Vice Chair Kellman asked would the exception to the CUP run with the land? If a new restaurant owner came in, they would have to come back to the Commission?

Mr. Buckley said no, this would run with the land.

Commissioner Pettitt said if the Commission does pass this, he would like to see language in the resolution saying that the fish market element must be maintained.

Mr. Buckley said the commission doesn't have to worry about passing it because it has to be acted upon by the City Council; the Commission is just making a recommendation.

Vice Chair Kellman said she is taken aback that the applicant came to the Commission and asked for something he wasn't planning to abide by. But the staff report lays out the fact that there are at least seven goals of the MSP that the business serves. She also believes that the business meets all the elements required for being an exception to the MSP, but those two things are very unique to this specific restaurant. The type of food served, the mix of the restaurant and the fish market clearly link the project to the maritime history of the area. The findings can be made but they are definitely linked to the existing use of the property.

Mr. Buckley said similar to when the commission considered the office use in the CN district on Second Street, in order to make sure that the use permit granted for that couldn't be used by some other office use, the Commission put some very specific conditions on there that said it only applied to a very specific type of office. The commission could do the same thing in terms of its findings for this. It could specific that the fish market has to occupy so many square feet, etc. There are various things that can be done.

Commissioner Pettitt said the other point he would make is that at the time the applicant came in, whilst they were clearly wanting more than what they applied for, the process for getting exceptions was in draft and clearly moving down the pipe.

Vice Chair Kellman asked staff for clarification on the kind of action the Commission can take.

Mr. Buckley said the Commission could direct staff to come back with a resolution of recommendation.

Commissioner Kelly asked how many seats are in the restaurant if you don't use the outdoor area.

			APPROVED /	155
item no. <u> </u>	PAGE_	133	Planning General Page 34 23	104

Mr. Foss said the current limitation is based on the distance between the two exits, so they are limited to 49 seats by the fire department.

Commissioner Kelly said his view is that according to the staff report there are several pieces of language in the MSP that allows exceptions and some of those exceptions, at least three of them and maybe four of them, have been met by the conditions that those exceptions require. The city can limit to some extent what they do out there, the fish market idea is a good one, limited signage is another one.

He has been out there to eat. The restaurant was recommended by word of mouth. It is a local place. It was being fed by boat people on the docks. It's a great use for the water. It was a restaurant before and there are no other places out there that he can see right now where a restaurant would fit. There are no empty restaurants out there. This is the only one. He is a bit disturbed that the applicant consciously went into the whole thing with an idea that was a little deceptive. On the other hand, this is an economic engine and the city needs these kinds of businesses, particularly the ones that serve residents. It would be a travesty to shut this business down at this point.

Commissioner Pettitt said as far as the history, deceptive or not, first, he believes that the Commission should look at the application on its merits, apart from the history of it. Second, if the Commission actually applied the standard —

Chair Leone said this is an existing use permit; you have to take into account what it says.

Commissioner Pettitt said you can take into account the existing use permit versus what has been applied for, but he doesn't think the issue of what they asked for last time and what they are asking for this time is applicable, and this is why: 90 percent of the businesses that come in and ask for CUPs don't ask for sign permits knowing full well that they are going to put signs up. If the city applied the standard of holding people up because they didn't apply for something else or because they were breaking some other rule, the Commission would never approve anything.

Chair Leone said he thinks it is a little different – if you remember what Caruso's was before, it was a fish market with some seats in it and it served some food. And the investment – and more power to him – that this entrepreneur put into his business requires more than 20 seats for him to make money. So there was a choice made at some point in time as to what the investment was going to be in this business. And if he had to guess, it wasn't based on 20 seats. His point of view is not anything against this specific applicant, it is that what Caruso's was before, when the fish came in, you could go down there and buy fish and if you

APPROVED BANGE 134

Planning Declared 35 24

ITEM NO. _____ PAGE 134

PAGE 25 24

wanted to have a few things cooked, there were a few things cooked. This is a commercial restaurant. What other restaurant in Sausalito has 80 seats that caters just to Sausalitans. There is no restaurant that can survive in Sausalito with 80 seats just catering to locals. It's impossible. And that's what is written in the MSP.

Commissioner Kelly said unless you consider the folks who come in on their boats and use Sausalito for two, or three or four days a week, they are like temporary residents.

Chair Leone asked where they are going to dock? There's nowhere to dock temporarily in that marina.

Vice Chair Kellman said it sounds like there might be some sort of consensus to recommend to the City Council to approve the CUP. But Chair Leone raises a good point about the 80 seats, but she doesn't see any sort of study about the economics.

Commissioner Pettitt said there is some spread sheet info in the back.

Commissioner Kelly asked if Mr. Buckley would explain why economics plays a role in this application where it doesn't in others?

Vice Chair Kellman said what she as trying to get out is, is there an in-between If 80 seats seems unreasonable?

Commissioner Kelly said it's only 70.

Chair Leone said if you go out and count tables, you've got to live by what you are going to do as a business. Yes, you can constantly put a different sign — he already has a sign permit, by the way, but you have to say these are my seats at some point in time and at least be in the neighborhood of the correct number.

Commissioner Kelly said but if the Commission cuts it to 50 seats, he's going to have 70.

Vice Chair Kellman said the concerns have been aired and they are quite valid. That being said, the decisions should be made on the findings.

Commissioner Kelly said let him weigh in on the findings:

"The exception will serve the needs of the residents of Sausalito and employees in the Marinship." He's not quite sure about the employees in the Marinship but he certainly believes it serves the needs of the residents of Sausalito, despite the fact that it may also serve the needs of other places.

APPROVED RUMPHIOUS DO NOTE 13 SPlanning Comming Commin

"The exception will not result in a significant negative impact on the traffic conditions of the marina or on Bridgeway." Again, there is plenty of parking. As far as traffic, on the night he was there he didn't have any trouble getting in or out and he didn't see any excess traffic on the streets. His observation is that Mollie Stone's uses 10 times more traffic than the restaurant would.

"The exception further the intent of one or more of the goals of the Marinship Specific Plan and the project is in substantial compliance with both specific and general regulations." – this one is a little harder to find for.

"The exception is needed to accommodate change to economic or operational circumstances affecting preferred uses described in the plan which was not or could not have been foreseen when the plan was adopted." That might apply because a waterfront restaurant of this character which has a good operation and good food would necessarily kill 20 seats in an hour. So clearly his economic circumstances have changed dramatically there because of the success of the restaurant.

"The exception addresses an implementation measure in the MSP and not a policy essential to achieving the goals ..." He's not clear exactly what that means.

But he finds enough there to say there is a specific exception here and he doesn't have to be bound by this exception on any other single use in the Marinship.

Commissioner Pettitt said he doesn't think the Commission is creating a precedent.

Commissioner Kelly said he doesn't want to see the Marinship turn into a restaurant waterfront area. That's not what was intended and that's not what the city wants.

Chair Leone said if it's not what was intended and it's not what they want, the Commission is approving one here, so it's kind of ...

Commissioner Pettitt said overall the Marinship is working in that there is a diversity of uses down there. There are a lot of low dollar uses in the Marinship that have survived and they have only survived because of the MSP and its zoning. That said, what else are you going to put in that space. The bait shop and fish shop went bust, which is a good argument that the economic circumstances have changed. That in itself makes the exception argument, that the previous restaurant in there at 20 seats went bust. If they were coming in for a different use, no question, it would be a no. If they were coming in just to

APPROVED

MER. 2004

DO

PLANNING GOVERNMENTES 7/2 7/04

PROPERSON 37 26

increase the rent on the property, it would be a no. But they aren't doing either of those things. They are trying to make a viable use that is clearly serving the community and the residents and those visitors that go to that part of the waterfront already.

Commissioner Kelly pointed out that the Commission does serve the community. If the Commission turns the restaurant down, there would be an outcry from people who have enjoyed it, want to enjoy it and think it is a good use. He hasn't heard one person complain about the use out there. In fact, he should point out that the mayor of Sausalito wrote a proclamation about the restaurant that's on the Website.

Chair Leone said yes, and he asks people to remember that the next time there's an election in Sausalito. It depends on your vision for Sausalito, and if you want it to not be a marine oriented area, this is step one. He's sorry, but because it serves fish really is not of importance. And when you start seeing the projects roll in using this as a precedent, he's going to call the Commissioners up and ask them to vote no on it because they voted yes on this.

(Commissioner Pettitt said just don't call more than one.)

Vice Chair Kellman asked if somebody is ready to make a motion?

Commissioner Kelly moved that the Commission direct staff to draft a recommendation to City Council approving the increase seating to 70 seats at the Caruso, LLC waterfront.

Commissioner Pettitt added, "and to include provisions reflecting the waterfront nature of the restaurant and the fish market, and the --

Commissioner Kelly said — and we recommend that the use for this restaurant with this seating capacity be for a fish restaurant and a fish market that is largely resident serving.

Chair Leone asked that the Commission maintain the conditions of approval that ran with the approval the first time, i.e., the hours of operations, since the applicant is not asking that those be changed, he has to live by what was approved.

Commissioner Pettitt said they aren't asking those to be changed.

Commissioner Kelly said he would assume they would say on.

Chair Leone said okay, he'll go down there at 9 o'clock and see what's going on.

APPROVED

New 1942004

Planning forming of Winder 7/2/04

Fage 42 38 27

ITEM NO. 1 PAGE 137

Commissioner Pettitt said and then he can ask the code enforcement officer to enforce it.

Commissioner Kelly moved, seconded by Commissioner Pettitt, to direct staff to prepare a resolution recommending that the City Council approve the applicant's request with the qualifications noted on the record.

ROLL CALL.

AYES:

Commissioners Kelly, Pettitt; Vice Chair Kellman

NOES:

Chair Leone

ABSENT:

Commissioner Williams

(Vice Chair Kellman noted that she voted yes, but for the record she does support Chair Leone's position and she agrees it is a slippery slope but the conditions put on the resolution address that.)

(Chair Leone said he has nothing against the restaurant, it just goes against his vision of what Sausalito should be and the more pressure put on the waterfront to not have anything to do with the waterfront the less it will over time and he doesn't want to be a part of that.)

Mr. Foss said that as someone who lives in the town and someone who has reviewed the Marinship Specific Plan, he would really like to invite all the Commissioners to the restaurant, and instead of hearing about it, speculating about it, come down and see what he knows is the working waterfront down there.

Chair Leone said thanks for correcting him on what he knows and doesn't know, but he has lived in Sausalito for 10 years and he's spent a lot of time down there, in getting to know it and reading the Marinship Specific Plan, so thanks for getting inside his head but he'd rather keep his insights inside his head than to let Mr. Foss tell him what he's thinking. But he appreciates the advice.

NEW BUSINESS

7. 60 Rodeo/247 Woodward Avenue SD/VA 04-004
Don Olsen (applicant)
William Worthington (owner)

Parcel Map to subdivide an existing 10,052 lot within the R-2-2.5 zone into Two lots with an area of 5,002 square feet and 5,050 square feet. Each of the resultant lots would contain an existing home. The application includes

a request for a Variance to the rear yard setback for 247 Woodward Avenue that would result from the placement of the proposed rear property line

	APPROVED Jundicalogy	6a
ITEM NO/_ PAGE	Planning Commissions Truster	7/17/04

MEMORANDUM

DATE:

June 23, 2004

TO:

Heather Hines

FROM:

Gordon Sweeney 66.

SUBJECT:

Fish Restaurant at #350 Harbor Drive-SA 04-029

I have reviewed the site plan dated 5/5/03 and received 5/12/04 and have the following comments:

- 1. This restaurant facility, which has a 60 seat occupant load will necessitate installation of a factory manufactured 1000 gallon commercial kitchen grease interceptor. The interceptor site shall be approved by the City Engineer.
- 2. The existing sewer lateral which serves the restaurant shall be video taped to the street sewer main and repairs and cleaning performed as necessary.

EM NO. _____ PAGE __________ Meeting E

April 1, 2004

Carusos's LLC 350 Harbor Drive Sausalito, CA 94965 (415) 331-3474

We are requesting an exception to the current zoning in the Marinship Specific Plan for APN 063-030-01, the site of the former Caruso's Sport Fishing Center. The current CUP, Resolution 2003-33, allows a maximum of twenty seats. In order for the business to continue, we are requesting an increase of 50 seats, allowing for a total of 70.

In reference to the City of Sausalito Zoning Ordinance, Chpater 10.28: Overlay Districts, we offer the following responses to paragraph F, regarding Exceptions.

F.1.a Documentation describing how the requested exception will conform to the Marinship Specific Plan goals, the Development Programs for the Marinship as a whole and for all parcels to be affected by the proposed exception, and the Development Standards.

The intention of the Marinship Specific Plan is to preserve the Sausalito working waterfront, and provide useable waterfront lands for the City of Sausalito. By increasing the amount of seats, we are able to continue the type of business that was established in 1957, namely, a working fish market and café. We believe this not only conforms to, but embodies the intention of the Marinship Specific Plan.

F.1.b An accurate legal description and a map of the land and any existing buildings.

See Attachment A.

F.1.c Documentation describing the changed circumstances which warrant or require the exception.

See Attachments B.1 and B.2

As described in Attachment B.1, at a maximum seat count of twenty, factoring in a 2X turnover and an average of twenty dollars per customer, gross yearly revenues are approximately 250,000.00 on minimum fixed expenses of 415,000.00.

Attachment B.2 describes the ability to serve 140 customers, again using the 2X turnover assumption. At this point, the business is able to sustain profitability. It is therefore essential that the business obtain additional seats in order to survive. Rent,

	item no	/ PAGE	140	item no. 	<u>Gem 194</u> (ecting Date:_	1 bo
şį				er e	Page #:	

insurance, labor and all other aspects of this marketplace have skyrocketed since 1957, and these changes have created an impossible environment for many small businesses. It is important to note that only the food service industry is revenue-limited by seating capacity.

F.1.d Change in the number of residents, employees, patrons, or visitors in the area resulting from the exception.

We anticipate no change in residents, or employees. We would hope for an average increase in patronage of approximately 50 persons per day. The former Caruso's served a large base of local businesses and residents for lunch, and based upon location and signage, we expect no increase in visitors.

F.1.e Probable amount and type of traffic to be generated by the exception and the impact on the intersections with Bridgeway which serve the Marinship.

We expect no change in traffic amounts or patterns, as the principal customer is already in town, and working or living within close distance.

F.1.f Documentation describing how the proposed exception complies with the 1985 Traffic Initiative.

Again, we expect no change in traffic due to the increase in seats. Besides the local customer base, the previous tenant operated in violation of the twenty-seat limit for twenty or more years. Our intention is to conform to the zoning and create a viable business that serves the community. In addition, a solid majority of customers are able to walk to this location.

F.2.a The exception requested addresses an implementation measure of the Marinship Specific Plan and not a policy essential to achieving the goals of the Plan.

Our request addresses the implementation of twenty versus seventy seats, a limitation of the Marinship Specific Plan.

F.2.b The exception is needed to accommodate changed economic or operational circumstances affecting preferred uses described in the Plan which were not or could not have been foreseen when the Plan was adopted.

The exception requested is needed to accommodate changes in economic circumstances. Rising energy, insurance, rent, labor and food costs have made it impossible to exist as a maritime business capped by seating, it's only source of revenue. For a more detailed description of this environment, please see Attachments B.1 and B.2.

Dom #:_	6a.
Heeting Date: 学者最后	7/27/04
L. STATE A.	

F.2.c The exception furthers the intent of one or more goals of the Marinship Specific Plan and the project is in substantial compliance with both specific and general regulations of the Marinship Specific Plan and the underlying zoning designation.

We believe that this exception epitomizes the intention of the Marinship Specific Plan, to provide services and locations that benefit the City of Sausalito and preserve the maritime history of Sausalito's working waterfront.

F.2.d The exception will not result in a significant negative impact on the traffic conditions in the Marinship or on Bridgeway.

The requested exception should create no additional impact on the Marinship or Bridgeway. The increase in seats allows us to serve the existing customer base.

F.2.d The exception will serve the needs of residents of Sausalito and employees in the Marinship.

The exception will directly serve the needs of the residents of Sausalito and employees in the Marinship. Indirectly, it also serves the needs of preserving Sausalito history, providing additional economic base for Sausalito, and furthering a social gathering location on the water.

Summary

We believe that the goal of the Marinship Specific Plan was to preserve many of the aspects of what makes Sausalito unique. By giving this business the tools needed to survive in today's economic climate, the intention of the Plan will be preserved, and a Sausalito legacy can continue for another fifty years.

Thank you for your consideration.

Sincerely,

William Foss

Member, Caruso's LLC

21 Sunshine Avenue

Sausalito, CA 94965

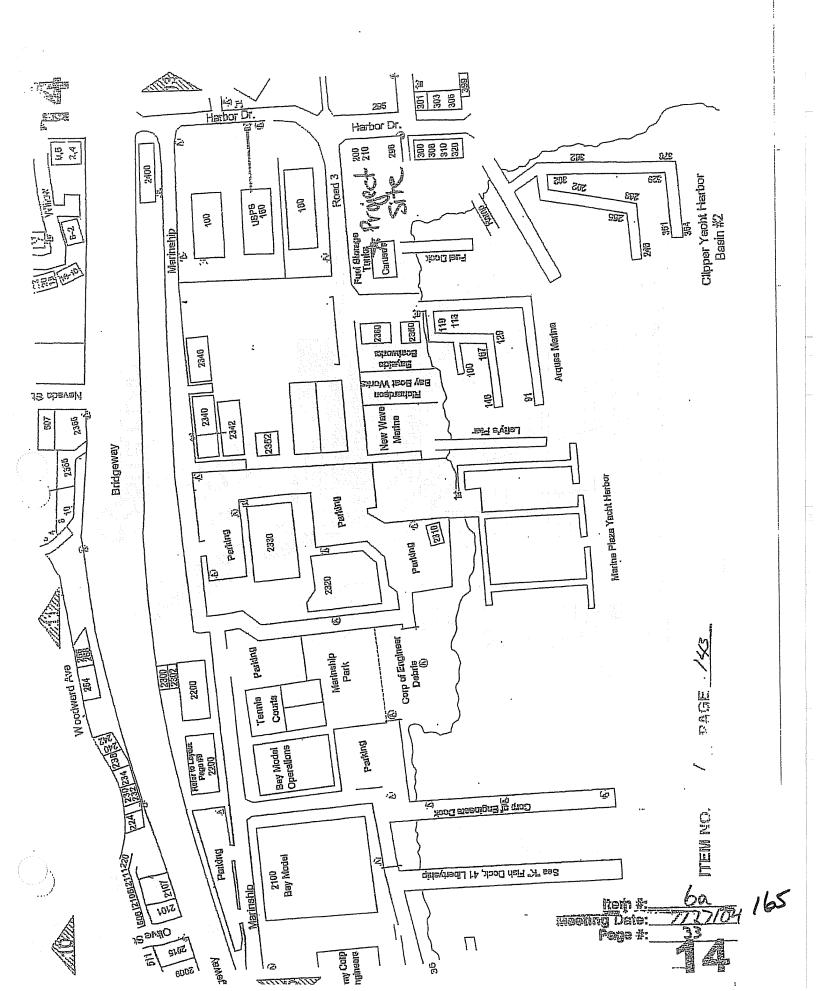
(415) 289-1124

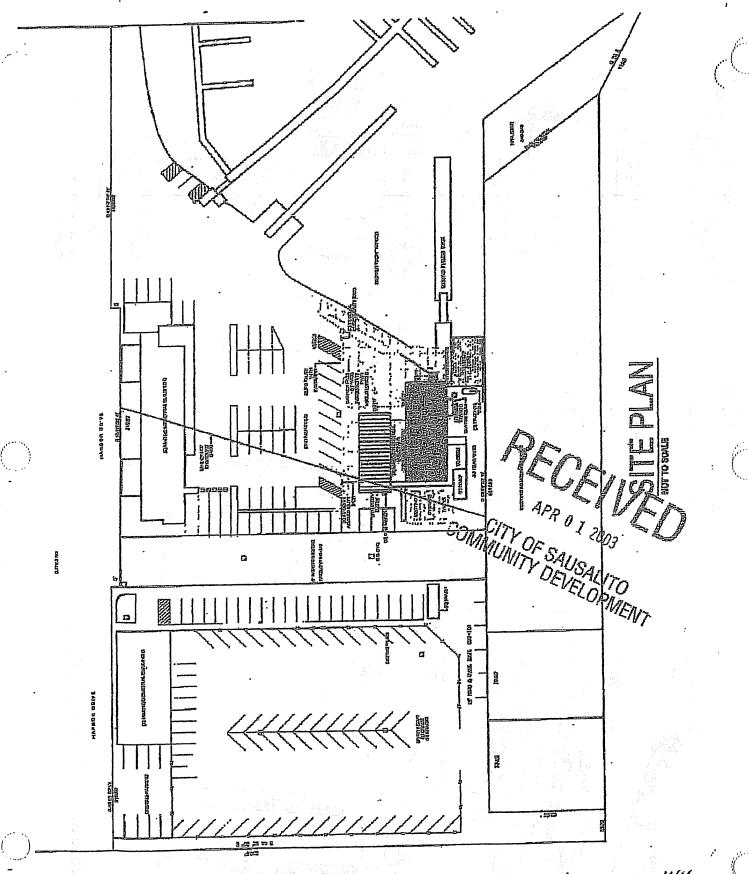
(415) 289-1148 (fax)

