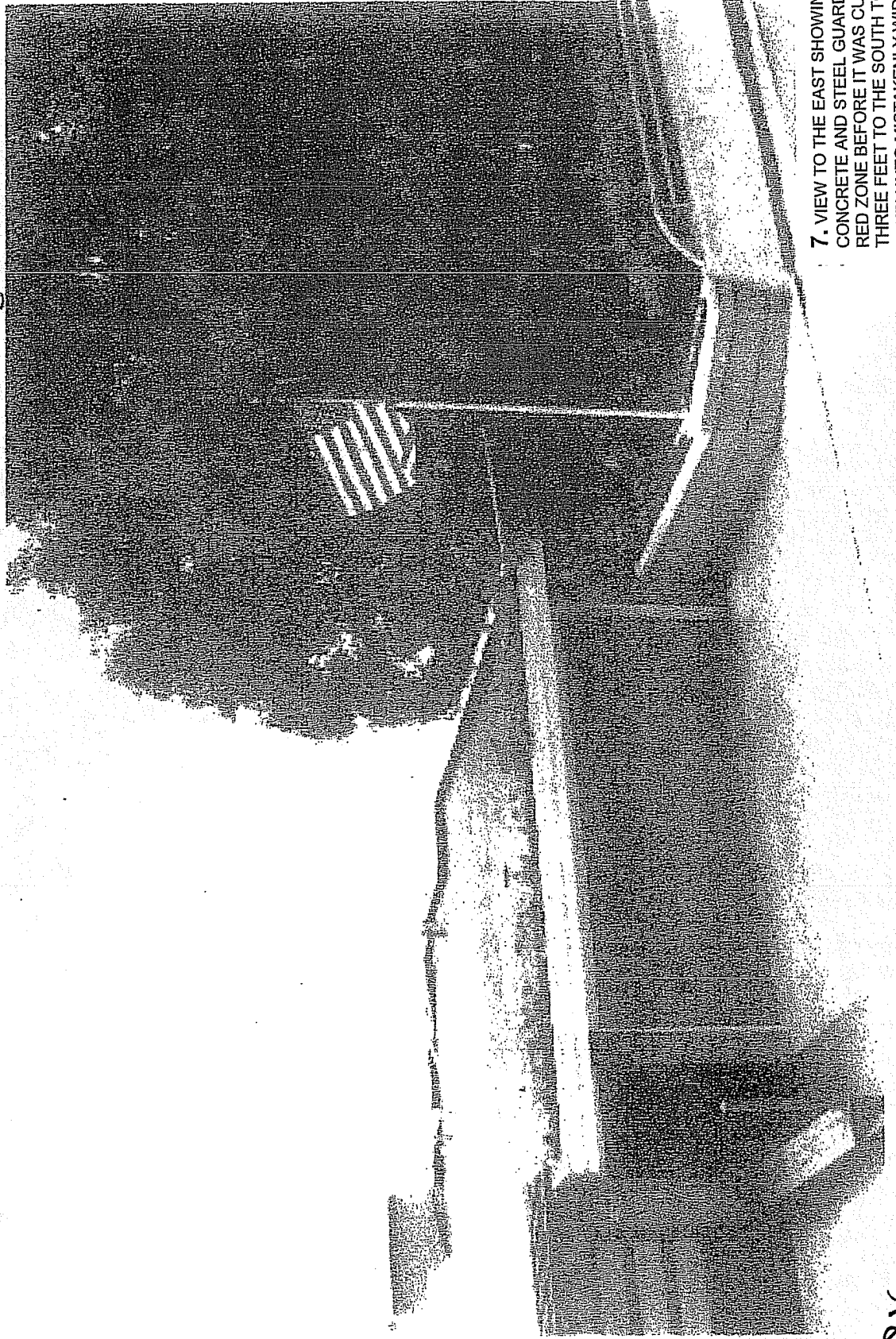


6. PUBLIC CONCRETE GUARDRAIL AND RED ZONE CUT BACK THREE FEET. BETWEEN THE CONES IS THE LONG ESTABLISHED SURVEY PIN THAT THE GARAGE WALL WAS SUPPOSED TO LINE UP WITH, BUT THE WALL HAS BEEN BUILT 1'-6" FURTHER SOUTH.

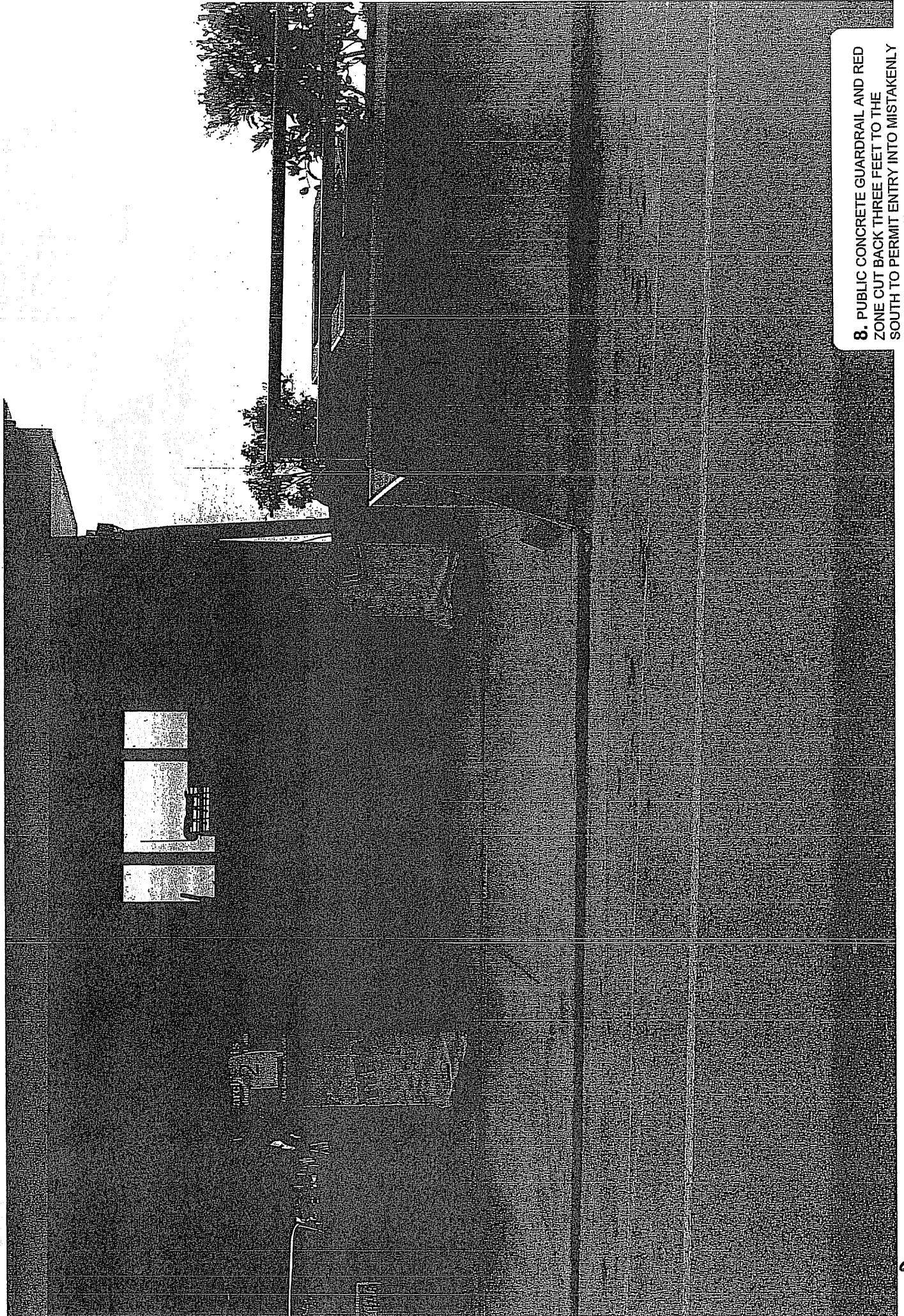
View Comparison Alexander Ave

2003- Pre-Remodel 2 Alexander Avenue Garage

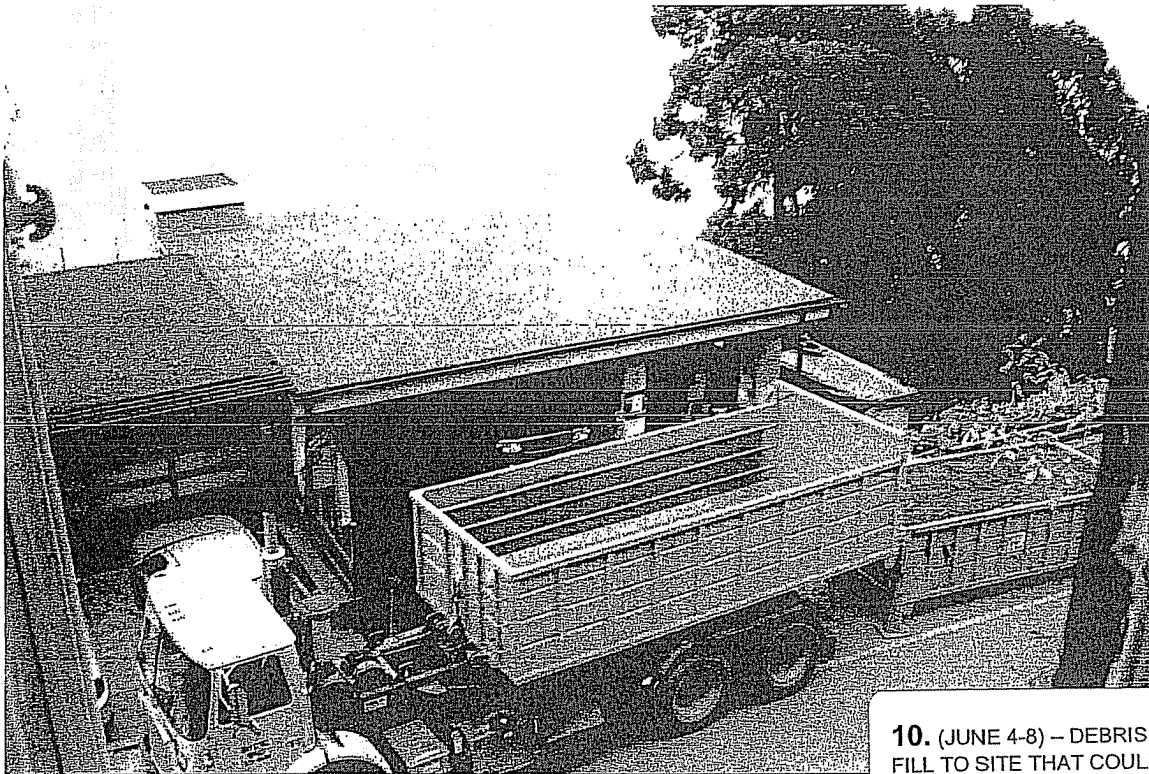
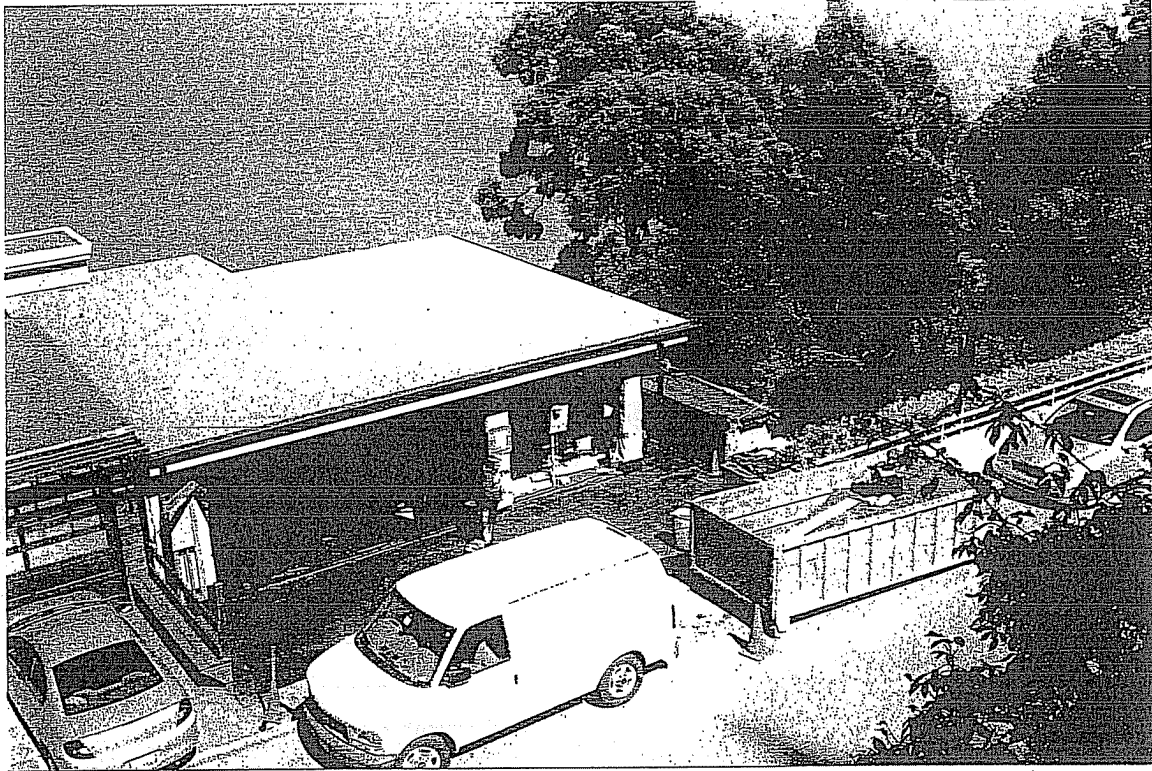


7. VIEW TO THE EAST SHOWING PUBLIC CONCRETE AND STEEL GUARDRAIL AND RED ZONE BEFORE IT WAS CUT BACK THREE FEET TO THE SOUTH TO PERMIT ENTRY INTO MISTAKENLY WIDENED GARAGE.

2257B
2257B



8. PUBLIC CONCRETE GUARDRAIL AND RED ZONE CUT BACK THREE FEET TO THE SOUTH TO PERMIT ENTRY INTO MISTAKENLY WIDENED GARAGE.



10. (JUNE 4-8) - DEBRIS BOXES BRINGING FILL TO SITE THAT COULD NOT BE FOUND BY PLANNING DIRECTOR. NOTE RED TAG ON DIVIDER IN GARAGE ABOVE BLUE SIGN.

5B
231

RECEIVED

OCT 0 2007

CITY OF SAN RAFAEL
COMMUNITY DEVELOPMENT

Information in "Cloud" indicates Recent work by this Surveyor

&
BY
S.

11.53 N 74°45'00" E

**PARCEL 1
19 PM 76**



Fed "x" on top of curb

FD. LEAD & TAG L.S. 2897.
FOUND BY OUR SURVEY
DATED 9/95.

L

N 15°11'42" W 137.98
N 15°15'00" W M1 M4

LANDS OF OLSON
00-10314

N 74°45'00" E 0.14
(N 74°45'00" E 69.5) L1 M4

3/1" I.P. L.S. 3775 PER
#2, NOT LOCATED BY
THIS SURVEY

LOT 2

LANDS OF MOODY
02-105172

LANDS OF FOTSCH
04-53023
(FORMERLY 3478 OR 226)

S 74°45'00" W 30.50

**1RM3
LOT 1**

*BASES OF BEARINGS
W 53°38'09" W 185.29 MAP & MEAS*

WOOD WALL
OVER 1.7'
PROPERTY LINE

WOOD DECK

N 74°45'00" E 120.66

NOTICE OF MERGER PER
95-22935 ELIMINATES THIS LINE

WOOD STEPS

DECK

ABANDONED LANE

*Set 1/2" Iron Bar
L.S. 5290*

30.52

17.99
(15' MORE
OR LESS D1)
(N 15°15'00" W M1)
N 15°11'42" W 41.50

*Set Nail & Tag
L.S. 5290
of projection
of lateral line*

FD. WELL MONUMENT
W/BRASS DISK STAMPED
B.L.M SOUTH 0.09' (0.11 M2)
SET BY M6

N 75°05'29" E 193.47
(NORTHEASTERLY 194 MORE OR LESS D1)

FD. 6"X6" CONC. H
MONUMENT SOUTH
DETAIL IN M2 POINT

(S 76°00'33" W 814.66 M5)
(S 76°00'02" W 815.55 M3)
S 75°05'29" W 814.82 M2

*Set 1/2" Iron bar
L.S. 5290 2' offset
to boundary line*

"SKETCH MAP"
(Not to Scale)

9. SURVEY SHOWS A LINE 2'-0" TO THE SOUTH OF THE GGNRA/FOTSCH BOUNDARY WAS LAID OUT ON SITE. IMPOSSIBLE TO MARK ACTUAL BOUNDARY BECAUSE IT IS COVERED BY CONCRETE STAIRWAY.

PAGE 164
5B
232

WATSON CONSULTING

PUBLIC POLICY AND LAW

October 3, 2007

Planning Commissioners
City of Sausalito
420 Litho Street
Sausalito, CA 94965

RECEIVED
OCT 13 2007
CITY OF SAUSALITO
COMMUNITY DEVELOPMENT DEPT.

Re: Application No. VAM/DRM 07-002 2 Alexander Avenue (APN 065-3-3-05/065-303-20/ADR 04-038 9 Edwards Avenue

Dear Commissioners,

I regret I cannot attend the Planning Commission meeting on 2 Alexander as I will be in Japan. I write this letter almost two years after appearing before you about unauthorized and dangerous construction (App. No. ADR-04-038 9 Edwards Avenue) on the same hill as 2 Alexander and that was subject to a red tag over 3 1/2 years ago and has been shown to place load on my home which is cracking in two. While in my case, you required numerous independent hydrological, engineering and other studies and revised plans at that December 2005 meeting, afterward I was informed the tape recorder had failed to function just for that part of the meeting so there was no record of the conditions. Demands to see the tape have been fruitless. To this day I have not been informed what has been done to rectify this error which has been just handled by staff in consultation with Mr. Woodrow and his contractors and engineer. My attorney, engineer and I have been excluded from any discussions and correspondence. The staff claims it cannot find my file. And it constantly corresponds with Mr. Woodrow without copying my attorney and me as required by law and noticed by my attorney John Sharp.

