

PLANNING COMMISSION
RESOLUTION NO. 2023-01

DENYING APPLICATION DR/EA/TRP 2022-00203 PROPOSING SITE GRADING, TREE REMOVAL,
CONSTRUCTION OF A DRIVEWAY ACCESS IN THE SAUSALITO BOULEVARD AND MARION
AVENUE RIGHTS-OF-WAY AND SITE RETAINING WALLS ON A VACANT PARCEL AT 215
SAUSALITO BOULEVARD (APN: 065-073-04)

WHEREAS, on October 26, 2022, applications for Design Review, Encroachment Agreement and Tree Removal Permits were filed by Long Water Trust, Property Owner, proposing to substantially remove existing trees and vegetation, grade the street frontages and site and construct retaining walls to support a driveway entry and a future building pad on a vacant parcel at 215 Sausalito Boulevard (APN: 065-073-04). No residential structure(s) were proposed under this permit. and

WHEREAS, the Planning Commission considered the application during a public meeting on January 25, 2023, at which time all interested persons were given an opportunity to be heard; and

WHEREAS, the Planning Commission has reviewed and considered the information contained in the staff report as well as any and all oral and written testimony on the proposed project; and

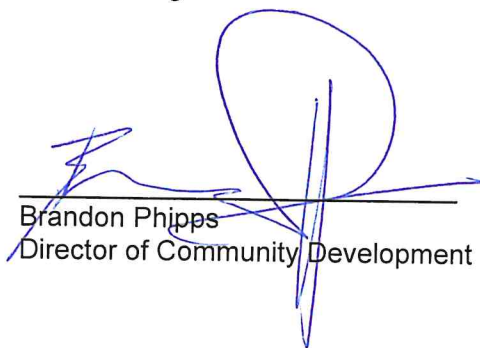
WHEREAS, Per Section 15270 of the CEQA Guidelines, the Planning Commission finds that a CEQA determination is not required if the project is disapproved; and

NOW, THEREFORE, THE PLANNING COMMISSION HEREBY RESOLVES:

Based on the information provided for the public hearing, the proposed applications to construct accessory structures on a vacant lot is not a permissible use unless a primary use is proposed, and that the findings for approval of the Encroachment Agreement and Tree Removal Permits could not be made. Therefore, application 2022-00203 for 215 Sausalito Boulevard is hereby denied. A Site Plan is provided in Attachment 1, and Findings for Denial in Attachment 2.

RESOLUTION PASSED AND ADOPTED, at the regular meeting of the Planning Commission on the 25th day of January 25, 2023, by the following vote:

AYES: Feller, Saad, Graef, Junius, Luxenberg
NOES:
ABSENT:
ABSTAIN:



Brandon Phipps
Director of Community Development

- ATTACHMENTS
1. Findings for Denial
 2. Aerial Site Map

**PLANNING COMMISSION RESOLUTION 2023-01
DR/EA/TRP 2022-00203
215 Sausalito Boulevard**

ATTACHMENT 1: FINDINGS FOR DENIAL

The subject application proposes to complete extensive grading, tree removal, and site work to construct accessory structures in the form of a driveway and supportive retaining walls greater than six (6) feet in height. The application omits a proposed residential development for which these features are intended to support. Generally, construction of accessory structures is permitted when:

- The site is already developed with a primary use;
- A proposed primary use, such as a residential structure is the focus of the application and the accessory structures, such as a driveway and retaining walls, would complete the design.

This approach is required by the following definitions and code Sections:

10.88.040 – Definitions

“Accessory structure or building” means a detached building or structure which is subordinate to, substantially smaller than, and the use of which is customarily incidental to, that of the main building, structure, or use on the same lot.

“Structure” means anything constructed or erected on the ground, the use of which requires attachment to the ground, or over 120 square feet in area or over six feet in height, or any structure that requires a building permit, including any building, but not including fences or walls six feet or less in height, or concrete flat work such as driveways, patios or planters less than 12 inches in height. Includes permanent tents.

“Driveway” means a vehicle access way extending from a road or street (See “street”) to a building or structure, vehicle parking or delivery area, or pedestrian drop-off point on the site of a land use, or between such areas on a site. A driveway serves no more than two separately owned parcels.