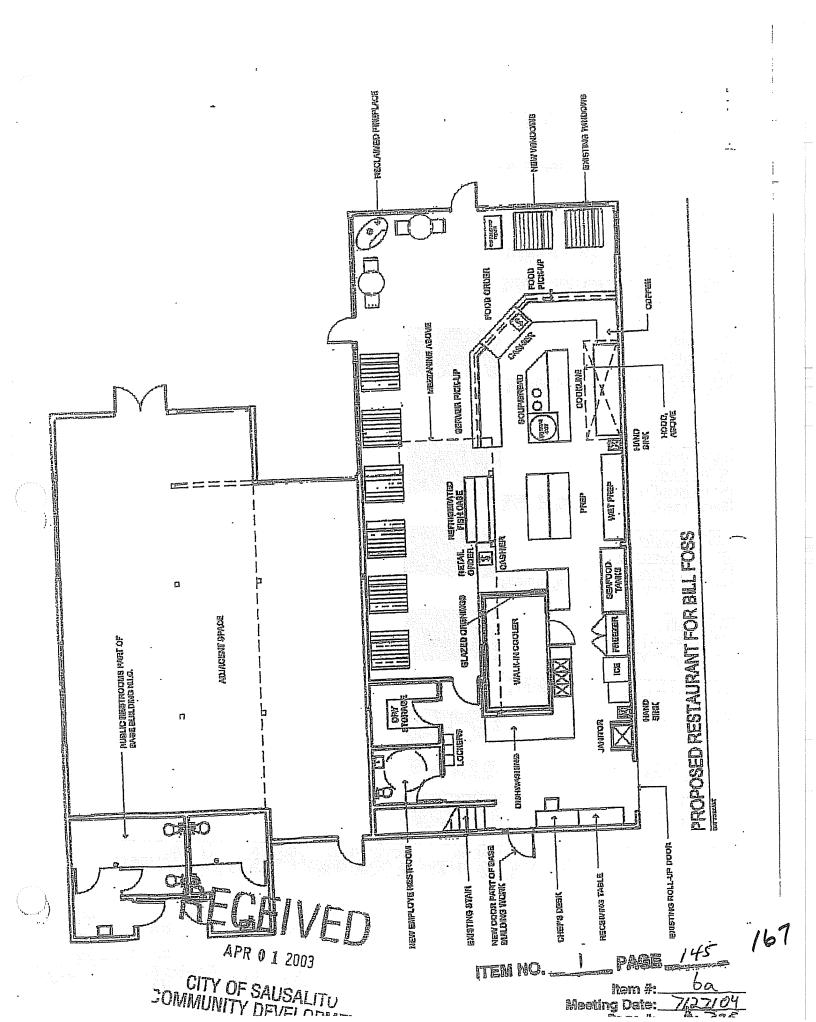
Item #: 6 c.

Meeting Date: 7/27/64

Meeting Date: 32







P&L Modeling] ,				
Salaries					
Utilities					_
Rent		eser 202 Marie de la companya (1987)			
		######################################			
Overhead					
COGS					
Exp. Daily			BY	·	•
Exp. Wkly. Exp. Mnthly.	•		•		
Exp. Yrly.					
Sales Daily Sales Weekly				•	
Sales Montlhy Sales Yearly					
EBITDA (daily)			-		
EBITDA (weekly) EBITDA (Monthly)					
EBITDA (Yearly)					
EAT (daily) EAT (weekly)				•	
EAT (monthly)					
EAT (yearly)					1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
Margins (pra)					5.1. 2.2. •
Margins (post)	J 7				
F, L & R Total]				
Target % Actual %	The second of th			Property.	
Ratios	COGS	LABOR	OVERHEAD	MARGIN	TOTAL

TEM NO. | PAGE 146 18

Rem #: ba

Attachment Base #: 2/12/04

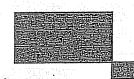
Insurance				 •
Carlotter and the server	Wk. Comp		19968,914	
	Liability	1.7%	(E50)	
1	Property		to a straight of an area or a the straight of the	
Total]			
1,000	. *		ing the second s	
		20/20	(20(10)	
Cost of Goods Solo	l Calculation (ba	sed on 30/30	/30/10)	
	Gross sales	[<u> </u>	
Total COGS	01000 00100			
	 ,			
C-1	7			
Sales				T
•	Monday	Tuesday	Wednesday	Thursday
		Saturday	Sunday	IF destration to the same
	Friday	WELL TO SEE		
				.
	Average Daily			<u> </u>
	Average \$ per	cust.		
Daily Total (Pre S	ales Tax)			
Daily Total (Post	Tax)			
D311) 10343 (1035				

Salaries

Wks per yr.

	Hours wkly	Hours yearly	Amount	Total
Chef 1	1	, j		. 37000
Chef 2	1	[] 1	37090	37000
Chef2	0	_	25,000	0
Prep 1	国际通过	1040	8.95	9308
Prep 2		1560	8.95	13962
Prep 3		0	8.95	0
Dish 1	NEL PIESE	1560	8.95	13962
Dish 2	图2.11 图2.50	1560	8.95	13962
Dish 3		0	8.95	
Counter 1		1560	8.95	13962
Counter 2		1560	8.95	13962
Counter 3	工门公司。15. 26	1040	8.95	9308
Mgr 1	1	1		50000
Mgr 2	0	1	The source of th	0
Mgr 3	0	1		. 0

Totals daily weekly monthly yearly



Min. Wage

Utilities	7	Per Mo.	Mo.per Yr.	
	Gas		12	18000
	Electric		12	18000
	Water		12	1200
	TV	200	12	2400
	Phone		12	1440

Total ·

Rent	Per sg.ft.	Sq. Ft	\$ per day	\$ per week	\$ per month
	lar and a large				
	1.75	280			

Total (Year)

Weeling Date: Pana 4-

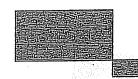
구립L Modeling .					
Salaries		1			
Utilities					
Rent					
Overhead					
COGS					
,					•*
Exp. Daily Exp. Wkly.					
Exp. Mnthly.					
				•	
G-I Delly	n gerg				
Sales Daily Sales Weekly	**.				rigina)
Sales Montlhy Sales Yearly			eres e e e e e e e e e e e e e e e e e e	A Program	
EBITDA (daily)			•		
EBITDA (weekly) EBITDA (Monthly)	•				
EBITDA (Yearly)					
EAT (daily)	•		1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1		
EAT (weekly) EAT (monthly)					
EAT (yearly)					
Margins (pre)					
Margins (post)					
F, L & R Total			and the se <mark>x</mark> of the second		
Target %]			•	
Actual %]	LA POP	OVERHEAD	MARGIN	TOTAL
Ratios	COGS	LABOR :	OVER ILAD		

Salaries

Wks per yr.

	Hours wkly	Hours yearly	Amount	Total	
Chef 1	. 1	1	37900	37000	Mount View Head the
Chef 2	1	1		37000	
Chef2	0	1	295000	0	
Prep 1		1040	8.95	9308	
Prep 2.		1560	8.95	13962	
Prep 3		. 0	8.95	0	
Dish 1		1560	8.95	13962	artine é
Dish 2		1560	8.95	13962	Attable to
Dish 3	T. L.	0	8.95		
Counter 1		1560	8.95	13962	
Counter 2	EKELETEN	1560	8.95	13962	
Counter 3	7000000	1040	8.95	9308	
Mgr 1	1	1		50000	
Mgr 2	0	1	-12 - 12 - 12 - 12 - 12 - 12 - 12 - 12		
Mgr 3	0	1			

Totals daily weekly monthly yearly



Min. Wage

			11 supplies to the part of the	
Utilities		Per Mo.	Mo.per Yr.	Tibe Wall
L	Gas	111111111111111111111111111111111111111	12	18000
	Electric		12	18000
	Water		12	1200
	TV	7777 777200	12	2400
	Phone	120	12	1440

Total

	-	 -	-	_	_	-	-	_	_	
Ô										

Rent	Per sq.ft.	Sq. Ft	\$ per day \$ per week	\$ per month
			and the contract of the section	1 0 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
	7	/数:::	2800	

Total (Year)

Insurance	Wk. Comp Liability Property		1. 19866504 6584 1792		
Total			·		
Cost of Goods Sold	Calculation (ba	sed on 30/30	/30/10)]
Total COGS	Gross sales	:::::::::::::::::::::::::::::::::::::	2		
Sales	Province (1997) i province (1997)				
	Monday Friday	Tuesday Saturday	Sunday	t Harvett et	
	Average Daily Average \$ per o				
Daily Total (Pre Sale					

Hem #: ba

Meeting Date: 7/27/04

Page #: 41

PAGE /S/

LAGER YACHT BROKERAGE CORP.

May 17, 2004

Heather Hines, Contract Planner City of Sausalito, City Hall 420 Litho Street Sausalito, CA 94965

Re: Caruso, LLC Increase of Allowable Seating

Dear Ms. Hines:

I have been a tenant at Clipper Yacht Harbor, at 400 Harbor Drive for 14 years. During this period I have had the opportunity to observe the unique business adjacent and within the Clipper Harbor.

The recent addition of "FISH" is a welcome enhancement to the water front. The City should recognize that the owners of "FISH" not only have provided a professional and successful business to Sausalito, but continue to be community minded with the past, present and future of the local community incorporated within their plan.

Please accept this letter as support for the applicant's exemption, allowing the increase in seating from 20 to a total of 70.

Sincerely

Greg Jampolsky GJ.jc

AECEIVED

MAY 1 9 2004

CITY OF SAUSALITO COMMUNITY DEVELOPMENT

400 Harbor Dr. Suite B, Sausalito, CA 94965TEM NO. PAGE 1/52

Phone: 415•332•9500 Fax: 415•332•9503 | Rem #: 60 |

— L.Y.B.C. Associates, Inc. — Meeting Date: 7/27/0*

Page 4: VI

To: heahennes@spendbaner

Subject: SA-0x-029 Carusos

Date: Tue: 8 May 2004 14:39:40 97:00

Heather,

This note is to give support to Carusos in their quest for an exception to the Marinship Specific Plan to increase allowable seating of the existing restaurant from 20 to 70 seats. My business is located at 480 Gate 5 Road in Sausalite in direct view of the restaurant and I fully support their quest.

Deliberate Design + Architecture www.deliberate-design.net

Barry Peterson 415 332 1300

175

July 19, 2004

JUL 1 9 2004

TO: Sausalito City Council

CITY OF SAUSALITO

FROM: Frances Mays, 60 Varda Landing, Sausalito, CA 2005/UNITY DEVELOPMENT

RE: Application No. SA 04-028, by Caruso's LLC at 350 Harbor Drive

My concern regarding the expansion of Fish Restaurant is the expansion's impact on traffic. Fish will be a popular tourist destination given its special Bay location and the presence of a top chef. The Marinship Specific Plan was put in place to protect area residents from expansion thoughtlessly done without considering parking or traffic issues.

While Clipper Yacht Harbor probably has ample parking, traffic along Harbor Drive will undoubtedly be increased. Again, my comments are directed more to the traffic issue than the actual expansion of the restaurant.

Thus my question is: has the City, and Clipper Yacht Harbor specifically, addressed this traffic increase issue so that the expansion conforms to the spirit of the Marinship Specific Plan?

Thank you for your attention in this important matter.

Sincerely, Inances Mans

17(| Itsm #: <u>60</u> | Itsm #: <u>7/27/04</u> | Page #: 44

TEM NO. ____ PAGE <u>154</u>

LAW OFFICES OF
LINDA ALDEN SWANSON
150 MADRONE AVENUE
LARKSPUR, CA 94939
TEL (415) 927-1990; FAX (415) 927-1950
EMAIL: laslaw@pacbell.net

Wednesday, July 21, 2004

JUL 2 1 2004

Mr. Drummond Buckley Planning Director Sausalito Planning Department City of Sausalito 420 Litho Street Sausalito, CA 94965 CITY OF SAUSALITO COMMUNITY DEVELOPMENT

VIA E-Mail

Re: FISH Restaurant Application, Caruso's LLC, 350 Harbor Drive

Dear Mr. Buckley:

The letter will present for the record the essential points of our discussion this morning. Would you kindly include this letter, along with copies of all the pictures (including those of the historic vessel "Freda") in the packet for the City Council members.

I represent Michael Wiener and Tom Miller, Co-Executors of the Estate of Gladys L. Spaulding. The Estate owns the Spaulding Boatyard property ("Spaulding Property"), which adjoins the Clipper Yacht Harbor property ("Clipper Property"). The Spaulding Property is expected to be distributed within the next few months to the nonprofit Spaulding Center for Wooden Boats. A recent press release is attached, which provides more information about the Spaulding Center. (I should note here that I do not speak for the Board of Directors of the nonprofit Spaulding Center for Wooden Boats, although I have no reason to believe they would not agree with the points made herein.)

First and foremost, I would like to state our enthusiastic support for the Caruso LLC application. I have met with Mr. Foss and discussed with him a number of ways that FISH and the Spaulding Center will be able to benefit each other, all to the good of the waterfront and greater Sausalito community. The possibilities are quite exciting.

Heating Date: 7/27/05
Page #: 45

177

ITEM NO. | PAGE /55

The second purpose of this letter is to let you know that we exist and to request conditions of approval that will discourage FISH parking in "Lot A" and encourage FISH parking in the lot directly in front of the restaurant. Mr. Foss assures me that this should not be a problem. We believe there is plenty of parking for everyone, with cooperation and a little give and take.

The Spaulding Property includes a 40-foot-wide deeded ingress and egress easement running north-south across Clipper's parking lot A from Harbor Drive to the Spaulding Property. That easement is shown on Applicant's "Site Plan," Item No. 6, Page 17, of the Staff Report for the June 9, 2004, Planning Commission Meeting. The deeded easement does not include parking, although an argument could be made that a parking use is implied.

Our interest in the parking on Lot A and in the area right in front of our building (see pictures for the latter) stems from 50 years of historical use. We believe we have an exclusive prescriptive easement for parking on the five spaces next to our building and a nonexclusive prescriptive easement for five to six places along the fence in Lot A.

We would appreciate any recommendation you might deem appropriate in order to shift any prospective FISH parking from Lot A to the lot in front of the restaurant itself. This might include a condition that any street signage for FISH be placed near the gate to the Clipper Yacht Harbor. An understanding with Clipper that their gate would be kept open until at least 9 p.m. would also be extremely helpful. (It takes a key to enter the gate, but no key to exit.)

My concern about the long benches counting as two seats, rather than what looks like an obvious three, has been alleviated by numerous visits I have made to the site. I have never observed more than two people sitting on any given bench.

Sincerely,

Linda Alden Swanson

CC.

William Foss

Directors, The Spaulding Center For Wooden Boats:

JUL 2 1 2004

17

ITEM	NO.	Ĵ	PAGE	151	0
		Chairman and the Company of the Comp		PERSONAL PROPERTY.	

CITY OF SAUSALITO
COMMUNITATION DATE: 2/27/04

Craig Swayne, president
Michael A. Wiener, Secretary
Thomas O. Miller, Treasurer
John C. Colver
Mike Douglas
Peter English
Terry Klaus
Tom List

Glen Miskel, Esq.
Gary Oswald, Esq.
Jerry Williams, Esq.

Charlie Merrill, Richardson's Bay Maritime Association

JUL 2 1 2004

179

CITY OF SAUSALITO

COMMUNITY DEVELOPMENT

SPAULDING CENTER FOR WOODEN BOATS ACQUIRES HISTORIC SAILING VESSEL FOR RESTORATION

Monday, July 19, 2004

The Spaulding Center for Wooden Boats has recently purchased the historic Gaff Sloop "Freda" and will soon be undertaking an effort to raise the estimated \$200,000 to fund a full and proper museum-quality restoration at the Center's nonprofit boatworks. The vessel is believed to be the oldest active sailing vessel on San Francisco Bay. was built in Belvedere in 1885 by Harry Cookson, who named the boat after his daughter. "Freda" had recently fallen in to disrepair and sank at her berth while at Lowrie's Yacht Harbor in San Rafael. Lowrie's was instrumental in raising her, and the acquisition by the Spaulding Center was jointly supported by Lowrie's and the Master Mariners Benevolent Foundation in order to launch the Center's goal to restore the boat.

The acquisition of "Freda" comes at an auspicious time for the fledging Spaulding Center, which was incorporated in May 2002 just after the death of Gladys Spaulding, the benefactor of the Center. In recognition of common objectives, the Center's founding Directors, Tom Miller, Linda Alden Swanson, and Michael Wiener, recently expanded the Center's Board of Directors to include John Colver and the five Directors of the Master Mariners Benevolent Foundation: Michael Douglas, Peter English, Terry Klaus, Tom List, and Craig Swayne. Swayne was elected the new President of the Center; he serves the MMBF in the same capacity. Both organizations are exempt publicly supported organizations.

The MMBF is known for hosting its annual fundraiser, the Wooden Boat Show at the Corinthian Yacht Club. herself won many races under the ownership of the Corinthian Yacht Club founder, Joe F. Tracy. recently she was also very active in the annual Master Mariners Regatta on Memorial Day weekend and other event sponsored by the Master Mariners Benevolent Association.

So it was that over the Fourth of July weekend the oldest sailing vessel on the Bay was towed to the oldest wooden boatyard in Sausalito, one of only two believed to be in operation today on the entire Bay. Referred to by Carl Nolte of the Examiner as "a kind of cathedral of

ITEM NO. _____ PAGE _ 158

Meeting Date

wooden boats," the boatyard was owned and operated by noted yacht designer and builder Myron Spaulding, who died at the age of 94 on September 11, 2000, leaving the property to his wife, Gladys. The property remains under probate administration, but the Center's directors project that transfer to the nonprofit Spaulding Center will occur within the next few months.

In addition to the preservation of Myron Spaulding's life work and the real property--with its historic "cathedral for wooden boats" and all the maritime artifacts it contains -- the specific purposes of the Center include operations to promote and perpetuate the preservation of wooden boats, associated skills, and traditional seamanship, all through education and learning by doing. wooden boatbuilding, repair and restoration operation, educational seminars involving traditional wooden boatbuilding, repair and restoration skills, related onshore and on-the-water events, and maintaining the Center as a venue for individuals and other organizations to contribute to the same, are all examples of operations consistent with the specific purposes of the Center. Among others, these activities are the objectives of the Center; collectively they represent its "vision."

Charlie Merrill of the Richardson's Bay Maritime Association, long-time supporters of the Spaulding Center concept, noted that "Freda" and the boatyard itself are both antiques that require restoration and continued stewardship. These are priceless and irreplaceable treasures that will enhance the public's enjoyment of the Sausalito waterfront."

Upon "Freda's" restoration, she will remain owned by and berthed at the Spaulding Center for youth programs, Master Mariner Benevolent Association events, and other sailing events to perpetuate her history on the Bay and that of the Spaulding Center, all to the benefit of our maritime community. The Directors believe that her acquisition and restoration will stimulate community interest in the Center and its vision.

To contact for further information:

Craig Swayne, President P. O. Box 470490 San Francisco, CA 94147-0490

JUL 2 1 2004

18

CITY OF SAUSHULTO 60 COMMUNITY DESCRIPTION 19

TEM NO. 1 PAGE 159

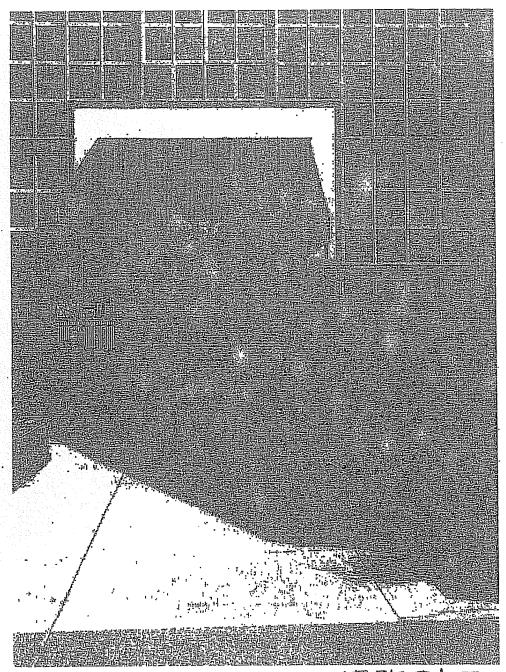
Office (415) 285-1500
Home, Carmel (831) 625-2925
Home, San Francisco (415) 495-0445
Email (use both):

sfwpco@earthlink.net
craigswayne@earthlink.net

PECEVED.