This close relationship between staff and contractors is echoed in the Fotsch construction before you tonight, which once again seeks forgiveness for overbuilding its approved plans. Two winters ago we looked out our windows at a house which slid off its hill because of adjacent illegal construction activities. There has been a large slide across the street from 2 Alexander caused by construction above it and related drainage issues. There is now a large slide to the north of my property which I believe may be related to drainage from 9 Edwards. The time is long past to begin vigorous enforcement of city and state building codes on this slide prone hill rather than granting justifications after the fact. Allowing homeowners and builders to flaunt the building code and the city's requirements for the safety of its residents is a pattern and practice that must be stopped. Just as my home is cracking from the improper weight placed upon it by the Woodrow structure, so is the Moody's home, below Mr. Fotsch's, endangered by improper review and construction practices and a pattern and practice of acquiescence in contractors' playing bait and switch with Planning.

If contractors know they can continue to overbuild with impunity, the city faces a huge potential liability. I urge you to deny this request for variance and issue removal orders. I also urge you to find the 9 Edwards file, reconstruct the tape of the December

SB
233

Sierra Russell

From: Bill Werner [waw@wernersullivan.com]
Sent: Wednesday, November 21, 2007 11:45 AM
To: Janelle Kellman; Cheryl Bossio; Barry Peterson
Cc: Kevin Bryant; Diane Henderson; Sierra Russell
Subject: 2 Alexander Avenue
Follow Up Flag: Follow up
Flag Status: Flagged

Chair Kellman and Members of the Sausalito Planning Commission:

RE: 2 Alexander Avenue. VAM/DRM 07-002

Just how often is the Planning Commission going to allow Dr. Fotsch to make them the scapegoats absolving his insatiable appetite for doing what he just damn well pleases? When he wants more space than the ordinance, or his many variances allow, he just builds it. When he wants disallowed uses, he just installs them. When he wants to encroach on set backs, he just invades them. When he wants access to his garage, he just demolishes safety barriers in the public right-of-way. And then, he claims these actions were all minor "mistakes" and asks for modifications to previously, often unwisely granted, variances.

The Planning Staff is once again recommending approval of this charade. Why? Probably because they, and the City Attorney, have done her usual thorough job. Not to determine what is right and wrong, but rather a risk assessment of who is more likely to take legal action. Dr. Fotsch has shown that he is quick to retain legal counsel for even the most trivial and nuisance actions. Should yet another of the many gross demonstrations of his unquenchable sense of personal entitlement miraculously be denied, you bet he'll sue. If it is approved, the citizens of Sausalito will have further proof that their interests are being attended to in an ineffective and cowardly manner.

This flagrant exercise in justifying personal privilege should be denied. Let it go, by way of appeal, to the City Council where our elected officials will have to show their colors. That is the best way for us to find out whether the standards and limitations of a supposed civil society apply equally to all members of the community.

Bill Werner
 213 Richardson Street
 Sausalito, CA.

5B
235

ITEM NO. 6 PAGE 167

Sierra Russell

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Bill Werner
 213 Richardson Street
 Sausalito, CA.

5B
 235
 ITEM NO. 6 PAGE 167

Application No. VAM/DRM 07-002
2 Alexander Avenue

Agenda Item 6
November 28, 2007

EXHIBITS SECTION C
OCTOBER 10, 2007 STAFF REPORT
EXHIBITS

SB
237

ITEM NO. 6 PAGE 169

Vicinity Map



SB
239

Exhibit 3

As-Built Dimensions of 2 Alexander Garage Structure
Measured by CDD Staff on July 24, 2007

Dimension #	Location	Actual Dimension ¹	Approved Dimension ²	Discrepancy	Compliance	Acceptable Deviation
Garage Floor						
1	Garage opening (outside of wall to outside of wall)	29' 4"	28'	16"	No	No
2	Garage wall to edge of planter	7' 2"	7' 6"	4"	No	Yes
3	Edge of planter to edge of stairway	4' 6"	4' 6"	0"	Yes	Yes
4	Total Width from Outside Garage Wall to Outside of Stairway	41'	40'	12"	No	No
5	Depth of garage (inside of wall to elevator)	29' 1"	28' 6"	7"	No	No
6	Longest depth of garage (inside of wall to inside of wall)	36' 3"	35' 8"	7"	No	No
7	Shortest depth of garage (outside of wall to inside of wall)	24' 5"	24' 2"	3"	No	Yes
8	Shortest width of garage (outside of wall to outside of wall)	15' 1"	15'	1"	No	Yes
9	Outside of garage wall to edge of planter	3' 6"	4'	6"	No	Yes
10	Edge of planter to outside of stairway	4' 7"	4' 6"	1"	No	No
11	Elevator to inside of wall	9'	9'	0"	Yes	Yes

Notes: 1) As measured on 07/24/07
2) As indicated on approved building plans

5B
240

Dimension #	Location	Actual Dimension ¹	Approved Dimension ²	Discrepancy	Compliance	Acceptable Deviation
Upper Landing Plan (Under floor area of garage)						
12	Floor Depth (Outside of wall to outside of wall)	33' 7"	32' 8"	11"	No	Yes
13	Floor Depth at Landing (Outside of wall to outside of wall)	29' 1"	28' 6"	7"	No	Yes
14	Floor Depth at Stairway (outside of wall to outside of wall)	23' 9"	23'	9"	No	No
15	Floor Width (outside wall to outside wall)	29' 10"	29' 6"	4"	No	No
16	Planter Depth	3' 2"	3'	2"	No	Yes
17	Planter Width	8' 1"	8'	1"	No	Yes
18	Stair to Stair	3' 6"	3' 6"	0"	Yes	Yes

Notes: 1) As measured on 07/24/07

2) As indicated on approved building plans

Staff Determination:

#1, #5, #6, #14, #15 – The applicant will need to demonstrate that the building coverage and floor area satisfies the City's development standards. These could be reviewed by the Planning Commission since #'s 4 and 10 will require the project to return to the Commission for reconsideration of the side yard setback Variance.

#4, #10 – The applicant will need to return to the Planning Commission for reconsideration of the Variance permit given there is an addition one (1) foot encroachment into the side yard setback.

SB
241

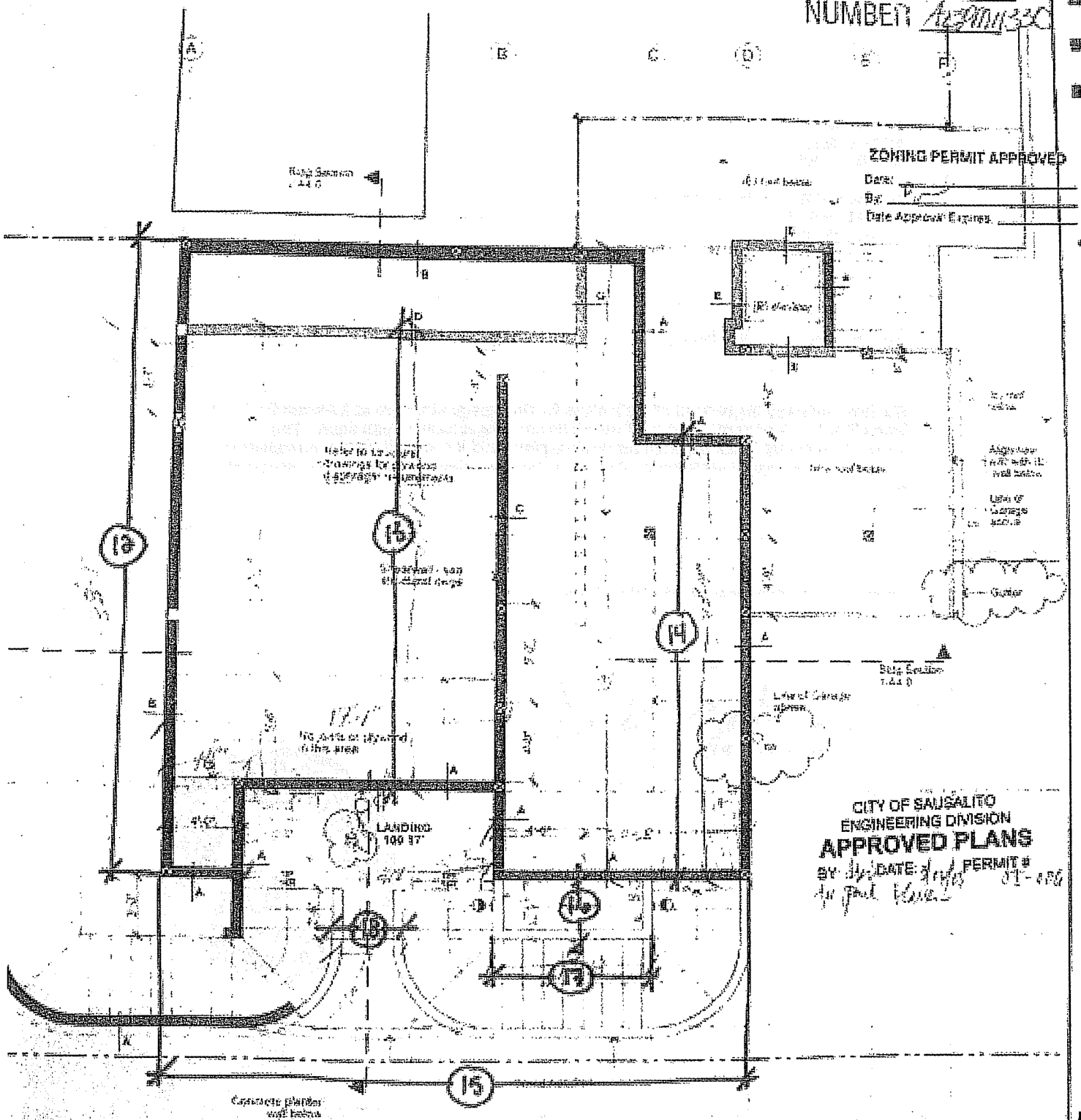
Provide ground level circuit breakers (GFCI) at all garage outlets.
 Provide waterproof GFCI at all exterior outlets.
 Provide protection against fire and explosion hazards.
 Provide fire 200 amp electrical panel as shown on plan.
 Working conditions are located underground.

6) Refer to wall type C, attaching wall. First floor ceiling shall be 8'0" clear height and ceiling shall be 8'0" to finished level. Then apply required materials to ceiling wall type C. (I.A. 244)

- NOTES:
1. All wall attachments are finished from inside to outside.
 2. All doors to be 2'0" type C, unless otherwise noted.
 3. All steel framing and joists shall comply with all structural requirements.
 4. The exterior finish on the exterior of exterior walls shall be as shown.
 5. The walls shall be 12" thick with exterior layer of type C (I.A. 244).
 6. All walls enclosing garage shall have 1/2" fire resistance.

**BUILDING PERMIT
 APPROVED**

BY [Signature]
 DATE 3/31/05
 NUMBER 123011330



ZONING PERMIT APPROVED

Date: _____
 By: _____
 Date Approver Expires: _____

CITY OF SAUSALITO
 ENGINEERING DIVISION
APPROVED PLANS
 BY [Signature] DATE: 3/31/05 PERMIT # 01-050
for Paul Kline

RECEIVED

MAR 9 2005

CITY OF SAUSALITO
 COMMUNITY DEVELOPMENT DEPARTMENT

5B
 243

SAABCO CONSULTING, INC.

PAGE 1 OF 1

September 11, 2007

City Of Sausalito
430 Lido Street
Sausalito ca 94965

Re: Structural Engineering Services For
2 Alexander St.
Sausalito, Ca

Iss # 03-136

Dear Dr. Fotachi and Mr. Olsak,

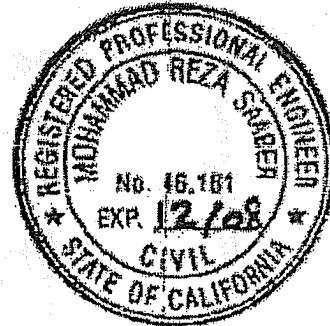
We have reviewed the revised as-built plans for the garage structure at 2 Alexander Ave in Sausalito. I have also made several site visits and inspections as you know. The relatively minor variance between the original plans and the as-built do not represent an issue from a structural standpoint. Our original engineering design and calculations still apply.

If you have any questions please let us know.

Sincerely,

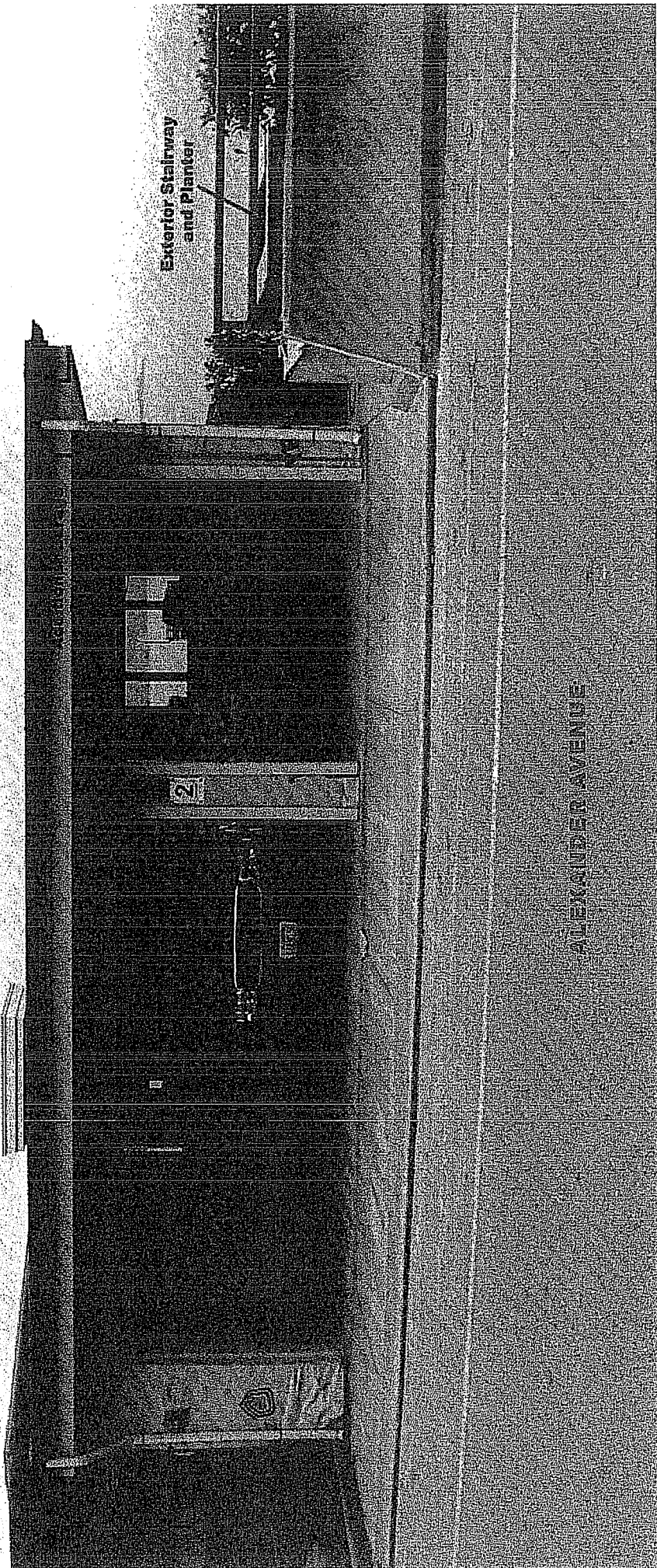


Mohammad R. Saabir P.E.



1203 El Camino Road Suite I, Menlo Park, CA 94025 Tel (650) 329-9219 Fax (650) 329-1943

5B
244

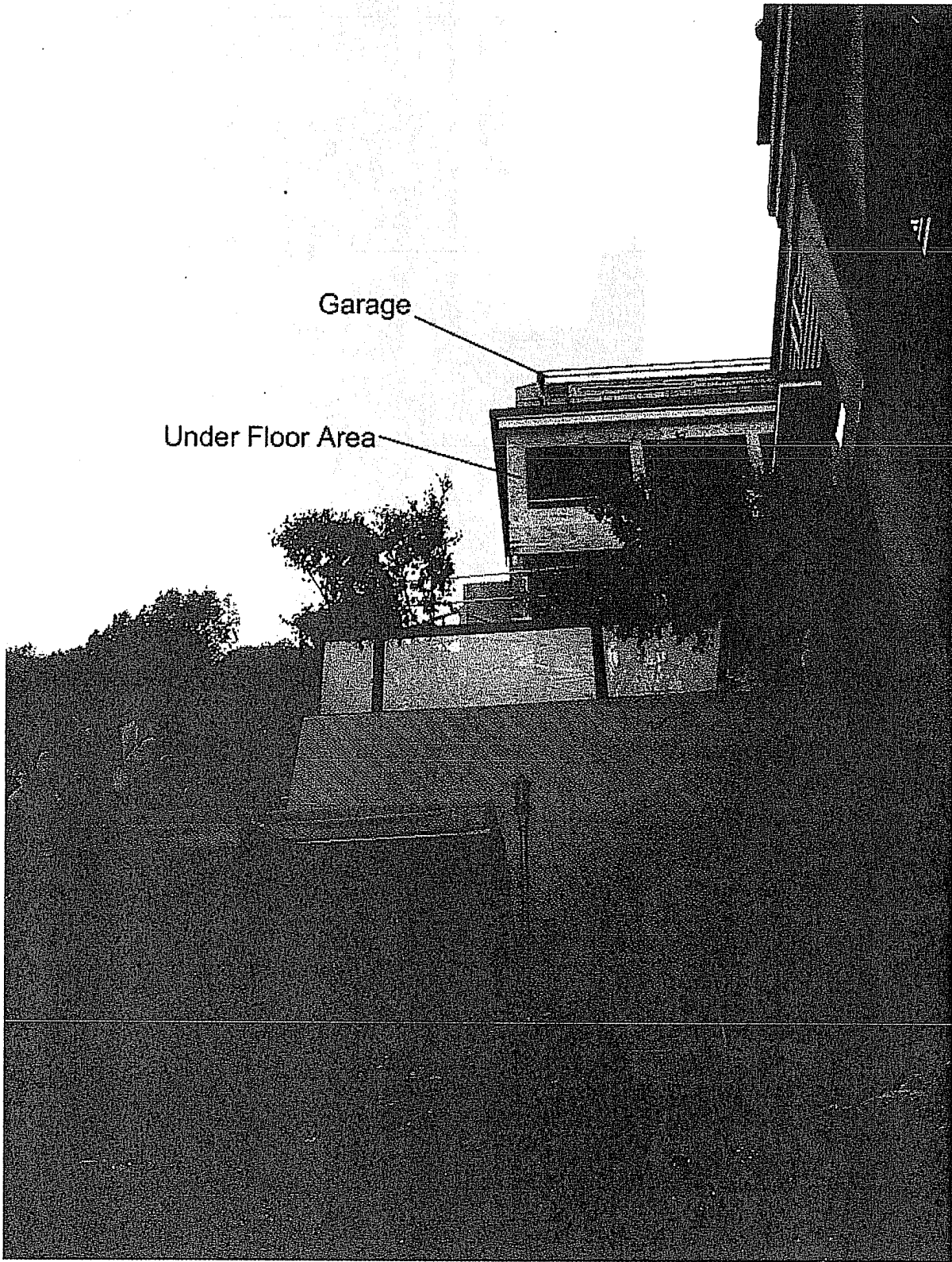


Exterior Stairway
and Planter

ALEXANDER AVENUE

258
ITEM NO. 6 PAGE 177

Exhibit
5



Garage

Under Floor Area

Photo of uphill view on 2 Alexander property - September, 2007

5B
2440

5



United States Department of the Interior

NATIONAL PARK SERVICE
Golden Gate National Recreation Area
Fort Mason, San Francisco, California 94123

IN REPLY REFER TO

L 24 (GOGA-PLAN)

MAR 11 2003

Dr. Edward Fotsch
2 Alexander Avenue
Sausalito, CA 94965

Dear Dr. Fotsch:

RECEIVED

MAR 14 2003

CITY OF SAUSALITO
COMMUNITY DEVELOPMENT

Thank you for notifying the National Park Service regarding your proposal to build a new entrance stairway to your house at 2 Alexander Avenue. After review of your proposal by NPS staff and discussions with you at the site, the following summarizes the conditions that would answer NPS concerns regarding construction on your property adjacent to the Golden Gate National Recreation Area boundary.

