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SAUSALITO PLANNING COMMISSION
Wednesday, October 28, 2009
Approved Minutes

Call to Order

Vice Chair Bair called the meeting to order at 6:30 p.m. in the Council Chamber of City Hall, 420 Litho Street, Sausalito.

Present: Vice Chair Stan Bair, Commissioner Joan Cox, Commissioner Stafford Keegin, Commissioner Eric Stout

Absent: Chair Bill Keller

Staff: Community Development Director Jeremy Graves
Associate Planner Heidi Burns, Associate Planner Lilly Schinsing,
Assistant Planner Alison Thornberry, City Attorney Mary Wagner

Approval of Agenda

Vice Chair Bair moved and Commissioner Stout seconded a motion to approve the agenda and to move approval of the September 23, 2009 minutes to the end of the meeting. The motion passed 4-0.

Public Comments

None.

Public Hearings

1. **DR/EA/TR 08-007, Design Review Permit, Tree Removal Permit, Encroachment Agreement, Mammone, 37 & 39 Crescent Avenue.** Design Review Permit to construct two new single-family attached residences, Tree Removal Permit to remove 28 trees at 37/39 Crescent Avenue and Encroachment Agreement for improvements and to build a driveway approach that encroaches into the public right-of-way at 37/39 Crescent Avenue (APN 065-122-08). This public hearing was continued from the September 23, 2009 Commission meeting.

The continued public hearing was re-opened. Assistant Planner Thornberry presented the Staff Report.

Commission questions to Todd Teachout, the City Engineer:

- How did staff determine the pedestrian stairway was too expensive, and what was the cost? *Mr. Teachout responded a switchback design would require an elaborate steel superstructure to support it and keep it confined within the right-of-way. It would cost hundreds of thousands of dollars and the City would be responsible for maintenance.*

1 Presentation was made by John McCoy, the applicant:
2

3 The public comment period was opened. There being none, the public comment period
4 was closed.
5

6 Commission comments:

- 7 • Changes to Heightened Review findings if the project is approved:
 - 8 ○ Finding A: Rewrite sentence to say, "The project arborist indicates the
9 remaining 16 protected trees will be viable as long as the recommended
10 protection measures are implemented during construction."
11 ○ Finding B: Add "setback" after the words "five feet."
12

13 **Vice Chair Bair moved and Commissioner Stout seconded a motion to approve
14 the Design Review Permit, Tree Removal Permit, and Encroachment Agreement
15 for 37 & 39 Crescent Avenue with the corrections to the Heightened Design
16 Review findings. The motion passed 4-0.**
17

18 **2. ENV 09-014, Initial Environmental Study/Mitigated Negative Declaration
19 (IES/MND), Mallya, 300 Locust Street.** Initial Environmental Study/Mitigated
20 Negative Declaration (IES/MND), which addresses the environmental impacts
21 associated with construction and operation of a warehouse at 300 Locust
22 Street (APN 064-087-07).
23

24 **3. DR/CUP 09-014, Design Review Permit, Conditional Use Permit, Mallya,
25 300 Locust Street.** Design Review Permit to allow for the construction and
26 site improvements, including parking and landscaping, related to a new +/-
27 6,600 square foot warehouse and a Conditional Use Permit to allow a
28 warehouse use at 300 Locust Street (APN 064-087-07). The project is subject
29 to Heightened Review standards since the project exceeds 80% of the
30 permitted building coverage and floor area limitations.
31
32

33 **Staff and the applicant indicated they wished to continue the public hearings for
34 Item 2 and Item 3 to November 18, 2009 with public comment taken at tonight's
35 meeting.**
36

37 The public comment period was opened. There being none, the public comment period
38 was closed.
39

40 **Vice Chair Bair moved and Commissioner Cox seconded a motion to continue the
41 public hearings for 300 Locust Street, Items 2 and 3, to the meeting of November
42 18, 2009. The motion passed 4-0.**
43

44 **4. DR/VA/NC 08-030, Design Review Permit, Variance, Nonconformity
45 Permit, Currier, 564 Sausalito Boulevard.** A Design Review Permit to
46 construct a carport over an existing parking deck, a Variance to construct a
47 carport to exceed the maximum allowed height of an accessory structure, and
48 a Nonconformity Permit to allow the construction of a carport on top of a legal
49 non-conforming parking deck at 564 Sausalito Boulevard (APN 065-222-14).
50

1
2 The public hearing was opened. Associate Planner Burns presented the Staff Report.
3 Commission questions to staff:

- 4 • What is the distance between Sausalito Boulevard and the front of the
5 proposed carport? *Staff responded it is 11.75'.*
6

7 Presentation was made by Philip Snyder, the applicant.
8

9 Commission question to Mr. Snyder:

- 10 • Would lowering the carport roof 2' result in any material design change? *Mr.*
11 *Snyder responded there would be no change.*
12

13 The public comment period was opened.
14

15 Angela Bradstreet, 565 Sausalito Boulevard, indicated the following:

- 16 • She is the owner of the property uphill from the subject property.
17 • She supports the project. The neighborhood has had to live with the canopy
18 over the existing car parking deck continually blowing off for years. A new
19 carport would enhance the neighborhood and would have no negative effects
20 on anyone.
21

22 Wistar McLaren (phonetic), 24 Cable Roadway, indicated the following:

- 23 • He and his wife strongly support the project.
24 • From their car deck and porch they look up directly at the subject property and
25 the carport.
26 • The canopy on the existing car deck becomes tattered and frequently blows
27 away during heavy winds. It is an eyesore and a replacement will greatly
28 improve the visual aesthetics of the area.
29