JUL 2 1 2004

CITY OF BYTESALLER COMMUNITY DEVELOPING TO



WAFF ALOTO 250 thread

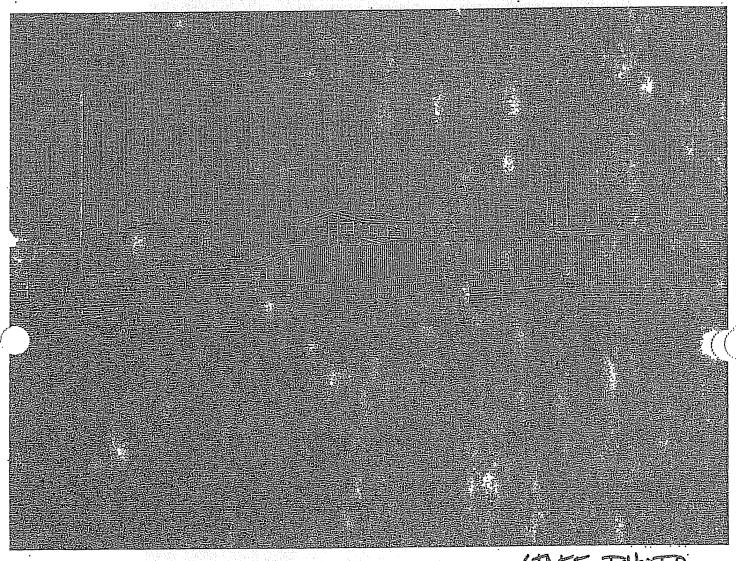
ITEM NO. _ PAGE _ 161

183

Hern #: <u>6a</u>

Wiceting Date: <u>7/27/04</u>

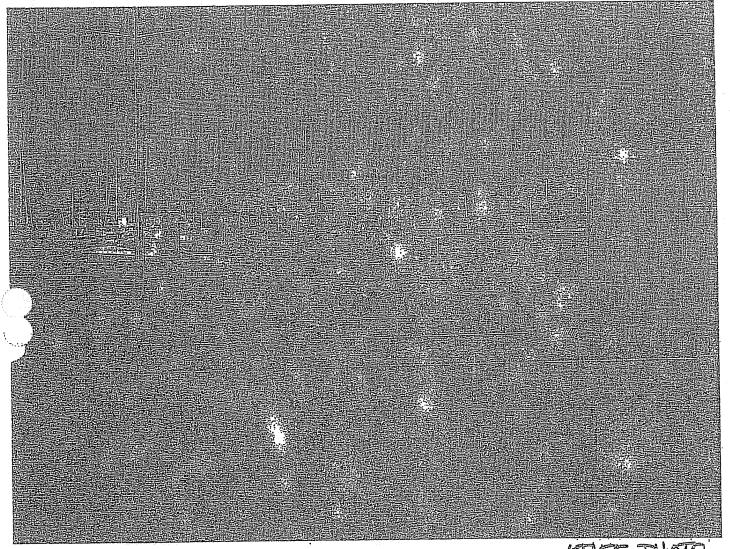
Page #: 51



MAFF PHOTO 350 HAPPOR

ITEM NO. ___ PAGE 162

#: 6a #feeting Date: 7/27/64 Page #: 52

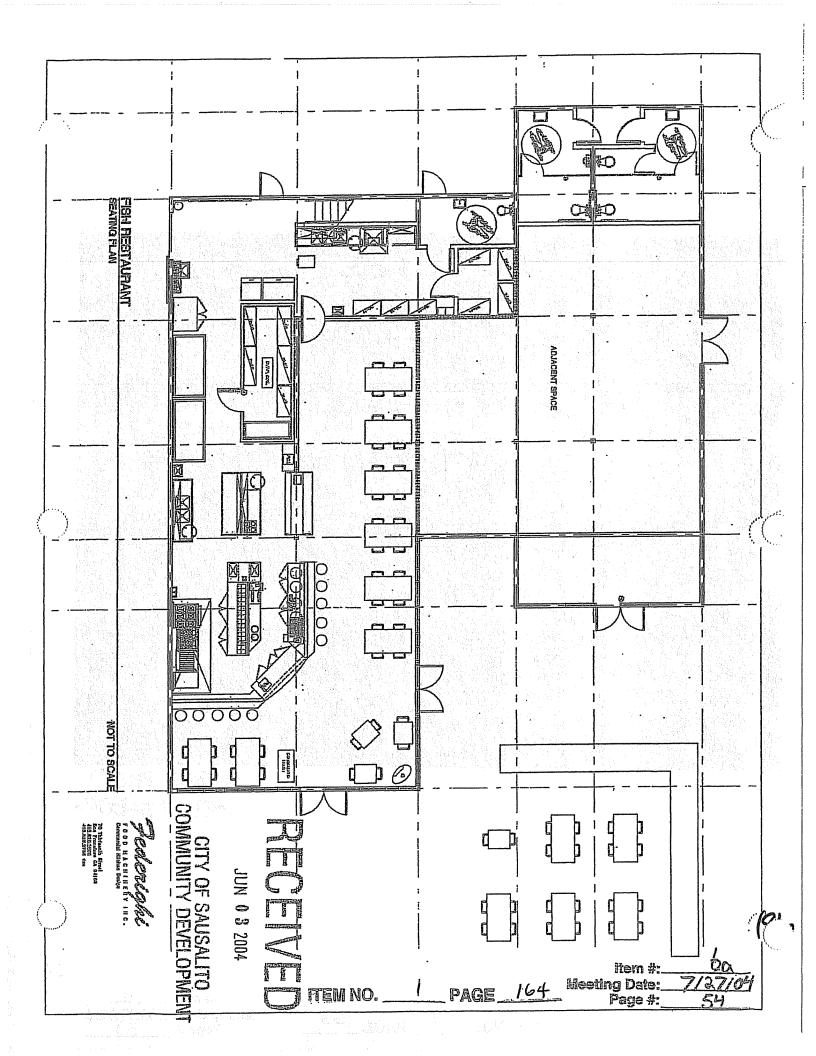


如件 叶000 多为 竹和2002

185 Item #: <u>6a</u>

ITEM NO. ___ PAGE 163

Weeting Date: 7/17/07 Page #: 53



ABBREVIATIONS COMMUNITY DEVELOPMENT SYMBIOLS (d) a munchermunamen COMMISSION OF THE COMMISSION O tall bearings TELEVISION NEWSTREET מונטר אוטלע שביוטוע סאואו מונטר אוטלע שביוטוע סאואו מונטר אוטלע שביוטוע סאואו حدية يم يعظم مر الديم عديم CHANGE OF THE STREET PRODUCTION OF MAY I.3 2004 CONSTRAIN PARTE Inches Till فطاوتها إدمالها gunda rausetta 8 Ĕ ALYO MOUNTHUS PERSONAL TRUBO GENERAL NOTES a, all designation and to feet definitions of ALL ENT DOORS BULL ES DATIANS FOR THE DOS VARIANT THE USE STALET OR ALS STAD SEA SHOULD BY TORK. SI COUMUST CORRESSIONS SAID THE SUICE JO, THE REVOKED AND THE SICATION SHAUDAY. allesser en paj mandri kusta de la composito del la composito della comp ות, אנן פונומנו וניבו מווימים ואודו מו המוטנומוסאי פוועה המיוואה מומינומנוי אין וויציווויינו והאינה בים אומחבריביין דינונידונו כווץ כי מעומעות ווימינוווי מאיפרונים והיי ווצב DEFERRED SUBMITTALS יאלסימר וניבוסחמנסי היהיא בכתעות ביייוסימים מעיר ווהירטון מבושיבוני אנושאם הבסוים בינושיר איס שוניהואס ניאוז אנושאם הבסוים בינושאל איס אומושם אול Served instates and public strategic unmaster to טצוומיל ביכוח ופינו ווא אונה המשיוו את מוח נות מור פעלית היניות משיוו את מיוחנות ייי ייייבטינה משיתנא עמיו מאיו וחנט CHINDATANIAN MARIANI M CIT CATA TOTAL TOT אובוושמדי. בווימוון באימוואא הובט בווימוון האווינווואבטון בווימוון האווינווואבטון בווימוון האווינווואבטון אובטווומוזי. ביבוות פרובונהאיבות מידות ממוות פ ביבות פמענעביאינת בפ ביבווות היחוביויביוצוויאל פו PROJECT DIRECTORY han crure macri lean crure macri DESIGN COMPLIANCE לאום אבו האים ויכו שנמונינטם בם סים שמומון ושאבאו גירוו האים מיופונון מפונמנט מונו מיי לאיבומהיר PARCIL AND PAGE TACONTACTOR OF THE PAGE O VICINITY MAP SAUGHTO, CA BIGUE total nivers biomete to by morals elective held BUTTE LINNACO PUSA STATE I P'S E MISE Literatura PROPOSTED AUTOGRAFIANT JOAN & TACHER MICH! JULIE OF, D 1 NPACE PIN 150 KD. FT. DITTO TIVE STATE OF S NWAL GALLITOURN HOLOM YEDDING THE WOOD PROGRAME OFF MORITON OFFI MO ותבו שובו נוסטוריוו וביו שובו נוסטוריוו הבוושהוהיה לאהוושמול ברו נמאסינוסאנדיא סדי פנורטורנירוסננט הניי פנורטורנירוסננט NDEX TOTAL та типол Спинатипатипати THE STREET, ACT 184 ALD DIDTLAL

TEM NO.

CHALER M SHAWAT ARCHING BY LIGHTY STATE OF THE ARCHING BY LIGHTY STATE OF THE ARCHING BY LIGHTY WAS ARCHING BY LIGHTY BY LIG

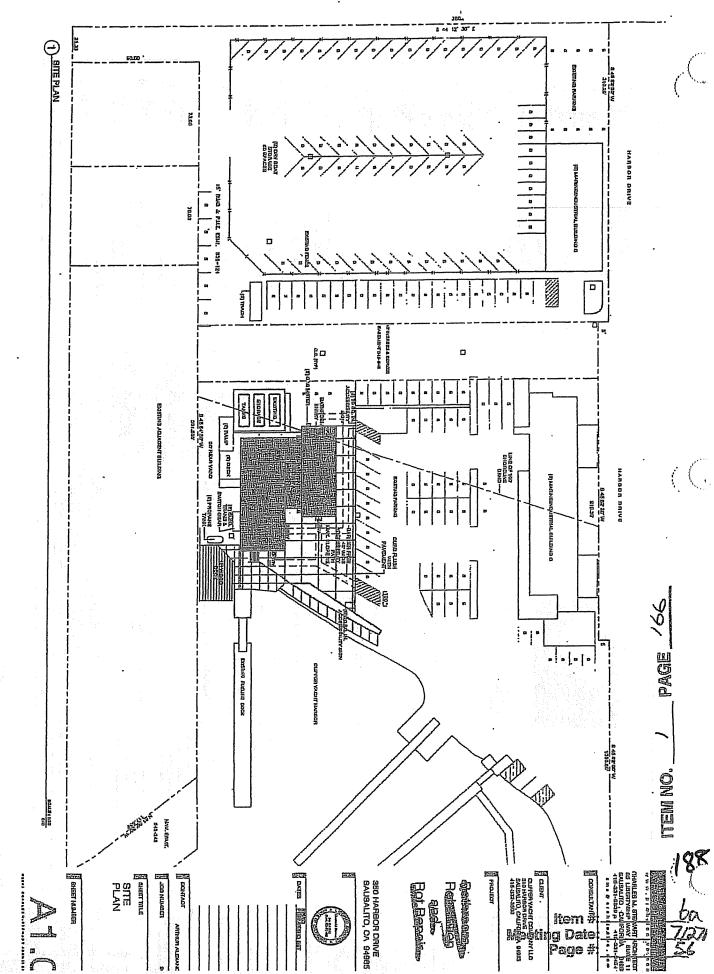
BHEET HUMBER STAIL LEGHS SHEET ASOFA'N BOF CONTACT

DAYES BEAD BE

350 HARBOR DRIVE BAUSALITO, CA 949

Dela Continue

Richard Ballery М ряслест



")

Page #: 7 of 40 EXHIPTO (11 PAGS)

Draft/Unapproved Sausalito City Council

Item #: 4(a) – Attachment 3 Meeting Date: 12-14-2004

July 27, 2004 Page 7

EM NO. 1 PAGE 167

deck represented as "public beach; and

12 13 14

11

15 16 17

18

19

20

21

22 23 24

25

26

27

28 29 30

31

32

38 39

37

40

41

42

ancillary fish market that cumulatively reflects and maintains the waterfront nature of the Marinship; and "... the Planning Commission is recommending approval of a maximum of 70 seats based on the seating plan submitted June 3, 2004, which does not include seating on the lower outside

"...the Planning Commission's recommendation is based on a fish restaurant with an

- "...the Planning Commission has determined that the location and signage does not encourage use by persons outside the Marinship; and
- "...the recommendation of approval for the proposed exception does not set a precedent in the Marinship nor does it question the intent of the existing provisions of the Marinship Specific Plan."

Since the Planning Commission's review of this project, concern has been expressed regarding the existing number of seats and the true seating capacity of the picnic tables used at the restaurant versus the seating shown on the submitted plans. Plans submitted by the applicant and reviewed by the Planning Commission indicate 13 standard tables (8 inside and 5 outside), each seating four people, four small tables (three inside and one outside) each seating two people, and 10 bar stools, for a total of 70 seats. The Commission recommended approval of this project based on the information provided by the applicant.

The existing seating at the restaurant is at wooden picnic tables with unattached benches. Due to the size of the benches it is debatable whether each standard table seats four or six people and whether each small table seats two or four people. This has the potential to alter the total seating calculation. The larger capacity for each table could result in seating for 94 people instead of the 70 approved by the Planning Commission. This in turn could have a significant impact on parking and traffic associated with the restaurant. The Council may wish to consider this and discuss how the existing bench seating should be calculated.

Staff visited the site on July 21, 2004, to verify the number of existing tables being used. Staff counted 20 standard tables, 5 small tables, and 14 bar stools. The majority of the tables were located outside on the patio with only 4 standard tables and the bar stools located inside. The applicant has indicated to Staff that tables are moved inside or outside depending on the weather conditions. Four standard tables and three of the small tables were located on the lower deck while the remaining were situated on the upper deck and entryway.

This number is significantly different than the seating illustrated on the submitted seating plan. The existing seating could accommodate 104 to 154, 149% to 220% of the increased seating approved by the Planning Commission.

> Draft/Unapproved Sausalito City Council July 27, 2004 Page 8

Item #: 4(a) - Attachment 3 Meeting Date: 12-14-2004

PAGE /68 ITEM NO.

Page #: 8 of 40

13 14 15

12

17 18 19

16

20 21 22

23 24 25

27 28 29

26

30 31 32

> 33 34

35 36 37

38 39

40

41

42

approval from the Bay Conservation and Development Commission (BCDC). Staff has contacted BCDC regarding this issue and will report more details, if provided, If the Council directs staff to approve the Exception, it may wish to consider a condition of approval which states that any necessary BCDC approvals be obtained, and that the project be confirmed to be consistent with BCDC regulations, before the Exception is effective.

Staff determined that the project was exempt from CEQA pursuant to 15301 (Existing Facilities). This section of CEQA exemptions includes minor alterations to existing private structures, including interior changes and additions of up to 10,000 square feet in urbanized areas. The proposed project does not involve any new physical construction, alteration, or major remodeling on the site and therefore Staff determined the impact would be less than those alterations listed as exemptions.

During the Commission review, a question was raised as to whether the project would require an

A key consideration of CEQA section 15301 is that there is "negligible or no expansion of use beyond that existing at the time of the lead agency's determination." Although Staff does not believe that the requested intensity of use will have a negative impact to the environment, the Council may wish to discuss this issue.

Staff received written correspondence voicing concern about the increase in traffic on Harbor Drive associated with the expansion of the restaurant (see attached).

Additionally, staff met with the attorney for the Spalding Estate regarding their concerns with parking on the Clipper Yacht Harbor site. The true number of seats was also questioned with reference to the capacity of the existing tables and the number of existing tables on site. Written correspondence, including late mail, is included with the staff report.

Councilmember Albert asked Ms. Hines to walk the Council through the drawings posted on the wall and describe the parking area.

Ms. Hines pointed out the parking on the drawing.

Mayor Albritton said the City regulates the number of seats in a restaurant, not chairs and tables.

Mr. Buckley said chairs are seats.

Mayor Albritton said they don't regulate the furniture, they regulate the number of diners.

Mr. Buckley said the parking requirement is based on the number of seats. So they do regulate seats, furniture. That's how the City estimates the occupancy. Traditionally they stipulate a maximum number of seats for any type of assembly use or restaurant.

> Draft/Unapproved Sausalito City Council July 27, 2004 Page 9

Item #: 4(a) - Attachment 3 Meeting Date: 12-14-2004

1 2 Vice Mayor Scremin asked if the City has done an assessment of seats over the years or has the 3 department just started looking at this? 4 5 Mr. Buckley said everything in Sausalito has a long history when it comes to planning issues. 6 When Caruso's was there, it was approved for 20 seats but at some point they were told if they 7 wanted to have more than 20 (which they had) they had to amend the Marinship Specific Plan, so 8 they filed an application to amend and that went to the Planning Commission and City Council in 9 1996. At that time it was decided that it was not a good idea to amend the MSP, but part of the 10 direction from the Planning Commission was "don't pursue any code enforcement on the number of seats here while the Commission is working on this exception process that will allow this to 11 happen." So basically staff was told don't do code enforcement on the number of seats at 12 Caruso's. Then about the time Bill Foss bought the space, he got a CUP for 20 seats in July; in 13 14 August the new code, which included the exception procedure, came into effect. 15 16 Mayor Albritton asked if he recalls what kind of tables they had at Caruso's? 17 18 Mr. Buckley said they didn't have benches. 19 20 Councilmember Belser said 20 seats were approved? 21 22 Mr. Buckley said 20 seats were approved for Fish just last year. Caruso's had an approval for 20 seats but it expired because it was vacant for more than six months. 23 24 25 Councilmember Belser said yes, but 20 was constant. 26 27 Mr. Buckley said yes. 28 Councilmember Belser asked if this has been examined in light of the Fair Traffic Initiative? 29 30 Mr. Buckley said that initiative regulates FAR; he doesn't know that it applies to something like 31 this. He hasn't given that a careful look. They have looked carefully at the traffic parts of the 32 33 MSP. But again, those apply to floor area. This is an expansion of use. 34 Councilmember Albert said his recollection was that the FTI also dealt with changing use from 35 less to more intensive. It is in the preamble to the zoning ordinance, isn't it? Is there something 36 37 in the MSP that precludes table service? 38 39 Mr. Buckley said no. there was something in the paper about that. They did find that in the public shoreline area that BCDC doesn't want table service. But there is nothing in the MSP that 40 precludes table service, or in the approvals that apply to this restaurant. 41 42 Draft/Unapproved Sausalito City Council July 27, 2004 Page 10

192

Item #: 4(a) – Attachment 3 Meeting Date: 12-14-2004

Page #: 10 of 40

1 2 3

4

5

6

Adam Krivatsky lives up the hill from the restaurant. Their boat is there and they observed the area when it was Caruso's. They welcome the new use. As a resident, he would like the Council to consider that this is a delightful place; it should be allowed to accommodate as many people as it can; there is a sea of parking nearby that is never fully occupied, even on Fourth of July weekend. Bureaucratic limitations should be related to fire, etc., but not to parking.

7 8 9

10

11

12

13

14

15 16

17

18

19 20

21 22

Bob Politzer has lived in Sausalito 44 years. He asked the Council to treat this application as a much greater and serious issue. He chaired the Planning Commission throughout the investigation and preparation of the Marinship Specific Plan. They worked three and four days a month for a year to make the plan fair and make it meet the goal of the City, which was to preserve the historic nature of the Marinship -- marine and fishing -- and to discourage new residential and tourist-related development in the area. The idea was that residential and tourist development would raise rents and push out the marine and fishing-related businesses. Where there was a restaurant on a site, they grandfathered it in with a conditional use permit with the proviso that the restaurant would continue - which was Caruso's, an institution - that they would serve the business community of Marinship, for breakfast, for lunch and not be allowed to encourage tourism in the Marinship. This restaurant, Fish, has become in a very short period of time, a destination restaurant. Congratulations to them, but to more than triple the seating at the restaurant will definitely have an impact on the number of people coming into the Marinship. It will also increase the traffic into the area, albeit at different times than the business community travels in and out. He asked the Council to see this as the narrow edge of the wedge to open the Marinship up to more tourism type business and destroy forever the historic area of Sausalito.