We would concur with your request for a variance from the City of Sausalito's required 5 foot side yard setback to a no less than 1 foot setback for your project if the following conditions are met.

- A survey is completed prior to the start of the project to confirm and permanently mark your property line and the GGNRA boundary along the south side of your property.
- Prior to construction, a temporary fence will be installed along that boundary that clearly defines the boundary line and contains all construction activity to your property.
- All stairway structure, footings etc. will be placed no less than one foot from the GGNRA boundary that adjoins your property on the south side.
- The design of the additions on your property satisfies the City of Sausalito Community Development department regarding avoidance of any potential impact on slope stability.
- After construction, you will install a continuous, permanent fence along the GGNRA boundary that clearly identifies the boundary line between your property and NPS land. You will maintain that fence as a permanent boundary marker.
- You will have any existing construction on your property that is found to extend onto GGNRA property removed, as well as any construction debris or yard waste that was previously deposited on the GGNRA land adjoining your property. We would further

5B
247

②

ask that no additional materials of any kind be deposited on GGNRA property in the future.

We appreciate your consideration of the need to clearly identify the NPS boundary and keep all construction activities on your property while accomplishing the improvements to your home. If you have any questions about the conditions detailed above, please contact Shirwin Smith at (415) 561-4947.

Sincerely,

Mai-Liis Bartling
Mai-Liis Bartling
Acting Superintendent

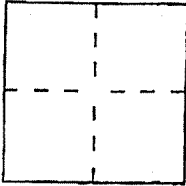
cc: Steve Buffenbarger, Building Official, Community Development Department, City of Sausalito

5B
248

CORNER RECORD

City of Sausalito
Brief Legal Description 065-303-20

Document Number 065-303-20
County of Marin, California



CORNER TYPE

Government Corner Control
Meander Property
Rancho Other
Date of Survey _____

COORDINATES (Optional)

N. _____
E. _____
Zone _____ Datum _____
Elev. _____

Corner — Left as found Found and tagged Established Re-established Rebuilt

Identification and type of corner found: Evidence used to identify or procedure used to establish or reestablish the corner:

Found Monuments per the Record of Survey filed in
2003 of Maps at Page 286, Marin County Records. (see Map)

A description of the physical condition of the monument as found and as set or reset:

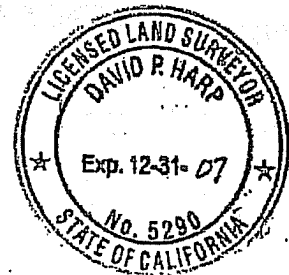
Set 1/2" Iron bar & Cap L.S. 5290 points, and nail tag L.S. 5290
point as shown on attached sketch map.

SURVEYOR'S STATEMENT

This Corner Record was prepared by me or under my direction in performance with

the Land Surveyors' Act on 8/27/07

Signed David Harp L.S. or R.C.E. Number LS 5290



COUNTY SURVEYOR'S STATEMENT

This Corner Record was received AUGUSTUS 29, 2007 and examined

and filed SEPTEMBER 24, 2007

Signed _____ Title COUNTY SURVEYOR

County Surveyor's Comment _____



5B
249

ALEXANDER AVENUE

40' R/W

USALITO LATERAL RIGHT OF WAY

FD. WELL MONUMENT
W/BRASS DISK STAMPED
BLM SOUTH 0.09" (0.11 M2)
SET BY M6

(26.14 M2)
26.17

11.88

17.99
(15' MORE
OR LESS D1)

23.51
(23.55 D1)

N 15°15'00" W 41.49

LAWN

NOTICE OF MERGER PER
95-22935-ELIMINATES THIS LINE

N 74°45'00" E 120.66
(NORTHEASTERLY 194 MORE OR LESS D1)

(S 76°00'33" W 804.66 M5)
(S 76°00'02" W 805.55 M3)
S 75°05'29" W 804.82 M2

FD. 6"X6" CONC. HWY. R/W
MONUMENT SOUTH 0.38" PER
DETAIL-IN M2 POINT "B"

ACCORDING TO D.N. 95-22935 THIS
BOUNDARY LINE IS DEPENDANT ON A
STIPULATED AGREEMENT WITH THE STATE
LANDS COMMISSION AND IS BEYOND THE
SCOPE OF THIS SURVEY. THEREFORE, THIS

51.84

20.88

S 07°39'19" E
(S13°15'E D1)

N 75°05'29" E 56.6

(53.427 M4)
N 74°45'00" E 54

N 15°15'00" W 137.9B

23.49
(24.00 M4)

53.99
(54.00 M4)

LANDS OF OLSEN
01-10314

LANDS OF MOODY
02-105172

19.00

S 74°45'00" W 20.00

N 15°15'00" W 7.00

N 15°15'00" W 32.78
(33.03 D1, 33.00 M4)

LOT 2

LANDS OF FOTSCH
02-110109
(FORMERLY 3478 OR 26)

3/4" I.P. L.S. 3775 PER
M2, NOT LOCATED BY
THIS SURVEY

N 74°45'00" E 70.14
(N 74°45'00" E 69.50 D1 M4)

S 15°15'00" E 63.29
(S 15°15'00" E 63.50 D1 M4)

WOOD WALL
OVER 1.7'

WOOD STEPS

DECK

WOOD
DECK

ROCK WALL

SAND BEACH

GROUND FEATURES
LOCATED ONLY IN
THIS AREA

39.00

N 74°45'00" E 75.34

PARCEL 3
19 PM 76
LANDS OF MOODY
02-105172

N 07°39'19" W 60.53
ORIGINAL LOT LINE PER 1 RM 3

PARCEL 4
19 PM 76

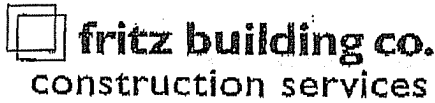
LOT 3

LANDS OF OLSEN
01-10314

5B
251

ITEM NO. 6

PAGE 185



Ms. Sierra Russell
Sausalito Planning Department
400 Litho Street
Sausalito California

September 14, 2007

Re: 2 Alexander Avenue Garage Project

Dear Ms. Russell,

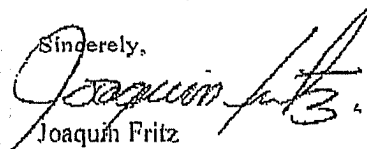
Recently I became aware of a roughly 12" overbuild at the garage project at 2 Alexander Avenue, the home of the Fotsch's. I am the contractor who has done the building and frankly I was surprised to find that the garage was a wider than the plans. I have looked into my construction notes and inspections records to determine the factors related to the variation between approved plans and the garage as built.

The 2 Alexander garage project is a challenge from a few aspects. The lot is quite steep and this project was part new construction and part remodel. Remodels and steep lots rarely result in actual construction that matches plans but I have discovered another factor that contributed to the 12" variance. The lot itself narrows slightly from east to west. In other words it gets narrower as it gets closer to the street. Though the lot is irregularly shaped, it narrows over 18" from the Bay to the street. Frankly I did not know this because the lot is only slightly out of square so a review of the plans doesn't easily call this to your attention. Likely the building inspectors who have made multiple inspections of the property did not notice this either.

When I was laying out the foundation I set my control points about half way down the hill because that is where there is flat space to work. The control point was set roughly a foot from the side property line that was set at that time. I assumed that the lot was square and laid out the foundation using that control point. We drilled piers, laid and poured the foundation, had multiple City inspections and framed based upon the control points not realizing that the lot narrowed the better part of a foot from the control point to the street. The remodeled garage is built square to the existing home and the old garage. But the lot is not square and the 12" overbuild and resultant less than one foot side yard at the street is the result.

I apologize for this oversight and assure you that it was completely unintentional. Obviously I had no reason to build a garage larger than planned. And though no building is ever built exactly to plan, the Fotsch garage has been the focus of so much scrutiny that I feel badly for having added to their headaches and to your workload. Fortunately the garage is fully built on the Fotsch property according to the lot lines just set by the surveyor. I recently visited the site and confirmed this for myself. The 12" overbuild across a garage of 40 feet in length not surprisingly has no impact on structurals or engineering as confirmed by the engineer. Also fortunately there is no neighbor or structure to the south, just open space.

Please understand that I am only interested in completing this project as quickly and efficiently as possible, and that I will do so to the best of my ability.

Sincerely,

Joaquin Fritz
Fritz Building

642 South Eliseo Drive. Greenbrae California 94904 ph.(415)235-6865 Ca.Lic.No.769451

5B
252

Park Service – 2 Alexander Stairs
#

Owners Statement 22 September, 2007

1. I am the owner of the home at 2 Alexander Ave. in Sausalito. A few years ago we decided to try to increase the size of our garage due to parking shortages in the neighborhood. The garage remodel included a new entry stairs along the southern side of our home adjacent to the Park Service property.
2. The City of Sausalito approved the garage remodel including a variance to build the stairs into the usual 5' side yard along Park Service property. The plan for the stairs called for a 12" (1') side yard between the southern edge of the stairs and the Park Service property
3. We hired a local contractor who built the garage and stairs. The structure was inspected at various points during construction and is now nearly completed.
4. Recently we were advised by the City that the stairs is closer to the property line than approved. This apparently was due to an error made by the contractor and the fact that our lot narrows roughly 18" from east to west. The contractor's statement has been provided to the Park Service.
5. We had the property surveyed and the stairs is within 2" of the property line near the street and is roughly 6" from the property line at the based of the garage (the point furthest east.)
 - a. The survey points are set 2' from the property line and are connected by an orange line as per the attached photo.
6. The stairs and garage are constructed on our property. A small area of a decorative concrete planter encroaches onto Park Service property by ~4" and will be removed by the contractor.
7. The drainage from the garage and stairs is directed away from Park Service property.
8. We will still be able to build the fence along the property line as requested by the Park Service if the Park Service still wishes there to be a fence.

The ~10" variance between the approved side yard and the as-built was an inadvertent error and not intentional in any way. It would not appear to have any material negative impact on the Park Service property. My family and I have a long history of cooperation with the Park Service and their property adjacent to our home as per the attached letter from the Park service. We've spent hundreds of hours in habitat restoration in a partnership with the Park Service and look forward to a continuing productive relationship.

Best regards,



Edward Fotsch, MD

EB
253

Liz Ponzini
Tennessee Valley Native Plant Nursery Manager
Fort Cronkhite, Bldg. 1064
Sausalito, California 94965

April 18, 2005

To Whom It May Concern,

In October of 2003, a half acre Eucalyptus tree stand was removed on NPS property adjacent to the Sausalito residence at Alexander Ave #2 in order to reduce fire fuels in an urban area. The resident at this address, Dr. Edward Fotsch has agreed to provide stewardship through labor, irrigation, funding and ongoing habitat restoration. In January of 2004, NPS and Parks Conservancy staff met with Dr. Fotsch to discuss and plan invasive plant removal and outplanting of natives on the site. Tools and instruction on how to remove the various invasive species were given on a subsequent date along with a small palette of native plants.

In January 2004, Dr Fotsch, his sons and several of their classmates began removing the French broom, vinca, cape-ivy and eupatorium from the site. Rice straw was then applied to the cleared site for the purposes of erosion control and future weed suppression. They then planted approximately 200 native trees and grasses and finally began to install drip irrigation along the width of the slope in the area cleared and planted. During the next few weeks, two steady helpers continued the weed removal working from the top of the slope downwards and applied mulch after the removal was complete. They then outplanted the remaining native plants and completed the installation of the drip irrigation to the entire slope where outplanted native plants occurred.

A total area of 4750 square meters was cleared of weeds and mulched. A total of 643 plants including Coast live oak, bay laurel, madrone, red fescue, purple needle grass, blue wild rye, and California oat grass were planted in to the site.

Follow-up weed removal continued to be performed by the neighbors of this site as part of their stewardship. Parks Conservancy staff visited the site regularly to make sure that the plants were receiving sufficient watering through the dry summer and fall months.

In January and February of 2005, an additional 1274 plants including coastal sage, coyote bush, lizard tail, sticky monkey flower and bee plant were outplanted into this site by the Fotsch family and gardeners. Non-natives encroaching upon the restoration site were once again removed and mulch was applied to protect the newly planted native species.

The plants that were planted in 2004 were monitored in January 2005 revealing 75% survivorship of all species planted. Many plants were in great health and had already grown big enough to produce seed that summer. The high survivorship and notable

health of most species can easily be attributed to the drip irrigation installed by the Fotsch family.

The Fotsch family's stewardship of this site has helped to make it a successful restoration area. The removal of hazardous fire fuels and re-establishment of a native plant community will contribute not only to the safety of the residents neighboring this park land, but also the biodiversity of the park itself. Without the Fotsch family's contribution, much less care would have been afforded to this site.

Sincerely,
Liz Ponzini

Edward J. Fotsch, M.D.
2, Alexander Avenue,
Sausalito, CA 94965.

August 8th 2007

Mr. Paul Kermoyan,
420, Litho,
Sausalito, CA 94965

Dear Mr. Kermoyan,

Attached please find an application for revision of the approved variance application as requested by the Planning Department. My understanding is that the one foot variance between the approved plans and the actual building requires us to make this application.

After being notified by the Planning Department of this discrepancy I have met with you and your staff, the architect, Mr. Olsen and the contractor, Mr. Fritz. It is apparent that the one foot discrepancy is the result of an inadvertent error or miscalculation by Mr. Fritz. The steepness of the slope and complexity of the curved design and complex foundation may have added to the site challenges and discrepancy.

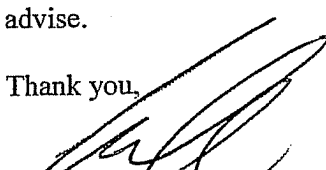
I have no way of knowing if this variation between plans and actual build is common. And I am not aware of any City standard in this regard. Certainly it is likely that nearly every construction project in Sausalito has some level of variation from plans. It is equally perplexing for me as to how this matter has come up at this late hour with the garage nearly completed aside from shingles and sheetrock. As you know there have been multiple City inspections of the foundation and framing. And there is little doubt that our garage project has been the focus of an unusual amount of attention from the planning, building, commissions and other folks from the City.

Other issues that are germane are as follows:

1. The approved remaining side yard was a foot and a half. The actual is half a foot. The side yard for nearly all of the neighbor garages on Alexander avenue is 0'.
2. The original side yard variance application and discussion had little focus on the remaining side yard dimension primarily because our property abuts the Park Service open space. The typical purpose of side yard set backs is to allow for air and light between structures which is not really at issue here.

We have been advised by the Planning Department that the only path forward to addressing this 1' variation and completing our construction, aside from a major demolition and rebuild from the foundation, is to make this application. If there are items which are unclear or omitted, please advise.

Thank you,


Edward Fotsch, MD
2 Alexander Ave.
415.332.8529

RECEIVED
AUG 15 2007
CITY OF SAUSALITO
COMMUNITY DEVELOPMENT

RECEIVED
AUG 15 2007
CITY OF SAUSALITO
COMMUNITY DEVELOPMENT

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Edward J. Fotsch, M.D.
2, Alexander Avenue,
Sausalito, California 94965.

RECEIVED
SEP 6 2007
CITY OF SAUSALITO
COMMUNITY DEVELOPMENT

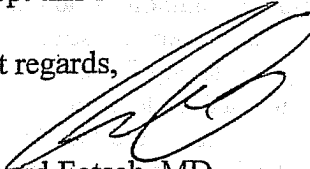
September 6, 2007

Ms. Sierra Russell,
City of Sausalito,
420, Litho Street,
Sausalito,
CA. 94965.

Dear Ms. Russell,

You had requested another check in an amount of \$1,612 and a letter requesting "Design Review approval" in order to add a toilet and sink to the shower called out in the Planning Commission-approved plans for our home at 2 Alexander Avenue. Please accept this letter and check as per your request.

Best regards,



Edward Fotsch, MD
2, Alexander Avenue
Sausalito, CA 94965

C Donald Olsen

1 Ms. Henderson said that's a 2-2 vote which is effectively the same as a denial. If
2 the Commission wants to try another motion, it can, otherwise it just counts as a
3 denial.