10.44.020 Accessory Uses and Structures

A. Purposes. In addition to the general purposes of this chapter, the specific purposes of this section regulating accessory uses and structures are as follows:

- 1. To provide for uses that are necessary to the operation or enjoyment of a lawful principally permitted or conditional use;*
- 2. To provide for uses that are appropriate, incidental and subordinate to any lawful primary use;*
- 3. To provide for residential accessory uses that are customarily part of a single-family dwelling, including but not limited to swimming pools, workshops, studios, greenhouses and garages; and*
- 4. To provide minimum standards for the timing and development of accessory uses and structures.*

B. Accessory Uses. The following accessory uses are permitted in all districts when located on the same parcel as the principal use (emphasis added):

4. Trees, shrubs and other ornamental planting.

7. Private swimming pools, cabanas, tennis courts and similar recreation facilities.

*8. Private garages, carports and **parking areas.***

Per the Sausalito Municipal Code (“SMC”), accessory uses and structures “are permitted in all districts when located on the same parcel as the principal use.” Although the driveway surface is not a structure, the proposed retaining walls, which exceed 6 feet in height, meet the definition of a structure. Additionally, the proposed driveway also meets the definition of an accessory use. Therefore, the proposed application is not a permissible project as there is no principal use.

DESIGN REVIEW PROCESS

Section 10.54.050 D. Findings. The Planning Commission shall approve design review permit applications only if the following findings can be made::

- 1. The proposed project is consistent with the general plan, any applicable specific plans, any applicable design guidelines, and this chapter. (The adopted historic design guidelines can be found in the Community Development Department or the office of the City Clerk.)*
- 2. The proposed architecture and site design complements the surrounding neighborhood and/or district by either:
 - a. Maintaining the prevailing design character of the neighborhood and/or district; or*
 - b. Introducing a distinctive and creative solution which takes advantage of the unique characteristics of the site and contributes to the design diversity of Sausalito.**
- 3. The proposed project is consistent with the general scale of structures and buildings in the surrounding neighborhood and/or district.*
- 4. The proposed project has been located and designed to minimize obstruction of public views and primary views from private property.*
- 5. The proposed project will not result in a prominent building profile (silhouette) above a ridgeline.*
- 6. The proposed landscaping provides appropriate visual relief, complements the buildings and structures on the site, and provides an attractive environment for the enjoyment of the public.*
- 7. The design and location of buildings provide adequate light and air for the project site, adjacent properties, and the general public.*

8. Exterior lighting, mechanical equipment, and chimneys are appropriately designed and located to minimize visual, noise, and air quality impacts to adjacent properties and the general public.

9. The project provides a reasonable level of privacy to the site and adjacent properties, taking into consideration the density of the neighborhood, by appropriate landscaping, fencing, and window, deck and patio configurations.

10. Proposed entrances, exits, internal circulation, and parking spaces are configured to provide an appropriate level of traffic safety and ease of movement.

11. The proposed design preserves protected trees and significant natural features on the site to a reasonable extent and minimizes site degradation from construction activities and other potential impacts.

12. The project site is consistent with the guidelines for heightened review for projects which exceed 80 percent of the maximum allowed floor area ratio and/or site coverage, as specified in subsection E of this section (Heightened Review Findings).

13. The project has been designed to ensure on-site structures do not crowd or overwhelm structures on neighboring properties. Design techniques to achieve this may include, but are not limited to: stepping upper levels back from the first level, incorporating facade articulations and divisions (such as building wall offsets), and using varying rooflines.

The Planning Commission's charge is to consider the entire development and ensure that both the residential development and its supportive features, including the driveway access, and finished grades of the proposed building pad, are best suited for the site and minimizes impacts on neighbors' views, etc. If the proposed site grading, driveway and building pad were to be approved and installed as proposed, this would remove the Commission's discretion to consider alternative approaches for garage access, modification of the finished grades for the residence and garage, and placement of the residence on the site. Therefore, to make the findings for approval of a Design Review permit, all the design elements, including a permitted use/structure, must be presented together.

More specific to the project as filed, the project is not consistent with the Sausalito General Plan (Finding No. 1) as the applicant has not proposed a permitted residential use, consistent with the applicable General Plan designation. In addition, the initial review of the project design by the Fire Department identified deficiencies in the design that required correction and clarification regarding driveway width and gradient (see Attachments No. 8). Therefore, the applicant has failed to comply with Finding 10, in that the details and configuration of the proposed driveway design will not provide an appropriate level of traffic safety and emergency access to the site.

The application also proposes the removal of twenty-four trees, located on-site, in the Sausalito and Marion Avenue right-of-way, as well as one tree (Tree No. 24) located off-site on 109/111 Marion Avenue. Additionally, applicant proposes grading of 1,840 cubic yards or cut and 155 cubic yards of fill in the rights-of-way and on a site with an average grade of 65-70%, but has not applied for the necessary grading permits or provided required supportive geotechnical reports to demonstrate the site conditions can adequately support the design. Therefore, the proposed project does not meet the findings of Condition No. 11, in that no evidence provided to demonstrate the proposed design preserves protected trees and natural features of the site to a reasonable extent and minimizes site degradation from construction activities and other construction impacts.

