

Submitted
8-11-15
ZA Hearing

August 10, 2015

Re. Administrative Design Review Permit and Variance for Proposed Pier and Boat/Deck Lift
Extending beyond the property line into the San Francisco Bay
ADR-VA 13-310

To: Danny Castro, Zoning Administrator, City of Sausalito
and
Calvin Chan, Associate Planner, City of Sausalito
City of Sausalito
420 Litho Street
Sausalito, CA 94965

RECEIVED
AUG 11 2015
CITY OF SAUSALITO
COMMUNITY DEVELOPMENT DEPT

Dear Mr. Castro, and Dear Mr. Chan,

My family has lived at 6 Alexander Avenue, the southernmost house on the Sausalito waterfront, since 1979. We have enjoyed the incredible bayshore wildlife, both landside and bayside for 36 years.

Effect on Waterbirds and Marine Wildlife in a Sensitive Habitat

I am concerned because the proposed pier, would involve drilling pilings and/or covering of a very large rock, which would destroy its value to the countless waterbirds, special status species, and those traveling the Western Flyway, who use the rock throughout the year for fishing, resting, and refuge, including Pelicans and the Great Blue Heron who fishes here daily.

Ed Fotsch bought the property with full knowledge that that rock and Fishermans' Beach was there. The proposed pier would destroy the value of the rock to marine wildlife, bisect the small public access beach at its widest point, impact the Sausalito public water right of way, and give away City property for the benefit of one owner.

Quality of Life Effects on Our Home

The effects of this pier, as proposed, would have considerable impact on the quality of life in my family's home. The hydraulic boat/deck lift, together with a large dock ending, would create a very large platform at the end of a very long pier which extends far further than nearby neighboring piers into property given to the citizens of Sausalito by the State Lands Commission.

Primary View – Heightened Review Findings require that “particular care be taken to protect primary view from private property and public vantage points”; in this case, the pier will diminish the view from both our home and Fishermans' Beach. The length and the large size of the pier's end platform with hydraulic boat lift guarantee that it would sit directly in the middle of our large central living room window.

Privacy – Persons walking or standing on the dock will have a direct look into living room and bedroom spaces of our home at 6 Alexander Avenue.

Property Value – The intimate view and observation of bayshore birdlife and wildlife; the small public beach to explore, play on, and enjoy the views of San Francisco and the Bay, the tranquility of nature's sounds, watching small watercrafts of all types with classes from Sea Trek quietly leading trips (just past the common end of all the neighboring piers) that teach and allow the observation of the incredible birds and wildlife here, the most beautiful view from our home--these are the very foundation of the

value of our home. These would be greatly diminished by the building of the pier proposed for this most unique of locations.

I have other requests.

Request for Planning Commission Review:

- I respectfully request that the Community Development Director/Zoning Administrator refer this administrative design review for permit and variance to the Planning Commission. Unique circumstances are significant enough to warrant Planning Commission Review.

Request for City Decision Makers to Visit Our Home:

- I respectfully request that no decision be made without a visit to our home and its natural setting. The impact of this pier of this pier cannot be fully understood on paper. It is difficult to comprehend what is at stake here without seeing it.

Request for Guardrail Information:

- Will the City of Sausalito Building Department please verify whether or not guardrails would be required, and if so, of what height. It is an important design specification needed for us to further understand the visual impact this pier would impose. We do not wish to be told that they are not needed, only to find out that indeed they are. (Fotsch tells us that, if they are required, the City will not care, and will look the other way.)

Request for Effectively Adequate Notice: The public was asked to comment on the project.

I received notice of this hearing on the evening of August 3. Written comments were due at noon on August 4. Some affected neighbors received their notice on the afternoon of August 4, after written comments could no longer be accepted for the Staff Report or be read by other citizens to consider. Given such short notice to submit a letter, I had just a few hours to resubmit, with a cover letter, my letter for the previous Design Review Hearing in 2014 for the same project, thereby providing at least the basic issues to be included in the current Staff Report. I identified this letter as one previously submitted for the Design Review hearing in 2014 for the same project. This was submitted on August 4, 2015.

Request for Supporting Documents to Fotsch's Claims

- Many of Fotsch's claimed information from several agencies do not appear in the Staff Report. I would ask that the City ask for and check documentation to all of Fotsch's unverified claims, and provide them in the Staff Report for staff and public examination.