4
5 Commissioner Bair noted the vote was taken on this already and it was a 3-2
6 vote for denial. And the item was just coming back to formalize it because the
7 resolution wasn't in front of the Commission at the time of the vote. And now
8 because Commissioner Bossio is not here, they're getting a different result.

9
10 Ms. Henderson said that's right. The Commission heard the item and directed
11 staff to come back with a resolution of denial. It was on the agenda in November
12 and at that time there were only three people present and it was going to be a 2-
13 1 vote, and when you only have three people voting, the voting has to be
14 unanimous. So it was continued. The applicant wants to appeal it and tried to file
15 the appeal after the first hearing but the staff told him he can't file it until the
16 action is actually taken. So the split vote that evening essentially has the same
17 effect as the denial, so the applicant can appeal it to the Council. Otherwise, the
18 Commission could continue it but it would delay the applicant another two weeks
19 at least.

20
21 **3. 204B Cazneau Avenue (DRC 07-021/APN 064-203-30**
22 **AGM Construction (Applicant)/Scott Wilder (Owner)**

23
24 **Applicant, AGM Construction, on behalf of the property owner, Scott**
25 **Wilder, requests Planning Commission approval of a Design Review Permit**
26 **to allow the addition of 540 square feet of new floor area with**
27 **approximately 83 square feet of new building coverage to remodel the lower**
28 **level of an existing duplex at 204B Cazneau Avenue.**

29
30 **(Chair Kellman recused as a noticed neighbor.)**

31
32 **Commissioner Bair moved, seconded by Vice Chair Keller, to adopt the**
33 **draft resolution of approval subject to conditions.**

34
35 **ROLL CALL**

36 **AYES: Commissioners Bair and Petersen; Vice Chair Keller**

37 **NOES: None.**

38 **RECUSED: Chair Kellman**

39 **ABSENT: Commissioner Bossio**

40
41 **4. 2 Alexander Avenue (DR 05-074)**
42 **Don Olsen (Applicant)/Ed Fotsch (Owner)**

43
44 Chair Kellman asked why this item isn't on the consent calendar?
45

5B
257

1 Ms. Henderson said it should have been, it was just an oversight on the part of
2 staff.

3
4 Chair Kellman noted that the 2 Alexander item is part of the Consent Calendar.
5 She had moved at the November 28 meeting to deny the variance, approve the
6 design review modifications related to the additional bulk and mass, and approve
7 the modification for the additional bathroom. Before the Commission is a draft
8 resolution of partial denial and partial approval subject to conditions.

9
10 Ms. Henderson said since it's shown on the agenda as a public hearing, it should
11 be open but just with the understanding that you don't need to hear what you
12 heard last time.

13
14 Ms. Russell recommended revising Condition 2 of the draft resolution on page 17
15 to add language at the second sentence of Condition 2, which should read "all
16 structures projecting into the approved one-foot side yard setback shall be
17 brought into conformance with the plans approved for application VA/DR 03-26
18 by resolution 2003-51 within 180 days of adoption of this resolution, unless the
19 time frame is otherwise approved by the Community Development Director." The
20 reason for that is just to further clarify that "unless otherwise approved by the
21 Community Development Director," was intended for the time frame, not for the
22 removal of the encroachments.

23
24 Chair Kellman said they won't have a staff report on this and at the urging of staff
25 they will take limited public hearing on this. She doesn't see the applicant
26 present. Are there any individuals who would like to repeat what they've said
27 previously?

28
29 A member of the audience asked about the Cazneau item.

30
31 Chair Kellman asked for public comment on 204B Cazneau.

32
33 Chair Kellman noted she is recused on 204B Cazneau.

34
35 **204B Cazneau**

36
37 Ms. Henderson said the Commission should ask for any comments on the draft
38 resolution prepared by staff. This is a consent calendar item but anyone in the
39 public or on the Commission can take it off consent and indicate their concerns.

40
41 Vice Chair Keller said if they take it off the consent calendar, they open up public
42 comment but there 's not a full staff report.

43
44 Chair Kellman said her concern is they've voted without taking public comment.

45
46 Ms. Henderson said the Commission should rescind that vote.

1
2 **Vice Chair Keller moved, seconded by Commissioner Petersen, to rescind**
3 **the prior vote on the resolution on 204B Cazneau.**
4

5 **ROLL CALL**

6 **AYES: Commissioners Bair and Petersen; Vice Chair Keller**

7 **NOES: None.**

8 **RECUSED: Chair Kellman**

9 **ABSENT: Commissioner Bossio**

10
11 **Public Comment on 204B Cazneau**

12
13 **Frank Taupe** <ph?> lives at 202A Cazneau. He is very much for approving this
14 permit; however his only stipulation would be to put a time frame on the exterior
15 framing due to the noise because he and his wife work at home. There's other
16 construction on the street as well, so they've been living in a war zone. But other
17 than that, he's very much for approval of this permit.

18
19 **Alastis Monfulis** <ph?> owns 59 Filbert Avenue which is next to the unit. He didn't
20 receive the note and his neighbor who lives in 55 Filbert told him about it. He
21 doesn't think he will have any problem with approving it, but he would like to see
22 some drawings. It mentions about an addition of some square footage and some
23 deck on the south side which would be right next to his entrance. The owner of
24 the unit mentioned in some information he found published through the
25 Commission that they have notified the people on Cazneau but as far as the
26 work, it affects the people on Filbert because it's on the hill and it's just next to
27 where those neighbors have their views and entrances. So it would have been
28 nice if the applicant had consulted him. Recently, in the last year and in the past
29 there was a slide, a tree that fell, and part of the area underneath this unit was
30 completely like a landslide, and that has not really been addressed. If you go to
31 the area you'll see that there are still bags, and it doesn't really look that nice. He
32 wants to find out what will happen, is this going to be addressed?

33
34 **Scott Wilder** is the owner of 204B. He said the mudslide is not directly in front of
35 204B, if you look closely, it's at the houses on the left of that. Secondly, there's a
36 separate issue, the City and State Farm Insurance and a few other folks are
37 involved in that now, so that is trying to be resolved. The plans are here and then
38 there's a question about the speaker not receiving the notice. He apologizes for
39 that; he thought the people on Filbert did get that.

40
41 Chair Kellman asked what neighborhood outreach Mr. Wilder conducted?

42
43 Mr. Wilder said the person who is in charge, the contractor, they went around
44 and took the notes and gave them to neighbors. He understands that the
45 contractor went to the neighbors on Filbert as well. He doesn't know the exact
46 footage or radius that was covered by the contractor.

SB
259

1
2 Chair Kellman said she lives down the street and she didn't receive any
3 information, so she's wondering how extensive it was.

4
5 Mr. Wilder asked what is the requirement for the radius?

6
7 Commissioner Petersen said 300 feet.

8
9 Chair Kellman noted that normally a Commissioner will recuse herself from the
10 interaction amongst the Commissioners, not necessarily the public comment.
11 They've gone both ways on the public comment, as far as someone who needs
12 to recuse themselves. So her plan was to step down when the Commissioners
13 began discussion so as not to unduly influence the Commission in its decision
14 making process. So she'll step down now because she is a noticed neighbor.

15
16 Vice Chair Keller said the other issue the prior speaker had was with regard to
17 the view corridor, with regards to the deck being proposed and any impact that
18 has on the view?

19
20 Mr. Wilder said his opinion is that it should haven't have any impact on the view.
21 The deck is along the side of the house and then to the right of the deck is a
22 public easement. And then on the other side of the deck are trees and bushes
23 and on the other side of that is the speaker's house. So the deck is actually going
24 to be on the ground level, so you have the deck, public easement, bushes, trees
25 and 58 Filbert.

26
27 Ms. Russell noted there are photographs in the staff report and a set of plans are
28 also available.

29
30 Commissioner Bair asked if Mr. Wilder's statement conforms to staff's
31 understanding?

32
33 Ms. Russell said yes, it does, it conforms to the analysis of the staff report.

34
35 Commissioner Bair asked if Mr. Wilder has an estimate from the contractor about
36 the length of the construction?

37
38 Mr. Wilder said there's been some damage since the most recent storm and he
39 will not have an estimate on construction time until the end of the day Friday.

40
41 Commissioner Bair asked would Mr. Wilder have any problem with putting a six-
42 month window on it, to the end of the summer time. This isn't a huge project.

43
44 Mr. Wilder said he agrees, he doesn't have a problem with six months. That's
45 fine.

1 Commissioner Petersen said it's a pretty small project; they could probably shrink
2 the time frame down to four months.

3
4 Vice Chair Keller said the applicant could run into problems with the weather.
5 The applicant is aware of the issue of the neighbors, that they work from home,
6 and one would hope the applicant would be considerate of that and so instruct
7 his contractor.

8
9 Ms. Russell said with regard to the noticing, staff did send out a notice to
10 neighbors within the 300 foot radius as is required by state law.

11
12 Commissioner Petersen said he knows the area pretty well and he thinks the
13 deck and other items are going to be pretty low impact on the Filbert neighbors.

14
15 Commissioner Bair said he's willing to move to approve as long as everybody's
16 willing to put in the six month condition to address the neighbor's concern.

17
18 Vice Chair Keller said okay.

19
20 **Commissioner Bair moved, seconded by Commissioner Petersen, to**
21 **approve the draft resolution as amended on the record.**

22
23 **ROLL CALL**

24 **AYES: Commissioners Bair and Petersen; Vice Chair Keller**

25 **NOES: None.**

26 **RECUSED: Chairman Kellman**

27 **ABSENT: Commissioner Bossio**

28
29 **4. 2 Alexander Avenue (DR 05-074)**
30 **Don Olsen (Applicant)/Ed Fotsch (Owner)**

31
32 Chair Kellman noted this has been noticed as a continued public hearing by
33 mistake. They will open the discussion up to public comment, but those public
34 comments should be addressed to the draft resolution.

35
36 **Public Comment**

37
38 **Chuck Donald** lives at 254 Spencer Avenue. His comments are explicitly limited
39 to the issue of partial approval and partial denial. He was on the Planning
40 Commission five, six, seven years ago and the Commission did just exactly that,
41 they had partial approval, partial denial with conditions. And it got to be a
42 problem. The drawings that went through the Planning Commission were
43 stamped approved and then handwritten "with conditions." There was no
44 comment on the drawings, what the conditions were. The applicant, the owner,
45 went ahead and built what was approved. And then about three years later the
46 applicant came back, there was a completely new staff now, and went to the

1 building department and asked for a permit to do the rest of the work, the part
2 that had been denied. So the staff people got out the drawing, it said "approved,"
3 not paying attention to the "with conditions," so they gave him a permit and he
4 went ahead and ended up building the whole thing, including the part that had
5 been denied. So his comment or his request is that somehow in the record it be
6 made very clear what's approved and what's not approved. He got involved with
7 the neighbors about a year ago trying to do something about that and it was a
8 complete failure and the neighbors were mad because the guy got to build what
9 was denied. So it's staff work, that he's talking about, that partial approval, partial
10 denial be made very clear.

11
12 Chair Kellman thanked Mr. Donald. She asked staff if they have any comments
13 on how to avoid the issue Mr. Donald raised.

14
15 Ms. Russell said that was actually the reason why the staff attached Condition 2,
16 which essentially says there's a stop work order on the project and it's stated in
17 the condition; it requires removal of encroachments prior to the issuance of a
18 building permit so essentially no work can occur and the red tag cannot be
19 removed until the encroachments are removed, which is stated in Condition 2.
20 That was to make it more enforceable that the encroachments were in fact
21 removed. There is also a time limit to remove the encroachments, that is, within
22 180 days of the adoption of this resolution. So that would be six months from the
23 date of the adoption of this resolution the applicant would be required to have the
24 encroachments removed.

25
26 Commissioner Petersen said the point in general is well taken, but in this project
27 it should be pretty easy because the Commission is asking him to remove
28 something first before anything else happens.

29
30 Ms. Russell said that's correct.

31
32 **Michael Rex** represents Jan and Ian Moody. As a point of clarification, on
33 condition 2, where it says "all structures," does that include the lower garden
34 retaining walls which encroach, and in fact extend across the property line onto
35 the GGNRA property.

36
37 Ms. Russell said Condition 5 addresses that issue, that "the project shall comply
38 with all National Park Service conditions, one of which is that all encroachments
39 are removed." So that would apply to that.

40
41 Commissioner Petersen asked if these walls are actually over the line? The
42 survey shows that they are not.

43
44 Ms. Russell said they're not, but they are up to the line and they will be required
45 to remove the walls. They are essentially dry stack walls so they will be fairly
46 easy to remove.

1
2 **Ian Moody** lives at 6 Alexander Avenue. He has photographs of the
3 encroachments that go over the property line into the National Park (displaying
4 photos to Commission). The wall of the stair is fairly close to the boundary, so
5 this concrete retaining wall is about two feet onto the National Park and this
6 nonreinforced concrete block is about two feet onto the National Park. This is the
7 same thing from above (pointing to photographs). And the red tag-- here's the
8 property line and as you can see the structural concrete retaining wall is on and
9 also this stuff is on. And somehow Ed Fotsch has convinced staff and the
10 National Park that there are no encroachments, and yet in fact they are. This is
11 basically because he wasn't made to provide a survey showing all of the
12 placement of all of the items on the side.

13
14 Ms. Russell said those walls are called out by the National Park Service in their
15 letter dated November 20, 2007. They do call out those encroachments and they
16 do require the removal of those encroachments. And the City would require as a
17 conditional of approval that those encroachments are removed to the satisfaction
18 of the National Park Service.

19
20 Mr. Rex said the site plan in the packet is not a survey.

21
22 **Jeannie Moody** lives at 6 Alexander. The walls that encroach and are a problem
23 are not all the stacked block walls, some are concrete and there's a huge
24 concrete one that was not pre-existing but there seems to have been some
25 convincing that it was a pre-existing wall; it was not, it was built by Ed Fotsch.

26
27 Ms. Russell said the National Park Service has called out those encroachments
28 to the property owner. The property owner is very well aware that he needs to
29 reconfigure the wall to pull it out of the setback to the satisfaction of the National
30 Park Service. And the conditions of approval are stated so that the applicant will
31 be required to submit evidence to the Community Development Department that
32 the National Park Service has reviewed the plans and that they're satisfied with
33 how they are, to make sure that they're looped in on those walls.

34
35 Chair Kellman asked if there was one document in the record that everyone
36 could focus their energies on, that was the best illustration and depiction of
37 where these encroachments are, what would that be?

38
39 Ms. Russell said the photographs and the November 20 letter show the
40 encroachments that they're talking about. Those would best show.

41
42 Chair Kellman said her question is going to this somewhat vague term to some
43 extent in Condition 2, "all structures projecting into the approved setback." If
44 there was a way to say these are the structures we're talking about, as in, "all
45 structures as shown in the letter and the attached photographs," or just
46 something to avoid confusion down the road.

1
2 Ms. Russell said those walls actually can encroach into the setback area, they
3 just can't cross the property line. So all structures projecting into the approved
4 one-foot side yard setback is actually referring to the garage and stairway
5 project, it's not referring to the walls and the walls are addressed in Condition 5,
6 but staff can reword that.

7
8 Chair Kellman said she'd like to reword that so that that is clear because that is
9 what initially spurred Mr. Rex' question and he was referring to in Condition 5,
10 and maybe add another sentence to Condition 5 that says those encroachments
11 are specifically called out in the letter and the photographs attached to the letter,
12 just so it is clear exactly where in the record to look for this information.

13
14 Vice Chair Keller said in light of the fact that this application has been before the
15 Commission six or seven times and it's obviously very contentious, he would like
16 to see staff come back to the Commission after all the encroachments have been
17 removed to staff's satisfaction. He'd like the Commission to be shown and be
18 satisfied that all the encroachments have been removed before the applicant is
19 granted a permit to finish the balance of the work that the Commission has
20 approved. He doesn't want this to fall through the cracks and they come back
21 and say, well, "staff said this," the Commission needs to be kept in the loop. He's
22 not saying they haven't been in the past, but because of the magnitude and the
23 length of time that this project has been going on, he would feel much more
24 comfortable--

25
26 Chair Kellman said that's a good idea.

27
28 Vice Chair Keller said he'd like to see this with photographs and some definitive
29 evidence that these things have been removed.

30
31 Chair Kellman said at what point in time? They should write that into the
32 conditions.

33
34 Commissioner Petersen noted the applicant has 180 days to remove them.

35
36 Ms. Russell said they can write that into Condition 2, 180 days, following the 180
37 days time frame "the applicant shall return to the Planning Commission for
38 verification of removal."

39
40 Commissioner Petersen said or they can come sooner.

41
42 Vice Chair Keller said he just wants them to come back in the form of a staff
43 report.

44
45 Ms. Russell suggested: "The applicant shall return no later than 180 days to the
46 Planning Commission to verify removal of encroachments."

1
2 Chair Kellman asked if they want the applicant to come or do they want a
3 director's report?

4
5 Vice Chair Keller said a director's report would be satisfactory, indicating that
6 staff is satisfied as well from the National Park Service, that they've signed off on
7 everything.

8
9 Ms. Russell said that's correct.

10
11 Ms. Henderson suggested adding in Condition 2, the second to the last
12 sentence, which is four lines up, "no work shall be permitted on the project and
13 no building permit shall be reinstated until the encroachments have been
14 removed to the satisfaction of the Planning Commission." And that will involve
15 staff bringing it back to the Commission as a director's report.

16
17 Vice Chair Keller asked if the other Commissioners are all right with that?

18
19 Chair Kellman asked Ms. Henderson if that would trigger a director's report, then-

20 -

21
22 Ms. Henderson said they can be more specific. They can say, "until the
23 encroachments have been removed and the Planning Commission has received
24 a report verifying so as part of the director's report at a planning commission
25 hearing."

26
27 Chair Kellman said that would be most exact.

28
29 **Remarks by Applicant's Representative**

30
31 **William Ziegler** spoke on behalf of the owner. He has no objection of course to
32 the Commission being satisfied with requirements in the permit, but this is going
33 to be appealed, it's going up, and if it's got to come back for another hearing, he
34 does have an objection to a hearing because this has just been the local piñata,
35 and seven times is probably a low number, and if they are going up to the
36 Council on this and the Council will review it, although he doesn't know what
37 they'll do obviously, but whatever happens he doesn't want this opened up to
38 some more bashing from the neighbors once they attempt to do it. It's 180 days
39 and now there's another shot. He just wants it to be clear that it's not a public
40 hearing that the Commission is asking for. If the Commission wants to be
41 satisfied, fine, but if it's a public hearing, he doesn't think that's appropriate.

