and that removal of the exterior stairway would further exacerbate a project that has already compromised NPS property. As indicated in previous NPS correspondence dated November 20, 2007 (Attachment 5), NPS has verified the construction error did not result in an encroachment onto NPS property, and they would support approval of the Variance modification conditioned upon the removal of other verified encroachments unrelated to the project, installation of permanent fencing, and installation of erosion control measures.

The information received regarding NPS concerns was not available to the Planning Commission at the time of their publicly noticed hearings. As such, staff is forwarding the correspondence to the City Council for their consideration with the subject appeal.

ANALYSIS

The following is an analysis of the issues raised in the appellant's appeal form submitted January 17, 2008 (Attachment 3). Staff has paraphrased the issues in *italics* and provides a response immediately following each issue.

1. *The Planning Commission decision was based on improper bias and prejudice by the PC members.*

The Planning Commission is the authority to review the 2 Alexander Avenue Variance modification and Design Review modifications, which were originally approved by the Commission pursuant to Resolution No. 2003-51. The Commissioners present at the time of the meeting reviewed the modification in accordance with State laws and in a judicious manner. Their decision to deny the Variance modification was based on required Variance findings, as listed in Zoning Ordinance Section 10.68.050, which the Commissioners unanimously determined could not be made based on the information and testimony presented to them before and during their meetings. As such, Staff believes the applicant received a fair hearing regarding the requested modifications.

2. *The Planning Commission used an erroneous standard in their discussion and ruling upon the Variance, by determining that new Variance findings should be made for the additional one (1) foot projection.*

During the November 28, 2007 meeting, the Planning Commission questioned Staff as to whether new Variance findings should be made for the additional one (1) foot projection, or whether the modification should be reviewed under the previous findings made for the 2003 Application (VA/DR 03-26). The City Attorney informed the Commission that all Variance findings must be made in order to approve the Variance modification. Although a Variance was previously granted for the project, the exacerbation of the structure's encroachment into the setback must be reviewed based on the requisite Variance findings. The Commission thus appropriately reviewed the Variance modification in light of the required Variance findings, and determined they could not make the findings for the additional encroachment into the setback.

3. *The Planning Commission made a mistake in their finding that "there are no exceptional circumstances that would not otherwise allow the stairway to be relocated" based on their finding that "there are also site access alternatives available in the interior of the garage, such as an elevator or interior stairway". In fact, there is no other reasonable alternative access available.*

The original Variance approval in 2003 was based on the finding that the southern (right) side yard provides the only viable access due to the narrowness of the lot and the 0' side yard setback along the northern (left) property line. However, the Planning Commission's finding that no exceptional circumstances existed to not otherwise allow the stairway to be relocated was based on the fact that the "exterior stairway projecting into the side yard is wide enough to be decreased in width to meet the Variance approved for Application VA/DR 03-26, while still allowing for the minimum Uniform Building Code width," as stated in Resolution No. 2008-04. The stairway is currently 5' wide and thus would meet the minimum 36" stairway width of the Uniform Building Code if reduced by one foot.

4. *The Planning Commission's finding that granting the Variance would be a special privilege is erroneous. There is no special privilege granted in allowing the existing stairway to remain.*

The Planning Commission's concern with granting a Variance modification for construction not in compliance with the original approvals was that it would establish an undesirable land use precedent that projects need not conform with their approvals. The potential for other projects to request after-the-fact approvals following the 2 Alexander Avenue decision was one of many considerations by the Commission in their determination. The original 2003 Variance approval that permitted the stairway's encroachment into the side yard setback was based on the finding that the structure's location in the side yard did not constitute a special privilege as other properties in the vicinity currently benefit from allowed development in their required setback areas. Although the same finding could have been made with the requested Variance modification, the Commission's decision was based on their determination that allowing work to be constructed not in conformance to the approved permits could constitute a special privilege.

5. *The Commission findings are contradictory by rejecting the argument that there is no material change, and ignoring testimony that the requirement to demolish the stairway would be expensive and unnecessary.*

There is no "material change" finding required for a Variance. The findings necessary to approve any Variance application, even if only a modification to a previously approved Variance, are listed in Zoning Ordinance Section 10.68.050, and include whether there are exceptional or extraordinary circumstances that apply to the property, whether the literal enforcement of the provisions of the Title would result in practical difficulty or unnecessary hardship, and whether granting the Variance would constitute granting a special privilege. The Planning Commission was unable to make any of these stated findings, as listed in the attached Resolution No. 2008-04. Although the removal of the encroachment could be considered a hardship for purposes of the Variance findings, based on the information provided to them during the November 28, 2007 meeting, the Planning Commission determined that the cost of the removal of the encroachment should not be considered a hardship.

6. *The Planning Commission ignored the City's role in the error. The garage foundation, piers, framing and structure were inspected on over a dozen occasions by the City over a period of two years.*

The subject 1' construction error resulted from an error that occurred during the structure's layout in the initial construction phases, and was caused by an oversight of the contractor that the parcel actually narrows from the Bay to the street. As confirmed by the project contractor in his letter dated September 17, 2007 (Attachment 5c), the 1' overbuild occurred when the foundation was laid out. The contractor set control points to determine the location of the garage foundation down the hill from the structure's location. Because the contractor assumed the parcel was square, and used a control point down the hill where the parcel is wider by approximately 12", when he projected the control points uphill and square to the northern (left) property line, they projected by approximately one foot too wide. Thus, the cause for the error was due to the contractor's oversight and not based on City oversight.

7. *Denial of the Variance modification is unreasonable and inequitable. There is no encroachment on GGNRA land and no view impact. Further, none of the policy reasons for a side yard setback are present and there is no health and safety issue.*

There are several points raised in this issue. Whether the denial of the Variance modification is unreasonable or inequitable is under the purview of the City Council. The following is Staff's response to the factual points raised by the appellant:

- ***There is no Encroachment on GGNRA land.*** As discussed in detail in the November 28, 2007 staff report and confirmed by NPS, the exterior stairway of the garage does not encroach onto NPS property.
 - ***There is no view impact.*** The Planning Commission did determine that the Design Review modifications do not appear to adversely impact public or private views, and constitute a minor deviation from the approved design, as stated in Resolution No. 2008-04.
 - ***The policy reasons for a side yard setback are not present.*** The location of the side yard setback is unique due to its adjacency to designated open space, and thus does not serve the traditionally intended purpose for side yard setbacks to maintain an adequate distance from adjacent structures. However, Zoning standards are uniformly applied to all properties, which is the reason a Variance is required to permit structures to be located in the side yard setback.
 - ***There is no health and safety issue.*** One of the Variance findings requires that granting the Variance will not be materially detrimental to the public welfare or injurious to properties in the vicinity of the subject property (Zoning Ordinance Section 10.68.050.D). This finding was not one of the findings that served as the basis of the Planning Commission's denial.
8. *The National Park Service has confirmed the stairs do not encroach on its property and has no objection to the completion.*

This statement is correct. As stated in the NPS letters dated February 7, 2008 (Attachment 2) and November 20, 2007 (Attachment 4), the National Park Service has informed the City of their acceptance of the one (1) foot modification conditioned on the applicant's compliance with NPS requested conditions of approval.

9. *There is no view or design issue.*

The Variance findings necessary to approve the requested one (1) foot modification do not include consideration of views or other design issues, which are relevant to the Design Review modifications and not to the subject appeal.

MODIFICATION TO CITY COUNCIL CONDITION OF APPROVAL

Because of neighbor concerns expressed that rear yard improvements at 2 Alexander Avenue may contribute to an increased landslide risk, Staff presented these concerns to the Planning Commission on November 28, 2007 to determine whether the condition of approval requiring submittal of plans and a geotechnical evaluation for the improvements should be required prior to issuance of a building permit (Attachment 5b). The Commission agreed that the requirements of Condition 12 of City Council Resolution No. 4907 should be imposed prior to issuance of a building

permit, rather than prior to final project approval, and recommended the City Council revise the condition to state the requirement as such.