Lastly, the applicant has failed to provide evidence that the property owners of 109/111 Marion Avenue have authorized the proposed removal of Tree No. 24.

ENCROACHMENT AGREEMENT PERMIT

The Community Development Director or Planning Commission may recommend approval of, and the City Council may issue, an encroachment agreement if the following findings can be made:

A. The proposed encroachment is compatible with the surrounding area and will either improve or not significantly diminish visual or physical public enjoyment of the streetscape upon which the encroachment is proposed.

B. The encroachment will not adversely affect the usability or enjoyment of adjoining parcels nor create or extend an undesirable land use precedent.

C. The encroachment is necessary to the reasonable use and enjoyment of the property and the extent of the encroachment is justifiable.

D. The proposed encroachment will not adversely affect the public circulation nor create or constitute a hazard to public safety.

E. The value of the proposed improvements will not prejudice a policy decision to terminate the encroachment nor preclude or make difficult the establishment or improvement of streets or pedestrian ways. [Ord. 1167 § 2, 2003.]

As proposed, the subject application does not comply with Finding No. B and C above. Based on the project record, approval of an encroachment permit for construction of an accessory structure/use, absent a proposed permitted primary structure/use, and without completion of a Design Review application to fully evaluate the project, would establish an undesirable land use precedent. Further, there is no evidence in the record to demonstrate that the proposed encroachment into both Sausalito Boulevard and Marion Avenue is necessary to the reasonable use and enjoyment of the property, or to determine the extent of the requested encroachment is justifiable.

TREE REMOVAL PERMIT

The Planning Commission may grant approval or denial of the Tree Removal Permit based on the following findings:

B. Criteria for Grant or Denial of Application for Removal or Alteration of Protected Trees.

1. In order to grant a tree removal or alteration permit, it must be determined that removal or alteration is necessary in order to accomplish any one of the following objectives:

- a. To ensure the public safety as it relates to the health of the tree, potential hazard to life or property, proximity to existing or proposed structures, and interference with utilities or sewers;*
- b. To allow reasonable enjoyment of the property, including sunlight, and the right to develop the property;*
- c. To take reasonable advantage of views;*
- d. To pursue good, professional practices of forestry or landscape design.*

2. In order to grant a tree removal permit, it must be determined that one of the following conditions is satisfied:

- a. The tree to be removed will be replaced by a desirable tree; or
- b. The applicant is required to pay a tree replacement fee in the amount established by City Council resolution; or
- c. The Planning Commission waives the requirements in subsections (B)(2)(a) and (b) of this section based on information provided by the applicant/owner.

3. A finding of any one of the following is grounds for denial, regardless of the finding in subsection (B)(2)(a) of this section:

- a. Removal of a healthy tree of a desired species can be avoided by:
 - i. Reasonable redesign of the site plan, prior to construction;
 - ii. Thinning to reduce density, e.g., open windows;
 - iii. Shaping to reduce height or spread, using thinning cuts only (drop crotch);
 - iv. Heading or topping – this is the least preferable method, due to the tree’s health and appearance and cost of maintenance.
- b. Adequate provisions for drainage, erosion control, land stability, windscreen, visual screening, privacy and for restoration of ground cover and/or other foliage damaged by the tree work have not been made in situations where such problems are anticipated as a result of the removal or alteration.
- c. The tree to be removed is a member of a group of trees in which each tree is dependent upon the others for survival.
- d. The value of the tree to the neighborhood is greater than its inconvenience to the owner. The effects on visual, auditory, and wind screening, privacy and neighboring vegetation must be considered.
- e. The need for protection of privacy for the property on which the tree is located and/or for adjacent properties.

As proposed, the application requests permits to remove twenty-three trees, located in the Sausalito and Marion Avenue right-of-way and on-site. In addition, Tree No. 24 is identified for removal on 107/109 Marion Avenue due to the proximity of excavation and proposed retaining walls to the base of this tree. Based on the project record, the application does not meet SMC 11.12.030 B. 1 a. as the submitted arborist report (Attachment No. 5), indicates the majority of the protected trees are in good to fair condition and there is no indication that removal is necessary to ensure public safety “as it relates to the health of the tree, or potential hazard to life or property”. Further, the application does not comply with Finding 11.12.030 B. 3 a. as the removal of healthy trees may be avoided with redesign of the proposed driveway access and modification of the building pad and supportive retaining walls, or 11.12.030 B 3. d. as; “The value of the tree to the neighborhood is greater than its inconvenience to the owner”. Lastly, there is no evidence in the record that the property owners of 109/111 Marion Avenue have authorized the applicant’s proposal to remove Tree No 24 on their property.

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ATTACHMENT 2: SITE PLAN