42
43 Chair Kellman clarified that the Commission is asking for a director's report. It will
44 be on the agenda but it's not a noticed public hearing. She asked Ms. Henderson
45 to opine on items on the agenda in the form of a director's report. Generally, the

1 Commission doesn't take public comment on them, but they are agendized
2 items.

3
4 Ms. Henderson said is that Mr. Ziegler's concern?

5
6 Mr. Ziegler said his concern is that they'll open it up again to responding to more
7 neighbors' attacks. For the Commission to get satisfied is entirely appropriate, of
8 course, that it's been done, that the staff is satisfied and the Commission is
9 informed of that and they want that report. That's appropriate, but then to have
10 that report open the criticism and then the applicant is told go back and do
11 something else after they've been up to the Council and who knows what else.

12
13 Chair Kellman clarified that the director's report is noticed, it's not a public
14 hearing, the Commission can in its discretion choose to take limited public
15 comment, but it's within the Commission's discretion. So it's not a noticed public
16 hearing, it is an agendized item that the Commission has the direction to take
17 public comment on if it chooses, but that's not the Commission's intention. The
18 intention is to get a report back from the director.

19
20 Mr. Ziegler said he wants to be clear what the intention is because he wants to
21 know what to appeal. Because if it's coming back for public hearing, he will object
22 to that, if that's going to be what's going to happen.

23
24 Chair Kellman said Mr. Ziegler's appeal will have transpired long before the staff
25 would come back with this report. The applicant has to appeal within 10 days.

26
27 Mr. Ziegler said clearly, but he's talking about conditions, whether he needs to
28 clarify that condition at the Council unless he's totally satisfied it's not going to be
29 opened up to a public hearing.

30
31 Ms. Henderson said the way it's worded, the applicant is covered. She read the
32 section again, this is the second to last sentence in Condition No. 2: "No work
33 shall be permitted on the project and no building permit shall be reinstated until
34 the encroachments have been removed and the Planning Commission has
35 received a report verifying such as part of the director's report at a Planning
36 Commission hearing."

37
38 Mr. Ziegler said he has no objection to that language, "has received," is fine. It's
39 the opening up to comment.

40
41 Chair Kellman said the language Ms. Henderson read is the language that's
42 going to be utilized. That's what's going to be in the condition.

43
44 Commissioner Petersen said the Commission may or may not receive public
45 comment, and his guess is that they wouldn't, but there's nothing voted on, so it
46 isn't truly a hearing, it's just a report given to the Commission.

1
2 Mr. Ziegler said he understands, but--

3
4 Chair Kellman asked if Mr. Ziegler is satisfied with the language as read to him?

5
6 Mr. Ziegler said he is.

7
8 **Further Public Comment**

9
10 **Marie McDermott** lives at 7 Alexander Street across the street from 2 Alexander.
11 The neighborhood was very tranquil until Mr. Fotsch wanted to expand his
12 garage, which was fine, but now that it's gone on for nine years and the view now
13 is very much obstructed by the garage. It's now a foot and a half in each direction
14 larger. She would like to at least request that he not be able to put the planned
15 flower boxes yet on top of that, they were supposed to sink down into the soffit,
16 and instead of that he built the roof way up, way above where it was supposed to
17 be and then he's got the flower boxes made but not yet up there, which would
18 make it much, much higher yet. She requested that not occur. Secondly, he built
19 his garage not only way larger, but he had a light-- the only windows that 1 and 7
20 Alexander have is opening onto the water. The other side is a hill that's been
21 sliding. Mr. Fotsch had a big blinding light and the neighbors asked him if he
22 could kindly lower it so that they wouldn't have to close their blinds and windows.
23 Instead, he raised it and added six more lights. So for many months, she's had to
24 have her blinds completely closed and even with the blinds closed and the light
25 drapes, there's still the glare of the light coming in. see requested that he put up
26 the garage doors or extinguish the lights or have down lights.

27
28 Chair Kellman said they are really only dealing with items in the draft resolution
29 of approval/denial, but she would note that somewhere along the line there has
30 to be a condition of approval that mandates downward facing lighting. That's a
31 standard condition of approval. She asked staff to look into that and make sure
32 that's being complied with. The Commission almost always mandates downward
33 facing lights.

34
35 Ms. McDermott said Mr. Kermoyan told her that technically until the project is
36 completed, totally, there's not a technical requirement for down lights and she
37 considers that actually vicious to have those lights aimed at her and when she
38 complained, Mr. Fotsch came and put a whole selection of --

39
40 Chair Kellman said she understands. There are lots of issues. Obviously Mr.
41 Kermoyan is not with the City anymore, so the present staff will look into that
42 issue and Ms. McDermott can follow up with staff, as will the Commission.

43
44 Ms. McDermott said if there just could be some kindness with one another there
45 would not have been all of this ongoing problem. Just a little kindness, because
46 the neighbors have been suffering for nine years, 10 years.

1
2 Chair Kellman thanked Ms. McDermott.

3
4 **Michael Rex** thanked the Commission and staff for their patience. He asked for
5 clarification on Condition 5, the letter from the GGNRA dated November 20, he
6 doesn't have a copy. When he read it neither Jan nor Ian nor he recalled that
7 those guardrails were to be removed from the GGNRA property. He asked staff
8 to read that section of the letter. He also pointed out in the notice to the public at
9 the top of the agenda; the second line in that box says the public may comment
10 on any item on the agenda that has not previously been subject to public
11 comment. So Commissioner Petersen is right, it's not really a hearing, but if
12 there's something in the report, the public can comment on it. They don't really
13 intend to, it's just important to note that.

14
15 Commissioner Petersen said he understands, he just wanted the applicant to
16 know there wasn't going to be any formal vote taken about any of this, it was just
17 a report.

18
19 Ms. Russell said on the second page of the GGNRA letter under Item (e), it says:
20 "Owner shall reconfigure the lower stairs indicated in image number 4 to remove
21 the encroachment from NPS property." And what they are referring to if you go to
22 Image 4, you can see the stairs with the wall that they're discussing and that's
23 the wall that Ms. Moody was concerned about.

24
25 Mr. Rex said so the expectation is the walls would be removed from GGNRA
26 property, but they could extend all the way to the property line, the Fotsch
27 property line.

28
29 Ms. Russell said that's correct, per City setback requirements.

30
31 **Michael Eisen** represents the company that manages 1 and 7 Alexander
32 Avenue. If he understands what he's hearing, he's feeling better; he understands
33 that before the applicant goes on to any other projects and starts new
34 construction, he must correct all of the violations and code infractions that have
35 been identified and stated. His tenant in No. 7 has been looking at this project for
36 a number of years and it's really quite a distraction. It's higher than it should be,
37 it's wider than it should be and it's deeper than it should be. But he believes the
38 applicant needs to finish this dog-gone garage and get the doors on it so that all
39 of these lighting problems don't affect his tenant. There are seven lights out
40 there, they're all on extension cords, the Commission can take a look at it when
41 they drive by. It's quite a distraction and it's just not needed at this point.

42
43 **William Zeigler** said on behalf of the applicant that they have applied to put the
44 doors on; they'd be more than happy to do that. It's an obvious security problem;
45 he didn't know it was a lighting problem.

1 Chair Kellman asked staff if the doors were an issue they discussed with the
2 applicant?

3
4 Ms. Russell said the applicant did request that, but because of the stop work
5 order no work is permitted related to the current building permit.

6
7 Commissioner Petersen said he would venture a guess that the lighting is in
8 there for security reasons because there's no doors. So they could just get rid of
9 the problem by putting the doors in.

10
11 **Ian Moody** requested that Ms. Russell read the section from the National Park
12 letter again because he believes it refers to a small temporary wooden stair
13 beside the concrete retaining wall and it doesn't refer to the two masonry block
14 walls or the four masonry block walls lower than that that extend onto the
15 National Park. And when you talk about removing encroachments, he believes
16 you're only talking about removing encroachments in the setback, but the walls
17 would go through onto the National Park. As staff said, they can go to the
18 property line because they're lower than a certain height, so that does not require
19 that he remove that encroachment from the National Park. The letter doesn't
20 refer to the concrete wall above which is a solid reinforced concrete wall and the
21 several masonry walls below that are retaining walls and holding up the hot tub.

22
23 Ms. Russell read the letter again: "Owner shall reconfigure the lower stairs
24 indicated in image number 4 to remove the encroachment from NPS property."
25 Those walls that Mr. Moody is referring to, the dry stack walls, those were viewed
26 by the NPS on site and they looked at the walls and they did not feel that they
27 encroached across property lines.

28
29 Mr. Moody said if Ms. Russell looks at the photographs he gave her, it is clear
30 that are on the National Park line by several feet. And again, this is a problem
31 with not having to produce a survey identifying all the structures on the said
32 property. He can assure the staff that those several feet are on the National Park
33 and somehow the National Park was convinced they weren't, and the two feet of
34 the concrete wall is also on the National Park. And it shows in the photographs.

35
36 Chair Kellman said the topic of a survey came up two or three meetings ago. Did
37 the Commission not direct the applicant to produce one?

38
39 Ms. Russell said there was a survey completed, but it was completed for the
40 portion of the project only, it did not detail all the improvements of the property.
41 Because staff received notification from the National Park Service through this
42 letter as to what would satisfy them, staff hasn't addressed those walls in terms
43 of encroaching. She was on site with NPS, they looked at the walls and NPS did
44 not express any concerns about the walls encroaching across the property lines.
45 However, there is a condition of approval that requires the applicant to submit
46 plans for those walls and a geotechnical report, which he has done and staff has

1 forwarded it to the plan check consultants, and staff will forward those to the
2 National Park Service for their review as part of that since it's adjacent to their
3 property.

4
5 Commissioner Petersen said could it be that the National Park just didn't take
6 issue with those walls because they're just dry stack walls, or do you think they
7 just weren't aware there was an encroachment under there?

8
9 Ms. Russell said either, or. Staff hasn't received direction from the National Park
10 Service--

11
12 Commissioner Petersen said in either case, the National Park Service is not
13 concerned about them.

14
15 Ms. Russell said that's right.

16
17 Mr. Moody said they're clearly on the National Park, and the survey would show
18 this.

19
20 Chair Kellman said there are so many encroachments that are being referred to,
21 those in No. 2 and No. 5, those in No. 5 that encroach in park lands, that's the
22 Park's jurisdiction to determine whether or not they would want to remove them.
23 So the Commission can only deal with those items that deal with this approval,
24 and she believes the NPS would be the appropriate body with which to discuss
25 whether or not the applicant should be removing encroachments onto their
26 property.

27
28 Ms. Henderson said she absolutely agrees. It is even more valid because the
29 National Park Service is outside the corporate limits; this body has no jurisdiction.
30 The City limits run on the common property line. So staff has referred it to NPS,
31 who asked the City to wait to take action until they responded, which they did in
32 the November 20 letter. Ms. Russell has met with them; she's been on site with
33 them. The Commission doesn't have authority on that property; it's outside the
34 City limits.

35
36 Mr. Moody said he's going to be taking it up with the National Park and he can
37 assure that they're going to realize that somehow they've been hoodwinked.

38
39 Chair Kellman said she's going to close public comment. There is a draft
40 resolution before the Commission. Are there any comments on the draft
41 resolution of approval?

42
43 Ms. Henderson noted that in Condition 2, the second sentence, "all structures
44 projecting into the approved one-foot side yard setback shall be brought into
45 conformance with the plans approved for application VA/DR 0326 by Resolution
46 2003-51 within 100 days adoption of ..." instead of "this resolution," she would

1 suggest it read "the final resolution, unless the time frame is otherwise approved
2 by the Community Development Director." Her concern is that if it is appealed,
3 they should go by when the Council takes final action.

4
5 Chair Kellman asked Ms. Russell to read the time frame clause.

6
7 Ms. Henderson read, "unless the time frame is otherwise approved by the
8 Community Development Director." That goes after the word, "unless," they
9 added "the time frame is..."

10
11 Chair Kellman asked if the time frame means 180 days? She's not sure that's
12 clear.

13
14 Ms. Henderson said yes. It's just clarifying that the director's discretion is
15 involving the time frame, it's not--

16
17 Chair Kellman asked if this means the Community Development Director can
18 alter the time frame, the 180 days?

19
20 Ms. Russell said that's how it's worded now, yes.

21
22 Chair Kellman suggested the wording that, "unless an alternative time frame is
23 otherwise approved by the Community Development Director," would make more
24 sense.

25
26 Commissioner Petersen asked if they want to address the issue of the doors?

27
28 Ms. Henderson noted that the building inspector has a red tag in place, a stop
29 work order, and the applicant has requested to do certain improvements which
30 the City has not allowed him to do; they allowed him to do a few health and
31 safety things. She's not sure that the Commission has the discretion to override
32 that red tag. If the Commission desired, it could word a condition that the
33 applicant could place the doors subject to the building inspector lifting the red
34 tag, or something to that effect.

35
36 Chair Kellman said maybe what they can do is deal with that separately from the
37 draft resolution, and instead make a recommendation to the building inspector
38 that he reconsider that portion of the red tag as applies to the garage doors and
39 suggest that he allow those to be placed on to avoid any additional issues with
40 the lighting, so that way the two aren't confused.

41
42 Chair Kellman asked for any further comments on the draft resolution.

43
44 No response.

1 Chair Kellman moved, seconded by Vice Chair Keller, to adopt the draft
2 resolution of partial approval and partial denial, subject to the conditions.

3
4 **ROLL CALL**

5 **AYES:** Commissioner Petersen, Chair Kellman, Vice Chair Keller

6 **NOES:** None

7 **ABSTAIN:** Commissioner Bair

8 **ABSENT:** Commissioner Bossio

9
10 Chair Kellman thanked staff and the neighbors for their input and attention to
11 detail.

12
13 **NEW PUBLIC HEARINGS**

14
15 **3. 3 Harbor Drive (SP 07-006/APN 053-140-15)**
16 **US West Sign Services (Applicant)**

17
18 **Applicant US West Sign Services, on behalf of he Bank of Marin, requests**
19 **Planning Commission approval of a Sign Permit for additional business**
20 **signage along the southwest elevation of the existing building at 2 Harbor**
21 **Drive. The proposed sign is an internally illuminated wall sign measuring 2**
22 **feet in height and 10 feet in length, for an area of 20 square feet.**

23
24 (Commissioner Petersen recused himself and left the dais.)

25
26 **Staff Report by Interim Community Development Director Diane Henderson**

27
28 Ms. Henderson reported that this is a request by Bank of Marin for a new sign. In
29 2006 the CDD director approved a 20 square foot sign along that wall (pointing to
30 drawings) and essentially they are wanting to repeat it along this wall (pointing
31 for obvious reasons: as you're traveling down Harbor in this direction, you don't
32 see the existing sign. The sign is 20 square feet; 10 feet long, 2 feet wide and
33 has white channel letters, interior illumination. This (pointing) shows what it would
34 look like. It has the green logo. They have 85 feet of sidewalk frontage which
35 means they are allowed 42 1/2 square feet of signage; they have 20 square feet,
36 this would be an additional 20, so they'd still be within the maximum of 42 feet
37 and a half. This is one of those things she feels staff should have the authority to
38 deal with.

39
40 Chair Kellman asked if there is an illumination plan guiding when the lights are on
41 and when they are turned off?

42
43 Ms. Henderson said there is not.

44
45 Chair Kellman said there should be. She would think business hours only, but
46 then she wonders why it would need to be illuminated during the day time.

1 Chair Kellman said she will fight the urge to take it off the consent calendar and
2 go through the minutiae of the sign ordinance and trust that staff has adequately
3 evaluated the application. Were there any issues?
4

5 Ms. Russell said it was a fairly straightforward application; the HLB was
6 supportive, and the signage met all the requirements of the Downtown Historic
7 District signage guidelines and zoning ordinance.
8

9 Chair Kellman asked if there are any color samples available?
10

11 Ms. Russell noted colored designs are included in the Commission's packet and
12 she also has samples of the awning, which is a black canvas.
13

14 Chair Kellman asked for comments.
15

16 No response.
17

18 **Chair Kellman moved, seconded by Vice Chair Keller, to adopt the draft**
19 **resolution of approval subject to conditions.**
20

21 **ROLL CALL**
22

23 **AYES:** Chair Kellman; Vice Chair Keller
24 Commissioner Petersen

25 **NOES:** None.

26 **ABSENT:** Commissioners Bossio and Bair
27

28
29 **CONTINUED HEARINGS**
30

- 31 1. **2 Alexander Avenue (DR 05-074)**
32 **Don Olsen (Applicant)/Ed Fotsch (Owner)**
33

34 **Staff report by Associate Planner Sierra Russell**
35

36 This is a request for Planning Commission approval to modify a variance and
37 design review applications VA DR 03-26 and DRM 06-070 for the property
38 located at 2 Alexander Avenue in order to legalize an additional one foot
39 projection of the exterior stairway of the as built structure into the required side
40 yard setback. The applicant is also proposing a modification to the design review
41 modification application approved in 2006 in order to include a bathroom in the
42 den of the approved under floor area. This item was continued from the October
43 10, 2007, Planning Commission meeting due to a letter submitted from the
44 National Park Service that requested compliance with certain conditions prior to
45 City approval of the modifications. At that time concerns were also expressed
46 regarding the survey information as it didn't identify the as built structures. Since

1 that time the applicant has submitted an updated survey and staff has received
2 correspondence from the National Park Service regarding its review of the
3 potential encroachments onto Golden Gate National Recreation Area lands. The
4 modifications being presented to the Commission are to amend the two
5 previously approved applications for a variance and design review permits, one
6 in 2003 and one in 2006. There is a correction on the staff report: Page 2 should
7 say DRM 06-070.