Plans and a geotechnical report for the rear-yard improvements have since been submitted by the property owner and are currently under review by the Community Development Department, so modification of Condition 12 is now a moot point. However, for purposes of ensuring complete compliance with this condition, Staff is carrying forward the Commission's recommended modification to Condition 12 with the subject appeal. Modifying the condition is a minor technicality, but will make Staff implementation easier. Should the appeal be granted and Variance modification be approved, an additional condition of approval has been incorporated in the attached draft resolution requiring compliance with Condition 12 prior to issuance of a building permit.

PUBLIC NOTICE AND FEEDBACK

Twelve (12) days prior to the hearing date, notice of this proposal was mailed to residents and property owners within 300 feet of the subject parcel, and published in the local community newspaper.

STAFF RECOMMENDATIONS


Staff concurs that the concerns raised by the National Park Service (NPS) as the neighboring property owner regarding the potential to compromise hillside stability if the stairway encroachment is demolished and reconstructed are substantial safety concerns that warrant the need to allow the exterior stairway to remain as constructed. The property's location adjacent to designated open space, Golden Gate National Recreation Area land, and the City's jurisdictional boundary serve as exceptional circumstances that would result in an unnecessary hardship to neighboring property owners and the subject property, should the stairway encroachment into the side yard setback be removed, as further detailed in the Variance findings of the attached draft resolution (Attachment 1). For these reasons and with respect to neighboring property owner concerns and policies, Staff recommends that the City Council grant the appeal and adopt the attached Resolution of the City Council of the City of Sausalito approving the Variance modification to allow an additional one (1) foot projection into the side yard setback for the exterior stairway structure located at 2 Alexander Avenue (Application No. VAM/DRM 07-002). Alternatively, the City Council may deny the appeal and uphold the Planning Commission denial of the Variance modification requiring removal of the exterior stairway structure.

ATTACHMENTS

1. City Council Draft Resolution
2. National Park Service letter dated February 7, 2008
3. Appeal letter submitted by William Ziegler dated January 17, 2008
4. Planning Commission Resolution No. 2008-04 for Application No. VAM/DRM 07-002
5. Planning Commission Staff Reports for Variance Modification and Design Review Modifications Application No. VAM/DRM 07-002
 - a. January 9, 2008 Planning Commission Staff Report
 - b. November 28, 2008 Planning Commission Staff Report
 - c. October 10, 2008 Planning Commission Staff Report
6. Planning Commission Minutes
 - a. January 9, 2008


- b. November 28, 2008
- c. October 10, 2008

PREPARED BY:

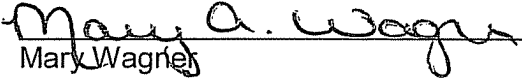


Sierra Russell
Associate Planner

REVIEWED BY:

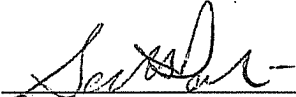


Diane Henderson
Interim Community Development Department Director



Mary Wagner
City Attorney

SUBMITTED BY:



Adam Politzer
City Manager

RESOLUTION NO. XXXX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAUSALITO GRANTING THE APPEAL OF WILLIAM ZEIGLER ON BEHALF OF ED FOTSCH AND APPROVING THE VARIANCE MODIFICATION FOR APPLICATION NO. VAM/DRM 07-002 TO ALLOW AN ADDITIONAL ONE (1) FOOT PROJECTION INTO THE SIDE-YARD SETBACK FOR THE PROPERTY LOCATED AT 2 ALEXANDER AVENUE (APN 065-303-05 & 20)

WHEREAS, an application has been filed pursuant to Municipal Code Title 10 (Zoning) by Don Olsen and Associates on behalf of Ed Fotsch, property owner, requesting approval of Variance and Design Review modifications to previously approved Variance and Design Review Permit No. VA/DR 03-26, approved by Resolution No. 2003-51, and Design Review Modification No. DRM 06-070, approved by Resolution No. 2007-08 and City Council Resolution No. 4907, to allow an additional one (1) foot projection of the exterior stairway into the side-yard setback, modifications for additional bulk and mass of the garage, and for an additional bathroom in the under floor area; and

WHEREAS, the Planning Commission conducted duly noticed public meetings on October 10, 2007, November 28, 2007, and January 9, 2008, in the manner prescribed by local ordinance, at which time all interested persons were given an opportunity to be heard; and

WHEREAS, the Planning Commission reviewed and considered the 2 Alexander Avenue plan set date-stamped received September 17, 2007; and

WHEREAS, the Planning Commission reviewed and considered the information contained in the October 10, 2007, November 28, 2007, and January 9, 2008 staff reports and related attachments for the proposed project; and

WHEREAS, the Planning Commission received and considered oral and written testimony on the subject application and obtained evidence from site visits; and

WHEREAS, the Planning Commission determined that the required Variance findings cannot be made for the additional one foot (1') projection into the side yard setback of the exterior stairway and denied the requested Variance modification pursuant to Resolution No. 2008-04; and

WHEREAS, the Planning Commission found that, as conditioned herein, the Design Review Permit modifications for additional bulk and mass of the garage and an additional bathroom comply with the requirements of the Zoning Code and General Plan, as outlined in the November 28, 2007 staff report; and

WHEREAS, the Planning Commission found that the project modifications are categorically exempt from the requirements of the California Environmental Quality Act (CEQA)

pursuant to CEQA Guidelines Section 15301 (e) in that the project involves remodeling that does not increase the floor area by more than 50% of the existing or 2,500 square feet whichever is less; and

WHEREAS, the Planning Commission found that the required Design Review findings for the modifications to Design Review Permits No. VA/DR 03-26 and DRM 07-060 to allow the additional bulk and mass of the garage and an additional bathroom in the under floor area can be made and approved the Design Review Permit modifications pursuant to Resolution No. 2008-04, as conditioned herein; and

WHEREAS, Mr. William Zeigler, on behalf of property owner Ed Fotsch, filed a timely appeal of the Planning Commission's decision within the 10-day time period on January 17, 2008 and based on reasons outlined in the appeal letter dated January 17, 2008; and

WHEREAS, on February 7, 2008, the neighboring property owner, the National Park Service, notified the City of concerns with the Planning Commission's denial of the Variance modification and the condition to remove the exterior stairway encroachment to bring the structure into compliance with the one (1) foot side yard setback, due to potentially significant adverse impacts to Golden Gate National Recreation Area lands from the demolition and reconstruction of the structure; and

WHEREAS, the City Council conducted a duly noticed public hearing on February 26, 2008 regarding said appeal; and

WHEREAS, on February 26, 2008 the City Council reviewed and considered oral and written testimony, evidence obtained from site visits, staff reports, project plans and materials, prior minutes of the Planning Commission and Planning Commission Resolution No. 2008-04; and

WHEREAS, the City Council considered all issues presented by the appeal subject to the provisions of the Sausalito General Plan and the Sausalito Municipal Code; and

WHEREAS, the City Council confirms that the project is categorically exempt from CEQA pursuant to CEQA Guidelines Sections 15303(e); and

WHEREAS, the City Council has considered neighboring property owner concerns with respect to degradation of the hillside and Golden Gate National Recreation Area lands should the encroachment of the exterior stairway into the one (1) foot side yard setback be removed; and

WHEREAS, based on the record of this proceeding and new information received on potential impacts to neighboring property owners, including the testimony and materials received and described above, the City Council finds that the requisite findings for the Variance modification to allow an additional one (1) foot projection into the side yard setback can be made, as included herein; and

WHEREAS, the determination of the City Council does not alter the findings or conditions of approval listed in Planning Commission Resolutions No. 2003-51 and No. 2007-08, which shall remain in full force and effect; and

WHEREAS, the determination of the City Council does not alter the findings or conditions of approval listed in City Council Resolution No. 4907, except as otherwise as stated in the attached Conditions of Approval included herein, and the Resolution shall remain in full force and effect; and

WHEREAS, the determination of the City Council does not alter the Planning Commission's findings and conditions listed in Resolution No. 2008-04, except as otherwise stated in the attached Conditions of Approval included herein, and the Resolution's approval of the Design Review modifications for additional bulk and mass of the garage and an additional bathroom in the under floor area shall remain in full force and effect.