24 25 26

27 28

23

Monica Cardanini spoke on what Fish has to offer Sausalito. For her it is a beautiful place to sit outside and enjoy good food. She doesn't see it as something that will attract tourists. It is attracting locals. She is not surprised that Saylor's Landing objects, it will be competition. The Fish owners are really determined to keep it for Marin.

29 30 31

32

33

34 35

36 37

38

Jordon Rogers represented Clipper Yacht. He doesn't think the Council understands that they start at 4:30 in the morning with parking control of the anglers who go out party boat fishing, and that continues through the day. They have managed to organize that parking. They are very much encouraged by the response of the locals that visit the area, it brings back what used to be there when Caruso's sportfishing center was there. Right now they are seeing locals coming down. And that is what they want to encourage. There is no sign out there saying "fish." It is quietly tucked into that little spot. Mr. Pedersen has been an esteemed member of the Sausalito business community for 57 years; he really hopes that the Council will give the operation a resounding yea vote.

39 40 41

42

Ms. Swanson is the attorney for the Spaulding estate. They strongly support the application. She has been to the restaurant numerous times because she was concerned about the benches; but

Draft/Unapproved Sausalito City Council July 27, 2004 Page 11

Item #: 4(a) – Attachment 3 Meeting Date: 12-14-2004 Page #: 11 of 40

she's never seen more than two people sitting on the benches. She appreciates the emphasis on historical use. They are very close to having the Spaulding estate transferred from probate to the nonprofit as the Master Mariner's Benevolent Association.

The Spaulding property has a 40-foot-wide deeded egress and an ingress easement across this parking lot, the sign says lot 1, it is not the lot directly in front of Fish. They have historically parked along here, that is next to their building and along the fence in Lot A which is actually not on the easement but beside it. She would request if there is going to be any signage that it be next to the gate. Please encourage the clientele of the restaurant to park inside the gate and discourage parking for the restaurant in lot A.

Councilmember Albert asked how many parking spaces does Ms. Spaulding's client believe he has an easement for?

She said an exclusive easement for five spaces along the side the building and a non-exclusive easement for five or six places along the fence.

Mike Monsef said he wants to drive a truck through this one, not a wedge. This Marinship Plan has to be readdressed. It never got the approval of the public. That's why there is a mess today. Revisit the whole thing. Caruso's is gone, he was one of those trying to see if it was going to workout, they were lucky enough to have someone else come with a successful business. But instead of encouraging him, they are putting up all these obstacles. Why is it that the City doesn't have the money to do a lot of things but it does have the money to have the staff counting seats? He wants them to have 160 seats as good as they are and he is going to bring tourists over there as much as he can. The City needs the money.

(Applause)

Vicky Nichols said this is nothing personal about the restaurant. But in looking at the late mail, she sees Mr. Thompson has noted that this is not a minor exception. This should be looked at like every other application. Listen to this in all fairness. The Marinship Plan should be revisited, but it shouldn't be chipped at bit by bit.

 Dawn Riley is a sailor and runs America True, a nonprofit foundation that gives kids a chance to get out on the water. She is speaking to vouch for the Foss's and the restaurant and their commitment to the community. The Foss's were instrumental in getting the program for getting kids on the water underway. They look forward to the Spaulding property getting straightened out. Regarding seats, she wants to point out that fish has allowed her to use their outdoor seating before and after lesons for the kids. She stressed that fish restaurant has been a great restaurant but more importantly a part of the community.

> Draft/Unapproved Sausalito City Council July 27, 2004 Page 12

Item #: 4(a) – Attachment 3
Meeting Date: 12-14-2004
Page #: 12 of 40

J.R. Roberts lives in Sausalito. He spoke in support of Fish. Last year the City Council approved a process by which to make minor amendments to the Marinship specific plan. There couldn't be a better model for a good reason for making a minor amendment to the plan. Fish has taken over an institution, which is Caruso's, this isn't a new business, it isn't changing Marinship, he is basically improving on an institution that has been there for years and it is truly resident serving. He has always heard people complaining about not having resident serving restaurants. Here is one this should be celebrated. The City should do everything it can to hope this business; it really does embody the spirit of the original Marinship. Although the MSP hopes to keep the main uses as marine, it wasn't designed to keep people and residents out of the Marinship. The Council will hear that evening on how to better enforce the City's codes, which is great, but from his standpoint the best way to enforce is to minimize violations and his experience with Caruso's they always exceeded 20 seats. He wasn't aware that the Council said don't enforce on this one. The City should not penalize somebody who wants to come in and make it legal. The best thing to do is let Mr. Foss get this in order. He could have gone on without coming in. he really applauds him as coming in and trying to do this the right way. As chairman of the revenue roundtable, they are scouring the City for revenue sources, one of which is good restaurants.

Joe Lemon spoke in support Fish's application. He agrees with what he has heard so far. Part of his business life in other parts of the country is hotels and business. It's an incredibly hard business. Fish is successful, but it is a hard road to get there. As a neighbor he likes being able to walk over there and have lunch. When he goes there, and to Saylor's, he sees a lot of people from the business community of Marinship. It would not offend him if a tourist showed up there but it looks pretty much like local people. The community should be celebrating Fish. Counting seats seems a little bit petty and Sausalito should be bigger than that.

Edie Caldwell has an art gallery on Bridgeway. She's lived in Sausalito for almost 3 years; she is shocked at this notion that tourists are a dirty word; where she comes from people who come to visit are welcomed and embraced. Her brother is coming from Nashville with his family this weekend. The people from London who have been buying art from her gallery are nice people and she would love to send them down to Fish. It's time to rethink this. It's time we raised the level of our restaurants, our stores and our attitudes and we make businesses that the locals want to go to and we will perhaps allow the tourists or even encourage them to see these wonderful places.

Charlie Merrill has been in Sausalito 62 years. He wanted to tell the Council and the community what a great thing the City has in the Spaulding boatyard. That building in later years was subject to erosion, falling down and for sale. He helped save the building with the help of Gordon Sweeney when it was being buried out there. He's not there for Fish or Saylor's Landing, he just wants to say how lucky Sausalito is to have been able to save that building, it's a heritage building, and now with the help of Linda Swanson and a nonprofit, they are taking it over to preserve wooden boats and it will be a great credit to Sausalito and its history.

Draft/Unapproved Sausalito City Council July 27, 2004 Page 13

Item #: 4(a) – Attachment 3

Meeting Date: 12-14-2004

ITEM NO. ___/ PAGE __/73 Page #: 13 of 40

T	
2	Public Comment closed
3	and the state of t
4 5	Presentation by Applicant William Foss
б	Mr. Foss said he would be happy to answer questions, but he doesn't think there is anything else
7 8	to say. He has tried to show with actions rather than words what the restaurant is about.
9 10	Councilmember Albert asked what percentage of business was from the fish market?
11 12	Mr. Foss said about 10 percent.
13	Transport Anna Anna Anna Anna Anna Anna Anna Ann
14 15	Mayor Albritton noted that staff on its site visit identified what would be apparently potential violations of the permit granted. Is it the applicant's intent to comply with the 70 seat limitation?
16	Mr. Bong gold that should have some 62.00
17	Mr. Foss said they should have gone for 80 seats. They opened the restaurant with no idea they
18	were going to be using that area – they got the tables from someone; technically they do not rent that area.
19	that arou.
20	Councilmember Keller asked in a perfect world and if the restaurant was wildly successful what
21 22	is the maximum amount of seating he would ultimately like to have?
23	Mr. Foss said again they never intended to see this kind of volume, they anticipated 50 percent
24	market and 50 percent restaurant sales. He doesn't think they can do more – they can't fit more
25 26	than three guys in the kitchen, so they are stuck where they are, on the busiest day they've done so far, they've done 270 tickets, 60 or 70 seats an hour. 80 seats should work. The way it seems
27	to work is people line up, by the time people get their food and find a table, it's hard to count
28 29	butts out there because they are gone so fast.
29 30	Norman Attitude to the same and
31	Mayor Albritton asked what is the average size party?
32	Mr. Foss said usually two to four. Two people will take a table that will hold six because that's
33	the way people are.
34	
35	Councilmember Belser asked what his hours are?
36	Mr. T
37 38	Mr. Foss said this week it is 11:30 a.m. to 4:30 p.m. Wednesday through Sunday.
39	Councilmember Albert asked about the rent, is the number in the staff report the annual rent?
40 41 42	Mr. Foss said yes, the low rent has allowed him to have the staff and the food he has.
T22	the first of a first the ground has surperated and the first of a first manifer expellence against
	Draft/Unapproved Sausalito City Council
	July 27, 2004 Page 14
	Fuge 14

196

Item #: 4(a) – Attachment 3 Meeting Date: 12-14-2004 / 74 Page #: 14 of 40

PAGE_

ITEM NO.

1 Councilmember Albert asked how much Caruso's rent was?

2 3

Mr. Foss said about 25 cents a square foot less. Some months John wasn't paying rent.

4 5 6

Mayor Albritton asked for any further comment.

7

None.

8 9

Council Discussion

10 11

12

13

14

15

16

17 18

19

20

21

22 23

24

25

Mayor Albritton said in 1995, the restaurant had been operating on a permit for 20 seats and had an average of 60 people attending the restaurants, somehow he got all his customers to come in and say Caruso's had to stay open and had to be allowed more seats. And after a couple of hearings the resolution was that they didn't want to violate the Marinship Specific Plan and that they were going to continue his expiring CUP but limit it to 20 seats and if he wanted to increase that he had to find a way to change the code that would allow for an exception to the Marinship Specific Plan. The room was full of anglers and residents who very much wanted that restaurant to stay open and not to be limited to 20 seats because obviously at that time they were serving quite a few more people than that, and they were asking for 60 seats. So his sense is that nine years ago, Caruso's was operating at 60 seats and went through this process -- some people even called it the Caruso's exception as it wound its way through the Planning Commission. He personally believes in the concepts of the MSP but in terms of history this restaurant has been operating with this number of seats for quite a long time under the radar and now they are being asked to make legal something that has been going on for nine years. The applicant needs to follow the conditions of the Planning Commission; he is a little concerned about tables in the public open space.

26 27 28

29

30

Planning Director Drummond Buckley said regarding the tables within the BCDC area it just needs to be clear that that use has to be approved by BCDC. The Council may think about a requirement that makes it clear that the tables are available to anyone, not just people eating at fish. The tables are the same kind as that used by the restaurant, so it could be confusing.

31 32 33

Mayor Albritton said they had a similar condition for Cass' Marina. His feeling is that having followed the nine-year path through his terms on the Planning Commission and the City Council, that that number of seats has been there for nine years.

35 36 37

38

39

40

41

42

34

Councilmember Belser said this is not unfamiliar to her either. She is delighted it is so successful. It is important though to note that there are rules in town and this particular region has a specific set of rules, so the dilemma is how you get where you want to go and not violate them and then penalize everyone else when you say you can't do that. It is important everyone understand that. It is to Mr. Foss' credit that he is asking for permission for this use that does have a long history. This is approving something that is, not something that might be, and so you

Draft/Unapproved Sausalito City Council July 27, 2004 Page 15

Item #: 4(a) – Attachment 3
Meeting Date: 12-14-2004
5 Page #: 15 of 40

19-

are not concerned about unintended consequences. She also believes it is consistent with the marine uses the Marinship Plan requires. It is important that the constraints in the resolution be observed, including the 70-seat number. The Council needs to first of all ratify what is there. As far as tourists go, nobody really hates them, but if there was a tour bus showing up there every hour and squeezing out the people who work there, that would not be appropriate.

Vice Mayor Scremin acknowledged the hard work of the Planning Commission and all the effort put into this. The difficulty for the Council is which way you look at it. When you look at it as a restaurant, it's a no-brainer. But from a Planning Commission point of view, it really is about the understanding of what is the Marinship Specific Plan and what the Commission has been charged with enforcing. This is not chipping away at the Marinship as much as it is providing leadership in the task of revisiting the Marinship.

Councilmember Keller echoed Vice Mayor Scremin's comments with regard to the Planning Commission's sensitivity to the Marinship Specific Plan. He was a frequent customer of Caruso's and he was sad when it closed. This is an entrepreneur who has taken a great idea and dusted it off and everyone in town is benefiting from it. Even the restaurant website talks about the history of Sausalito, the waterfront, fishing. The fact that Mr. Foss is coming to the Council with an honest request is a plus. He is totally in favor of approving the additional seating to 70. If the applicant has to come back and ask for a few more seats, he will be happy to revisit it at that point.

Councilmember Albert noted that the Council adopted a proclamation saluting fish, but in hindsight he is embarrassed they did it at that time. The Council shouldn't be adopting special proclamations when there is an application pending before a Commission.

Councilmember Albert said that Sausalito's intent is not to be anti-tourist. However, the Marinship Plan's goal was to preserve and protect the traditional ,maritime businesses down there. There was concern that there was going to be a ripple effect and gentrification would drive out businesses and rents would go up as tourist-serving businesses moved in.

What the Council has to keep in mind is that this approval runs with the land; it is not specific to this restaurant. There is a sense that Caruso's was a great tradition and that Fish has more than amply picked up that tradition and continued it. He suggested that the Council consider conditions that will assure that any new business will have the same characteristics, such as requiring a fish market there that sells fish on a retail basis, or that the menu be predominantly fish oriented. This restaurant is becoming a destination restaurant; he doesn't object to that. Fish had a nice write up in one of the San Francisco magazines. Not having signs or not advertising isn't something that should give anybody a false sense of security; they can do both if they want. He agrees with the Mayor's comments, that is, require that the business stay within the confines of the approval granted by the Planning Commission. Also the restaurant has to count seats,

Draft/Unapproved Sausalito City Council July 27, 2004 Page 16

Item #: 4(a) – Attachment 3 Meeting Date: 12-14-2004 Page #: 16 of 40

ITEM NO. PAGE 176

1 2 3	including the ones in the BCDC area; that is how it is done. If a restaurant on Caledonia Street puts tables on the sidewalk, those seats get counted.
4	Mayor Albritton asked Mr. Buckley to address the idea of conditioning the approval on it maintaining the fish market.
5 6	maintaining the fish market.
7	Mr. Buckley said the Commission looked at that but he would suggest using floor area used for
8	the use rather than a percentage of sales. It could have another condition that says the owner shall
9	not contract with charter bus business. That is enforceable. It may not be something Mr. Foss is
0	planning on doing but you can't control what somebody else might do down the road.
1	F
2	Mayor Albritton said if the use is discontinued for six months then it doesn't run with the land.
.3	(He noted that the Fish proclamation was actually a joke linked to the website, and the fact that it
4	was approved while the application was still being considered the Planning Commission was
5	inappropriate. Mayor Albritton noted again that he is a lawyer and believes in following the law,
6	
17	THE ATT OF THE TOTAL PROPERTY OF THE TOTAL P
8	Mayor Albritton moved, seconded by Vice Mayor Scremin, to direct staff to prepare
9	Resolution of Approval No. 4727 consistent with the Planning Commission's recommendation contained in Resolution 2004-029, thereby approving the proposed
20	Exception, with the further conditions that require the restaurant to have a fish market
21 22	and prohibits bus charters.
23	and pronibles bus charters.
24	The motion was unanimously approved without a roll call vote.
24 25	
26	
27 28	 Introduction and First Reading of an Ordinance Establishing an Administrative Code Enforcement Procedure
29	
30	Staff report by Planning Director Drummond Buckley
31	
32	Mr. Buckley said there was a proposal floated a couple of years ago by former Community
33	Development Director Reba Wright-Quastler and that ordinance never made it to the City
34 35	Council for discussion. She may have done a Power Point presentation on it at one point. The attached draft ordinance includes comments made on that draft. This draft is modeled after the
	City of Mill Valley's regulations that were adopted in July of last year. It has been very
36 37	successful there. This was part of his presentation regarding signage, which was made to the
38	Chamber of Commerce as well as to the Council and Planning Commission.
39	Chamber of Commerce as were as to the Council and Framming Commission.
40	Currently the Sausalito Municipal Code provides "penalties provisions" for violations of the
41	municipal code, punishable by prosecution as an infraction. A court imposes the punishment.
42	
	Draft/Unapproved Sausalito City Council July 27, 2004 Page 17

199

Item #: 4(a) – Attachment 3

Meeting Date: 12-14-2004

Page #: 17 of 40

Been all their till trigger selegareners med er kritist fram i till grinde er grinde i fram i grinde er fram i

and the state of the control of the

BLANK

in the community and has been presented in the property of the company of the company of the contribution of the contribution

- 6. Research and make decisions on applications requiring administrative approval.
- 7. Review and make decisions regarding certain types of encroachment permit applications as specified in Section 10.56.030.A (Community Development Director).
- 8. Draft resolutions outlining official actions.
- 9. Act as Secretary to the Planning Commission; sign resolutions on behalf of Planning Commission and attest to Planning Commission action on Final Maps.
- 10. Act as Zoning Administrator or assign a staff member to act as Zoning Administrator.
- B. Community Development Department Staff. Except where otherwise provided by this Title, Community Development Department employees may also carry out the responsibilities of the Community Development Director, under the Director's supervision.

10.80.040 Zoning Administrator

- A. Authority. The Community Development Director shall act as the Zoning Administrator and shall have the authority to appoint a qualified Community Development Department staff member as the Zoning Administrator. Appointee shall serve in that capacity at the discretion of the Community Development Director.
- B. Duties and supervision. The Zoning Administrator shall serve as a hearing officer and is assigned the authority and original jurisdiction to investigate, consider, and approve or deny the following applications:
 - 1. Minor Use Permits.
 - 2. Variance Applications for the following when the application is not associated with any discretionary permit requiring Planning Commission approval:
 - a. Setbacks (Required yards per Section 10.40.070 (Setbacks and Yards) et seq.)
 - b. Building height where the project will change the lowest or highest point of contact with grade, but will not physically increase the height of the structure.
 - c. Fences over six feet (6') in height.
 - 3. Extensions of, or amendments to, existing variance and conditional use permit approvals which do not alter the general intent of the original approval granted by the Planning Commission.
 - 4. Lot Line Adjustments, unless the proposal requires a variance requiring Planning Commission review and approval.

- 5. Pursuant to Section 8.44.185 of Title 8 (Building and Construction), the Zoning Administrator shall be authorized to determine if differences between Historic Landmarks Board decisions and Planning Commission decisions are minor design feature(s) when petitioned by the Community Development Department staff or by the project applicant. If the Zoning Administrator determines that there is a minor design inconsistency in the two Board's approvals, the Planning Commission decision shall control.
- C. Referral to Planning Commission. The Zoning Administrator may transfer original hearing jurisdiction to the Planning Commission at his/her discretion when it is deemed necessary for policy implications, unique or unusual circumstances, or the magnitude of the project.
- D. Appeal. Decisions of the Zoning Administrator may be appealed in accordance with Chapter 10.84 (Appeals) of this Title.

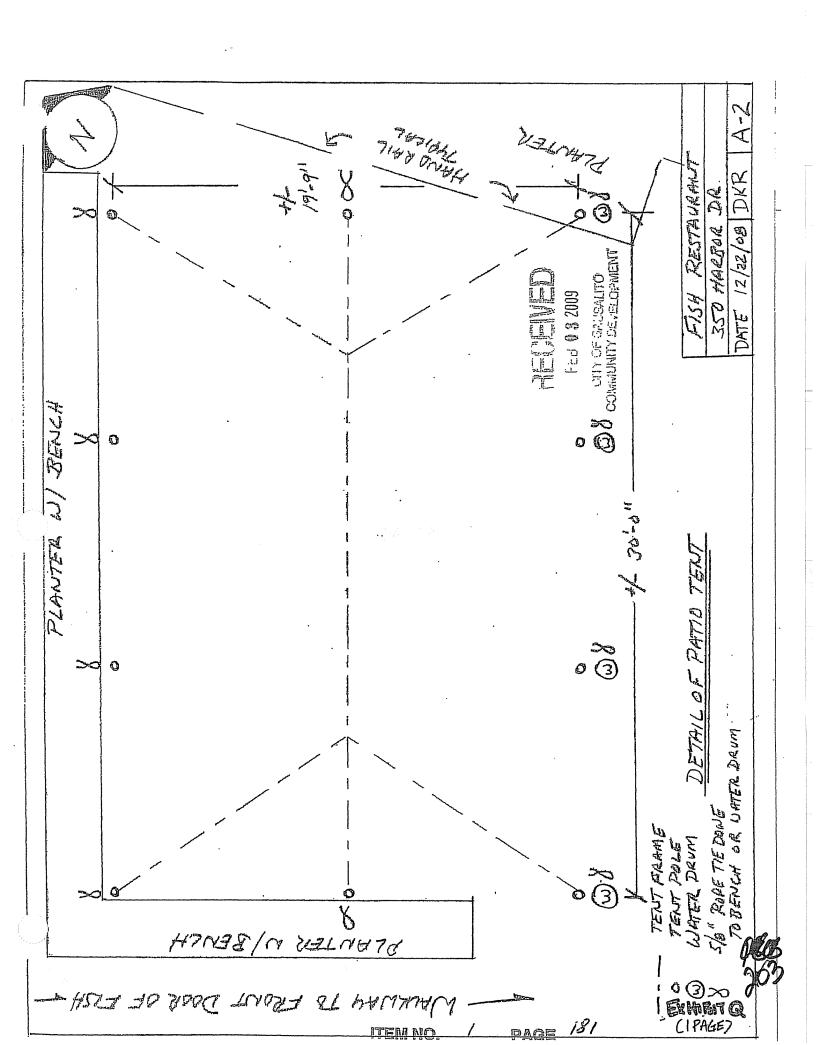
10.80.050 Planning Commission

The Planning Commission is hereby established for the City of Sausalito pursuant to California Government Code §65101. The Planning Commission shall be appointed and shall serve as follows:

- A. Appointment and responsibilities. The Planning Commission shall be appointed and shall serve in accordance with Chapter 2.58 of the Sausalito Municipal Code.
- B. Actions. Action to approve any application by the Planning Commission shall be by a majority vote of the members present and voting. A tie vote, which is not followed by a continuation of the matter for further consideration, shall have the same effect as a denial.