8
9 The requested modification resulted from a discrepancy that was discovered by
10 Community Development Department staff that the garage was constructed 16
11 inches wider and the exterior stairway four inches narrower, which meant there
12 was an additional one foot structural projection into the side yard setback of the
13 exterior stairway. Other deviations found with the as built dimensions were
14 considered minor, but because the review of the variance modification requires
15 Planning Commission review, these modifications were also forwarded to the
16 Commission for the review. In addition to the modifications to the mass and bulk
17 and the additional projection, the applicant is requesting to place a bathroom in
18 the under floor area. (Ms. Russell displayed photos of the site plan.) Previously a
19 showerhead was shown on the approved plans and the applicant is now
20 requesting to include a toilet and sink area. The new floor area and building
21 coverage that resulted from the increased projection increased the floor area and
22 building coverage .9 percent and .5 percent respectively and both are still within
23 the permitted maximum development requirements for the zoning district.
24 (showing tables comparing previously approved application and the as built
25 structure.) There was no change in the garage height. The change with the
26 additional setback involves the south and west elevations (pointing to photos).
27 This is a view (pointing) from Alexander Avenue showing where the structure
28 would be if it wasn't built 18 inches wider, and shows the difference in the view
29 along Alexander Avenue. It also obviously results in an additional projection in
30 the view from looking uphill; however, uphill views weren't a major consideration
31 in the approval by the Planning Commission. The Planning Commission was
32 concerned about the view from Alexander Avenue in its original approvals;
33 however that concern mainly involved the removal of some cypress trees and not
34 necessarily the extent of the garage. The applicant submitted updated survey
35 information that identifies the location of the as built structure. It focuses on the
36 area in question of the garage and identifies that the exterior stairway structure
37 does not encroach on to the Golden Gate National Recreation Area lands. The
38 correspondence received from the National Park Service stated that the NPS has
39 determined that the project was not in compliance with the requested conditions
40 approved for the project. The NPS requested before the City reviewed the
41 modifications that the applicant allow the NPS to verify and remove any
42 encroachments onto NPS land, remove project construction debris and
43 temporary stairs and restore disturbed surfaces on NPS property and investigate
44 the construction of a continuous permanent fence or equivalent ground level
45 boundary marker along the surveyed boundary. NPS further clarified in their
46 letter they would support the modifications upon the completion of these requests

5B
274

1 and that they had no objection to the City allowing work related to the project
2 outside the minimum one foot setback. Staff met with NPS staff, the property
3 owner and the contractor on October 25, to discuss work done by the applicant to
4 comply with the NPS requests and to identify whether the encroachments had
5 been removed and if any still existed. Before the meeting, a sample excavation
6 was done at the exterior base of the stairway to view one of the footings to
7 identify whether the footing encroached onto NPS property. One of the already
8 identified encroachments, a planter wall, was demolished for the purposes of the
9 meeting to bring it outside of NPS property. Based on that meeting, NPS
10 inspected the project and confirmed that the stairway and garage no longer
11 encroached in NPS property with the removal of the planter. This slide shows
12 where the sample excavation was done. These are the drilled piers here.

13
14 Commissioner Petersen asked if it is correct the piers weren't going over?

15
16 Ms. Russell said that is correct, they were not. This was consistent with
17 comparing previously approved building permit plans and identifying those
18 compared to the current plans. Staff found a one foot difference in the project
19 and the previously approved plans allowed for that one foot distance, so that
20 would be consistent with it being located on the property line. This is a photo of
21 the wall in the area of the sample excavation. After verifying the project related
22 encroachments, NPS staff confirmed several other encroachments that will need
23 to be removed; these consist of debris from a removed planter, a deer fence, a
24 plastic drain pipe and stairs within the southeast portion of the property. Based
25 on the correspondence received from NPS staff, they would accept the approval
26 of the project modifications conditioned on the removal of these identified
27 encroachments, installation of approved erosion control measures on disturbed
28 NPS property, and installation of an NPS approved permitted fence along the
29 southern boundary line that would begin at the end of the exterior stairway.

30
31 One of the concerns that were reported at the previous meeting was the guard
32 rail along Alexander Avenue. The Golden Gate Bridge District contacted the City
33 and requested that staff direct the applicant to work with the District to repair the
34 wall. Although an encroachment permit was issued, a City encroachment permit
35 for the guard rail and the work related to the driveway and the approved plans did
36 show the guard rail being shortened. The district was dissatisfied with the
37 manner in which it was cut and was also dissatisfied that an encroachment
38 permit from the district was not issued. Particularly, their concerns involve the
39 exposed concrete and rebar. The applicant met with the District engineers and
40 they worked out a guard rail repair plan that was agreed on by the District. The
41 applicant also made a commitment to repair the wall within 90 days of issuance
42 of a building permit and this is included in the draft resolution as a condition.

43
44 Some neighborhood concerns have been reported regarding the rear yard
45 improvements and in relation to landslide concerns. One of the conditions of the
46 City Council resolution that resulted from the appeal process was Condition 12,

5B
275

1 which requires the submittal of plans for retaining walls that indicate the spa
2 drainage systems along with the geotechnical analysis prior to final project
3 approval. As written currently the condition does not require addressing these
4 improvements until final project approval. However, staff is aware that these
5 improvements pose a concern to neighbors for increased landslide risk and that
6 the geotechnical evaluation done in 2005 doesn't necessarily address the
7 installation of these walls. Staff is requesting the Commission to consider
8 whether Condition 12 should be modified to require the submittal of plans at an
9 earlier time than final project approval. Staff has been unable to identify a
10 building permit that was issued for these walls (showing aerial photo); they
11 appear to be unpermitted; however, it also appears that they have been in place
12 for more than several years based on looking at aerial photographs. Staff has
13 received correspondence from six persons who are not supportive of the
14 application. That correspondence is included in the Commission's packet.
15 Concerns include the need for a geotechnical report, that the survey does not
16 show the constructed features, concerns with potential landslides and structural
17 safety. Staff also received correspondence from six persons supportive of the
18 application.

19
20 In summary, the Commission is being requested to consider the modifications to
21 the previous applications that include an additional one foot projection into the
22 side yard setback, design review modifications related to the additional bulk and
23 mass, and design review modifications for the additional bathroom.

24
25 Staff believes the necessary variance and design review findings can be made
26 as they are previously made in resolution numbers 2003-51 and 2007-08, which
27 have been incorporated into the attached draft resolution of approval. The
28 resolution also states that these previous resolutions shall remain in full force and
29 effect and includes several additional conditions that are specific to recent
30 concerns. Additionally, the Planning Commission may approve the application
31 with modifications, continue the application for project revisions or other
32 additional information or deny the application and direct staff to return with a
33 resolution of denial. Staff is also requesting the Commission to consider two
34 specific things: One is the landslide concerns and whether Condition 12 should
35 be modified to require plans and materials related to the unpermitted rear yard
36 improvements to be submitted at an earlier time. Should the Commission support
37 this, staff will forward the request to the City Council to modify the condition. The
38 Commission is also considering the additional bathroom. Previous minutes
39 indicate that this was a concern to the Commission at the time of original
40 approval based on the potential for a second unit in this area and staff believes
41 that the Commission could approve the request with a condition that requires that
42 220 electrical premise wiring shall not be installed in the under floor area.

43
44 Chair Kellman noted that a lot of the correspondence the Commission has
45 received has been beyond the scope of the Commission's task that evening. To
46 clarify, Chair Kellman said there are three things the Commission is looking at:

1 the additional one-foot projection, which is related to the variance findings. Does
2 the Commission need to make variance findings for that?

3
4 Ms. Russell said because variance findings were previously made as well as
5 design review permit findings and because after reviewing those resolutions it
6 appeared that the modifications were consistent with these findings, staff
7 incorporated these into the attached draft resolution.

8
9 Chair Kellman said the previous variance findings were made in 2003 by a
10 Commission of which she is the only commissioner remaining on the
11 Commission, and she voted no at that time. Now, there are two Commissioners
12 present that have never in fact voted on the variance; should the Commission be
13 conducting a variance finding analysis when evaluating that question?

14
15 City Attorney Mary Wagner said yes, the Commission needs to make variance
16 findings related to this additional projection into the setback.

17
18 Chair Kellman said that will be one of the three things they are looking at. The
19 other two are design review permit findings, which even though there are two
20 prior resolutions of approval can be made independent of whatever those two
21 prior resolutions of approval stated.

22
23 Ms. Wagner said right, they are for the modifications. In all three instances, if the
24 Commission were to not approve these requested revisions, obviously those
25 prior approvals are still in full force and effect.

26
27 Chair Kellman said correct. The most recent one was from 2007 and it was for
28 the den area and included the shower head, and that would still stand. The
29 Commission is simply opining whether or not a full bathroom should be put in
30 there. Regarding the two items on the next slide (pointing to slides), if the
31 Commission was going to vote yes and approve this, then it would consider
32 those; if the Commission was going to vote no, then these don't actually come
33 up.

34
35 Ms. Russell said that's correct.

36
37 Chair Kellman reiterated that those are the three things the Commission is
38 looking at. The Commission is not opining on anything else. Those are the only
39 decisions the Commission is making that evening.

40
41 **Remarks by Applicant Ed Fotsch**

42
43 Dr. Fotsch lives at 2 Alexander Avenue. The Commission has heard a lot about
44 the garage and he apologizes for being back again. It was not his intention to be
45 back before the Commission. Pointing to slides, Dr. Fotsch noted that sometime
46 ago they made a decision because of parking in the neighborhood to try to get

1 some more garage space and thus needed a variance. The variance findings had
2 to do with the fact that almost all of the neighbors have garages that go fully to
3 the property line. He was approved for a variance; it was the Park Service that
4 requested a one-foot setback and that was on the approved plans. They
5 proceeded with construction with one modification that was approved by the
6 Planning Commission for the use of space on the level below. They are well on
7 the way, just at the point of shingles and a garage door, when he was notified by
8 the planning department that there was an overbuild of a foot into the side yard
9 and because there was a variance involved, he would have to go back to the
10 Planning Commission. He noted that this is off by one foot across 40 feet, he's
11 certain no one would say that every structure that's built in Sausalito is built
12 exact. He inquired of the development community, how unusual is this? He
13 doesn't build houses for a living. The answer to his question was "we don't
14 know," because most construction is not subjected to the level of scrutiny that his
15 project has experienced. The contractor will speak and explain this was an
16 honest mistake. Dr. Fotsch said he didn't get any benefit from the one-foot nor
17 does he get a benefit from a stair that's four inches smaller.

18
19 Chair Kellman asked to see a slide of the existing status. That's the before and
20 after shot?

21
22 Ms. Russell said yes.

23
24 Dr. Fotsch said very germane to the discussion is the view of before and after.
25 The original variance approval was for the removal of a substantial number of
26 eucalyptus trees which created a view corridor, which in fact has existed and the
27 off street parking now exists. It sort of boiled down to one foot encroachment into
28 the side yard. The Planning Commission requested, after the surveyor had set
29 the line, an additional survey. Ms. Russell has a slide of it and he has one as
30 well. At any rate, they ended up with a one foot intrusion in the side yard. He met
31 with the Park Service and they identified that a concrete planter wall actually
32 extended a couple of inches onto the Park Service property and Dr. Fotsch
33 removed that. There were some temporary stairs there for construction purposes
34 and the Park Service ask those to be removed, and they did so. The Park
35 Service is now supportive of the completion of the garage, which he hopes to do
36 with some conditions which he is happy to fulfill. There was certainly nothing
37 intentional or malicious about this construction. He travels a great deal and
38 wasn't present to conduct the construction. The contractor will speak to the
39 construction itself. The steps aren't quite on the property line even at the top.
40 There are a couple of inches off of the property line where they should have been
41 a foot. There's more space on the next set of steps down because the property
42 line is not quite parallel to the north property line. So he has done what he could
43 to mitigate this over build of a foot across 40 feet, and the only thing he can say
44 is he wishes he wasn't back before the Commission and taking up its time. He'd
45 like to complete the garage, if this hadn't come up, they'd be done by now. They

1 hope to wrap this up and get on with the quiet enjoyment of his home as soon as
2 possible.

3
4 **Remarks by Applicant Contractor Joaquin Fritz**

5
6 Mr. Fritz said this has been quite an experience; he was quite shocked to find out
7 that he had over built the structure by 12 inches as they got close to the property
8 line. As he stated in his letter to the Commission, he went back to identify the
9 discrepancy and looking at the plans he found out that the property lines were
10 not parallel. He explained his process in trying to maintain the setback; he didn't
11 realize that he had gone into the setback as he went up the hill.

12
13 Chair Kellman asked if Mr. Fritz normally takes photographs of his work?

14
15 Mr. Fritz said yes.

16
17 **Remarks by Project Architect Don Olsen**

18
19 Mr. Olsen asked to see the two elevations that show the proposed and the
20 actual, the west and the east elevations. It shows the survey property line and
21 the actual location of the stairs and the original. You can see (pointing to
22 requested slides) from the street elevation, you can see the approved and the as
23 built, which in this section is about two inches and if you go to the east elevation,
24 you'll see it's about six inches. One of the interesting things about this is that in
25 Sausalito there are parcels that have a front street and also on the side would
26 have an unimproved street right of way. In that particular case, it's quite similar to
27 this in that at the street right of way that's not been developed, you have a zero
28 setback line. Side setbacks are primarily for light and air. Where you're in a
29 position where you are not going to have another building built adjacent to you,
30 you look at it different from land planning and say, okay, yes, in this particular
31 case you could have a zero setback, and that is part of the zoning ordinance in
32 Sausalito.

33
34 Chair Kellman asked Mr. Olsen to point out where it reaches one foot or how that
35 one foot is figured?

36
37 Commissioner Petersen asked is it the stairway that grew or is it the garage and
38 den?

39
40 Mr. Olsen said both. It just travels on down. But the issue really is the stairs
41 occupying more of the side yard than they were supposed to, which was a foot.
42 So in that particular elevation that was supposed to be a foot and now it is only
43 six inches. If you traveled around to the street, it's two inches instead of a foot.
44 The whole project has moved.

1 Ms. Russell noted that the garage enlarged 16 inches and the stairway nearly
2 four inches, based on staff measurements, which resulted in the additional one
3 foot projection of the stairway into the setback.

4
5 Chair Kellman said what she was asking is where on any of these slides does it
6 illustrate the one foot projection into the setback.

7
8 Ms. Russell said the east elevation shows as built here (pointing) and approved.

9
10 Public Comment

11
12 Chair Kellman noted that the Commission has read the letters submitted by the
13 public.

14
15 **Architect Michael Rex** represents the neighbors directly down hill of the project
16 site, Ian and Jan Moody. He referred to his letter on page 115 of the
17 Commission's packet. He noted that the project already had a variance to
18 encroach and now the applicant is asking for more. They are losing sight of the
19 fact that it's not just the stair side yard encroachment that they're dealing with,
20 but the fact that they have a three-story, very massive building that is 16 inches
21 wider, it's 11 inches deeper, and therefore you end up diagonally with a more
22 apparent, more massive building. It almost ended up higher except that staff
23 caught that the plans didn't match the building height approved. The applicant is
24 obligated to build according to the drawings. There's probably no physical way to
25 get the building back to the mass it should be, but there certainly is a way to
26 honor the variance that was approved and not extend it. The applicant's
27 argument that it was an honest mistake doesn't change the fact that a builder and
28 home owner is obligated to build according to the plans. In terms of the variance
29 findings, he'd have to question the findings in the first place. What's the
30 hardship? Why encroach at all? The stairs could have been behind the building,
31 they could have been internal. But making a bad situation worse is really hard to
32 justify. Where's the hardship? Right now the current variance that they're asking
33 for of an additional foot or an additional six inches, it's a self-imposed hardship
34 that was created because they didn't pay attention to the plans. Where's the
35 unusual circumstances? This lot is over 10,000 square feet. There's nothing
36 unusual about a property line being slightly on an angle. He noted his request on
37 page 120 of the staff report that the variance be denied, at least in terms of the
38 additional encroachment, and that those stairs be pulled back. It's not just the
39 stairway; it's creating a mass that the Moodys look up to that is several stories
40 high. The findings can't be made for that. They are glad to see the guard rail will
41 be repaired. That request is also in the staff report. They ask that the building
42 permit plans be pulled back until they're corrected. The site plan is still not
43 correct. Those retaining walls encroach almost two feet or more and the site plan
44 in the packet is not correct. There's no reason that those retaining walls should
45 encroach beyond the property line. He asks that they be pulled back. He
46 supports staff suggestion that condition 12 be modified. When they thought they

1 were getting a geotech report and a drainage plan prepared as part of the final
2 project approval, they thought that approval referred to the building permit. They
3 didn't fully appreciate that the condition referred to the final permit after these
4 walls were finally done. He would ask that the technical data be required as part
5 of the building application, as part of plan check, as is required for every other
6 project in town.

7
8 **Ann Watson** asked if the Commission has the letter she emailed to the
9 Commission?

10
11 Ms. Russell indicated yes, the Commission was given the copies of the email.

12
13 Ms. Watson noted that she lives on the same hill as the Moodys, uphill from Dr.
14 Fotsch. It is a hill that George (sic) Sweeney characterized to her as a "slide
15 prone" hill, when he was the City Engineer. She has construction above her that
16 was not properly reviewed. It was not built within what was said on the permit. It
17 was not red tagged when the City's building official saw that that was the case. It
18 took a call from her to get the project red tagged. That was more than three and
19 a half years ago. She is still waiting for the City to take action. They've had a
20 Planning Commission meeting, conditions were put on the project and nothing's
21 been done about it. She now has a slide to the south of her caused by
22 construction above it at 11 Edwards. A lawsuit on that is ongoing. This winter the
23 property just north of her slid, likely because of drainage issues related to the
24 property above her with the illegal construction at 9 Edwards. Her house is
25 cracking down the middle where the load above her has settled on her property
26 because it was not properly engineered. The City has been on notice that this is
27 a problematic hill for many years and they have the evidence of the landslides to
28 prove it. The Moodys have good reason to be worried about the piece-mealing of
29 this project and the construction of walls that have not been properly reviewed
30 from a geotech and structural engineering perspective. There is a pattern and
31 practice going on in the City of granting back end approvals on illegal
32 construction and not looking at unpermitted retaining walls such as is present
33 here. The City is failing to protect its residents and their valuable homes by not
34 enforcing the building code and making people build what they tell the City they
35 are going to build. The code says that on an exceptional site such as this slide
36 prone hill anything over three feet requires an engineering review. That code also
37 says you cannot approve a variance that impacts an adjacent property's safety.
38 The Moodys have legitimate concerns and she urged the Commission to listen
39 carefully to those concerns and look at this project on an overall basis on how it
40 impacts a hill that is sliding badly and has severe drainage issues.