Request for Denial of Permit and Variance:

- But most importantly, Please deny this Permit and Variance for the Proposed Pier and Boat/Deck Lift
Extending Beyond the Property Line into the Sausalito Public Waters of the San Francisco Bay.

Sincerely,

Janeane Moody

(Retired teacher of 31 years, Kent Middle School, Kentfield School District)

Dear Mr. Chan,

Thank you for forwarding me the August 5, 2015 letter from Ed Fotsch.

Ed Fotsch really doesn't know me very well. Consequently, his speculative analyzes about my motivations are off the mark. Additionally, they are off focus on the issues being considered by the City for this Design Review.

I have never been very concerned about what I've "got" or about denying others. I have stated my concerns about the proposed pier. My concerns are valid and are what I say they are.

For those further concerned, please see the following itemized addendum to the letter from Ed Fotsch on the following two pages.

Addendum to the Response to the Letter from Ed Fotsch, August 5, 2015

There are a few inaccurate and misconstrued items from his letter that I address here.

I will refer to them by the number he assigned them in his letter. [Please refer to his letter attached.]

1. In an email on July 20, he stated that he had finalized the pier plan. He gave us plans. We responded with multiple emails since then. He also knew our responses from the last Design Review Hearing.
2. A cursory parsing of my letter will reveal that it refers to an access for the Fotsch property; which is not shown on the plan, and would also allow our proscriptive easement to Fishermans' Beach. There is no allegation that the pier will obstruct existing public access to Fishermans' beach. Bisecting this small beach with a pier at its widest point does, however, affect the panoramic public view.

[Incidentally, BCDC was concerned that public have access to shoreline hiking, wildlife viewing and fishing activities on this public beach, as was noted in the SMCSD Treatment Plant Upgrade Project EA/Initial Study.]

3. The Army Corps of Engineers authorized the project with four special conditions to be implemented, two of which require mandatory Eel Grass surveys, and authorization is not effective until BCDC approval is obtained.

Fotsch's statement, "...BCDC, who asked for a few changes which were made months ago", is vague. [BCDC has been keeping us informed, as affected parties, from the beginning of this application.] I spoke, today, with Jaime Michaels, who has handled this application. She said that the application is incomplete, and that there has been no communication for a long time; she gave a letter date of September 2014. They have no Water Board Certification from the Regional Quality Control Board, nor an approval from CA Fish and Wildlife (which has changed it's name from Fish and Game).

4. The two pier applications are very different in what they require. 2 Alexander Ave. requires a variance and a lease for extended encroachment into public right of way waters. It also requires the drilling or covering of a large rock used for fishing and resting birds.

4. The two pier applications are very different in what they require. 2 Alexander Ave. requires a variance and a lease for extended encroachment into public right of way waters. It also requires the drilling or covering of a large rock used for fishing and resting birds.
5. There is no reference to "massive development in our neighborhood". A variance and lease extending beyond the property lines may encourage the building of more piers extending ever further into the bay; hence "future cumulative impacts".
6. Re. Navigational Hazard, I would like to have a name, copy, or reference citing supporting Fotsch's claim that, "Our pier will largely eliminate this existing hazard as the BCDC staff have opined."
8. The Moodys were never fined by the BCDC. We did have a float which they asked us to remove and we did. We then applied to and received permission from the City of Sausalito for a float within our own property boundaries. Ed also stated in a letter to us that we were the first private property to have a lease with the City for a pier. We have never had a lease with the City. Where does he get these ideas?
9. Our Primary View is degraded by his greatly extended pier with a large platform with a large hydraulic boat lift at the end.

12. Noise Issues: Agreed. The young men appear to be home only on school vacations and holidays.
Except for the previous parties, they have behaved very well on the stairs and beach.

As to other noise issues: Piers and floats that are properly moored do not "bang against the pilings"

I stated that we had no previous noise issues with previous owners. We did have to get a permanent injunction against John Hickey for shining spotlights on our house, throwing burning materials onto our shake roof, vandalizing our sprinkler system, etc., nevertheless, there was no noise issue!

13. Waiting for a closed City Council session involving the pier, Jonathon Goldman asked me for background and history on the Sausalito Corporate Lane, to help clarify some of the issues surrounding the pier. I sent it to him, and included it in my letter to the previous Design Review hearing for clarification.