10.80.060 Historic Landmarks Board

- A. Appointments and responsibilities. The Historic Landmarks Board (HLB) is hereby established for the City of Sausalito and shall be appointed and serve in accordance with Chapter 2.58 of the Sausalito Municipal Code.
- B. Actions. Action to approve any application by the Historic Landmarks Board shall be by a majority vote of the members present and voting. A tie vote, which is not followed by a continuation of the matter for further consideration, shall have the same effect as a depial
- C. Duties. The Historic Landmarks Board shall have the following duties:
 - 1. Make recommendations to the Planning Commission regarding designation of historic districts and listing properties on the local register, consistent with Sections 10.28.040.F (Procedures for Historic District Designation) and 10.46.050 (Procedures for Listing on the Local Register).
 - 2. Hear and consider permit applications for construction, alteration, demolition and remedial work on sites listed on the local register or located in the Historic



BLANK

TEM NO. / PAGE /82



CITY OF SAUSALITO PLANNING DIVISION

MEMORANDUM

Date:

February 26, 2009

To:

Planning Commission

From:

Lilly Schinsing, Associate Planner

Subject:

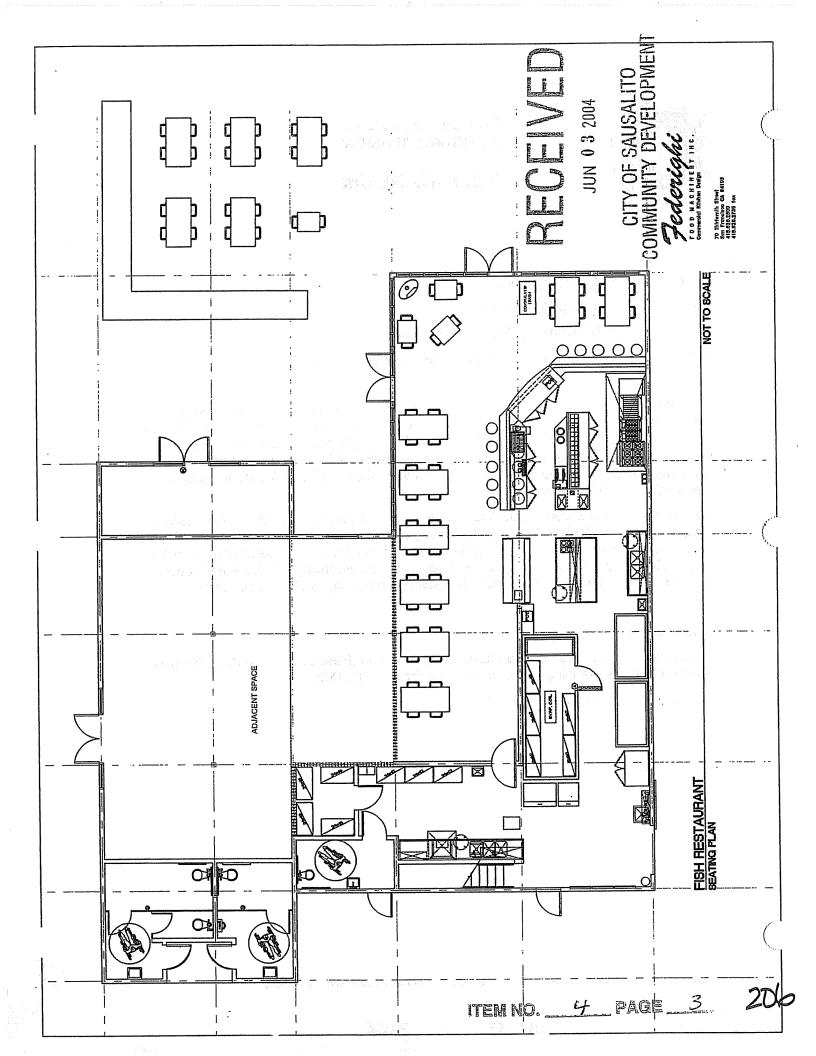
350 Harbor Drive, Fish Restaurant (DR/CUP 07-002)

On February 11, 2009, the Planning Commission held a public hearing on a Design Review Permit for a gazebo to cover twenty-four outdoor seats, approval of amendment to Conditional Use Permit CUP 03-25 to allow for an eight additional indoor seats and forty-two additional outdoor seats and recommendation of City Council approval for an exception to the Marinship Specific Plan to allow total of 120 indoor/outdoor seats at Fish restaurant, 350 Harbor Drive.

Four Commissioners were present for the hearing on February 11, 2009 (Chair Keller, Cox, Keegin and Stout). After public testimony and Planning Commission discussion, the Commission continued their review of the project to the March 4, 2009 hearing in order to give Commissioner Bair an opportunity to review the February 11, 2009 staff report and the recording from the meeting. Staff was not given any additional direction.

Attachments:

- 1- Seating plan approved by the Planning Commission (Resolution 2004-29). This was distributed to the Planning Commission on February 11, 2009.
- 2- Staff Report from February 11, 2009





CITY OF SAUSALITO PLANNING DIVISION

MEMORANDUM

Date:

February 26, 2009

To:

Planning Commission

From:

Lilly Schinsing, Associate Planner

Subject:

350 Harbor Drive, Fish Restaurant (DR/CUP 07-002)

On February 11, 2009, the Planning Commission held a public hearing on a Design Review Permit for a gazebo to cover twenty-four outdoor seats, approval of amendment to Conditional Use Permit CUP 03-25 to allow for an eight additional indoor seats and forty-two additional outdoor seats and recommendation of City Council approval for an exception to the Marinship Specific Plan to allow total of 120 indoor/outdoor seats at Fish restaurant, 350 Harbor Drive.

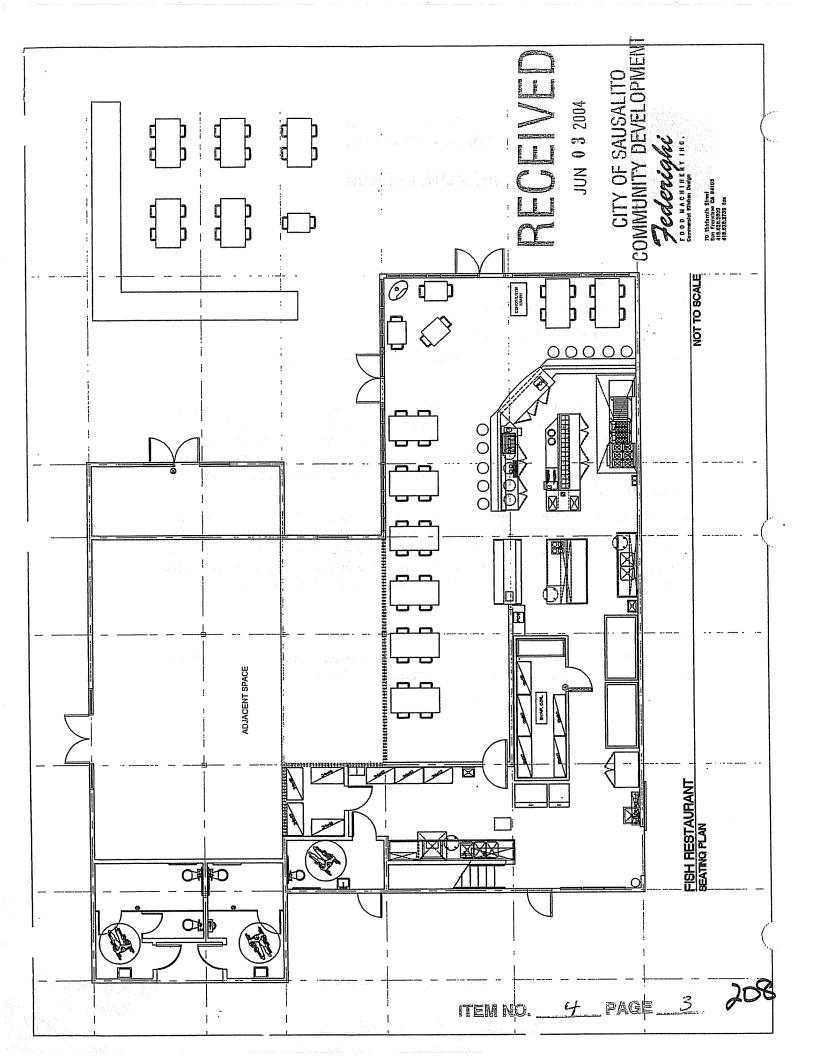
Four Commissioners were present for the hearing on February 11, 2009 (Chair Keller, Cox, Keegin and Stout). After public testimony and Planning Commission discussion, the Commission continued their review of the project to the March 4, 2009 hearing in order to give Commissioner Bair an opportunity to review the February 11, 2009 staff report and the recording from the meeting. Staff was not given any additional direction.

Attachments:

- 1- Seating plan approved by the Planning Commission (Resolution 2004-29). This was distributed to the Planning Commission on February 11, 2009.
- 2- Staff Report from February 11, 2009

ATTACHMENT'4"
(3PAGES)

I:\CDD\PROJECTS -	- ADDRESS\G-L\Harbor	Drive 350\DR 07-0	02\350 harbor (drive 2-26-09 doc



Sausalito Planning Commission Regular Meeting Minutes Wednesday, February 11, 2009 DRAFT EXCERPT

At 6:30 p.m. the February 11, 2009 Regular Meeting of the Sausalito Planning Commission was convened in the Council Chambers of City Hall at 420 Litho Street.

Chair Keller asked Community Development Director Jeremy Graves to take the Roll Call

ROLL CALL

PRESENT:

Chair Keller

Commissioners Stout, Cox, and Keegin

ABSENT:

Vice Chair Bair

Staff Report by Associate Planner, Lilly Schinsing

Project:

Fish Restaurant, 350 Harbor Drive

Design Review Permit/Conditional Use Permit

DR/CUP 07-002

Applicant:

William Ziegler

Owner:

Clipper Yacht Harbor

The Applicant is requesting approval of a Design Review Permit for a gazebo to cover twenty-four outdoor seats, approval of an amendment to Conditional Use Permit CUP 03-25 to allow eight additional indoor seats and forty-two additional outdoor seats, and recommendation of City Council approval for an exception to the Marinship Specific Plan to allow a total of 120 indoor/outdoor seats at Fish Restaurant, 350 Harbor Drive, Sausalito.

The restaurant is currently approved for 48 indoor and 22 outdoor seats and also operates a small fish market. Fish Restaurant is located within a portion of an existing building on the Clipper Yacht Harbor sight in the Marinship area. The project site is hatched on this map and the fish restaurant building is circled in red. The site is located on about 10 acres of land and water. Access to the site is via Harbor Drive off of Bridgeway at the north end of the City. The site is located in the waterfront Marinship zoning district and is designated as "waterfront zone" in the Marinship Specific Plan. The surrounding uses include a bait & tackle shop, boat yard, yacht sales, and other offices, fishing charter businesses, etc.

The site has a detailed history that dates back to 1984 with regard to the restaurant use when a Conditional Use Permit was approved for a Deli without tables or chairs. At the time, the food & beverage service was considered accessory to the bait & tackle sales on site, and was limited to the sale of pre-packaged foods such as sandwiches. In 1989, a Conditional Use Permit was approved for a small restaurant which was limited to 20 seats within 300 square feet of the bldg. Outdoor seating was not permitted with that approval.

In 1995, an amendment to the Marinship Specific Plan was approved which permitted outdoor seating in the waterfront district but did not approve an overall on site increase in the permitted site seating.

In 2003, a Conditional Use Permit was approved for the establishment of a fish market and food service café with 20 seats. That was the beginning of Fish Restaurant. In the same year, the City Council adopted amendments to the zoning ordinance that allowed for minor exceptions to the development standards or "definitions of use" in the Marinship Specific Plan.

In 2004, the City Council approved an exception to the Marinship Specific Plan to increase the maximum allowable seats at Fish Restaurant to <u>70 seats total</u>. <u>This decision was based on a fish restaurant with an ancillary fish market</u>.

The current applicant's request for additional seating is mainly due to variable weather conditions at the site. Patrons frequently move the tables & benches indoors and outdoors depending on the weather conditions. The primary reason for the increased seating request is to allow flexibility in seating options for patrons without such frequent movement of the tables and benches.

The applicant contends that the current request for increased seating is "after the fact," as Fish Restaurant has been operating with 120 seats since the approval for 70 seats in 2004. The applicant's request is not an effort to enlarge the restaurant or create a larger business, but rather an effort to secure the appropriate permits to maintain the same level of service Fish Restaurant has been providing since 2004.

The Planning Commission is authorized to amend existing Conditional Use Permit approvals which "do not alter the general intent of the original approval granted by the PC." The required approvals for an amendment to the Conditional Use Permit for increased seating are to make the Conditional Use Permit Findings and the Exception Findings in Section 10.28.050.F of the Zoning Ordinance. In the waterfront zone of the Marinship Specific Plan small scale eating establishments are allowed with the CUP in a maximum of 20 seats. However, the Zoning Ordinance contains a provision for "minor exceptions" to the development standards or "definitions of use." These "minor exceptions" may be approved by City Council upon recommendation by the Planning Commission. The term "minor" however is not defined.

In 2004, the minor exception provision was used to increase the on site seating to 50 seats. The current request is to increase the authorized seating from 70 to 120, which is again an increase in 50 seats. However, the <u>cumulative</u> impact from both requests would result in 120 seats total which is 100 seats more than the 20 that the Marinship Specific Plan allows with the Conditional Use Permit. Therefore, the Commission should discuss whether or not this request is a "minor exception" and if the findings can be made for the exception.

There are 5 Findings for "minor exception": Finding A. states that: "the exception requested addresses an implementation measure of the Marinship Specific Plan and not a policy essential to achieving the goals of the Plan." The seating exception addresses a land use limitation in the waterfront zone of the MSP. The restriction of 20 seats for small scale eating establishments is an implementation measure that addresses the "Waterfront Zone General Intent" of re-enforcing and supporting the Marinship's Maritime trade and industries (wholesale and retail fish sales). The 2004 seating exception approval noted that the action was based on a fish restaurant with an ancillary fish market that cumulatively reflected and maintained the waterfront nature of the Marinship. Therefore, Staff concludes that Finding A can be made that

the exception addresses an implementation measure of the Specific Plan that will not threaten the character of the Marinship or the goals of the Specific Plan itself.

Finding B. states that "the exception is needed to accommodate changed economic or operational circumstances affecting preferred uses described in the Plan which were not or could not have been foreseen when the Plan was adopted." The applicant has stated that there are unique weather conditions that affect the restaurant. When the weather suddenly changes, patrons enjoying the outdoors quickly move indoors for shelter. Short of asking patrons to move their table each time the weather changes, the applicant is requesting ample tables indoors and outdoors in order to accommodate changing weather conditions. This is an operational condition that was not recognized in 2004 when an approval was granted for 50 additional seats.

The applicant has also stated that the restaurant has experienced changed economic circumstances that have developed both from a "continuing, more costly environment in which to do business and the need to maintain the current level of service." If the current seating restriction of 70 seats is enforced, the applicant contends that rising economic costs would make it difficult for the owner to continue operations.

Finding C. states that "the exception furthers the intent of one or more of the goals of the MSP and the project is in substantial compliance with both specific and general regulations of the MSP and the underlying zoning designation." Staff has reviewed the goals and regulations of the MSP and the Waterfront Zone and concludes that the exception would further the intent of the goals of the MSP, and these are all outlined in the Staff Report. In summary, the goals emphasize supporting maritime industry, serving the local population, and producing only low levels of traffic. Fish Restaurant purchases fish locally, thereby supporting the commercial fishing industry in Sausalito and the Marinship. A survey conducted over nine days in August of 2007 has shown that more patrons come from the Marinship in Sausalito than outside of Sausalito and that there's a larger percentage of patrons who arrive by foot, bike, or boat. Staff can conclude that the project furthers the intent of these goals.

The Waterfront Zone requirements state that "the proportion of food provisioning in marine supply business to other marine supply elements should remain small enough that it will qualify as "limited accessory food provisions" and not characterize the nature of the business." In 2004, the City Council authorized an increase in seating at Fish Restaurant from 20 to 70 seats. The resolution stated that the action was based on a fish restaurant with an ancillary fish market that cumulatively reflected and maintained the waterfront nature of the Marinship.

Therefore, the restaurant was considered the primary use and the fish market the secondary use. Based on this previous determination, Staff concludes that as the characterization was previously authorized, the exception is in compliance with the MSP. In addition, the increase in seating requires that adequate parking is provided on site. Restaurants must provide 1 parking space for every 4 seats. As the proposal is for a total of 120 seats, the restaurant portion must provide 30 parking spaces. In addition, wholesale and retail fish markets must provide one space per every 250 square feet. The fish market at Fish Restaurant occupies about 75 square feet and, therefore, is required to provide 1 parking space. Therefore, the total required parking Fish Restaurant is 31 spaces. Clipper Yacht Harbor has provided a letter stating that 39 parking spaces are assigned to Fish Restaurant for restaurant and fish

market patrons. Therefore, Staff concludes that the proposal is in compliance with the parking standards.

Finding D. states that "the exception will not result in a significant negative impact on traffic conditions in the Marinship or on Bridgeway." Applicant has candidly stated that the restaurant has been operating with the requested number of seats since receiving approval for 70 seats in 2004. In addition, the applicant asserts that the current level of intensity has never created an observable traffic condition in the Marinship or on Bridgeway. A survey conducted by the applicant over 9 days in August of 2007 found that 42% of patrons arrive at the restaurant by foot, bike or boat with the rest arriving by car. Over the 27-hour survey period, an average of 6 vehicles per hour came to Fish Restaurant. With 39 dedicated parking spaces to serve Fish Restaurant, the survey shows that traffic impact is light. Therefore, with the survey information and the knowledge that the restaurant has been operating with the requested number of seats for 5 years, Staff concludes that this finding can be made.

Finding E. states that "the exception will serve the needs of the residents of Sausalito and employees in the Marinship." The restaurant provides an important service to the employees of the Marinship and the residents of Sausalito by offering a food service location in an area where restaurants are limited. In addition, the owners of the restaurant and fish market have stated that they purchase all the fish they cook and sell from local fishermen who deliver their catch to the dock. They also buy fish direct from the boats thereby supporting the local commercial fishing industry in Sausalito and the Marinship. Staff concludes that this last finding can be made that the exception will serve the needs of residents of Sausalito and employees in the Marinship.

The Commission should consider whether or not the request is "minor" in nature, and if the Findings can be made to amend the CUP and recommend approval of the exception.

Moving on the Design Review aspect of this application, the applicant is requesting approval of a gazebo structure to cover 6 picnic tables or 24 outdoor seats. Staff has provided a very rough depiction in this photograph of the location and height of the proposed structure. The proposed gazebo is composed of 20 eight foot tall wooden posts that would surround an existing u-shaped configuration of wooden planters in an existing patio area. The structure would include a flat wood roof and pressure treated wood to match the existing planter that it would surround. The gazebo would be open on the South and East sides with roll-down shades, while the North and West sides of the structure would be enclosed with tempered glass. The applicant has stated that there is a correction that's needed in the Staff Report and on the plans that the entire structure would stand 10 ½ feet tall – not 9 ½ tall.

The San Francisco Bay Conservation and Development Commission reviewed the project and stated that the gazebo would require and amendment to the existing BCDC Permit . An amendment has been added as a "condition of approval" that BCDC authorization for the gazebo has been obtained prior to issuance of a building permit. BCDC staff has also requested that the Planning Commission consider the gazebo's impact on public access to the shoreline and the public's view of the bay.