41
42 **John Keating** addressed the process. The Commission considered an
43 amendment of this variance before and denied those proposed amendments,
44 specifically finding that there was a self imposed hardship. It seems that what
45 happened is the developer did not have success in getting his variance, found a
46 way to sidestep the Commission's jurisdiction by casting his plans as a design

1 review permit and modification, and when the Commission had to hear the
2 application again, the Commission decided it needed direction from the City
3 Council as to whether the Commission needed to really look at the original
4 variance or not, whether that was appropriate to have piecemeal development
5 beyond the approval. The City Council in handling it did not address the issue
6 that the Commission attempted to give to them, but instead said, well, this is a
7 design review permit modification, so they just looked at that issue and the
8 Commission's concerns weren't addressed as to how the City is going to deal
9 with this kind of piecemeal approval. The Commission does need to have that
10 dealt with for reasons including protecting staff and for the efficiency of the
11 process, because if a person is allowed to go back to staff repeatedly and
12 pressure them and get changes beyond what's approved, then staff is just
13 subjected to a tremendous burden and the Commission doesn't get to fulfill its
14 duty to look at the overall planning issues. It is extremely important. The
15 Commission should consider what message it is sending to the City Council
16 because if it denies the variance amendment on the basis that the Commission
17 cannot make findings, and specifically inquires of the City Council whether the
18 Commission has to look at the overall findings for the overall project, because
19 they are amending the initial variance-- if the Commission can get that direction
20 from the Council in the context of having denied it, the Council will have to deal
21 with the Commission's issue. If on the other hand, the Commission decides to
22 bump it up to the City Council and hope that this time they resolve the issue on
23 the basis of an appeal of an approval, the Council has every ability in the world to
24 say there's no basis to overturn it. He would suggest that if the Commission
25 wants to resolve the issue, protect the staff and protect the Commission, the
26 Commission should deny the requested amendment to the variance.

27
28 **Ian Moody** lives at 6 Alexander Avenue. He noted that there are still
29 encroachments on the GGNRA. There's a concrete retaining wall and there's
30 several stacked block masonry walls, as the ones that are unengineered, are still
31 encroaching on the National Park. So he is really baffled by the Park Service's
32 letter. The one-foot variance that's being asked for is not true; the upper wall of
33 the stairs that is right on the property line has a four-inch handrail on top of that
34 which will now go four inches into the National Park. So the variance that should
35 be asked for is one foot, six inches, not one foot. He's never had any objection to
36 Dr. Fotsch building what is permitted and approved. He does object to the
37 constant return for retroactive approval of what has already been built without
38 permission or approval and for new and modified variances necessitated by
39 mistake and oversight by this experienced developer claiming hardship as a
40 justification. Self-created hardship is not grounds for granting a variance, which is
41 a special privilege. Dr. Fotsch is requesting a modification of that special privilege
42 by 40 percent, claiming oversight or sloppy construction, clearly showing that he
43 doesn't respect the import of that variance privilege. The Commission is being
44 asked to believe that an experienced developer made a mistake in laying out the
45 building because he violated a condition of approval, that the south boundary be
46 marked by a licensed surveyor, a fence be installed along the boundary, before

5B
282

1 construction began. The Commission is being asked to believe that the
2 surveyor's monument on Alexander Avenue aligns exactly with the south wall of
3 the garage, but it still somehow missed. That's in the photographs. It's virtually
4 impossible to make an error with a survey's monument so close; 1867 cubic feet
5 of bulk has been added to the south side alone of the upper building towering
6 above the Moodys home. Construction has been going on on this site for 10
7 years and counting, and this is just simply not acceptable. The hand out shows a
8 portion of drawing 2 of October 29, '04, which pretends to show the west
9 elevation of the applicant's widened garage. You'll note that to remove the
10 existing concrete wall without the railing shown leads one to believe that the
11 concrete wall is on the applicant's property. In fact, it's a public safety barrier on
12 the Alexander Avenue viaduct three feet from the applicant's property. The public
13 safety wall is drawn six foot, nine inches longer than it actually is or was to
14 exaggerate the impact to access on the garage. But the only reason it would ever
15 have needed to be demolished is because the garage was built one foot, six
16 inches wider than shown on the plans. The overbuilt garage is why the stair
17 invades one foot, six inches beyond the variance allowance. They see Ed Fotsch
18 at these many hearings, many would describe him as a take charge guy, yet he
19 claims no knowledge of these violations and says they are a result of sloppy
20 building, a mistake or oversight. This travesty reminds him of the Enron fiasco;
21 Kenneth Lay claimed he was not in the loop and knew nothing of the fraud, yet at
22 his trial he showed what kind of a take charge guy he was. The Moodys want to
23 see this garage project completed as approved, as quickly as possible, but they
24 want to see all the violations removed or corrected, including the unpermitted,
25 unengineered, stacked block and concrete retaining walls before any work on
26 this garage is allowed to continue. If the Commission believes what has been
27 done was intentional, this variance to the variance must be denied. If the
28 Commission believes what has been done is a mistake or sloppy building, it must
29 be denied. If not, simply add language to all future variances that "within 40
30 percent is close enough. Sloppy buildings and developers are welcome," and
31 let's not waste everybody's time with these meetings.

32
33 **Maureen McDermott** lives directly across the street. She opposed the variance
34 and the design review permit before. She will continue to object to the special
35 exemptions given to this developer. An additional one foot encroachment just
36 makes it worse. The request for approval of the bathroom retroactively is just
37 further evidence that the developer misled the Commission when he promised
38 that he wasn't increasing the habitation area. She asks that the variance be
39 denied.

40
41 **Michael Eisen** manages the property at 7 Alexander Avenue across the street.
42 He objected to the consideration of this request without considering all the
43 comments previously submitted on this project, verbal and written. The
44 Commission needs to make a finding on the project as a whole, this piecemeal
45 approach is not acceptable. The Commission needs to look at where the project

1 started, what was accepted, where it is now, what they have said they're going to
2 do and what they ended up doing. He believes the public is being misled.

3
4 **Jeaneane Moody** lives at 6 Alexander Avenue. She pointed out there are some
5 vital thing missing from the staff report, including the Planning Commission
6 denial. The project was denied because it was out of compliance with the
7 General Plan, because of slides. Each staff report thereafter has diminished the
8 importance of that and now it says the project is acceptable.

9
10 Ms. Russell said that staff report was included as part of the Commission packet
11 but was submitted electronically, which is indicated on page 9 of the staff report.
12 There were certain previous staff reports and minutes that were submitted
13 electronically.

14
15 Chair Kellman noted it was about 100-plus pages. So the Commission did
16 receive those items electronically, the City just chose to avoid the actual printing
17 of them.

18
19 Ms. Moody said it's interesting what was put out in print and what was put out
20 electronically. The other thing is the building was larger in 13 dimensions and she
21 did not see in the staff report where those dimensions were taken, and those
22 dimensions add tremendous bulk to the structure. She is not the north neighbor;
23 she is the east neighbor directly below. The rear yard retaining walls are not the
24 only ones, they are mostly the side walls and they go entirely around the house.
25 So there are many things that are not correct in the staff report.

26
27 Ms. Russell noted that the dimensions are included in the staff report on page
28 172 and also a key is included on pages 174 and 175.

29
30 Ms. Moody continued her comments. Project creep must end to insure efficient
31 City oversight of construction projects; such oversight is very important to public
32 safety and quality of life. The abuse of the planning process has been taken to
33 new heights by the construction at 2 Alexander. Dr. Fotsch simply builds and if
34 caught he seeks approval after the fact or not at all. With project creep, shoddy
35 construction is invited and public safety is compromised. Fotsch is back again
36 claiming he needs a variance to the variance. She requests the Commission
37 deny the modification to the variance, that all encroachments beyond the City
38 granted variance be removed, the design review should be denied and the game
39 room/den project be reconsidered because of overbuild, bulk and because
40 approval was based on misleading information and plans shown in Dr. Fotsch's
41 presentation and the design review findings were inconsistent with the
42 requirements of the General Plan. None of the mandatory findings needed to
43 approve this application can be made. Fotsch would have one believe that
44 troublesome neighbors caused him not to be able to finish his garage; neighbors
45 waited over seven months and began wondering what was taking so long for this
46 garage to be finished. The answer came in May 2006; they were shocked to see

1 an enormous amount of construction on the level below the garage. While
2 everybody was waiting for him to finish the garage, he was instead building a
3 game room down below the garage without going through any planning process,
4 permit approval. He constructed on the lower level even after the City issued a
5 stop work order, even though he was still allowed to work on the garage. He
6 further delayed his garage project when he built it 16 inches wider and too large
7 in 13 dimensions, earning him a stop work order for all projects, including the
8 garage. There were more delays and he impinged on the variances of the
9 GGNRA and the City. He demolished the viaduct of the Golden Gate Bridge and
10 Highway District so he could have a straight shot into his mistakenly widened
11 garage. Violating the variances was avoidable. He simply needed to lay out a
12 straight line on the National Park boundary. Instead he built structures and threw
13 debris on the National Park. All of the mistakes have been to his advantage.

14
15 Chair Kellman asked Ms. Moody if she has a copy of the November 2006
16 resolution?

17
18 Ms. Moody said she doesn't. She can give it to the Commission.

19
20 Chair Kellman asked if she has a copy of that for staff.

21
22 Ms. Moody said yes.

23
24 Chair Kellman asked Ms. Moody to sum up.

25
26 Ms. Moody said Dr. Fotsch has been building above her property for 10 years,
27 there's no end in sight. He will continue to harass his neighbors with these illegal
28 construction projects if no equity prevails and there are no consequences given.
29 Dr. Fotsch is an experienced developer as one Planning Commissioner stated;
30 he has been in front of the Planning Commission many times; he knows how the
31 system works and he knows how to work the system. At a meeting in June 2006,
32 Fotsch represented this to the Commission: "Dr. Fotsch said that as far as what's
33 built, the building inspector came out and verified that it," the garage project, "is
34 within an inch in every aspect of what was approved."
35

36 **William Zeigler** is the attorney for Dr. Fotsch. Most of the comments he's
37 hearing are really a personal attack on Dr. Fotsch. They are not relevant. Dr.
38 Fotsch is not present as a developer, this is his home, he's lived there for 10
39 years. Regarding the retaining walls that are supposedly built without permits,
40 they've been there for 10 years plus. They are 48 inches high; his understanding
41 is no permits were required. However, Dr. Fotsch is going to revisit that and has
42 no objections to the condition proposed that would require geotechnical
43 inspection. He addressed the implication that the applicant is asking for a
44 variance. They are not asking for a variance for the one foot mistake; they are
45 asking for an amendment to the variance and the Commission may want to make
46 new findings because of that, but he will submit that the Commission can't make

1 findings for 10 inches into the side yard. The Commission has to look at this as
2 that project that is simply 10 inches bigger than the one that was submitted
3 previously. That would be the basis for the variance findings. The Commission
4 has to look at why the variance was granted in the first place, and see whether
5 those findings can still be made for a structure that is now 10 inches, 12 inches,
6 whatever, bigger. In that context, and if the Commission does need to make
7 those findings, he'd ask the Commission to think of this one issue: is this one foot
8 variation material to that variance? That's the question. Is this a material change?
9 There's a one half of one percent increase in coverage; there's a nine-tenths of
10 one percent increase in floor area. Is that material? Mr. Rex says maybe it wasn't
11 intentional, it's still wrong. The Commission has to look at that comment in that
12 context; is the mistake material, whether it was a mistake or whatever implication
13 the Commission wants to put on it.
14

15 Chair Kellman asked if Mr. Zeigler has any comment on the design review
16 aspects, particularly as related to the bulk and mass or as to the bathroom issue?
17

18 Mr. Zeigler said no. There's been nothing presented in that regard and they don't
19 have any objection to what the staff has presented to the Commission. He wants
20 to go to a couple of other issues.
21

22 Chair Kellman asked him to outline those issues for the Commission.
23

24 Mr. Zeigler said one, this didn't occur in a vacuum, this occurred over several
25 years. There were City inspections and the building proceeded on the basis of
26 those inspections. Everybody including the City believed it was in compliance.
27 Second, they are talking about an intrusion into the side yard so you've got to
28 look at side yard issues, light, air, possibly safety. Those issues don't apply here,
29 as Mr. Olsen pointed out. There is no side yard on the other side, with Mr.
30 Moody's house or anyone else's house in that area. This side yard exists only
31 because the Park Service requested it. They have now inspected it and said as
32 long as Dr. Fotsch complies with their other requests, they don't need it. It's the
33 applicant belief they asked for it just because of issues like this so that there'd be
34 some room in case there was an error. Now they've looked at what's there and
35 that's fine. The last --
36

37 (From the audience) How much time has he been given?
38

39 Chair Kellman replied about the same amount as given Ms. Moody.
40

41 Mr. Zeigler said the last point he wants to make is that NPS does not object to
42 what's there, the applicant doesn't object to complying with any of the conditions
43 NPS or the City requires. As the staff found, the project is now in compliance with
44 all the required conditions, notwithstanding what everyone has said. There's no
45 problem with the height, there's no issue with the sprinkler system, a new survey
46 has been produced as the Commission requested. That survey shows there is no

1 intrusion into Park Service property. There's an intrusion into the setback. They
2 aren't talking about an encroachment here, they're talking about a setback which
3 is unnecessary and not required anywhere else in this neighborhood. Lastly,
4 there's been issues raised about the landslide; that will be looked at, that's not
5 before the Commission anyway but the applicant has no objections to looking
6 into those problems.

7
8 Dr. Fotsch said the retaining walls on his property are gravity walls that are four
9 feet or less. Nothing happens at 2 Alexander without everybody knowing.
10 Suggesting they were built illegally in the '90s is just silly. Steve Buffenberger,
11 who was the building inspector at the time, came out and said keep them under
12 four feet and permits are not required. Despite all that Dr. Fotsch said he is
13 happy to submit plans for them including a geotechnical analysis. Much has been
14 made of the instability of the hillside and yet as staff points out there is a
15 geotechnical report that shows no active sliding in the area and in fact what he's
16 done is take an existing house and put a foundation under it with drilled piers.
17 Regarding the misrepresentation of his comments vis a vis "the building was built
18 within an inch," he would point out that previously the neighbors complained that
19 the building height was too high. Much was made of that. The building inspector
20 came out and measured it and it was built within an inch of the height. That was
21 what his quoted comment referred to. The planning staff has again identified that
22 there is no issue vis a vis the height of the garage roof. So what it boils down to
23 is really the issue of the side yard and not this other superfluous stuff and he has
24 to object to the constant berating that he takes.

25
26 **Public Comment closed.**

27
28 **Commission Discussion**

29
30 Chair Kellman asked Ms. Russell to display the summary slide. She thanked
31 everyone for their comments; she will continue to adopt the City Attorney's
32 perspective on this that if the Commission wishes to look at the variance findings
33 that is something that they should do and she's going to base on the fact that she
34 voted no originally back in 2003 to the variance findings and the two
35 Commissioners on the dais that evening actually have never voted on this, so it's
36 important to look at that.

37
38 Commissioner Petersen commented that he's trusting what the Commission is
39 going to do here is see if the additional encroachment does change anything
40 materially with what was granted before, with the findings that were made before.
41 Does this suddenly change the way they approach their concerns for the findings
42 that have already been granted? He has a tough time finding a real difference
43 because he doesn't see a light and air issue here at all. He'd like to hear the
44 other Commissioners' comments?
45

1 Chair Kellman asked Vice Chair Keller if he agrees with Commissioner
2 Petersen's perspective?

3
4 Vice Chair Keller said he's still trying to come to grips with here we have a project
5 that they are now into what appears to be the fourth year, and what originally
6 started out as being an addition to the garage for additional parking and some
7 enclosed space below the garage has now moved to variances, bathrooms
8 below. It is correct that he wasn't on the Commission when the variance was
9 originally voted upon, and he didn't vote in favor of the application a year ago, he
10 voted for denial. He has a question for staff: If the Commission denies the
11 modification of the variance, what options does the applicant have?
12

13 Ms. Russell said he could appeal the decision and if the City Council upheld the
14 decision to deny it, the applicant would need to remove the structure from the
15 side yard setback. So he would need to remove drilled piers and the exterior
16 stairway, relocate them back to the previous approval, which would be one foot
17 further to the north.
18

19 Chair Kellman said she doesn't think that's really the Commission's concern, how
20 he remedies the situation shouldn't be something that the Commission takes into
21 consideration especially if it makes anybody start thinking along the lines of a
22 word like "hardship," that's certainly not the hardship that's considered under the
23 ordinance. She's seen this under all its permutations and to answer
24 Commissioner Petersen's question, she thinks it does in fact materially change
25 the original application because in fact, as one of the speakers pointed out, it
26 moves the entire home to be a bit wider and moved everything over and in fact
27 the original variance was actually approved back in 2003, and again she voted
28 no on that, but it could have changed people's minds at the time to have
29 understood that it was an even greater side yard setback. So to the extent of
30 whether or not it's into a light and air issue or whether it's into a neighbor's yard,
31 there's a reason the City has setbacks, and some of it has to do with keeping
32 applicants within the perimeters of their design; when you start to stretch out the
33 design, it's changing it. It's not the same light and air issue, but there also isn't--
34 she couldn't make any of the variance findings to begin with, so she can't make
35 them now for an additional one-foot movement.
36

37 Commissioner Petersen said but if the Commission is truly to pretend like there
38 are no construction ramifications and let's say there's no building right now that's
39 being discussed, that it's just this application for this, does something materially
40 change with an additional foot, in terms of making those findings?
41

42 Chair Kellman said she thinks the argument is that the whole structure widens as
43 a result.
44

1 Commissioner Petersen asked does that really change anything for that
2 variance? As opposed to design review, which would look at massing and bulk
3 and so on?
4

5 Chair Kellman said you can't answer that--
6

7 Commissioner Petersen said that's the question that the Commission would--
8

9 Chair Kellman said you can't answer that unless you do the variance analysis. So
10 how can you say it materially changed if at least two of the Commissioners
11 present that evening haven't done that analysis. There's no starting point for
12 them, so there's no materially changed point, which is why she suggested that
13 the Commission look at this as a variance finding to begin with because the
14 Commission has no basis other than that. If Commissioner Petersen had to make
15 a variance finding for that additional one foot projection, in and of itself, could he
16 make a variance finding for that? Under the findings; hardship, unusual
17 circumstances ...
18

19 Commissioner Petersen said the thing that would make it difficult would be the
20 hardship issue. Granted the property is a fair size property; it's very narrow on
21 the street and the trade off is just trying to get off street parking versus access
22 down to the lower portions of the property. It's going to be a very difficult thing to
23 do when the property is very narrow at the street frontage. It's a very deep piece
24 of property, it's fair-sized, but it touches Alexander in a narrow passage and if
25 you want to provide off street parking, you've only got so much to work with, plus
26 a stairway or however it is you are going to get down.
27

28 Chair Kellman asked what about an internal stairway they could have designed?
29

30 Commissioner Petersen asked if she's saying in the back of the project? Yes,
31 certainly, an internal stairway, elevator, yeah.
32

33 Chair Kellman said the fact is this is existing construction, she can say right off
34 the bat based on her prior analysis of this that she can't make the hardship
35 findings, she does feel that it is a material change, so she would not be able to
36 approve a one-foot projection. So in the interest of moving this forward, where do
37 the other two Commissioners stand?
38

39 Vice Chair Keller said from his perspective he can't make the findings either,
40 based on exceptional circumstances or as a hardship. The applicant had
41 alternatives early on, he decided to go down this path with his architect; there
42 have been mistakes made by whoever over a period of time. If he was in the
43 applicant's situation and he had been granted a variance, you'd better well damn
44 build it the right way and not exceed what you were already granted. And in this
45 case he just can't make the findings for the additional foot. He couldn't make the
46 findings for the last time the applicant was before the Commission, a year ago.