In the last two sentences, Ed neglected to mention that the 2 Alexander property encroaches onto ours in several places as well. This is a very old argument that was settled shortly after he moved in almost 20 years ago.

14. We purposely did not build our pier across the Fishermans' Beach; instead we built it on the north of our house where the beach disappears, turning into rocks. The public who comes to this beach for fishing and recreational purposes has an unimpeded view of the City (and fireworks) from this beach. The proposed pier bisects this small beach.

16. The Regional Water Quality Control Board has issued no Water Board Certification yet to the BCDC.

“

Response to “Summing up”, by Ed:

It is a matter of public record that we supported his expanded garage. As to his other improvements, he never proposed any of them to us; he just built them without permits, or inspections, and kept his house(s) under almost permanent construction since he moved in, that's all. But again, he brings up things that have nothing to do with this Design Review Hearing.

The Moodys' Files

Ed refers the reader (in numbers 8, 12, and the last paragraph of his letter) to “the Moodys' files.” He has referred to these files so often, in this letter and previously, that I finally went to have a look at them. I was astonished to find items missing from them, items that would give a full description of what took place. I have documents to put back into the files, but this is a whole new issue, and nothing to do with this Design Review.

[Prepared by Janeane Moody, August 5, 2015]

Edward J Fotsch, MD
2 Alexander Avenue
Sausalito California 94965

5 August, 2015

Calvin Chan
Associate Planner
City of Sausalito
420 Litho Street
Sausalito, CA 94965

RECEIVED

AUG -5 2015

CITY OF SAUSALITO
COMMUNITY DEVELOPMENT DEPT

Via email and U.S. mail

Dear Mr. Chan, Thank you for forwarding Ms. Moody's very long letter of 4 August, 2015. I will address the issues from her missive in order of appearance as follows:

1. The Moody's asked for a full sized copy of our pier plans and were provided a full sized copy. We also provided the plans as a PDF on several occasions via email going back over a year. The definition of 'full sized' means that it correlates to the scale legend on the plans to wit: 1" = 30'. I offered to provide an enlarged set of plans to the Moody's as per the email I forwarded to you on 4 August. We have had no reply.
2. Our pier does not obstruct any existing public access to the beach. To the extent that non-local residents use the beach it is relatively rare and they access it from Park Service property to the south of our neighborhood.