Staff has visited the site and has concluded that obstructions to public views have been minimized by the location and design of the gazebo. The gazebo is proposed to be located behind the public access walkway and the public access viewing deck. In addition, the

proposed gazebo is to be enclosed with tempered glass creating minimal obstruction of the view from the parking lot area. As the gazebo is also proposed to be located on private property in an existing patio area enclosed on 3 sides, Staff has concluded that the gazebo will not have an impact on public access to the shoreline. The structure also conforms to the development standards in the Zoning Ordinance in terms of the height, setbacks and coverage, and these are outlined in your Staff Report.

Story poles are required to be installed and certified whenever there is a change in building footprint, roof elevation or building bulk. However, Fish Restaurant secured a temporary Use Permit for a temporary seasonal tent from December of 2008 to May of 2009, and the tent currently stands in the same location as the proposed gazebo structure, and it provides seasonal wind and rain protection. If story poles were required to be erected, the tent structure would need to be taken down for a period of no less than 20 days. As this might cause a disruption in the restaurant operations and service, Staff is requesting that the Commission consider the temporary tent as a substitution for the story poles to show the height and bulk of the proposed structure. The tent marks the location of the structure, although the height and bulk of the tent structure are larger than the proposed gazebo structure. The Commission may consider the temporary tent as providing information about the bulk and location of the proposed gazebo. If the Commission decides that story poles are necessary to provide a more accurate depiction of the mass of the gazebo, the Commission's consideration of the Design Review Permit should be continued to the next available PC Meeting to provide time for the applicant to erect the required story poles.

The Planning Commission has several options in considering this request. The first is to approve both requests and adopt the resolutions in Exhibit A and Exhibit B of this Staff Report. Staff is recommending this option.

The second is to approve the Design Review Permit and deny the Conditional Use Permit amendment. The Commission would then adopt the resolution in Exhibit A and direct Staff to return with a Resolution of Denial for the Conditional Use Permit amendment request. If the Commission decides to go this route, a Condition of Approval should be added to the Design Review Permit Resolution stating that prior to issuance of a building permit, the applicant shall submit a revised seating plan showing only 22 outdoor seats and 22 indoor seats (which is what was previously approved in 2004.)

The third option is to deny the Design Review Permit and approve the Conditional Use Permit amendment which would require the Commission to adopt the resolution in Exhibit B, and direct Staff to return with a Resolution of Denial for the Design Review Permit.

The fourth option is to deny both requests and direct Staff to return with a Resolution of Denial for both applications.

The Commission may also continue the hearing for additional information and/or project revisions.

That concludes our Staff report. I'm available for any questions.

Chair Keller then asked if anyone had any questions of Associate Planner Schinsing this point in the meeting.

Commissioner Keegin expressed confusion over the question of which is primary and which is ancillary – Fish Restaurant of the fish market?

Associate Planner Schinsing agreed that it's confusing. According to the Marinship Specific Plan, "eating areas should be secondary in nature and not characterize the business itself."

Associate Planner Schinsing further stated that in September of 2004, the City Council approved an exception to the MSP which increased the maximum allowable seats at Fish Restaurant to 70. The resolution clearly noted that the action was based on a fish Restaurant with an ancillary fish market that cumulatively reflected and maintained the waterfront nature of the Marinship. The exception was not included as an amendment to the 2003 CUP, but rather a stand alone approval of additional seating. Associate Planner Schinsing stated it was at this point in time hat the Planning Commission and City Council decided to make the restaurant primary and the fish market secondary. (Associate Planner Schinsing suggested the Commission refer to Page 10 of the Staff Report.)

Commission Keegin asked whether there is adequate parking at the facility. Reference was made to the survey which was conducted in 2007 over a 27-hour period in which it was determined that an average of 6 vehicles per hour came to Fish Restaurant. Concern was voiced over how many vehicles were there during peak hours of business as the survey suggested that traffic impact is light.

Associate Planner Schinsing stated that the Applicant provided the survey and stated that the survey provided lunch hour traffic counts.

Chair Keller than expressed dismay over the fact the Fish Restaurant was allowed to have benches at the restaurant. He recalled that the original seating plan showed seats instead of benches. He questioned whether approval should be given for benches which are difficult to move, when the restaurant could instead use chairs. Also, the benches seat more people which in turn increases seating capacity.

Associate Planner Schinsing distributed the original seating plan showing individual chairs and not benches. She stated that the issue was raised at the Council meeting, but does not appear to have been resolved at the Council meeting. The original seating plan shows 70 seats.

Chair Keller invited the Applicant to give a presentation.

Presentation by Applicant William Ziegler:

Mr. Ziegler stated that he brought 3 gentlemen with him who also wished to speak to the Commission: Kenny Belove, the co-owner and manager of the restaurant, Bill Craig, the architect designing the Gazebo, and Sean Hodges, a local fisherman.

Mr. Ziegler stated that from the beginning seating has always been an issue at this site. He provided a brief history of the site. He mentioned that when the restaurant was closed down for a period of time, the area was practically vacant, no one went there. It really affected the other businesses in the area. When Fish finally re-opened the locals were happy to have a

restaurant back there. Since 2003 or 2004, an attractive place, a seasonal place. In fall 2006, the restaurant was cited for "non-compliance" for having too many seats. In Dec. 2006, he submitted an application to legalize the seating and put in a gazebo. The previous owner told him he couldn't stay in business if he didn't have seating that was variable.....inside and outside seating. He did a survey in summer 2007 which proved that even during peak hours, the maximum # of people was 55. So, even though there were actually 120 total seats available, only 55 seats were used. on nice days....totally packed outside.....91% of people who go there prefer to eat outside. In order to survive, it needs to be a year-round restaurant. Therefore the need for a tent2004-2005 a tent was put up to help deal with the weather problems. He's been trying to get his application through the PC for over 2 years. It's been a very difficult process. Right from beginning, he wanted to legalize existing seats. He was told he had to remove extra seats before anything could proceed (including the tent)...He tried reducing the seating capacity to 70, but it was impossible to function smoothly and keep the customers happy. "If you count people, not seats, there's no problem....ordinances refer to seats rather than people." The key question/issue is to comply with the intent of the Zoning Ordinance. He says there are no negative impacts from approving it.

On the positive side: it serves the people in the area: 30% came from the immediate Marinship area; another 30 plus % came from city of Sausalito.....19% are outside area....most from Marin.....on week-ends people come off their boats to enjoy lunch there. Fish clearly serves the area.

Secondly, it enhances/promotes the fishing marine industry; increases shoreline access, brings people to area. BCDC required Clipper Yacht Harbor to build a walkway around shoreline and seating area down below. There's more than enough parking and there are no traffic problems.

Chair Keller expressed concerns about the car traffic at peak hour.

Mr. Ziegler stated there are no traffic concerns....at the most, there are 9 cars at peak time.

Mr. Ziegler then stated that he was finished with his presentation and wanted to bring forward the other gentlemen. Chair Keller stated that Ziegler had used up his full 15 minutes of speaking time allotted to him, so the other men wouldn't be able to make full presentations.

Chair Keller asked if Mr. Ziegler knew when the previous owner decided to overlook the City Council decision which increased the seating from 20 to 70 and decided on his own volition to then increase the seating to 120?

Mr. Belove, the co-owner and General Manager of Fish, stepped forward and stated that there is never a time when every seat in house is full. Probably there are never 70 seats used at one time. Even during the lunch rush.

Chair Keller then said he was out there today and there were 24 large tables out there - a lot more than is on the schematic - and 4 tables were in the public access area which is against the BCDC's regulations.

Mr. Belove stated that the customers probably placed the tables there.

Chair Keller said "that's not possible," two of the tables were permanent picnic tables with attached benches. How could the customers move those? Chair Keller said he counted more than 120 seats.

Associate Planner Schinsing stated that the BCDC permit requires Fish Restaurant to provide picnic tables in the public access area, but do not allow Fish Restaurant to provide table service in the area.

Mr. Belove said the owners were asked to purchase tables for that area. He said if Chair Keller saw other tables in the public access area that weren't picnic tables, those are the tables that were probably brought there by customers. He said the customers are used to taking care of themselves.

Chair Keller next opened the discussion to PUBLIC COMMENT:

Sean Hodges, a local fisherman, (his boat, Hog Heaven, is at Clipper Yacht Harbor) is totally loyal to the restaurant. He depends on Fish Restaurant. Fish purchases his catch at a good price. Fish helps him support his family.

Commissioner Keegin asked Mr. Hodges where and what does he mainly deliver to Fish.

Sean Hodges stated he delivers to the fish market and it is additionally served as food in restaurant. He delivers mainly crab. In summer Halibut... also salmon. Also, 3 other boats from the Harbor delivers crabs and 2 boats deliver Halibut in the summer time. He is asked where the sand dabs and bottom fish come from? He says they are caught out in the Bolinas area.

Jordan Rogers, the Harbormaster at Clipper Yacht Harbor stated that the weather in the Fish Restaurant area is just like Candlestick Park! Usually, from May – Sept. the weather is foggy, cold, windy and that's why the patrons run inside. They need the seating capability for inside and outside.

He also points out the heritage that Fish Restaurant represents. From 45 years ago when it was Caruso's Bait shop to now. The Fish Restaurant property represents part of Sausalito's heritage. The Marinship Specific Plan has hampered business and caused a lot of problems. Fish Restaurant should be left alone! They are supporting the local fisherman and bringing people to the waterfront. "We need the business down there! We have to increase business in the waterfront in Sausalito make changes to MSP stop beating up on people like Fish....Clipper Yacht Harbor is only 80% full traditionally always at least 98% People are literally leaving their boats there rather than paying.....we have to increase & encourage business....make it happen.....figure out how to make it work!"

Emil Waigand: stated that he works at the fuel dock and said that Fish is a great place. Patrons come with children....The whole family can eat there....well loved restaurant by the locals.

Chair Keller asked if there's any more public comment. No one replies. He then asks the Commissioners if they have any questions for the public who just spoke or Staff members. The Commissioners reply No.

Chair Keller closes the Public Comment portion of the meeting.

Next **Chair Keller** suggests that the application should be viewed in 2 parts: First, the Design Review Permit on the gazebo and second, the CUP Amendment.

Chair Keller says he thinks the gazebo makes sense. The tent has already been up there for quite some time...with no problems

Commissioner Cox agreedshe's a frequent patron...thinks gazebo will be a vast improvement. It will have 2 windowed sides (clear sides) with views of the bay which the tent can't provide.

Commissioner Stout agreed, but has one question....in the planter area what will they plant? He would suggest no trees.

Commissioner Cox refers to a mention of a color board in the Staff ReportIs there one?

Associate Planner Schinsing stated that she would get it.

Chair Keller stated "One pole is going into a flower bed.....why is it there? Can you mover it?"

Bill Craig, architect, stated the size and the pole location of the gazebo is a function of the tables that go inside it. The building becomes secondary to the seating plan in order to get adequate movement around the tables. The location of the story pole was a matter of function – not design.

Chair Keller asked Commissioner Keegin if he has comments. Commissioner Keegin says he agrees with his colleagues. He too dines there occasionally and is in support of Fish being there.

Commissioner Stout asked....what the roofing material is for the gazebo

Bill Craig responds that it would be a built-up roof with a minor slope....with tar and gravel with flashing around the edge

Chair Keller: Well, it seems we have a consensus on the Gazebo. However, I have questions/concerns regarding the seating. It seems this whole process has been driven from the beginning by picnic tables and picnic benches. Are you wedded to picnic tables and picnic benches?

Mr. Belove stated that what they are wedded to is the whole feel of the very rustic east coast crab shack with the picnic table and the bench....it is a feelwe don't have linens, crystal. Also, we feel it is important to pay our fisherman more for their product and pay our Marin farmers more for their produce. Our customers drink wine out of jars, beer out of mason jars...people love ityour kids can come, draw on paper mats and feel at home at Fish. To change that is tampering with something that works! Yes, I guess you could say I am wedded to the picnic table and bench idea because of the feel that was created some time ago.

Chair Keller stated that Bill Foss's original application when I was on the City Council. He originally wanted to just have chairs and tables. Somewhere along the line that changed. What drove the restaurant going to picnic benches? This is one of the things that the Chair is grappling with. He stated that he doesn't look at picnic benches as a minor exception. Other restaurants can operate moving inside and outside using chairs and tables. The benches are cumbersome....you can probably get as many as 8 people at a picnic bench....so you are being enabled to far exceed our seating limits.....the definition was a picnic bench for 4 people. Chair Keller stated that he definitely wants Fish to succeed. However, they've got more than 120 seats there......in the context of other restaurants in town......they're approaching the size of Poggio, they're 3 times the size of Avatar's and much bigger than Angelino's in terms of seating. He would like to know how wedded Mr. Belove is to this design? Do you have any flexibility at all? We're talking about benches versus chairs.

Mr. Belove stated if we were granted the 120 total seats, we wouldn't find ourselves moving tables because we would have enough inside and outside seating available." We will never seat 120 people at one time. But with the extra seating we wouldn't have to constantly be moving tables inside and outside. Everything would stay in its place. If it's cold, the locals know not to Fish because there's not enough seats inside. I am wedded to benches because I'm wedded to the feeling they create. I can't imagine picnic tables without benches. Traditional dining tables do not fit out on that patio; patrons love the feel. However, at the same time, I am not opposed to discussion about this issue.

Chair Keller: I think the issue is how we define "minor" I'm struggling with adding an additional 50 seats after we approved 50 seats 4 years ago." Going from 20 to 70 and 70 to 120 - 2 minor additions doesn't equal a minor change! I question is this was the intent of the applicant from the beginning to get it to this size! We were told the last time that you didn't need more than 80 seats! I'm struggling with this...find it difficult to grant a "minor exception" for 50 more seats!

Commissioner Cox: In their defense, although they're asking for 50 seats, they want to keep indoor and outdoor seating fixed. And they don't intend to have more than 70 patrons at any given time....which was the original exception that was granted to them...they're asking for the convenience of not having to move tables back and forth. I don't get the sense that when it's nice, the indoors are full! When it's nice, they're all outside conversely on evenings or on rainy, cold days, there's no one outside. Therefore, I can characterize this as a minor change for 2 reasons: 1) I am able to make each of the Findings. It is true that section 10.28.050 of the Zoning Ordinance states "minor exceptions" that do not alter the general development programs may be approved upon recommendation by the Planning Commission, but the findings that we're required to make don't have the word "minor" anywhere in them. And I feel I am able to make each of the Findings.

Secondly, we are undergoing a huge change in economic circumstances. So I'm very sympathetic to the fact that crab rolls have gone up \$10 from what it used to be! Fish Restaurant does patronize our local fishermen. And Fish is of a character consistent with its locale. The fish market is a very active part of Fish Restaurant. Many locals buy fish there.

Commissioner Cox stated that she feels the actual change in status that would be effective upon our approval of the CUP

would not amount to a huge change in the status quo. That's not to say that she approves of the fact that they have more seating out there than the CC approved ...she's dismayed by that as much as Chair Keller. However, she felt encouraged by the applicant's survey that indicated they never have more than 55-70 people being served/seated at any one time. Cox goes on to say that even though it's true that picnic benches can accommodate as many as 6 people, she often sees only 2 people sitting at them. To summarize, Cox states again that she feel she can make each of the 5 Findings.

Commissioner Stout agrees with Commissioner Cox. He is an alternate member of WAM Committee. He thinks the project is great project. He wants an economically viable neighborhood there again. It's a great opportunity for us to present to the City Council a new idea a new push for what can be done on waterfront...He likes the fact that it does support local fisherman

Chair Keller stated that he agrees with Commissioner Stout in almost all respects...very sympathetic with applicant's dilemma. Chair Keegin stated "Our problem is not with Fish...our problem is with an ordinance that has been passed by the City Council, reviewed regularly by the City Council, and is replete with references to 20 seats that serve employees of the Marinship area! And so far the evidence presented to us indicates that less than half of the patrons are from Marinship area. We're looking at an application not for 20 or 40 seats but 6 times the amount permitted by the Ordinance. He don't think that's a minor change. It's a significant major exception ...it's up to the City Council to say that this particular element of the MSP should be amended. He would urge that those here today should go to the City Council. The CC has the authority to make amendments. The PC doesn't. We need to have a space on this waterfront for Fish and similar facilities. The CC needs to decide what and how this ordinance should be amended to allow this particular activity. The Planning Commission can't disregard the directions of a very significant Ordinance that is directed exactly at the waterfront that we're talking about. This is not a minor exception.

Also, he stated that would have difficulties with findings A & BKeegin urges the applicant to go to the CC to get a changeKeegin feels legally bound by the Ordinance...It reads plainly in several different places: "20 seats serving employees of the Marinship area" not 120 seats serving Marin Co. residents, and Sausalito residents not part of Marinship! This is a long way off from the intent of the ordinance

Commissioner Cox stated Section 10 does say minor exceptions. It also does list out the findings that we have to make if we want to make an exception and if you go through the Findings, Finding A. says that "the exception requested addresses an implementation measure of the Marinship Specific Plan and not a policy essential to achieving the goals of the Plan. And Cox thinks having a viable restaurant that enhances the business of the Marinship area (such as the bait & tackle shop, the yacht harbor, the fishery) does address an implementation measure and not a policy essential to achieving the goals of the plan. The restaurant and the fish market reflect and maintain the waterfront nature of the Marinship area.

Commissioner Cox continued, stating that Finding B is one of the most important findings." It refers to changed economic circumstances affecting preferred uses described in the Plan. She believes that the Marinship Specific Plan, at face value, prefers retail to restaurant uses. However, when Fish was recently closed for a month, the whole area was dead. The absence of that business had an adverse effect on surrounding businesses in that area and that result

is adverse to the purpose of the Marinship Specific Plan. She's also mindful that several waterfront restaurants are closing or have closed. She's concerned about the inability of Sausalito restaurants to remain viable. Commissioner Cox stated that she believes that Finding B which accommodates changed economic circumstances is key.

Commissioner Cox continues, stating that Finding C can be made also....the exception would further the intent of one or more goals of the Marinship Specific Plan.

Finding D can be made that the exception will not result in a significant negative impact on the traffic. When the parking lot is full on week-ends it's not just due to Fish, people are there for other reasons.. walking boating sailing. The exception will serve the needs of residents of Sausalito and residents of Marinship including those who earn their living purveying or providing to Fish Restaurant and those who are employed by Fish Restaurant

Commissioner Cox urges that the Commission not to get caught up in the specific language of the Zoning Ordinance itself, and that they follow the lead established by the City Council when it approved a minor exception increasing the seating from 20 to 70. They should recognize that making available indoor and outdoor seating will not have the impact of increasing patronage from 70 to 120. It will simply facilitate the restaurant not having to move seats in and out and out and in based upon the weather and time of day.

Commissioner Stout stated that he wanted to make it clear, that he was for finally make a stance to make the Marinship Specific Plan change. Tear it up and rebuild it. This is a great case for that argument.

Chair Keller stated that there have been significant changes in the business due to Fish's success, from what was originally granted. The original CUP was for a Fish Market and a Café with 20 seats. Now we're at a point where we have a restaurant with 120 seats and a marginal fish market at best. They've taken out the refrigerated glass counter and replaced it with seats.

Chair Keller continues: Would we be better off requesting that the Applicant come back and apply for an additional CUP as opposed to just continually adding on to what was the original CUP? That way we would not impair the ongoing business at Fish as it stands right now. Would that have a stronger impact on the City Council as it comes to change MSP? If we grant another minor amendment what's going to happen with other situations with other restaurants along the waterfront? Are we better off asking the applicant to come back and apply with a new CUP and at the same time not impeding the business that they are currently operating?

Commissioner Cox said that if the applicant comes back with a new CUP asking to go from 20 seats to 120 seats, shed would have a harder time approving it. She prefer this CUP which is an amendment because here I'm guided by--

Chair Keller stated that he doesn't think the new CUP application would address changing from 20 seats to 120. Instead, the new CUP would be for a new application basically stating that Fish is a restaurant with 120 seats and an ancillary fish market. The Commission would treat it as a straight application.

Commissioner Cox said that in her view, that would be a less viable proposal under the MSP than this amendment to the existing Conditional Use Permit.

Chair Keller said that what he's trying to get to is: Where are we going to have an impact on City Council?

Commissioner Cox said that she also want to have an impact on City Council. First of all, is that our job to have an impact on City Council?

Chair Keller said that he we want to have an impact on the Marinship Specific Plan...it's too stringent, it's old....it's outdated.

Commissioner Cox said that she agrees, and as a citizen she is on board with him, but as a Planning Commissioner she is bound by the MSP as it's currently written, so she had to find my way clear to utilize the Zoning Ordinance and the Findings that we have to make. She struggled with her own conscience about whether she could make these Findings because the Commission are at the moment bound by the Marinship Specific Plan as it is currently written.