NOW, THEREFORE, THE CITY COUNCIL HEREBY RESOLVES AS FOLLOWS:

1. The Variance modification for an additional one foot (1') projection into the side yard setback is approved based on the attached Findings (Attachment A).
2. The Variance modification is approved for the plans date-stamped received September 17, 2007 (Attachment B) and subject to the attached Conditions of Approval (Attachment C).

RESOLUTION PASSED AND ADOPTED at the regular meeting of the City of Sausalito City Council on the 26th day of February, 2008, by the following vote:

AYES: Councilmember:
NOES: Councilmember:
ABSENT: Councilmember:
ABSTAIN: Councilmember:

MAYOR OF THE CITY OF SAUSALITO

ATTEST:

DEPUTY CITY CLERK

**CITY COUNCIL APPEAL HEARING
FEBRUARY 26, 2008
VARIANCE MODIFICATION FOR APPLICATION NO. VAM/DRM 07-002
2 ALEXANDER AVENUE**

ATTACHMENT A: FINDINGS

VARIANCE FINDINGS

Pursuant to the Sausalito Municipal Code Section 10.68.050 (Variance Findings), it has been found that the requested Variance modification for an additional one foot (1') side-yard setback is in conformity with the following findings:

- A) There are exceptional or extraordinary circumstances or conditions applying to the property involved or to the intended use of the property, that do not apply generally to other property or uses in the same district.

The southern (right) side yard area of the 2 Alexander Avenue property serves as the only viable area to provide an exterior access stairway due to the property's unusual shape and the 0' setback along the northern (left) side yard. The property is also unusually shaped with the front portion being narrower than the rear. The subject garage structure's location adjacent to designated open space forming the City's jurisdictional boundary, Golden Gate National Recreation Area (GGNRA) land owned by the National Park Service (NPS), is also an exceptional circumstance that does not apply to other properties in the district. The proximity to GGNRA land provides unusual conditions that limit the possible locations to stage construction.

- B) Owing to such exceptional or extraordinary circumstances, the literal enforcement of the provisions of the Title would result in practical difficulty or unnecessary hardship.

Due to the property's location adjacent to GGNRA land, the enforcement of the originally approved one (1) foot side yard setback for Variance VA/DR 03-26 would result in an unnecessary hardship to the neighboring property owner, the National Park Service. Conformance with the minimum 1' setback would require removal of a built structure located immediately adjacent to GGNRA land, and may cause ground disturbance and hillside erosion on NPS property, which has already been compromised during the course of the 2 Alexander Avenue project. Further, respecting NPS policy that third party construction is not permitted on park land would make construction staging of the demolition and reconstruction of the exterior stairway infeasible without violation of this policy.

The enforcement of the 1' side yard setback requirement as approved for Variance VA/DR 03-26 would also decrease the width of an exterior stairway that serves as the only access for the residential property, which would result in a more limited means of egress in which to access the main residential structure.

- C) Such Variance is necessary for the preservation of a substantial property right of the petitioner, possessed by other properties in the same district.

Most properties in the vicinity of the 2 Alexander Avenue site and along Alexander Avenue maintain a 0' side yard setback for both side yards. Permitting a 0' side yard setback along the southern (right) property line is consistent with the property rights exercised by other properties in the district.

- D) The granting of such Variance will not be materially detrimental to the public welfare or injurious to the property or improvement in the vicinity or in the district in which the subject property is located.

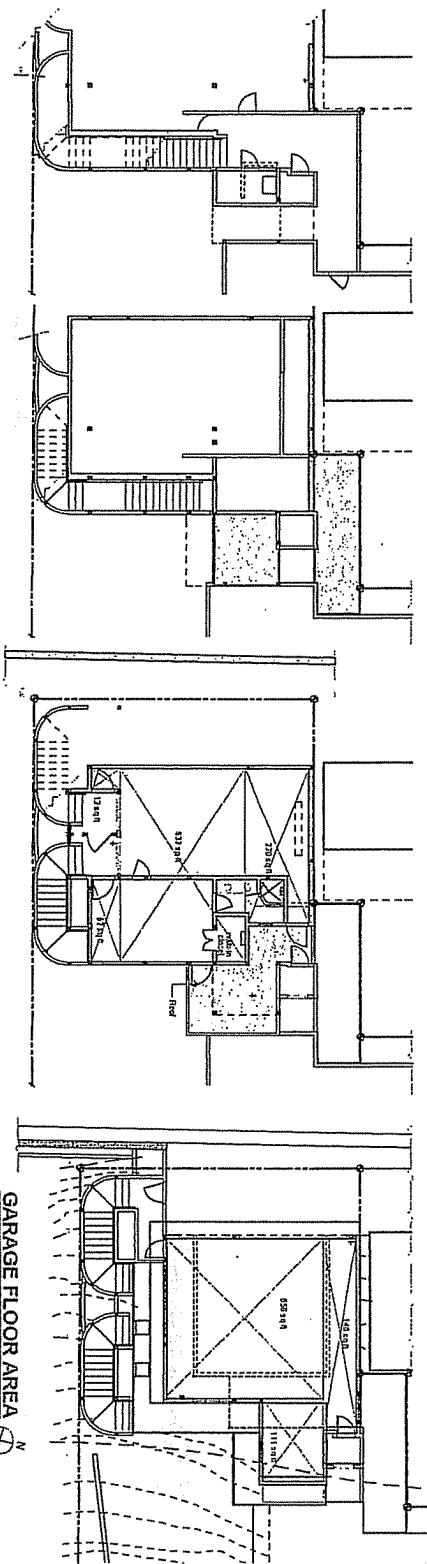
In the case of the 2 Alexander Avenue Variance modification to permit the additional 1' projection into the side yard setback, not granting the Variance would be materially detrimental to the adjacent National Park Service GGNRA property. Because of the exterior stairway structure's immediate proximity to GGNRA property, removal of the stairway to bring it into conformance with the approved 1' side yard setback could be injurious to the park land by potentially compromising hillside stability, contributing to hillside erosion, and further disturbing soils and vegetation that have only recently been restored. Permitting the continuation of the as-built structure is necessary to avoid further detriment to this adjacent property.

- E) The granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zoning district.

The granting of the Variance modification to permit an additional 1' projection into the side yard, thus creating a 0' side yard setback, would not constitute a grant of special privilege in the case of 2 Alexander Avenue, as the modification is being granted to prevent adverse impacts to adjacent properties. Absent these exceptional conditions that make difficult the removal of an as-built structure not in conformance with the approved permits, such an error would not be accepted. Because permitting the exterior stairway to be located with a 0' side yard setback is consistent with the nonconforming 0' side yard setback privileges of adjacent properties, and would prevent potentially significant impacts to adjacent property that may be caused from its removal and reconstruction, the deviation of the exterior stairway from the approved permits is acceptable only under these unusual circumstances that do not apply to other properties in the City's jurisdiction.