1
2 Chair Kellman asked where does Commissioner Petersen want to go with that?

3
4 Commissioner Petersen said nowhere.

5
6 Chair Kellman asked if he would be in favor of making the finding?

7
8 Commissioner Petersen said if they truly are going back to the original
9 application, then no, he can't make the finding. And if they truly are looking at this
10 as though it's a brand new project and they are trying to establish a hardship with
11 the property, providing the off street parking and getting access down-- if this was
12 a brand-new project, no, he couldn't make the finding. And he just wants to make
13 sure that's really how the Commission is looking at this. Are they really going
14 back?

15
16 City Attorney Mary Wagner said it's somewhat of a distinction without a
17 difference. What the Commission is being asked to do is make a modification to
18 an existing variance. In order to do that, the Commission has to be able to make
19 variance findings and adopt the requirements. But it is to the existing variance.
20 You're not going back and re-approving the existing variance. You're talking
21 about an exacerbation of encroachments into a setback. She's not sure which
22 finding Commissioner Petersen is struggling with or if it's all of them. If they want
23 to walk through it and talk about is this changing this finding, they can certainly
24 do that. What has been done is those findings have been incorporated into the
25 resolution. But she doesn't know if that's a productive exercise because of the
26 direction in which she's hearing that the Commission is leaning.

27
28 Chair Kellman said that's a good suggestion because the applicant's attorney
29 threw out this sort of vague concept of material alteration and it might have been
30 a little bit confusing rather than clarifying. So let's not get caught up on whether
31 there is a material alteration to the property; the question is whether to make a
32 modification to a variance and in so doing the Commission has to make variance
33 findings. Right?

34
35 Ms. Wagner said right.

36
37 Commissioner Petersen said he can't see that anything is materially changing
38 from that original variance with the additional one foot. If he is being asked to
39 make that finding anew, then he can't make it. So there are two very different
40 things going on here.

41
42 Chair Kellman said the inquiry is not whether or not there's a material change; it
43 is whether you are making variance findings that modify an existing finding. It's
44 confusing, but nowhere in the variance findings does it say "material change,"
45 that is something that the attorney threw out that has no basis in the City's
46 variance findings.

1
2 Ms. Wagner said there is not a material change provision in the findings for the
3 variance. There's an existing variance that's been granted; the Commission's
4 been asked to modify that variance to make it greater, into the side yard setback,
5 so the question before the Commission is: Can you make the findings necessary
6 to approve it? The findings to approve the additional encroachment into the
7 setback are the same findings as the original granting of the variance. Whether
8 you believe that that same hardship exists for this additional foot or if it's another
9 practical difficulty or unnecessary hardship, the Commission could find that
10 moving the structure is a practical difficulty, if you so choose. But you could also
11 go back and say for whatever purpose it was practically difficult or there was a
12 hardship and the original variance was granted, the Commission finds that that
13 applies in this situation as well. That's why she's saying that looking at it
14 specifically as "are we going back and remaking those findings," you can, or you
15 can make new findings. You can find that there are new factors that apply as
16 well.

17
18 Commissioner Petersen said the difficulty with counting in the difficulty of
19 removing the structure, the enormous waste of energy and materials that that
20 would involve is a tough one, but at the same time, if we call that hardship, then
21 does that not open the door for people to build whatever it is they want to and
22 then claim hardship later?

23
24 Chair Kellman said she thinks he's right. The Commission could look at it as an
25 existing-- first of all, the Commission has to make all six variance findings. So
26 even if you found that there was a hardship, you'd still need to make the other
27 five. But you could theoretically say this is an existing condition; whether or not
28 the applicant built it, let's sort of put that aside, we know that he did, but whether
29 or not he did, it's an existing condition. Not making the finding would cause him to
30 have to remove it and that would be a hardship. Okay, that is a reasonable way
31 of looking at it. But there are still five other findings that would need to be made
32 for a variance.

33
34 Commissioner Petersen said he's wondering if those stairs would still be legal
35 stairs if it were just the stairs that were modified.

36
37 Ms. Russell asked if he's talking about per California building code?

38
39 Commissioner Petersen said yes.

40
41 Ms. Russell said she believes they are wide enough, she's not sure.

42
43 Commissioner Petersen said that might be-- if they don't grant the variance, but it
44 doesn't mean tearing the whole side of the house out and re-establishing new
45 footings. It's just dealing with the stairs. That rests a little easier, in a way, if the
46 Commission can determine that that's true. That may be something Mr. Olsen

1 could answer. The existing variance is for four feet. Can the stairs swallow up a
2 foot and still be functional stairs?

3
4 Mr. Olsen said they can meet the uniform building code because the minimum
5 width is three feet.

6
7 Commissioner Petersen said the stairs are four feet or more in width?

8
9 Mr. Olsen said if they were right up to the property line. They've got two inches
10 up at the top end which would be the controlling factor.

11
12 Commissioner Petersen asked how much would the stairs have to be reduced in
13 width in order to be--

14
15 Mr. Olsen said he believes it's about nine inches but he'd have to go back and
16 lay it out.

17
18 Ms. Russell said the stairs would need to be reduced one foot, 12 inches. She'd
19 have to measure the plans and confirm the minimum width of the uniform
20 building code for stairways to confirm if this stairway could absorb that 12 inches.

21
22 Commissioner Petersen noted that's probably going to change its configuration,
23 too, the way it winds and so on?

24
25 Mr. Olsen said that's correct, particularly because of the winders. As the winder
26 starts turning down, you've got the minimum width.

27
28 Mr. Rex asked to speak. As an architect, he took a very specific look at the
29 question of whether you could pull that stair back one foot and have it meet code.
30 He can assure the Commission that the answer is yes, he's studied it. It does
31 require some change to the configuration winder, but there's plenty of room to do
32 it and meet code. He's looked at it personally and he can attest to that.

33
34 Chair Kellman said that's a good suggestion.

35
36 Commissioner Petersen said if that's the case, then he doesn't feel that there
37 really is a hardship. You know, this is a bit of a waste but it's not what he would
38 think would be a catastrophic revision to the building. It would be an unfortunate
39 precedent to say, okay, build whatever you want and then claim hardship
40 afterward, as he said before, but he really hates wasting materials.

41
42 Chair Kellman said from an ecological standpoint, she shares Commissioner
43 Petersen's sentiment, but from a policy perspective that would just be holding up
44 the Commission every single time. So sounds like there isn't support for that
45 projection. And then there are two design review permit modifications, related to
46 additional bulk and mass and an additional bathroom.

5B
292

1
2 Vice Chair Keller said he doesn't have a problem with the bathroom.
3
4 Commissioner Petersen said he doesn't either. There is a condition that prevents
5 gas and 220, so it's not likely to become a second unit if that's the concern. The
6 additional mass, they still have a lighter building than last time. It doesn't seem to
7 be causing any view issues or any other things the Commission would normally
8 be concerned with as far as bulk and mass.
9
10 Chair Kellman asked what the Commissioners think about condition 12? The
11 time element?
12
13 Commissioner Petersen said if moving it up sooner is of any benefit to the
14 neighbors downhill, he would very much be in support of that.
15
16 Chair Kellman said it's also of benefit to staff. There seems to be agreement.
17
18 Ms. Russell asked what the time frame is in terms of Condition 12?
19
20 Commissioner Petersen said staff suggested 30 days after permit issuance?
21
22 Ms. Russell said yes.
23
24 Chair Kellman said that sounds reasonable.
25
26 Ms. Wagner noted there's no enforcement provision if they don't do it.
27
28 Commissioner Petersen asked if staff wants to do it before permit?
29
30 Ms. Wagner said that would be a more clear time frame.
31
32 Chair Kellman said that's a good suggestion. Chair Kellman asked Ms. Russell to
33 comment on the reference by one of the neighbors that the public's concrete wall
34 within the street right of way is being repaired?
35
36 Ms. Russell asked if they are referring to the guardrail.
37
38 Chair Kellman said she thinks so.
39
40 Ms. Russell said that's the issue that went to the Golden Gate Bridge District and
41 the concrete plan that was vetted out between the District's engineers and the
42 owner, and that was included as a condition of approval in the resolution.
43
44 Chair Kellman asked how staff feels about the plans that are filed to be
45 withdrawn to be revised and then resubmitted. That's probably smart so they
46 have the most accurate plans.

1
2 Ms. Russell agreed.

3
4 Chair Kellman asked if that should be included as a condition of approval.

5
6 Ms. Russell said she believes staff would need to return with a draft resolution
7 since it seems the Commission is approving certain portions and denying certain
8 portions, so she would request that staff be allowed to return with a draft
9 resolution and incorporate that as a condition of approval.

10
11 Chair Kellman moved that the Commission deny the variance, deny the design
12 review modification related to additional bulk and mass; approve the modification
13 for the additional bathroom; that condition 12 be modified to move the
14 geotechnical report requirements up as discussed.

15
16 Ms. Russell asked if the denial of the bulk and mass is for the garage structure or
17 the stairway?

18
19 Chair Kellman said she was referring to the garage structure. She's not sure what
20 sort of leeway the Commission has as far as how best to encourage the applicant
21 to retain the stairs--

22
23 Ms. Russell said it seemed from the Commission's discussion that the bulk and
24 mass of the garage itself wasn't of concern, but more so, the additional projection
25 into the side yard setback, so if that were the case, if she's interpreting the
26 Commission's comments correctly, the Commission would need to approve the
27 bulk and mass of the garage.

28
29 Commissioner Petersen said that's how he was looking at it. That that design
30 review modification would be something the Commission would vote to approve,
31 but to deny the variance modification for the stairs.

32
33 Chair Kellman said she's willing to go with that; it's not perfect. But as long as the
34 variance is denied, she thinks the Commission achieved what it set out to do.
35 Anything else in Condition 12 that needs to be altered?

36
37 No response.

38
39 Ms. Russell confirmed the motion: The variance would be denied and the
40 Commission would be recommending to modify Condition 12 to have it prior to
41 issuance of a building permit rather than prior to final project approval.

42
43 Chair Kellman said that's correct.

44
45 Ms. Russell asked if it is correct that the Commission is also permitting the
46 bathroom modifications?

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Chair Kellman said that's correct.

Chair Kellman moved that the Commission deny the variance, approve the design review modifications related to the additional bulk and mass, and approve the modification for the additional bathroom. The item was continued to January 9, 2008 to return with a draft resolution.

Commissioner Petersen seconded the motion.

ROLL CALL

- AYES: Chair Kellman, Vice Chair Keller, Commissioner Petersen**
- NOES: None.**
- ABSENT: Commissioners Bair and Bossio.**

ADJOURNMENT

Chair Kellman moved, seconded by Commissioner Petersen, to adjourn the meeting. The motion was approved unanimously without a roll call vote. The next regularly scheduled meeting of the Planning Commission will be held January 9, 2008.

Respectfully submitted,

Tricia Cambron
Minutes Clerk

SB
295

1 something the City pursues. She did check with the building inspector and that
2 was his report as well.

3
4 **C. Meeting Calendar**

5
6 *(There was a Commission Consensus to continue this item to the next Planning*
7 *Commission meeting.)*

8
9 **D. Construction Time Limit Ordinance**

10
11 Ms. Wagner noted the City Council is considering a construction time limit
12 ordinance; it's not an amendment to the zoning code, so it wouldn't automatically
13 come to the Planning Commission, but if there's a desire from either the interim
14 Community Development Director or from the Planning Commission to have
15 input on that ordinance before it goes to the City Council, staff can certainly bring
16 it to the Commission first for its recommendation to the Council.

17
18 Chair Kellman said she'd like to see a draft report.

19
20 Ms. Henderson noted that some cities have an ordinance that when you get your
21 approval you get x-amount of time, based on the value, to complete construction.
22 If you don't meet that deadline, fines accrue and each day is a separate violation
23 up to some maximum.

24
25 **PUBLIC COMMUNICATIONS**

26
27 None.

28
29 **AGENDIZED ITEMS**

- 30
31 **1. 2 Alexander Avenue (DR 05-074)**
32 **Don Olsen (Applicant)/Ed Fotsch (Owner)**

33
34 Chair Kellman noted there has been a request for continuance for this item and
35 asked for public comment.

36
37 **Public Comment**

38
39 **Michael Rex** represents the Moodys, neighbors to the project at 2 Alexander.
40 He said the Moodys are very concerned that the survey that has been submitted
41 doesn't show any site features relative to the property line. He asked the
42 Commission to request that that information be added to the surveys during the
43 time the item is continued. Additionally, he has asked several times for a
44 correction to the staff report on page 71; the overall depth of the garage structure
45 is not 1 inch greater, but 11 inches greater. It is an arithmetic error. It's important

1 for everyone to know that this building is not only 18 inches wider, but it's 11
2 inches deeper. He asks that those things occur before the next meeting.

3
4 Associate Planner Sierra Russell noted in terms of the survey, the corner record
5 was filed with the County of Marin and submitted to the City in response to a
6 request for updated survey information. This consists of an orange line that was
7 set two feet from the southern property line, which is where the subject
8 encroachments are located. Staff did not request that a new survey drawing be
9 submitted; the metes and bounds of the survey information are consistent with
10 the site plan. You can measure from the line to determine if there are
11 encroachments, which how staff has done it in the past. If the Commission feels
12 a new survey is necessary, it can request it. Regarding the 11 inch discrepancy,
13 she has noted that and it has been accounted for.

14
15 Mr. Rex noted it has not been corrected in the staff report. The site plan that's
16 been updated to show the site features on Don Olsen's plan is not accurate and
17 the only way you know that is if you have a licensed surveyor show what is built
18 and that is what he and his clients are requesting. It will demonstrate that the site
19 survey that shows retaining walls and what-not is not accurate, those features
20 are not in the right place, they are actually off the property and they're on the
21 Park Service land. They should all know where these things are and the proper
22 way to do it is to have a surveyor define that.

23
24 Chair Kellman asked staff to respond to whether or not it thinks that would be
25 helpful to either the staff or the Commission in its deliberation of this item, to
26 have a survey that has the information that Mr. Rex is suggesting.

27
28 Ms. Russell said her opinion is that the property lines don't change; they haven't
29 changed since the survey was completed in 2003. If in fact the line set by the
30 surveyor is accurate, or if the City is willing to assume it is accurate, they can
31 take measurements from the line. The survey information is already existing,
32 which is why they didn't require a new drawing to be submitted.

33
34 Chair Kellman asked if staff is saying it's not necessary to have a survey that
35 shows site features?

36
37 Ms. Russell said there is a survey that shows site features, but it's from 2003, it
38 doesn't show the new as-built features.

39
40 Commissioner Bair said there's a motion to continue, and if the Commission is
41 going to start directing additional information be brought to the Commission, he
42 thinks they can suggest it and staff can do it. Otherwise they're going to have to
43 open it to make additions to the record in terms of directing something. Either
44 continue it or not; the Commission has heard the objections, let's move on.

1 Ms. Russell added that staff has been working with the National Park Service
2 and they are currently investigating the encroachments because the
3 encroachments are on NPS land, which makes it within the Park Service's
4 jurisdiction, not the City's.

5
6 Chair Kellman said in any event the staff report should be accurate, so if there's a
7 change that needs to be made, it should be made. It sounds the overall depth of
8 the garage structure needs to be adjusted like on page 71. As for the survey
9 showing the site features, personally the more information available for this
10 project the better and easier it will be for the Commission to make a decision. So
11 the applicant can choose to provide that update or the applicant can choose to
12 make the update. For her, it would make things a lot easier. She's not going to
13 direct the applicant to do it, but the more information the Commission has the
14 easier it will be for the Commission to understand the applicant's position.

15
16 (Commission indicated a consensus on the approach suggested by Chair
17 Kellman).

18
19 **Chair Kellman moved, seconded by Vice Chair Keller, to continue 2**
20 **Alexander to a date uncertain.**

21
22 **ROLL CALL**

23
24 **AYES: Chair Kellman; Vice Chair Keller**
25 **Commissioners Bossio and Bair**
26 **NOES: None.**
27 **ABSENT: Commissioner Petersen**

28
29 **2. 103 BONITA STREET (APN 065-082-04)**
30 **Michal Staninec (Property Owner)/Don Olsen (Applicant)**

31
32 **Applicant, Don Olsen, on behalf of property owner, Michal Staninec, is**
33 **requesting a Design Review Permit and Variance for a proposed stairway**
34 **room addition and deck partially within a required setback area. The**
35 **Variance would allow the reduction in required side and rear yard setbacks**
36 **for the addition and garage. The proposal is to add 506 square feet of floor**
37 **area and 435 square feet of building coverage and impervious surface,**
38 **connecting the home and the detached garage. The proposal requires**
39 **Heightened Review for the additional building coverage.**

40
41 Chair Kellman noted there is a request to continue this item (formerly Item 4) and
42 asked for public comment.

43
44 No response.