Chair Keller said that if they go ahead and approve this amendment, it is going to go to the City Council and they're going to have to weigh in on it and make their own decision yea or nea. At that point, the whole discussion will be brought up.

Commissioner Cox said that that would be the appropriate forum for that to happen.

Commissioner Keegin: Said that he thinks that would be the case in either event. Also, he has difficulty with Finding A. - in particular, approving a restaurant the size of Ondine or close to the size of Horizons (which is what we're doing on the waterfront in this particular zoning area). He thinks it is inconsistent with achieving the goals of the plan. That's a big restaurant. This would make it one of the biggest in town.

Commissioner Keegin continues. The other thing that is regrettable is the problem with the Ordinance. The Ordinance uses seats as a way of controlling the intensity of use. But it's clear to him that seats are unrelated to the intensity of the use at Fish. Fish has never had more than 60 people or so at a very busy time. Yet they need 120 seats in order to accommodate the 60 people they might have at the maximum occasional rush. That doesn't make sense. What needs to be looked at is how intense does the City want the use of the restaurant to be there, and how the City makes sure the rules dealing with intensity actually affect intensity. So that's just another problem with this Ordinance, but we've got to take this Ordinance as it is. Approving a 120 seat restaurant in this neighborhood zone is inconsistent with the goals of this Plan.

Chair Keller said that he tends to agree with Commissioner Keegin with regards to Finding A. That said, it seems to him that where the Commission is going with this is that they can approve the Design Review Permit for the gazebo, but, based on the fact that they have two Commissioners who have difficulty with the definition of "minor" with regards to the CUP Amendment, the applicant is probably not going to get approval on that tonight the way that the Commission is configured up here at the moment.

Commissioner Cox asked if it possible for the Commission to approve the Design Review Permit tonight and have them continue to a date uncertain or a date certain the CUP Amendment when we would have a full panel?

Chair Keller said that they can do that.

Commissioner Cox said that they could then weigh their chances in front of a full panel and decide at that time whether to proceed and get a vote, or continue to a date uncertain and take effort at the City Council level to get the Marinship Plan changed.

Commissioner Keegin asked a procedural question of City Attorney Mary Wagner: All we're doing is making a recommendation to the CC on this particular item....am I right about that?

City Attorney Wagner said that they were making a recommendation with respect to an exception to the Marinship Specific Plan and you're taking action on the CUP

Commissioner Keegin said with respect to the exception to the Marinship Specific Plan, his question is...does it go to the CC regardless of what we do??

City Attorney Wagner said that it's an interesting procedural question.... Hypothetically.... the Commission takes whatever action on the Design Review - it can be appealed or not appealed to the City Council....With respect to the Amendment to the Conditional Use Permit and the minor exception to the Marinship Specific Plan: if, for example, the Commission were to deny the Conditional Use Permit and recommend that the City Council deny the exception to the Marinship Specific Plan, in order to get the project approved, the applicant would need to appeal the decision on the Conditional Use Permit Amendment to the City Council to be heard concurrently with the recommendation by the Planning Commission to deny the minor exception to the Marinship Specific Plan. Otherwise, it doesn't work. If you've denied the Conditional Use Permit, and the City Council even changes the minor exception to the Marinship Specific Plan, they don't have approval because the Conditional Use Permit was denied.

Chair Keller said that they could just continue the Conditional Use Permit Amendment until they have a full compliment, and the applicant can take his chances with the vote at that point, and approve the Design Review at this point---

Commissioner Cox said that they could go ahead and build the gazebo.

Chair Keller said that they could build the gazebo, but they'd have to come back to the Commission at a date certain or uncertain with regards to obtaining a vote up or down on the Amendment to the Conditional Use Permit with a minor exception to the Marinship Specific Plan.

Associate Planner Schinsing said if the Commission decides to approve the Design Review Permit, but continue the Amendment to the CUP, Staff is recommending a Condition of Approval for the Design Review Permit that the seating plan be amended to reflect what's actually approved on site.

Commissioner Cox said that the applicant should have the option-- recognizing that if we approve the Design Review Permit, a Condition of that Approval will be that the applicant must comply with the currently existing seating requirement....and so they applicant cannot have more than 70 seats there....they would have to move tables in and out . Recognizing that, she asked if the applicant would like for the Commission to move forward with the Design Review Permit aspect of the application or would they like to continue the entire application to some other time when all five of the members are here.

Mr. Ziegler said that he would like the latter alternative that they continue the application to review our matter so that we're not....I'm not clear what would happen and it seems like an easier resolution (inaudible)

Commissioner Cox said that what they are suggesting is that the applicant might want to see what the inclination of the panel is when they have the fifth member, because the applicant needs at least 3 of the Commissioners' votes to approve. She has no idea how Commissioner Bair will weigh in on this, so...

Mr. Ziegler said that it seems to him that given the discussion if it's adverse to Commissioner Bair, the matter is going to be appealed, so he'd like to keep it together....he is asking for is a continuance till the next meeting when there is a full panel.

Chair Keller asked Mr. Ziegler if he wanted a date certain or a date uncertain? The next agenda is full....

Community Development Director Jeremy Graves stated the second meeting of February is full. So, it would be the first meeting in March which is March 4th.

Chair Keller moved to continue the application to a date certain which will be the Meeting of March 4th and asked for a second.

Commissioner Stout seconded his motion

Chair Keller asked Community Development Director Graves to take the roll.

Community Development Director Graves took the roll.

ROLL CALL VOTE:

Commissioner Stout: Yes
Commissioner Cox Yes
Commissioner Keegin Yes
Chair Keller Yes
Motion Approved: 4-0

Mr. Ziegler asked if there will be a new presentation at the March 4th meeting.

Chair Keller said that he hopes that the applicant would consider his comments with regard to the benches/seats issue.

Community Development Director Graves said that Commissioner Bair will have had an opportunity to review the transcript from the meeting.

CDD\Project Address\Harbor 350\DR 07-002\PC Draft Minutes 02-11-09

garan di kacamatan k



SAUSALITO PLANNING COMMISSION REGULAR MEETING

Wednesday, March 4, 2009
Fish Restaurant / 350 Harbor Drive

Transcribed by:

Vicki Blandin (510) 337-1558 vblandin1@yahoo.com

ATTACHMENT 6 225 (20PAKES)

Sausalito Planning Commission Regular Meeting 3-4-09

Present:

Chair Bill Keller Vice-Chair Stan Bair Commissioner Stafford Keegin Commissioner Joan Cox Commissioner Eric Stout

Item #4: FISH RESTAURANT / 350 HARBOR DRIVE (DR/CUP 07-002)

CHAIR KELLER: Okay, moving right along, the next item of the evening, 350 Harbor Drive, Fish restaurant.

ASSOCIATE PLANNER SCHINSING: This item is a continuation from the February 11, 2009 Planning Commission hearing on a project at 350 Harbor Drive, which is Fish restaurant. The application is for a Design Review Permit for a gazebo to cover 24 outdoor seats, an amendment to an existing Conditional Use Permit for eight additional indoor seats and 42 additional outdoor seats, and also a recommendation of City Council approval for an exception to the Marinship Specific Plan to allow for a total of 120 seats. Four commissioners were present at the meeting in February and Staff recommended approval of the project at that meeting. After discussion and public testimony the Commission continued the project to tonight's meeting to give Commissioner Bair an opportunity to review the Staff Report, the recording from the meeting and draft meeting minutes, which are before you tonight. Staff was not given any additional direction at that meeting and as no new materials have come in Staff is available for any questions that you may have. Otherwise the Commission can continue their discussion.

VICE-CHAIR BAIR: I'll just weigh in and say that I did review the draft transcript that you sent me and all the other materials and just in order to give you a feel for where



I am, unless there is new testimony or anything else, I feel confident in the Staff recommendation and I'm in favor of approving this project. I guess I would just say I would adopt the discussion items brought up by Commissioner Cox and Commissioner Stout generally speaking is kind of where I lie.

COMMISSIONER COX: I have no further comment beyond my comments the last time except for one thing. It occurred to me that my ability to make the findings is based on my understanding of Fish restaurant's and Caruso's use of this property, and I would add as a Condition of Approval that this Conditional Use Permit not survive a sale of the restaurant. Can you do that?

CITY ATTORNEY WAGNER: Conditional Use Permits run with the property.

That is a standing tenet of land use and planning law. Now if the restaurant were to change hands the same conditions apply. The configuration of the seating is the same.

Whatever conditions you impose on this Applicant run with the land and apply to any future Applicants, so the Fish market issue has to remain.

COMMISSIONER COX: So here's my concern, and maybe you can suggest a way to address it. My concern is that I perceive Fish, although it is a destination restaurant to some, it nevertheless to me is more evocative of the nature of the Marinship District, and it supports the local fisheries and it supports the tackle shops and the other types of fishing businesses nearby. I would not be as inclined to approve the Conditional Use Permit if this were a Houlihan's, and that is the basis for my concern.

COMMISSIONER STOUT: I think within the Marinship Plan you wouldn't be able to open that type of restaurant there unless part of your space is going towards the successful nature of the Marinship. They're a fish market.

COMMISSIONER COX: I suppose that's true.

CITY ATTORNEY WAGNER: I could pull up the language, but they're supposed to serve the uses in the Marinship.

COMMISSIONER STOUT: Right.

CITY ATTORNEY WAGNER: That's the intent of allowing this type of use in the Marinship, so any other business that were to locate there would be subject to those same restrictions.

eating establishment, which is supposed to serve the employees, and what we're suggesting here is that instead of an eating establishment which serves the employees of the Marinship that a 120-seat restaurant is okay that serves as a destination restaurant, and so it's foreign to anything that I've been able to find. I can't even find in the plan the word "restaurant" to tell you the truth, except as a defined term, so there is a defined term for restaurant, so there must be somewhere in there the use of the term restaurant, but I haven't been able to find it. So the plan calls for a 20-seat maximum and the City Council has allowed in one instance an enlargement to 70 in addition to 50, so the question is whether an additional 50 on top of that, so 100 over what the plan admits is a minor change rather than a major change, because we're only allowed to do minor changes.

I guess I'd like to add one thing. Joan mentioned that she's relying on the fact that it supports the local fisheries, but I don't think there's any fish at the Fish retail establishment that came from California that they now have except maybe some clams from Monterey.

VICE-CHAIR BAIR: No humming toadfish then?

COMMISSIONER KEEGIN: No humming toadfish. No crabs.

COMMISSIONER COX: Can we open it for public comment for them too?

CHAIR KELLER: Yeah, we will.

COMMISSIONER KEEGIN: Fish from Hawaii, fish from Chile, fish from Monterey.

CHAIR KELLER: So you've had a few introductory comments from a few of the commissioners and it's time for the Applicant to respond. Come on up and weigh in for a couple minutes, or you've got 15 minutes.

KENNY BELOV: Okay, I'll be very quick. Thank you everyone for letting us be heard tonight and to Vice-Chair Bair for reading over the minutes and paying attention to everything that you obviously had to read and listen to.

CHAIR KELLER: Can you identify yourself?

KENNY BELOV: Oh, sorry. Kenny Belov, co-owner of Fish restaurant.

Commissioner Keegin, you made reference to no fish in California.

COMMISSIONER KEEGIN: Sorry, I meant Sausalito-based fish. There is fish from, as I understand it, Monterey and San Diego.

KENNY BELOV: As of today we...

COMMISSIONER KEEGIN: Well, today or... No, actually this was somebody reported to me on Monday and somebody reported to me on Tuesday.

KENNY BELOV: You are absolutely correct, there is no local fish, because I don't support the bottom drag fishing, which is the only fish that you'll be seeing from the California local waters right now, the drag trolleys (inaudible), the rock sole. The crab is done. I am supporting two vessels at Monterey for (inaudible) sardines, market squid. I'm working with two direct vessels out of Juno, Alaska for Alaskan True Cod and I drive to the airport and pick those fish up directly.

Our dedication to sustainability is more important than anything else, so I could provide local fish like every restaurant here in downtown and supporting fisheries that

are ultimately going to destroy our waters. I was invited today to address Sacramento on the 26th of March to restore our fisheries, to speak in benefit of the fishermen so we can get rid of the draggers, we can get hook and line fishermen back. So you're absolutely correct. If somebody reported to you on Monday there was no local fish, I can't argue that, but I can tell you that I know every vessel that every piece of fish came from, which is much more than I can say about what everybody else is attempting to do to our community.

We've also started a nonprofit, Fish (inaudible).org to educate consumers on this matter that I'm addressing, and that's for further discussion.

Don't get me wrong. I'm an enthusiastic supporter of the fishing industry and have made some mistakes in my lifetime, but with respect to my involvement in fishing, I just want to set the record straight that this is not a retail store (inaudible) buying fish off boats that show up at the gas dock down there and delivering in...

COMMISSIONER COX: No today, but during the year you do.

KENNY BELOV: Absolutely. As soon as the bait shows up in April we will have halibut boats lining up. Historically speaking the crab boats would be still fishing. We're trying to get the bill passed in front of the governor to get crab pot limits in place so we will have a local bounty of crab throughout the season. We're attempting to, but currently right now it is looking pretty bleak for the San Francisco fleet, especially when it's the hook and line sustainable (inaudible) again this year, and Vice-Chair Bair, if you have any questions directly to me I'm more than happy to answer them.

CHAIR KELLER: Bill, you want to weigh in?

WILLIAM ZIEGLER: I'll be brief. For the record my name is (inaudible). I'm the attorney and operator (inaudible). There was a question about use (inaudible) I want to address that to a Houlihan's type hamburger shop or whatever. I think that is already

restricted. When the City Council increased the seats the last time in 2004 from 20 to 70, it made a finding that the primary use of this site was a fish restaurant with an ancillary fish market and it was on that basis that it granted the 70, so I think my understanding is (inaudible) Use Permit (inaudible), but that was the basis for the finding.

COMMISSIONER COX: Can I ask that when the City Council votes on this that they continue that condition?

CITY ATTORNEY WAGNER: Sure.

COMMISSIONER COX: Okay, then that would satisfy me.

WILLIAM ZIEGLER: Thank you.

COMMISSIONER KEEGIN: May I ask you, from your position then that a large seafood restaurant like Spenger's in Berkeley would be okay under this particular permit?

WILLIAM ZIEGLER: I don't know how to answer that. I'm familiar with Spenger's, but I was going to give an example. We're here asking for 50 more seats, which I think is not a minor increase in the number of seats, but that isn't the issue. Is this a major change or a minor change to this restaurant and I want to give you another example (inaudible). If we were here asking for ten more seats I think that would be a minor increase in the number of seats, but had I said we're going to take the fish market out and open a bar and we want ten seats at the bar, I think you would not find that was a minor change in use, and so you have to go to the purpose of the change to make those findings an do think whoever comes in has got to obtain an occupancy permit and I think that would trigger that kind of review before they could get their occupancy permit. Do they meet the criteria? If they can and say they wanted to turn half of it into a bar, reduce the seats. I think you would say no, they could not get that use permit. I

want to use that example to emphasize what we're doing. We're not changing anything. The purpose of this is not to get more customers or not to change the type of customers that we're trying to get. We're not looking for tourists; we're not looking for people out shopping. We're catering to the local people. We simply want to accommodate the customers who already come, and if you were there today you'd see that people were sitting outside for obvious reasons, and if you were there yesterday and the day before, there were none. It was raining and those are the same people that might come on one day or another. We simply want to accommodate them, that's all this is about. We're not looking to change the use or change what's going on inside; that's why what we're asking for is a minor change.

CHAIR KELLER: I guess the other point, Bill, would you not agree though, you're not changing the use but you're intensifying the use?

WILLIAM ZIEGLER: I don't think so. We're not looking to get more customers.

CHAIR KELLER: I hear what you're saying. You're not looking to get more customers, but you'll take more customers if they come by.

WILLIAM ZIEGLER: Of course. In our survey the maximum we got was 55 on the busiest weekend of the year and it was only (inaudible) 55 in any one hour. If we could get 70, the owner would be jumping up and down. That is not what's been going on here. We're not trying to bring more people in. If they come, nobody's going to turn them away, but that's not the purpose of this.

COMMISSIONER KEEGIN: In your application I think it says, or at least it was mentioned in the last meeting, that if this permit is not granted that (inaudible) a more intense use that it would make it difficult for the owners to continue operation, so it sounds to me like you are looking for more people to generate more revenues.

WILLIAM ZIEGLER: I don't think I used the words "more intense use," but no, we're not looking for more (inaudible). As I said the last time, the seats are there. We're not trying to fill more seats. We're trying to do one thing, and that is to accommodate the customer so that if he wants to sit outside he can, and if he can't do that, if we've go to take seats out, then we've got a very strange situation. We're going to have to hire more people to move benches and move seats, because on a nice day, a sunny day, everyone wants to sit outside. The survey said I think 91% want to sit outside, and a day like yesterday, 0% wants to sit outside. We simply want to accommodate those people.

I don't know how else to describe the situation. I think it's obvious this is not (inaudible). I said we could have all the customers sitting outside or all of them inside at any given time. If some more come and it's a nice day and it's crowded outside, they may want to sit inside, but they (inaudible). I know I go down there at a crowded time on a Sunday evening on a beautiful summer night, I may not go there, because there aren't enough seats outside, and I think those considerations come into effect. What's the weather like and can I sit where I want to (inaudible) restaurant? (Inaudible) answer any more questions you might have. Thank you.

CHAIR KELLER: Thanks. Yes, sir.

BILL PETERSON: My name is Bill Peterson from Clipper Yacht Company. I just wanted to explain, you know, they're asking for more seating because property supports it. You know parking is a huge issue. You've talked about it in the condo situation. The Clipper can support it. Bill has shown that they can support it. There is not going to be spillover parking into the neighborhoods, and to be honest with you, I'm on the Steering Committee for what to do with this. I would love to show you guys the numbers. Some of this stuff has to pencil out and it's pretty tough to make it. If the (inaudible) property

isn't left the way it is by choice, it's really tough to make it. If the property supports it, it's pretty much I see it (inaudible), it's tough to say no to something like this.

CHAIR KELLER: Thank you. Yes, Vicki.

VICKI NICHOLS: Vicki Nichols, 172 Caledonia. I enjoy going to Fish as often as I can. I think it's great food. I totally support their sustainable fishing policies and I know on many occasions I've been at events and they've been good community participants, volunteering their food for charitable organizations, et cetera.

I'm on the steering committee with Ken, the WAM Steering Committee, and my curiosity about this is more just a general perception. This I understand would be an exception to the Marinship Specific Plan. I think you have a similar situation with Le Garage, which we know is being over-parked, and the problem is these are both great restaurants and everybody loves them and wants to go to them, and I think there is just the space issue. But there are the limitations that are called out in the Marinship Specific Plan for 20-seat cafes with the intent being to serve the maritime workers, et cetera. Maybe the nature of the Marinship area has changed. We know some of the jobs have changed. The plan is old. The Steering Committee is looking at these issues to make some recommendations to the City Council.

But long story short, my concern is the exceptions. Does this start a precedent? Have these been given before? I don't know this process. What's to say that each individual business comes, which I think defeats the purpose; it undermines the plan, not that I can't foresee in the future that we're going to have to look at this plan and maybe do an update to it to keep in the intent. I guess that would be my concern and I suspect that if there were more people from the community here tonight they may share some of that perspective; I'm surprised that there are not. And it's more broad. I'm not

against the restaurant; I just think this is a bigger issue that we're going to be seeing more of. Thank you.

CHAIR KELLER: Thank you, Vicki.

BILL PETERSON: There are only two property owners in the W; that's the Lemon property and ours. Everything else down there is I, and that's a whole different set or ordinance, so there's not going to be an influx of people coming down to ask for this. This has been a long drawn out process and if it wasn't for Bill Foss and Al Hardy's work, I had many other restaurateurs come in and take a look, find out what hoops he had to jump through to get this. They all said no. Very successful ones said no. Bill was the only one to come through, and he had to do a lot of work with Planning Commission and Council to get this to work. There is the notion of this possibly going some other way, opening a can of worms, create a crack. It's not real. Thank you.

CHAIR KELLER: Thank you. Any other comments from the public before I close public comment and bring it back up here? Okay, I'm going to close public comment.

Commissioners, like to add anything else?

COMMISSIONER KEEGIN: I'd like to address a couple of the findings that are required to be made and why I have a problem making them and this is the perfect time to do that.

CHAIR KELLER: Yeah.

COMMISSIONER KEEGIN: Whenever that's appropriate.

CHAIR KELLER: Go right ahead, Stafford.

COMMISSIONER KEEGIN: One of the findings, Finding B, requires that the exception is needed to accommodate changed economic or operations circumstances, and the response to this was that the Applicant did not recognize in 2004 when the approval was granted that the weather conditions would change from time to time, and I

don't want to use the word "malarkey," but I would think that if you've had a restaurant there and you were applying for an application to go from 20 seats to 50 seats, you knew that the weather conditions were such that it being complained of right now, which is what's causing their need to have more tables, so that they don't have to move them inside and out.