**CITY COUNCIL APPEAL HEARING
FEBRUARY 26, 2008
VARIANCE MODIFICATION FOR APPLICATION NO. VAM/DRM 07-002
2 ALEXANDER AVENUE**

ATTACHMENT B: PLANS AND ELEVATIONS



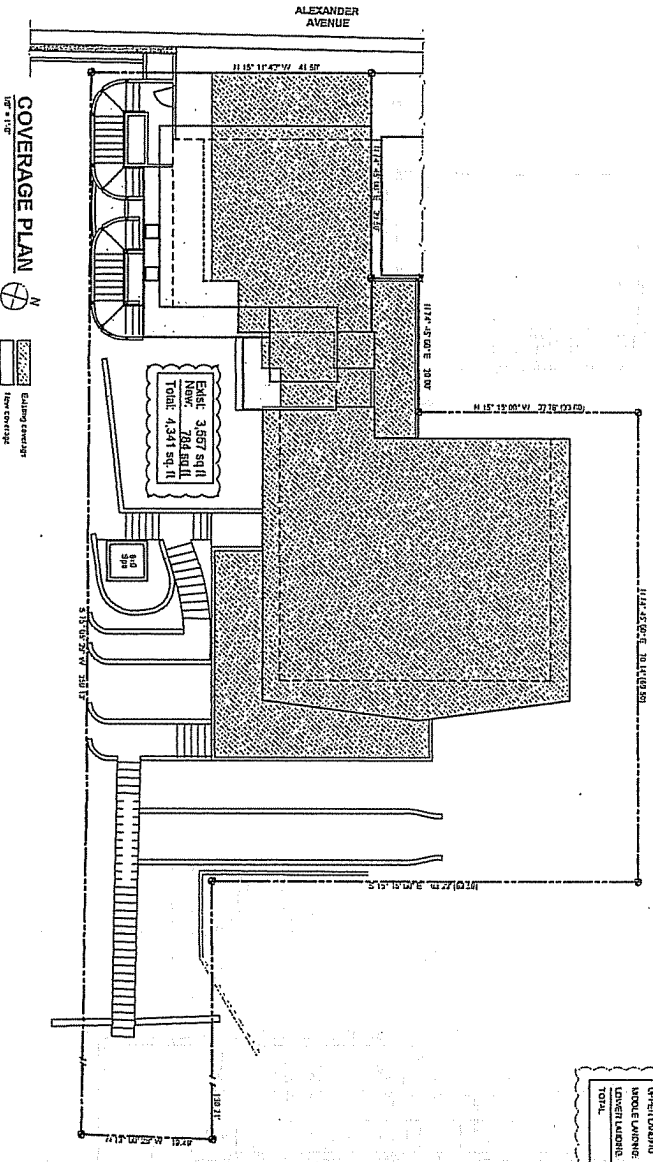
LOWER LANDING AREA
 1/8" = 1'-0"
 TOTAL LOWER FLOOR AREA: 934 S.F.

MIDDLE LANDING AREA
 1/8" = 1'-0"
 TOTAL MIDDLE FLOOR AREA: 14 S.F.

UPPER LANDING AREA
 1/8" = 1'-0"
 TOTAL UPPER FLOOR AREA: 314 S.F.

GARAGE FLOOR AREA
 1/8" = 1'-0"
 TOTAL GARAGE FLOOR AREA: 103 S.F.

CALCULATED DESIGN AREA
 GARAGE: 215 S.F.
 UPPER LANDING: 314 S.F.
 MIDDLE LANDING: 14 S.F.
 LOWER LANDING: 934 S.F.
 TOTAL: 1367 S.F.



COVERAGE PLAN
 1/8" = 1'-0"
 Building Coverage
 Paved Coverage

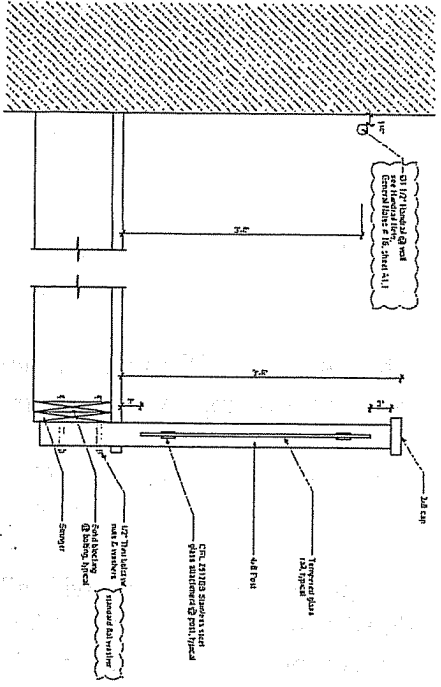
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 JUN 15, 2007
 JUN 15, 2007
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FOTSCH RESIDENCE ADDITION
 2 ALEXANDER AVE
 SAUSALITO, CA 94965

DONALD OLSEN ASSOCIATES ARCHITECTS

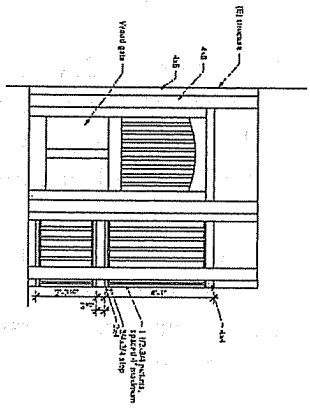
888 Bridgeway, Sausalito, CA 94965 tel: 415/331-0597 fax: 415/331-0593 email: dor@donaldolsen.com

SB
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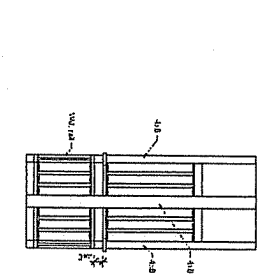


C STAIR RAIL SECTION, TYPICAL
1/2" = 1'-0"

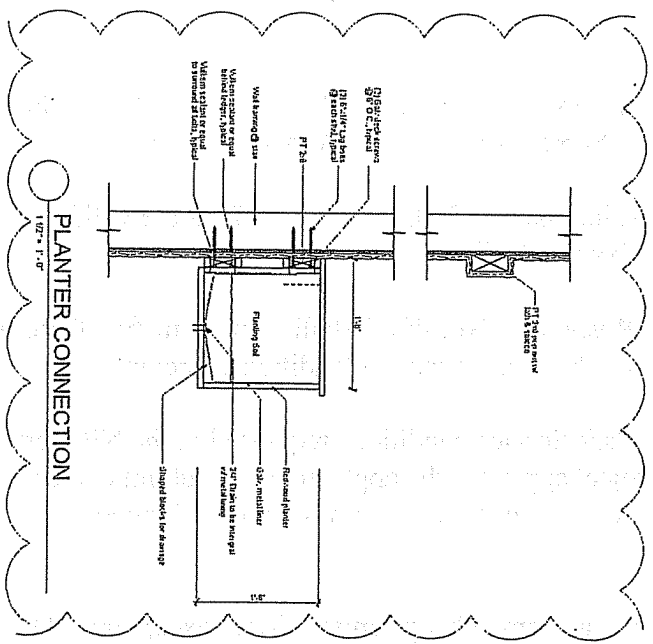
See General Notes # 22, Sheet A1.1



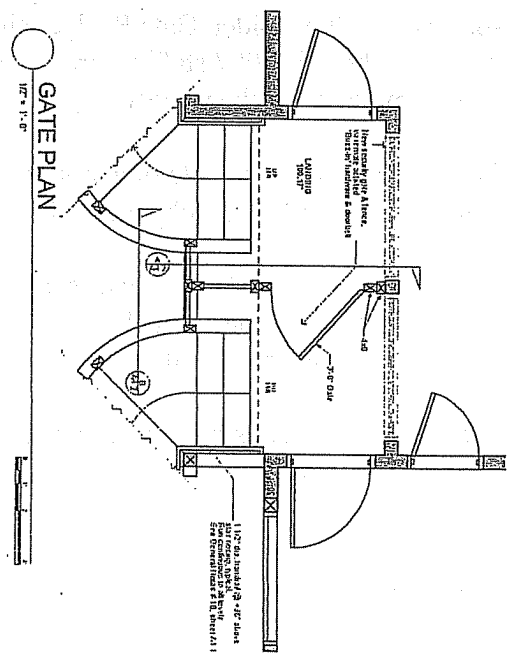
A GATE ELEVATION
1/2" = 1'-0"