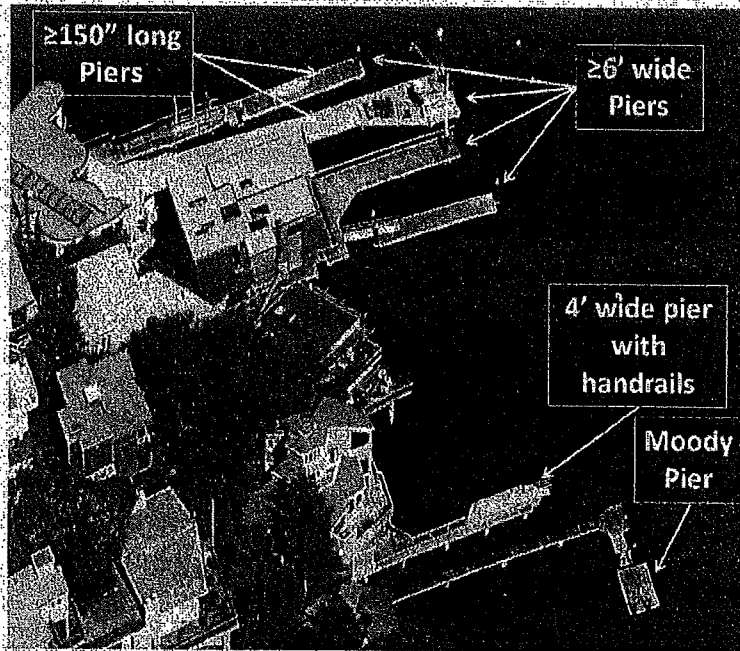
From the previous Moody Letter

3. "Incomplete Application" Our pier application has been deemed complete by the Army Corp of Engineers- who have approved it, BCDC, who asked for a few changes which were made months ago, and the City of Sausalito.
4. "Hearing Review Concerns" The City of Sausalito Administrative Review process was established for exactly this type of application, which is why the city staff has placed it on the agenda. The two pier applications before you are for the only two homes in our neighborhood without piers- hardly an unusual or unexpected request.
5. "Future Cumulative Impacts" Mrs. Moody's speculations about massive development in our neighborhood is simply baseless conjecture. The fact is that all lots in our neighborhood are fully built out, and all waterfront homes have existing piers aside from Mr. Dillard's and our home. The Sausalito zoning and building codes control development as the planning staff well knows.
6. "Navigational Hazard" Our pier was designed to extend over the large rock in the Bay that is an existing navigational hazard because it sits just below the waterline at high tide. Our pier will largely eliminate this existing hazard as the BCDC staff have opined. The pier is designed to be only long enough to get to open water- just beyond the rock. Any pier in the water, including the Moody pier, can be said to block 'navigational waters.' BCDC and the Army Corp takes these issues into account when they approve the piers- including the Moody's pier.
7. "Lack of Neighborhood Transparency" The public noticing process for this hearing I assume was completed as per the code. We have previously submitted letters of support from our neighbors.

Email: ed@fotsch.com Office: 415.332.8599 Fax: 415.332.8530

8. "Design Review Procedures" Mrs. Moody's conjecture that 'this is not just any pier' as relates to the zoning code seems to get to the meat of the matter as relates to her letter. The simple facts are that every waterfront home in our neighborhood has a pier save the Dillard home and ours. Many are larger than the piers being proposed by Mr Dillard and us. Some are longer. Some have handrails that obstruct neighbor's views. Others have had leases granted by the City. Some have included illegal construction resulting in BCDC fines- see Moody pier file circa Oct. 1988. But none have been singled out in the arbitrary and capricious manner suggested in Mrs. Moody's letter- none!

9. "Proposed Width" The proposed width of the was reduced from 6' to the request of BCDC. Further reduction in would necessitate the construction of handrails that would neighbor views as we explained to the Moody's in-person and email on multiple occasions. Several piers in the neighborhood are far wider- >12' as per the enclosed image.



pier
5' at
width
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other

10. Proposed height of pier at 10' is as per the current FEMA requirements. The reference to 10' is standard nomenclature for tide heights as Mr. Moody certainly knows as a 'marine builder'.

11. "Degradation in View" Our pier was designed to minimize view impacts by:
- a. Limiting the length to that needed to reach navigable water
 - b. Eliminating handrails
 - c. Eliminating gangplanks and floats as are common on other neighborhood piers including the Moody's

Every pier in our neighborhood has some modest impact on the other neighbors- including the Moody's pier. We have made every effort to mitigate this impact- and have shared those efforts in detail for the past year with the Moody's.

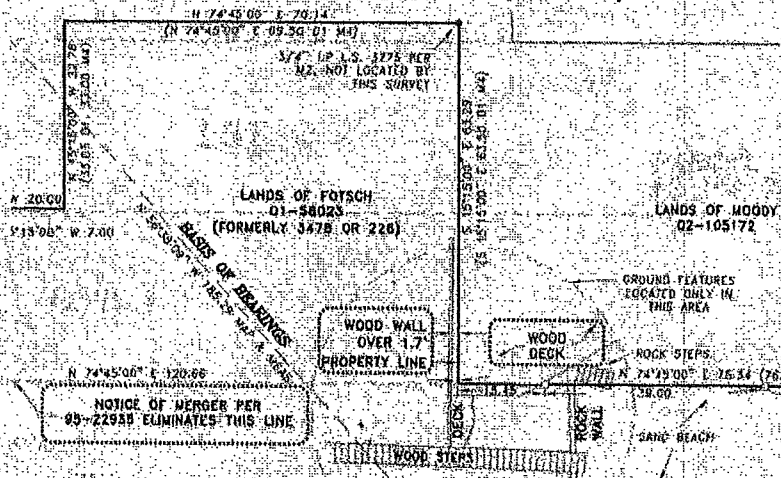
12. "Sound Pollution" While we no longer have teenagers living in our home the issue appears to have little to do with our pier and design. Sadly our kids are grown and largely gone. The Moody's on the other hand appear to have their grandchildren living with them. Kids make noise- and we don't use city zoning, building or other processes to complain about kid noise in the neighborhood.