I also think that their question about whether the goals of the Marinship Specific Plan were being met, and one of the arguments is that Fish restaurant purchases fish locally, thereby supporting the commercial fishing industry in Sausalito and the Marinship. They do support the fishing industry, but not the local fishing industry.

But the core issue for me is that a 50-seat increase over a 20-seat limit is a major exception, it's not a minor exception, and I think it's especially a major exception when it's on top of a prior 50-seat application and permit. I love Fish too, but I would I guess feel compelled to comply with the plan, and the issue is whether the plan should be amended and if should be, then we should set about doing that, but I don't think that this incremental changing is appropriate under the circumstance. That's it.

CHAIR KELLER: Commissioners like to add anything else?

COMMISSIONER STOUT: I guess what I would have to add is as a planning commissioner I think things like the MSP and the General Plan are tools for us to interpret as a community, being a representative of the community, what is best for that part of the community. I think what's best in this situation, being that the MSP is so out of date, that is our opportunity at this time to represent the community and be like wow, this is a great opportunity to be like let's pass this and let the City Council deal with the idea of okay, they are breaking the rules, why are they doing that? Let's really now take apart this plan and rewrite it and really go after what it should be.

As far as the idea that they don't technically support Sausalito fishermen doesn't bother me. What they are doing is supporting the maritime use of this space. They're keeping in with the whole idea, the metaphoric idea, of supporting fishermen. It may be 200 miles away; it's the idea that they're keeping that area for that type of use. To me it's kind of slicing hairs to say it's not a Sausalito fisherman. I think the fact that he's standing up and doing more stuff for sustainable fisheries is a great idea for the Marinship Plan to start looking at. Well, why don't we make this an educational center that sponsors sustainable fisheries and sponsors historic Marinship areas, and I think that's what they're really trying to do. I mean asking for them to go out and find a Sausalito fisherman and go get them, it would be a lot more difficult. So for me I think what' they're doing is exceptionally good and beneficial for the community.

COMMISSIONER KEEGIN: I don't see how a 120-seat restaurant helps that. I think they're doing great with the 70 seats.

VICE-CHAIR BAIR: But I think that gets to kind of the only comment I'll add on this, other than what I've already said, is that there's a lot of talk about having a critical mass in the Marinship to sustain the maritime related business, and I don't know that for us up here we're able to on an individual basis as to any particular business that comes up that requires a finding for a use under this to determine, I mean I find it difficult to determine what that critical mass is as to a restaurant, and it appears to me that 20 seats, given the experience we've had, may have been a little penurious when they did that, and so now we're trying to massage this plan for current use pending some undetermined time that we're going to change things, and I think we have a business that exists there, they're doing well, they're supported by locals. I think an additional part of this critical mass is not only being able to feed the people down there, but I mean

we've got on the horizon now, if the Marinscope can be believed, that Anderson may or may not be there.

CHAIR KELLER: They're gone.

VICE-CHAIR BAIR: Yeah, I mean that's what I read, and so if that's true, it just adds another facet to this in how we try to maintain this sort of thing, so I think this restaurant supports the goals of the Marinship Specific Plan and at this point I haven't seen anything that makes me question the things that I've been told by the Applicants in terms of what they need in order to sustain their business and how they need to go about it, and I think in my mind this is a minor change to that in the sense of they feel they can't sustain what they've been doing without this change, and so I'm willing to go along with that.

CHAIR KELLER: I think the ultimate goal here, outside of seeing Fish get what they want, is obviously to get the Marinship Plan revised, changed, updated, whatever you want to use. Eric, I could argue it from another point that if we denied this the Applicant would have to appeal this to the City Council, which would put the onus on the Council to look more closely at the Marinship Plan and ultimately it's in their lap to decide and make the changes to the Marinship Plan, not us. We're here to work within the guidelines of the Marinship Plan and from that perspective that's open to Fish if we denied this, they could appeal to the City Council, they could see that the Marinship Plan is out of date or needs to be expended or reinterpreted, so you can ague it from either way.

I think that from my perspective, Fish, I don't want to penalize them because of their own success. I agree with Commissioner Keegin, you add 50 additional seats, that's a major change and it's a major amendment, and this has morphed from what was originally a 20-seat restaurant/fish market to a full-blown restaurant. Now I had a

conversation today with Bill Foss, and he agreed with me, and I'm the one person on this Commission that's been involved with this from the very beginning from the original approval, times on the City Council, and I agree with Vicki's comments. We're going to have the same issue come up to us at some point with Le Garage; it's inevitable. I don't want to penalize any of these restaurants, but it's obvious that something is going to have to be done about the Marinship Plan sooner rather than later.

I could argue also that Fish could operate quite easily with an 80-seat restaurant, hire one or two more employees to move tables inside and out when the weather is nice, and Bill Foss agreed with that. I go back to what I said initially, and that is I would rather see the Applicant, and there's a possibly they may at some point if they expand into the building next door, come back and apply for a whole new CUP that changes the whole definition of what they're doing down there. It's no longer a small little café that's selling fish as a fish market; it's a full-blown restaurant, and I haven't got a problem with that. I go to Fish and I want to see them continue to succeed, but obviously we're a bit hampered with this Marinship Plan and it's up to each individual commissioner how they want to interpret it and make the findings. So I'm pretty much where I was the last time, and that is I can't make the findings as it stands. I would assume, the way I've heard from all the commissioners up here, that there are enough votes to approve this, but I'm at a point where I just don't think that this is a minor amendment to the current CUP as it reads. So that's where I am on it.

COMMISSIONER COX: I think I spoke my piece pretty much at the last meeting. The only thing I will add, but I think I already said it the last time, is that the changed economic situation has to do with the economic downturn in Sausalito as a whole. I think supporting this project supports Sausalito; not just the Marinship area, but Sausalito as a whole. We have restaurants closing left and right. We're losing income,

and so I will admit that I am bending over backwards to make findings that will support a restaurant that supports Sausalito as a whole as well as supporting the Marinship area.

VICE-CHAIR BAIR: I'm willing to make a motion.

CHAIR KELLER: Be my guest.

VICE-CHAIR BAIR: That we approve a Design Review Permit for a gazebo at 350 Harbor Drive.

COMMISSIONER KEEGIN: I think we've already approved that.

VICE-CHAIR BAIR: Have we?

COMMISSIONER COX: No, we didn't.

COMMUNITY DEV. DIR. GRAVES: You talked about it, but did not do it.

VICE-CHAIR BAIR: Okay. So I'm in favor of that. I will make that motion in addition to the attachment to Condition of Approval for the CUP 07-002; I'm assuming the numbers are the same.

CHAIR KELLER: Just a point of order.

VICE-CHAIR BAIR: Yup.

CHAIR KELLER: Can we do this as two motions?

ASSOCIATE PLANNER SCHINSING: Yes, you may. There are two resolutions.

VICE-CHAIR BAIR: Okay, that's fine. I think everybody was more or less in favor of the gazebo.

ASSOCIATE PLANNER SCHINSING: Before you make the motion can I just add, at the last meeting Commissioner Stout suggested that there not be trees in the planter areas.

COMMISSIONER STOUT: Right.

ASSOCIATE PLANNER SCHINSING: Would you like to make that a Condition of Approval?

COMMISSIONER STOUT: Yes.

ASSOCIATE PLANNER SCHINSING: For the gazebo.

COMMISSIONER STOUT: No deciduous trees, so leaves don't fall into the water and boats.

COMMUNITY DEV. DIR. GRAVES: So it's no deciduous trees?

COMMISSIONER STOUT: Right.

COMMUNITY DEV. DIR. GRAVES: Evergreen trees would be satisfactory?

COMMISSIONER STOUT: Right, because they don't drop their needles.

VICE-CHAIR BAIR: Unless you have the pine tree that resides in my side yard.

COMMISSIONER COX: I don't know how to structure it, but as for the

Conditional Use Permit I did want to add a condition that the...

COMMUNITY DEV. DIR. GRAVES: Can we finish the (inaudible)?

COMMISSIONER COX: Okay.

VICE-CHAIR BAIR: So I'll make the first motion on the gazebo with the changes about the evergreen tree.

COMMISSIONER STOUT: Second.

COMMUNITY DEV. DIR. GRAVES: I'm sorry, the second was Commissioner Stout?

CHAIR KELLER: Eric.

COMMUNITY DEV. DIR. GRAVES: Commissioner Stout?

COMMISSIONER STOUT: Yes.

COMMUNITY DEV. DIR. GRAVES: Commissioner Cox?

COMMISSIONER COX: Yes.

COMMUNITY DEV. DIR. GRAVES: Commissioner Keegin?

COMMISSIONER KEEGIN: Yes.

COMMUNITY DEV. DIR. GRAVES: Vice-Chair Bair?

VICE-CHAIR BAIR: Yes.

COMMUNITY DEV. DIR. GRAVES: Chair Keller?

CHAIR KELLER: Yes.

COMMUNITY DEV. DIR. GRAVES: Approved five-zero.

VICE-CHAIR BAIR: And then we have the amendment of Conditional Use

Permit 03-25, and I think Commissioner Cox had some modifications she would like to
make.

COMMISSIONER COX: Right. I would like to add as a Condition of Approval or whatever is the appropriate way to accomplish this, that the City Council proviso that accompanied the last granting of a Conditional Use Permit continue along with this one, and that is that the use be restricted to a fish restaurant with an ancillary fish shop.

COMMUNITY DEV. DIR. GRAVES: If the Commission wishes to, you could make that a Condition of Approval of this Conditional Use Permit.

COMMISSIONER COX: Yes, I would like to do that.

VICE-CHAIR BAIR: I'll make that motion. Is that all you had?

COMMISSIONER COX: Yes, thank you.

VICE-CHAIR BAIR: So just change what we had with that is my motion.

COMMISSIONER STOUT: Second.

ASSOCIATE PLANNER SCHINSING: One more thing to add. At the last meeting the Commission mentioned carrying over the restriction on charter buses. Does the Commission recall? The City Council put a condition on the 2004 approval for the additional 50 seats that there be no charter buses allowed at the site to serve the restaurant. Did the Commission want to carry that over as a Condition of Approval?

VICE-CHAIR BAIR: That's fine with me. Let's not change anything.

COMMISSIONER STOUT: Right.

VICE-CHAIR BAIR: So I'm making that motion with those two changes.

COMMISSIONER STOUT: And I'll second that.

COMMUNITY DEV. DIR. GRAVES: Okay, so I want to repeat the intent of the two additional conditions. The first additional condition would be that the restaurant is a seafood restaurant with a fish market component as part of the operation.

VICE-CHAIR BAIR: That's the way I understood it.

COMMISSIONER COX: With an ancillary fish shop.

COMMUNITY DEV. DIR. GRAVES: Thank you. Ancillary. And the second component is a prohibition on charter buses.

COMMISSIONER COX: Hang on just one second here. My esteemed colleague is helping me get this.

COMMISSIONER KEEGIN: If you're going to keep it the same we can keep it the same. We have the language here somewhere.

COMMISSIONER COX: Okay, so the language specifically reads...

COMMUNITY DEV. DIR. GRAVES: On what page is it?

COMMISSIONER COX: On page 177 of the Staff Report. It's the motion made by Mayor Albritton.

COMMUNITY DEV. DIR. GRAVES: And that's line 12?

COMMISSIONER COX: No, it's actually lines 21 and 22.

COMMUNITY DEV. DIR. GRAVES: Okay, thank you. We can pull that language up from that resolution and incorporate it in here.

COMMISSIONER COX: Thank you.

VICE-CHAIR BAIR: With that language.

COMMISSIONER STOUT: I would like to second.

COMMUNITY DEV. DIR. GRAVES: Commissioner Stout?

COMMISSIONER STOUT: Yes.

COMMUNITY DEV. DIR. GRAVES: Commissioner Cox?

COMMISSIONER COX: Yes.

COMMUNITY DEV. DIR. GRAVES: Commissioner Keegin?

COMMISSIONER KEEGIN: No.

COMMUNITY DEV. DIR. GRAVES: Vice-Chair Bair?

VICE-CHAIR BAIR: Yes.

COMMUNITY DEV. DIR. GRAVES: Chair Keller?

CHAIR KELLER: No.

COMMUNITY DEV. DIR. GRAVES: Approved three-two.

CHAIR KELLER: Thank you.

SEILER EPSTEIN IEGLER & APPLEGATE LLP Attorneys at Law

RECEIVED

APR 1 4 2009

CITY OF SAUSALITO COMMUNITY DEVELOPMENT

April 14, 2009

Honorable Jonathan Leone and Members of the City Council City of Sausalito 420 Litho Street Sausalito, CA 94965

Re: Fish Restaurant Application/350 Harbor Drive/CUP 07-002

Dear Mayor Leone and Members of the City Council:

On behalf of Caruso's LLC, I am hereby requesting your approval of an exception to the Marinship Specific Plan to add additional seating at Fish Restaurant.

As you all know from your visits to Fish Restaurant over the past five (5) years since its opening, the style, use and capacity of the restaurant has remained unchanged. Caruso's LLC is not now seeking any change to what has become a favorite dining location, both for workers in the Marinship, boat owner and residents of Sausalito. From your knowledge of the area you are also aware that because of its waterfront location and the varying weather conditions at the site, that while it is most pleasant and enjoyable to dine outdoors viewing the boats and waterfront activities on a sunny day, when sudden wind shifts occur and the afternoon fog sets in, indoor dining becomes the obvious choice. The restaurant owner has attempted to accommodate its patrons in both conditions, by providing both indoor and outdoor seating. Indeed, our survey on this subject showed that a full 91% of all patrons prefer to sit outdoors. However, depending on the season and time of day, frequently no one is outdoors. A restaurant whose primary attraction is its waterfront location cannot survive if all of its seating is outdoors on a cold, windy day or, conversely, if all chairs are indoors when 90% of its customers want to be outside. Without sufficient seating to enjoy both conditions, the owner has not just a seasonal business, but, in Sausalito, a gamble about its daily business.

Faced with insufficient seating both inside and out, the owner has been forced to move tables and benches from inside to out and back again on almost a daily basis. To avoid using staff to move large unwieldy tables in the middle of dinner traffic, the owner has periodically supplemented the allowed number of benches, which is then typically followed by a complaint from the building department. This situation demands resolution.

A simple solution exists: apply the same exception procedure as was used in 2004, to

245





supplement the previously approved seating limit from 40 seats to 70 seats. There is no health and safety issue and, if we are objective, there is no policy issue. The City Council has spoken clearly on at least two occasions on this subject. Once, in amending the current use permit in 2004 to allow 70 seats, and previously in approving 40 seats from the original 20. The reasons for this are clear and in fact are codified in Section 10.44.220, entitled "Restaurants – Outdoor Dining Areas." Paragraph A of this Section reads as follows:

"Purpose. In addition to the general purposes of this Title, the specific purposes of allowing and regulating Outdoor Dining Areas for restaurants are as follows:

- 1. To meet the desires of Sausalito residents to dine outdoors;
- 2. To provide for the use of public sidewalks for outdoor dining
- 3. To provide for improved business to restaurants and surrounding businesses;
- 4. To allow Sausalito restaurants to be competitive with restaurants in neighboring communities that provide for outdoor dining;
- 5. To protect the economic and social health and safety of Sausalito; and
- 6. To provide a process for restaurants to request and obtain sidewalk dining encroachment permits."

Clearly this code section, while directed primarily at restaurants with available front sidewalks, favors outside dining areas such as the one at Fish Restaurant. The Planning Commission in its hearings repeated many of the same reasons before recommending to the City Council that the requested exemption be granted. In addition, the Planning Commission found that all necessary requirements of the Marinship Specific Plan ("MSP") were satisfied and that "the project is in substantial compliance with both specific and general regulations of the Marinship Specific Plan and the underlying zoning designation." This is not surprising, given that several of the purposes and the intent of the MSP, as found in Section 10.28.050 of the Zoning Ordinance, are furthered by the operation of the applicant, such as its orientation to "Sausalito residents, rather than tourists", the encouragement of "public access and use of the water and waterfront" and the maximizing of "the amount of open water and open shoreline area."

While the intent and purpose of the MSP are clear and favorable, and while the Planning Commission recognized that this application is favored by many city policies, the question has been asked as to how the addition of fifty (50) additional seats can be a "minor exception" to the development standards applicable in a "W" zone within the Marinship overlay district. The correct answer to this question is that NO development standard, as specified in the Sausalito Zoning Ordinance for the Marinship (see Section 10.28.050 (E) and Table 10.28-1), is involved in any manner by this application. Very simply, there is no issue about lot size, FAR ratios, setback, parking availability, traffic, building height or any other site development standard. In the words of the Planning Commission and the Zoning Ordinance, the request for additional seating is an "implementation measure" and "does not threaten the character of the Marinship or the goals of the Specific Plan." This should be apparent, since the request is not for "development" or "construction" but rather for a furniture accommodation to allow the applicant to remain in business by recognizing the





needs and desires of its customers to sit where they prefer in different weather conditions. No request is made to alter any "development standard" because no "development" is involved. Since, in fact, the Council's Resolution No. 4731 made in 2004, based that action on the site being used as "a fish restaurant with an ancillary fish market that cumulatively reflects and maintains the waterfront nature of the Marinship," the only real issue should be whether this application does the same. It clearly does by allowing applicant to accommodate its existing customer base in a better manner.

At the request of the Community Development Department an extensive survey was taken in connection with this application during peak business hours in the summer of 2007. That survey is on file with the City, but briefly it showed the following:

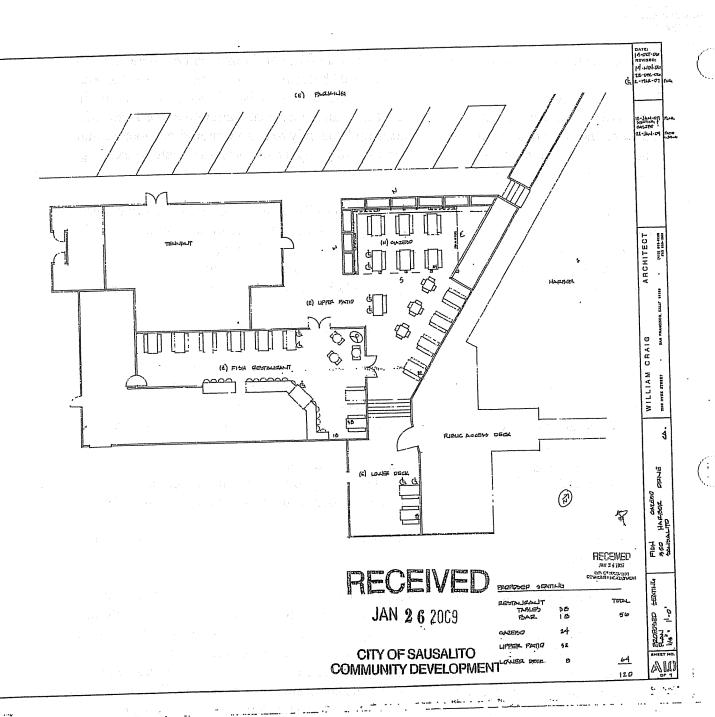
- During the 27 hour peak times, a total of 702 patrons came to the restaurant.
- 27% of the above patrons came by foot, 8% by bicycle, 7% by boat and the remainder by auto.
- A total of 152 autos came to the site during the 27 hour peak period, for an average of 5.63 per hour.
- 31.5% of patrons came from the Marinship area and 29% more came from other areas of Sausalito. 19% came from outside Sausalito [many patrons declined to state].
- 91% of all patrons preferred to sit outdoors if weather allowed.
- Average hourly attendance was 26.11. At no time, including key weekend hours, were all seats filled.
- Sunday, August 12, 2007, during the noon hour a total of 55 customers were surveyed, which was the maximum number of patrons anytime during the survey period. Friday, August 10, at noon had the second largest attendance, namely 49 customers.

No material variation from these survey numbers has been observed, even with additional seating available.

In conclusion, I would like to point out that for every other property in Sausalito, outside of the Marinship, the Zoning Administrator is authorized to issue Minor Use Permits, including but not limited to permits authorizing outside dining for every qualifying restaurant in Sausalito. In the present case, solely because of the property location and not because of any controversy or unusual nature of the request, a heightened review standard has been applied, commencing in January, 2007, when this application was first filed. This review has included extensive staff time, an expensive survey, Planning Commission review and now City Council approval. It is no exaggeration to say that no similar project, as simple in its nature and with less impact on Sausalito and the Marinship itself, has ever been examined as closely. Applicant believes that it has complied with every possible request and that this request should be granted without further ado.

Respectfully submitted

William J. Ziegler



ATTACHMENT &