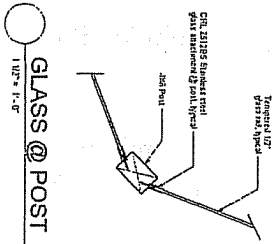
B SCREEN ELEVATION
1/2" = 1'-0"



PLANTER CONNECTION
1/2" = 1'-0"



GATE PLAN
1/2" = 1'-0"



GLASS @ POST
1/2" = 1'-0"

SB
23

**CITY COUNCIL APPEAL HEARING
FEBRUARY 26, 2008
VARIANCE MODIFICATION FOR APPLICATION NO. VAM/DRM 07-002
2 ALEXANDER AVENUE**

ATTACHMENT C: CONDITIONS OF APPROVAL

1. The Variance and Design Review modifications are approved for the plans titled "Fotsch Residence Addition", date stamped received September 17, 2007 (Attachment A).
2. The findings of Planning Commission Resolutions No. 2003-51 and 2007-08 are valid and the conditions of approval shall remain in full force and effect.
3. All conditions imposed by City Council Resolution No. 4907 shall remain in full force and effect, except Condition 12 which shall be modified as stated in Condition 17 below.
4. The project shall comply with all National Park Service conditions requested in the NPS letter dated November 20, 2007. Prior to final project approval, the applicant shall submit evidence of full compliance with National Park Service conditions to the Community Development Department.
5. Gas systems, "220" electrical premise wiring, and any other premise wiring, except one (1) 20 amp branch circuit serving the bathroom receptacle, shall not be installed in the under floor unless otherwise approved by obtaining the necessary permits from the Community Development Department.
6. The owner shall repair the Alexander Avenue viaduct guardrail adjacent to the driveway as stipulated by the repair plan approved by the Golden Gate Bridge Highway and Transportation District and incorporated in the November 28, 2007 staff report within ninety (90) days of issuance of a Building Permit for completion of the project.
7. This approval will expire in five (5) years from the date of adoption of this resolution if the property owner has not exercised the entitlements hereby granted.
8. Construction materials, equipment, vehicles, and debris boxes shall be placed to minimize obstruction of roads and gutters, shall be maintained in a clean and safe condition, and shall not be maintained in a manner that becomes a nuisance to the neighborhood.
9. Pursuant to Ordinance 1143, the operation of construction, demolition, excavation, alteration, or repair devices within all residential areas or within a 500 foot radius of residential zones shall be limited to the following hours:
 - a. Weekdays – Between 8 a.m. and 7 p.m.
 - b. Saturdays – Between 9 a.m. and 5 p.m.
 - c. Holidays – Between 9 a.m. and 7 p.m.

Such operation is prohibited on Sundays except by a homeowner residing on the property. Such work shall be limited to 9 a.m. to 7 p.m.

10. Dumping of residues from washing of painting tools, concrete trucks and pumps, rock, sand, dirt, agricultural waste, or any other materials discharged into the City storm drain system that is not composed entirely of storm water is prohibited pursuant to Sausalito Municipal Code (SMC) Chapter 11.17. Liability for any such discharge shall be the responsibility of person(s) causing or responsible for the discharge. Violations constitute a misdemeanor in accordance with SMC Section 11.17.060.B.
11. As a condition of this approval, no alternative or unrelated construction, site improvements, tree removal and/or alteration, exterior alterations and/or interior alterations and/or renovations not specified in the project plans, or alterations approved by the Community Development Director, shall be performed on the project site. In such cases, this approval shall be rendered null and void unless approved by the Community Development Department as a modification to this approval.
12. In the event that any condition imposing a fee, exaction, dedication or other mitigation measure is challenged by the project sponsors in an action filed in a court of law or threatened to be filed therein which action is brought within the time period provided by law, this approval shall be suspended pending dismissal or final resolution of such action. If any condition is invalidated by a court of law, the entire project shall be reviewed by the City and substitute conditions may be imposed.
13. In accordance with Ordinance No. 1160, the applicant shall pay any and all City costs arising out of or concerning the proposed project, including without limitation, permit fees, attorneys' fees, engineering fees, license fees and taxes, whether incurred prior to or subsequent to the date of this approval. Applicant acknowledges and agrees that City's costs shall be reimbursed prior to this approval becoming valid.
14. The applicant shall indemnify the City for any and all costs, including without limitation attorneys' fees, in defending this project or any portion of this project and shall reimburse the City for any costs incurred by the City's defense of the approval of the project.
15. An approval granted by the Planning Commission does not constitute a building permit or authorization to begin any construction. An appropriate permit issued by the Building Division must be obtained prior to constructing, enlarging, moving, converting, or demolishing any building or structure within the City.
16. The Community Development Department is authorized to administratively approve minor modifications to the approved plans. Major design modifications to the approved project will require further review and approval by the Planning Commission.
17. To the extent a Building Permit is or would be required, the applicant shall submit plans, including, without limitation, grading, drainage, and improvement plans to the extent required by the Building and/or Engineering Divisions, for all work constructed without a Building Permit including floor systems, placement of the spa, and the garden retaining walls to the Community Development Department for review and approval. Engineering staff shall

review site improvement elements, including, but not limited to, detached retaining walls and drain systems for approval. Building structural elements shall be reviewed by the Building Department for conformance with Building Code provisions. Said plans shall be submitted prior to issuance of a Building Permit and shall include a geotechnical review prepared by a State of California licensed civil engineer qualified in geotechnical engineering.



United States Department of the Interior
NATIONAL PARK SERVICE
Golden Gate National Recreation Area
Fort Mason, San Francisco, California 94123

RECEIVED
FEB 12 2008
CITY OF SAUSALITO
COMMUNITY DEVELOPMENT

IN REPLY REFER TO:

D18 (GOGA-BMD)

February 7, 2008

Sierra Russell, Associate Planner
City of Sausalito Community Development Department
420 Litho Street
Sausalito, CA. 94965

Re: Variance 2 Alexander Avenue, Sausalito

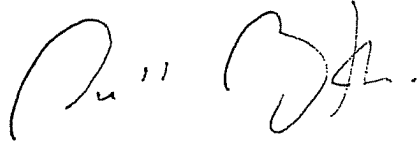
Dear Ms. Russell:

The National Park Service (NPS) is writing in response to the City of Sausalito's (City) denial of the proposed modification to a variance at 2 Alexander Avenue (Property) originally adopted by the City Planning Commission in Resolution 2003-51 on November 5, 2003 (Variance). It has come to our attention that Dr. Edward Fotsch, the Property owner (Owner) was directed by the City of Sausalito Planning Commission to remove and reconstruct the stairway portion of the garage remodel project (Project) in compliance with the original Variance. In our letter of November 20, 2007, NPS verified that the Owner had corrected an encroaching Project planter. We also confirmed that the Project stairway is not encroaching. The letter also identified continuing encroachments that pre-existed the Project. In our letter, NPS submitted conditions for granting final approval of the Project including the removal of the continuing encroachments, post-construction restoration of NPS property, and permanent demarcation of our boundary to prevent future encroachments.

While we respect the findings of the City of Sausalito Planning Commission, NPS is very concerned that the removal and reconstruction of the Project stairs to conform to the original Variance will only cause further significant disturbance to our property. NPS policy does not permit third party use of park property to stage off-site construction. In the past months, NPS has worked cooperatively with City staff to ensure that the Owner corrects and mitigates Project errors in order to protect and restore our resources to their original condition. In our opinion, the removal of the Project stairs would cause further excessive ground disturbance and would only exacerbate, not correct, this already compromised Project.