As for the insinuation that the Moody's had no issues with previous owners of our home, a quick review of their building and zoning files in the city will demonstrate a litany of tit-for-tat complaints, frenzied allegations, legal maneuvering and general angst between the Moody's and neighbors. We are not interested in furthering this track record.

On the specific matter of 'noise pollution' please note piers with floats create ongoing noise as the wave action rattles the hardware, and floats bang against the pilings. Our pier was designed with a lift which eliminates this issue.

13. "Sausalito Corporate Strip" Our lot and its boundaries and easements are a matter of public record. The lot was recently surveyed with a copy of the survey provided to the city. The referenced 'corporate strip' was quit claimed to a previous owner of 2 Alexander in exchange for cash paid to the City of Sausalito in the 1990s. The city required that this land be merged with the primary lot at 2 Alexander which occurred under a previous owner in 1997. It is unclear why this would be material to a pier application.

Interestingly however, much of adjacent construction to their referenced by Mrs. Moody's letter including the "outdoor dining was built through side yard setback in the west and southerly direction



the home deck" the both and

on to the property at 2 Alexander- see embedded image from 1997 Recorded Survey. There is no building permit on file for this deck or these improvements- nor could there have been since the construction violates the Sausalito building and zoning codes. But again, I fail to see how this issue or this undocumented construction is material to our pier permit.

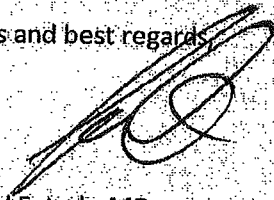
14. "Public Access Beach" There is limited public access to the beach between our neighborhood and the sewer treatment plant to the south. Our pier will have no impact on public access aside from any nominal impact created by any of the existing piers- including the Moody's pier.
15. "Environmental/Species/Sea Mammals/Wildlife" Both CA and US Fish and Game must sign off on the final permit plans. Both have done preliminary reviews and found no issues; including no Eel Grass. Our pier will have no impact on these issues aside from any nominal impact created by any of the existing piers- including the Moody's pier.
16. "Clean Water Act" A separate application for approval has been submitted and changes to the plans were made last year to address related comments. This is not a city planning function- but it is part of the approval process.
17. "Survey" A survey was completed and recorded earlier this year. Property lines have been marked on site. A copy of the recorded survey is on file with the city.

18. "Prescriptive Easement" If the Moody's have a 'prescriptive', or any other easement associated with 2 Alexander, they need nothing from us to confirm same.
19. "Story Poles" The stairs to the pier already exists. The design and design details- including materials, engineering, decking specs etc. have been submitted to the city. A separate copy was provide to the Moody's. The height of the pier has been show in relation to the existing rock wall that runs along the shore and is easily located (referenced in the plans.) The Moody's have been provided a height survey that locates the top of our pier in relationship to their existing pier and first floor.
20. "Safety Measures and Construction Materials" We will of course comply with all relevant safety and construction parameters. The construction time frame will be relatively short- certainly far shorter than the residential construction currently underway- which we strongly support- at the waterfront home of the Seegal's which is on the other side of the Moody residence.
21. "Parking" The contractor will be instructed as to where to park any necessary construction vehicles. Fortunately we have off-street parking for 3 cars/trucks. My understanding however is that most of the construction will occur on the water side as is typical for pier construction. As all our neighbors are aware, we have a lot of construction already in the neighborhood. And the contractors and subcontractors manage to find parking- including those who work at the Moody's home.

Summing this all up, we simply wish to have a pier and access to the Bay just as all others in our neighborhood enjoy. Mr. Moody has written via email that he 'supports our right to have a pier.' Mrs. Moody on the other hand seems to wish to deny our family the same right to a pier that she enjoys. I must admit that I find the sense of entitlement in her letter to be profound to wit: "I got mine but you can't have yours."

The simple truth is that the Moody's have protested every improvement we have made to our property from our rebuilt garage to additional bedrooms for our kids- back when they were at home. Their history of neighborhood conflict need no further discussion and is quite well documented in their city file. We have no interest in participating in those activities. We simply wish to be held to the same standard as every other home in our neighborhood regarding our application process- including the Moody's- and complete our pier, and enjoy the quiet enjoyment of our home.

Thanks and best regards



Edward Fotsch, MD