As a neighboring property owner, NPS believes that the approval of the Variance modification subject to NPS conditions identified in our November 2007 letter, and other penalties as the City deems appropriate, will be the best resolution of this matter. Thank you for your consideration. If you have any questions regarding this communication, please contact me at (415) 561-4971.

Respectfully,



Paul Batlan
Realty Specialist

SEILER
EPSTEIN
ZIEGLER &
APPLEGATE LLP

Attorneys at Law

wjz@sezalaw.com

January 17, 2008

Mayor Amy Belser and Members of Sausalito City Council
City of Sausalito
420 Litho Street
Sausalito, CA 94965

RECEIVED
JAN 17 2008
CITY OF SAUSALITO
COMMUNITY DEVELOPMENT

Re: 2 Alexander Avenue/Variance and Design Review Modification
Application No. VAM/DRM 07-002

Dear Mayor Belser and Members of the Sausalito city Council:

On behalf of Dr. Edward Fotsch I am hereby appealing the decision and findings of the Planning Commission made on January 9, 2008, regarding the above property and application as it relates to its denial of the variance modification to allow an additional one foot (1') projection into the sideyard setback.

Dr. Fotsch was originally granted a variance on this project in 2003, and thereafter received permits for a new garage, exterior stairs and subsequently, living space below the garage, which were then constructed. The variance which was granted allowed a new exterior entry stairs which would project four (4) feet into the otherwise required five (5) foot side yard setback. This variance allowed a garage of adequate size so as to reduce the need for on street parking at this difficult location. The remaining one foot (1') side yard was requested by the National Park Service to ensure that no encroachment of the new exterior stairs would occur into the adjacent GGNRA property. After nearly two years of construction, with the foundation and framing completed, and after at least seven (7) City inspections performed by both the prior and the new building inspector, the City notified Dr. Fotsch that in certain locations the structure was one foot wider than the approved forty foot (40') structure shown on the building plans. The City then required Dr. Fotsch to apply to the Planning Commission for a "modification to the variance."

Dr. Fotsch made application for a modification to the Variance and to the permit approvals, as requested. (After investigation as to the cause for the deviation from the approved plans, it was discovered that the contractor had made an error in setting his control point for measurements in assuming that the North and South property lines were exactly parallel. In fact, the South property line actually angles slightly, causing the lot to narrow as it moves uphill toward Alexander Avenue. This error was entirely unintentional, and apparently was accepted as such by the Planning Commission. There is no apparent benefit accruing to Dr. Fotsch as a result of the error.)

The Planning Commission, in its decision and resolution adopted on January 9, 2008, in fact *approved* the new garage portion of the structure, finding that the additional bulk and mass created (41 feet, instead of 40 feet wide) was consistent with General Plan policies, that it minimally impacted the design of the structure and maintained the prevailing design character of the neighborhood. The Planning Commission specifically found that the enlarged garage was "a minor deviation from the approved design." It also found that "Light and air of downhill properties appear to be minimally affected" and that there were no other impacts that needed to be addressed. On this basis, the Planning Commission basically approved the structure as it stands, although it imposed other agreed upon conditions as to the garage.

Curiously, the Planning Commission then denied approval of the exterior stairs which do not encroach upon NPS property, and affect neighbors, views, and the City much less than the garage itself. The stairs are not even visible from the street. This denial was based upon the mistaken belief that that the Planning Commission had to make entirely new variance findings, because the original variance had created a one foot (1') setback from National Park Service property. This is even more curious because the NPS has made clear, in writing, that it has no problem with the building and setback situation as they stand, provided Dr. Fotsch removes certain temporary encroachments which have been placed for construction purposes. The NPS has specifically requested the City to approve the requested amendment to the variance.

A brief statement of the grounds for this appeal will reveal why this curious and erroneous decision has occurred:

1. **Bias.** The Planning Commission ("PC") decision was based upon improper bias and prejudice by PC members. At the outset of the hearing, and before hearing any argument by applicant, Chairman Kellman stated that "the original variance was granted in 2003 and I voted NO on that... I could not make any of the variance findings to begin with and I can't make them now for an additional one foot..." (It is actually ten inches (10")) This statement was repeated by Chairman Kellman at least three times as the hearing progressed. Approximately halfway into the hearing, Commissioner Keller also stated that "I didn't vote in favor of the application of a variance a year ago... I just can't make variance findings for an additional foot." These two commission members, Kellman and Keller, did not accept or respect the fact that the PC itself had previously decided that a variance should be granted, that the project had previously been approved and that it was built substantially in accord with that approval. Since there were only three (3) commissioners present at the hearing, the applicant could not receive a fair hearing.
2. **Erroneous Standard Used.** The PC discussed and ruled upon the application on the basis that it had to go back and make new variance findings as if the application were an entirely new project. Despite the fact

that the project was built in reliance on the fact that a variance had been granted previously and that hundreds of thousands of dollars were spent in reliance upon this grant, it acted as if the project and building did not exist. Then, using a prior announced mindset that the majority of two of the three members would not have granted the original variance, it quickly decided that no variance could or should be granted. In fact, Dr. Fotsch, the applicant, did not even apply for a *new variance*, but rather an amendment to the existing variance, as he had been instructed by the Planning Staff. As noted above, in discussing the garage itself, the PC inconsistently found that the additional bulk and mass of the garage "minimally impacts" the design and character of the structure and that it was a "minor deviation." Then it ruled that the garage could stand, but that the stairs alongside the garage had to be torn out and narrowed. Apparently the PC recognized that the overall structure had a *de minimis* variation, but when it came to the sideyard and stairs, the "new variance" standard distorted its view.

3. **Mistake of Fact.** As part of the PC findings, the commission found that "there are no exceptional circumstances that would not otherwise allow the stairway to be relocated..." and that "there are also site access alternatives available in the interior of the garage, such as an elevator or interior stairway." In fact, there is no interior stairway in the garage and no place to locate an additional set of stairs. Further, the elevator, which is not used often because of its location and reliability issues, is not available when the garage doors are closed. Additionally, there are serious safety issues without a proper exterior stairway. Simply narrowing the offending stairs on the side is extremely expensive and would not allow any room for carrying packages or large objects, etc. from the street to the home below. In short, there is no alternative access reasonably available without performing major demolition on the garage itself, which the PC has now approved.
4. **Special Privilege Finding is Erroneous.** Clearly, there is no special privilege in allowing the existing stairways to remain. Every residence in the area has a similar stairway and every home along this section of Alexander Avenue is built to the lot line with no setback. Instead, the PC found that there would be a special privilege in allowing the stairway to remain because it would be "allowing work to be constructed that is not in conformance to the approved permits." While that is a true statement by itself, the PC allowed the forty foot garage itself to remain because the garage as built has "minimal impacts" and substantially conforms to what was approved. It is not the stairway that is not built in accord with the approved permits, but the garage, which being oversized, pushes the stairway further into the sideyard. It is also very unclear why, when the stairway was granted the right by variance to be four feet into the sideyard, it becomes a special privilege when it then goes four feet and ten inches (4' 10") into the sideyard.
5. **The Commission Findings are Contradictory.** We have detailed above both how the PC approved the garage structure on the grounds of minimal

impact, but at the hearing it rejected out of hand the applicant's argument that there was no "material change" from the original variance. Chairman Kellman specifically stated that "the query here is not whether there is a material change," yet she justified her vote on the garage on exactly this standard. Apparently the commission was unwilling to require the applicant to tear down the garage itself, but it had no problem in inflicting a lesser pain upon the applicant. In so doing, it ignored testimony that even this requirement would be extremely expensive and meaningless to everyone other than the applicant. We are currently estimating the cost of compliance with the PC decision to be well in excess of \$100,000, in order to create a narrow and unsatisfactory stairway.

6. **The PC Ignored the City's Own Role in the Error.** The construction of Dr. Fotsch's garage and stairways did not occur in a vacuum or in the dark. Planning staff reports, including on-site inspections and photographs, were done on at least seven (7) occasions *after completion of the stairs* on the following dates: December, 2005; June 7, 2006; October 26, 2006; November 8, 2006; March 14, 2007; May 15, 2007; and June 12, 2007. The garage foundation, piers, framing and structure were inspected on over a dozen occasions by the City over a period of two years. These inspections and photographs were made by the City Building Department because construction was on-going and required City presence. Based upon continuing City approvals and inspections, the applicant continued to spend money and to build. If there was a special privilege being exercised or an undesirable land use being made, it was not apparent to either the City or to the builder. Clearly, because of the *de minimis* nature of the error, the problem was not detected when it could be dealt with on a reasonable basis. This is truly an exceptional circumstance.
7. **Denial of a Variance Modification is Unreasonable and Inequitable.** In the face of an expense in excess of \$100,000 that is aimed at producing an undesirable result, with benefit to no one, in order to demonstrate that the City sticks by its rules, whatever the cost, there is only one way to characterize the PC decision: unreasonable and inequitable. The increased floor area created by the contractor's mistake is 0.9% and the increased building coverage is 0.5%. There is no encroachment on GGNRA land and no view impact. Further, none of the policy reasons for a sideyard setback are present and there is no health and safety issue (except for the detriment that would be *caused* by complying with the PC decision). In short, the decision cries out for correction.
8. **National Park Service Request.** The only party who could conceivably be affected by the error, the NPS, has written its approval to the City for the stairs as-built and for completion of the garage. Originally, it requested the one foot (1') setback, but now has confirmed that the stairs do not encroach on its property and has no objection to completion.
9. **There is No View or Design Issue.** The PC itself has confirmed in its findings that because of the location of uphill and nearby residences, there

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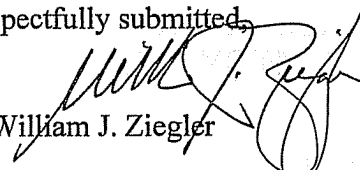
Attorneys at Law

Page 5

is a minimal impact upon views. In fact, there is *no* discernable effect upon anyone's view, light, air or any other protected value.

We respectfully submit that the Planning Commission decision should be reversed and that the variance modification should be granted.

Respectfully submitted,


William J. Ziegler

Cc: Dr. Edward Fotsch

MICHAEL REX ASSOCIATES

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RECEIVED

FEB 20 2008

CITY OF SAUSALITO
COMMUNITY DEVELOPMENT DEPT.

February 19, 2008

Sausalito City Council
City of Sausalito
420 Litho Street
Sausalito CA 94965

**RE: 2 ALEXANDER AVENUE - VARIANCE AND DESIGN REVIEW MODIFICATION
APPLICATION NO. VAM/DRM 07-002**

Dear Members of the City Council,

On behalf of Ian and Jan Moody, homeowners of 6 Alexander, located directly downhill of the project site, I write to request that you deny the appeal filed on January 17, 2008 by William J. Ziegler, attorney for Dr. Edward Fotsch, owner of 2 Alexander Avenue, and uphold the Planning Commission's action on January 9, 2008 approving the Design Review modifications, but voting against the Variance application. The Planning Commission determined correctly that the findings necessary to approve a Variance to allow an additional one foot projection into the sideyard setback could not be found. This is still the case. The Commission's decision should stand, for the many reasons noted below.

1. Misstatements in Mr. Ziegler's Appeal Letter:

- A. In the first sentence of his second paragraph on Pg. 1, Mr. Ziegler explains that following the granting of a Variance (to encroach 4 ft. into the southern sideyard) Dr. Fotsch "thereafter received permits for a new garage, exterior stairs and subsequently, living space below the garage, which were then constructed." To the contrary, a building permit was issued only for the new garage and exterior stairs. The levels below the garage were permitted only as horizontal diaphragms, not living space. These diaphragms did not span entirely across the building envelop, but were left open in areas. Subsequently, Dr. Fotsch had the open areas filled with a floor system without a Building Permit. Design Review approval has been obtained to convert these diaphragms to floors for living space accompanied with 24 Conditions of Approval. Plans were submitted for a Building Permit, but the plan check process is pending the outcome of the current appeal.
- B. The garage portion of the project is not just 12" wider than approved, as Mr. Ziegler notes at the top of Pg. 2 in his letter. As-built dimensions taken by City Staff and summarized on a July 24, 2007 chart have determined the garage portion of the project is 16" wider and 11" deeper. Also, subsequent measurements revealed the roof height is approximately 4" higher than the original garage, the structure the new one was supposed to match in height. Though the Moodys objected to this excess bulk and mass, the Planning Commission approved on November 28, 2007 this significant increase in building size.
- C. Rather than a 10" discrepancy as noted in paragraph #1 on Pg. 2 of Mr. Ziegler's letter, Staff's July 24, 2007 chart notes that the width of the combined garage and stairway measures 12" wider than approved. Though the Moodys asked that the City require a survey to accurately establish the extent construction has encroached into the required sideyard setback, the survey provided by

the Applicant unfortunately does not show any site features, so there is no way to know to the inch the full extent of the encroachments.

- D. At the bottom of Pg. 1 of his letter, Mr. Ziegler claims the deviation from approved plans is due to the Contractor setting incorrectly his control point for laying out the building and assuming that the north and south property lines were parallel, when in fact, they converge a bit at the uphill end of the lot. The Applicant argues that this was a minor and simple error anyone could make. However, it isn't unusual in Sausalito for parcel boundaries to be located at an angle to each other. Had the Contractor surveyed the boundaries and constructed a fence along the parcel's southern property line, as required by the National Park Service as their first two conditions in their March 11, 2003 letter to Dr. Fotsch, this angled configuration would have been made apparent and the error avoided.
- E. Boundary lines being slightly angled to each other aren't the real reason for the deviation. Later, at the end of paragraph 4. on Pg. 3 of his letter, Mr. Ziegler admits, "It is not the stairway that is not built in accordance with the approved permits, but the garage, which being oversized, pushes the stairway further into the sideyard." How the garage was constructed 16" wider and 11" deeper isn't explained. Either care wasn't given when laying out the foundations for this large, three-story structure, or there was intent to build larger than approved.
- F. During its November 28, 2007 hearing, the Planning Commission never determined that the error was "entirely unintentional" as Mr. Ziegler, at the bottom of Pg.1 of his letter, states was apparent.
- G. At the bottom of Pg. 1 of his letter, Mr. Ziegler states, "There is no apparent benefit accruing to Dr. Fotsch as a result of the error." Actually, Mr. Fotsch has obtained a considerable benefit in having a garage structure enclosing two living levels below that is 16" wider and 11" deeper than what was originally approved.

2. Commissioners Alleged to be Biased by First Variance Approval:

Mr. Ziegler claims that Commissioners Kellman and Keller were biased, because they didn't respect the Commission's previous majority vote in favor of the first Variance for a 4 ft. encroachment into the sideyard setback. The merits of the first variance were not revisited during their November 28, 2007 hearing. It was the request for a second, additional Variance that they discussed that night and voted against. Reading of the minutes from this hearing makes it clear that the Commission focused on and was unable to make the findings necessary to approve the second Variance.

3. Appeal Letter Mute on Need for Variance Findings:

- A. In his January 17, 2008 letter, Mr. Ziegler never discusses the need for new Findings to grant the second sideyard setback Variance. At the start of the November 28, 2007 hearing, the Commission was advised by City Attorney, Mary Wagner, that new Findings would be required to grant another 12" encroachment. She further advised that unlike Conditions for Design Review, which allow for some minor deviations from what is approved, there are no such provisions in the City's code to allow for minor deviations from a Variance. Upon thoughtful deliberation, the Commission could not make three of the necessary Findings, those of Exceptional Circumstances, Hardship and Special Privilege.

- B. In his letter, Mr. Ziegler objects to the Planning Commission finding that no exceptional circumstances exist that would preclude conformance to the approved plans. Such exceptional circumstances refer to unusual physical site conditions typically not found at other parcels within the same Zoning District. While the parcel at 2 Alexander Avenue is steep, there are many steep lots throughout Sausalito, particularly in this Zoning District. It certainly isn't unusual either for property lines to be slightly askew to each other. The Fotsch parcel is over 10,000 sq.ft. , more than sufficient in size to accommodate a single family home, even more so given the added benefit of the first Variance allowing a 4 foot, or 80% encroachment into the lot's southern sideyard. Because no such exceptional circumstances exist associated with this particular parcel, the Commission could not vote in favor of the requested Variance.
- C. Mr. Ziegler argues that "there is no special privilege in allowing the existing stairways to remain." In paragraph 4 on Pg. 3 of his letter, he asks why the original 4 foot encroachment into the sideyard setback was found to be right justifying the first Variance, but another 12" encroachment isn't? The simple reason is that, right or wrong, a Variance was approved for the first four additional feet but not for another 12". Nowhere is it written that granting one Variance necessitates granting another. There are reasonable limits. Because the new encroachment was due to lack of compliance with approved plans and the project's Conditions of Approval, the Commission determined correctly that any hardships associated with compliance now were self imposed. The Commission further reasoned that a special privilege would exist when one is exempt from building in conformance with approved plans when others must conform. Commissioners were troubled by the message approval would send, "Go ahead and build it wrong and we will simply approve it."
- D. Mr. Ziegler argues that the 12" additional encroachment does not conflict with policy reasons for requiring sideyard setbacks, such as providing a reasonable distance between homes, preservation of light and air, health and safety, etc. While it is true that there are no homes to the south of the Fotsch residence which would be crowded or shadowed by further reduction in the sideyard setback, one of the reasons for prescribed setbacks is to control a building's mass. Approving no setback at all, which the applicant requests, is inconsistent with the intent of Zoning to regulate bulk and mass. Nowhere in the Zoning Ordinance is it written or implied that when there are no abutting dwellings, one can ignore prescribed setbacks.
- E. While City policy and the intent of Zoning are important considerations, the Commission's decision to vote against the Variance application had more to do with the fact that the required Findings could not be made, which provided a very clear reason to deny the request for another 12" encroachment.

4. Claim that Variance Denial Benefits No One, Only Punitive to Applicant:

- A. In the second paragraph on Pg. 2 of his letter, Mr. Ziegler states that "The stairs are not even visible from the street." Anyone traveling along Alexander Avenue can see that this statement isn't true. The stairs and adjacent guardrail begins at the street level and given that it rises nearly two stories in height, an additional foot adds to its apparent bulk.
- B. In the first paragraph of Pg. 4, Mr. Ziegler claims that constructing the stairway in conformance with the required sideyard setback would be "meaningless to everyone other than the applicant." Is it meaningless to everyone to expect one to construct a home in accordance with approved plans, or adhere to a project's Conditions of Approval, or honor prescribed setbacks, or respect the need for required Variance Findings?" The Commission rightfully concluded it is not.

- C. Mr. Ziegler argues that if the Commission could approve the garage structure being 16” wider and 11” wider, why the Commission couldn’t find an extra 12” width at the stairs acceptable? The reason is that the garage portion of the structure is within the required setbacks and within Zoning limits controlling bulk, mass and design. The stairs are not. The Commission had the discretion to rule that the deviations related to the garage portion of the project are minor. According to the City’s Attorney, they didn’t have such discretion when it came to the Variance application. For a Variance, certain Findings were required that the Commission could not make.

5. City Inspections Obligate the City to Approve Deviation:

- A. Mr. Ziegler implies that because the City provided multiple inspections during the course of construction to date, the City is now obligated to approve construction that deviates from what was approved. It is well known that inspections by the City’s Building Official seek to protect life safety and are not intended to certify that construction is done in accordance with planning codes – it remains the responsibility of the owner and his agents to build correctly and in accordance with Zoning requirements and Conditions of Approval. Besides, the City has yet to provide a final inspection, and so it can continue to provide scrutiny until the project is fully completed.
- B. Also, just because one variance was granted, doesn’t mean the City is obligated to grant another one, particularly to encroach even more into a sideyard setback for which significant relief has already been granted.

6. Precedent:

- A. In the second paragraph on Pg. 2 of his letter, Mr. Ziegler finds it curious that the City would take issue with the stairs encroaching further into the sideyard setback, when the National Park Service (NPS) supports the current Variance application. It’s true that for some unknown reason, in their November 20, 2007 letter, the NPS changed its mind about requiring a fence along the entire length of the parcel’s southern property line, now limiting the fence to only the area downhill of the Fotsch stairway. But the NPS does not regulate Sausalito’s Zoning standards, nor enforce the City’s Conditions of Approval for a project, nor administrate Variance applications necessitating Findings. This is solely the City’s purview, regardless of NPS actions.
- B. In spite of Mr. Ziegler’s objections in paragraph 7 on Pg. 4, it is not “unreasonable and inequitable” for the Commission “to demonstrate that the City sticks by its rules.” To do so otherwise, the Commission feared would set a bad precedent, sending the message, “Build it wrong or too large and we’ll approve it.”
- C. There are precedents in the past where the City has required rebuilding when structures were built larger than approved. One such example is at 60 George Lane for which I was the project’s Architect. When a second floor addition was framed in accordance with approved plans, but 8” higher than the story poles that were set in the field, the City decided in March, 2001 to require the owner to lower the framing, including expensive steel frames that had been put in place.

7. Viable Options Exist:

- A. Mr. Ziegler states, "There is no alternative access reasonably available without performing major demolition on the garage itself." This isn't true. The layout of the stairs could be adjusted where the steps wind, and/or the width of the stairs could be narrowed a bit, such that either way, the stairway would conform to the approved setback with no renovation to the garage portion of the project. Mr. Ziegler claims, "there are serious safety issues without a proper exterior stairway." Yet there are ways the stairs can be adjusted to conform to the approved setbacks in a manner that is safe and conforming to code standards. Mr. Ziegler argues that to narrow the stairs, "would not allow any room for carrying packages or large objects." Yet the existing staircase is 3'-6" wide, 6" wider than the code required 3 foot width. Plus the stairs are open on the south side, providing even more room to maneuver. Most homes have 3 foot wide stairs and accommodate carrying packages just fine. Besides, the Fotsch residence is also equipped with an internal elevator, providing another alternative for transporting packages from the street to the home.
- B. The applicant's Architect has never presented the City with a plan showing how the stairway can be modified to honor the approved sideyard setback encroachment. Since the stairs can be adjusted without a loss in use, the Council should require that such a plan be presented for Staff's review before it accepts Mr. Ziegler's claim that viable options don't exist.

8. Conclusion:

On January 9, 2008, the Planning Commission determined that the deviations of the garage portion of the project were minor in nature and consistent with the City's Design Review standards. When it came to the Variance application, however, after considering the counsel provided by City Attorney, Mary Wagner, and properly applying City Ordinances and standards, the Commission could not make the required Findings to approve the Variance to allow additional encroachment into the southern sideyard setback. The Commission found there are no exceptional circumstances associated with the property at 2 Alexander Avenue, that no hardship exists due to such circumstances, and that a special privilege would exist to treat this applicant differently from others, by allowing construction to occur outside of an approved Variance, when others must conform. For these reasons the Planning Commission ruled properly when denying the Variance application and for this reason, the City Council should support their decision, by denying this appeal to overturn their action.

Thank you for your thoughtful consideration of this letter.

Sincerely,



Michael Rex, Architect

c.c. Ian and Jan Moody
Kenneth G. Downs, Attorney at Law