30 The public comment period was closed.
31

32 Commission comments:

- 33 • The criteria set for the granting of variances has been met. The findings set
34 forth in the Staff Report provide support for the granting of the requested
35 variances.
36 • There will be no adverse impacts to the neighbors and they have all written
37 letters in support of the project.
38 • The proposed variances will bring this property a similar character and
39 appearance to other properties in the neighborhood.
40

41 Revised Condition of Approval:

- 42 • The roof of the carport shall be lowed by 2'.
43

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46 **Vice Chair Bair moved and Commissioner Stout seconded a motion to approve a**
47 **Design Review Permit, Variance, and a Nonconformity Permit for 567 Sausalito**
48 **Boulevard with the modification to the Conditions of Approval as noted. The**
49 **motion passed 4-0.**
50

1
2 **5. TM 09-068, Parcel Map Subdivision, Chang, 95 Cloudview Road.** A Parcel
3 map to subdivide one parcel at 95 Cloudview Road (APN 065-191-76) into
4 two separate parcels. Resultant Parcel "A" would encompass 9,590 square
5 feet in size and would front on Cloudview Road. Resultant Parcel "B" would
6 encompass 6,000 square feet in size and would front on an existing vehicular
7 driveway.
8

9 The public hearing was opened. Associate Planner Schinsing presented the Staff
10 Report.
11

12 Commission questions to staff:

- 13 • Did staff inform the applicant of the Conditions of Approval that require a
14 kitchen be installed in the accessory building? *Staff responded the applicant*
15 *reviewed the Conditions of Approval and had proposed to install a kitchen*
16 *when they submitted their application.*
- 17 • Could the Commission approve a lot split, but without the requirement to put in
18 a kitchen, but coupled with the requirement that the accessory building either
19 be removed or not used pending the completion of the project? *Staff*
20 *responded in order to comply with the Zoning Ordinance the building would*
21 *need to be removed or a kitchen installed so as to make it other than an*
22 *accessory building. When it is on its own lot the building will have nothing to be*
23 *accessory to. It has to have a primary use attached to it or be attached to a*
24 *primary use.*
- 25 • Is there a bathroom already in the accessory building to make it legal? *Staff*
26 *responded there is a bathroom.*
- 27 • What constitutes a kitchen? *Staff responded that is defined in the Zoning*
28 *Ordinance as including a gas range, oven, stovetop, microwave oven, sinks,*
29 *and refrigerator.*
30
31

32 Presentation was made by Michael Rex, the applicant.
33

34 Commission questions and comments to Mr. Rex and staff:

- 35 • Will the lot line be to the left of the existing retaining wall? *Mr. Rex responded*
36 *that is correct.*
- 37 • What about undergrounding? *Mr. Rex responded the undergrounding has*
38 *already been done for power, but the sewers still need to be separated. They*
39 *will submit a Building Permit to install the kitchen and make other changes, so*
40 *that will all go through Plan Check.*
- 41 • The description of the legal status of the lane is vague. Has that lane actually
42 been dedicated to the City? *Mr. Rex responded they could not split the lot if the*
43 *remainder lot didn't front on a public right-of-way of at least 30' wide. After an*
44 *extensive research of records staff concluded it is a public lane, although it has*
45 *never been named. Staff responded the Engineering Division confirmed it is a*
46 *public right-of-way.*
- 47 • The conceptual plans are irrelevant to the application and give the impression
48 they have been reviewed or considered by the Planning Commission. *Mr. Rex*
49 *responded they could be pulled. The plans were created to assure the*
50

1 neighbors a house could be built on the lot without blocking views and were
2 included for the Commission's information only. Staff responded they could add
3 a whereas to the resolution stating this application does not include the
4 conceptual plans and the Conditions of Approval can list which sheets this
5 approval applies to and which it doesn't.

- 6 • Because this lot might be sold years in the future we don't want to have the
7 conceptual plans around as "this was what was approved." We would like to
8 see a slash through the conceptual plans that say, "Conceptual only. Not
9 approved," so if the accompanying text is lost it is clear what the Planning
10 Commission's intention was.
- 11 • How did you come up with the location of the line to split the lot? Mr. Rex
12 responded, 1) They needed a 6,000 square foot lot and the other boundaries
13 are fixed; 2) They wanted to provide enough room for a proper front yard
14 without a major remodel; 3) If a new house isn't built this would continue to
15 stand on its own with the proper parking; 4) They wanted enough setback to
16 provide for a guest parking spot; and 5) They wanted all the side yards and
17 rear yards to conform.

18
19
20 The public comment period was opened. Being none, the public comment period was
21 closed.

22 Commission comments:

- 23 • When creating a split that has a minimum permissible lot with only 6,000
24 square feet every permitted square foot will be developed with a house, and a
25 fairly sizeable house can be built on a 6,000' site. If approved it should be
26 conditioned that any single-family residence built there does not come within
27 the Zoning Ordinance's Heighted Design Review restrictions and does not
28 require any setback, FAR, lot coverage, or height variances.
- 29 • We should not impose restrictions on the potential uses of a prospective buyer
30 whose architect might be able to shoehorn an acceptable house in that lot. We
31 should not impose those restrictions without having a structure to review. If the
32 split should be done differently, let's impose that burden on this applicant and
33 not go beyond what our Zoning Ordinance already does.
- 34 • If the Commission is inclined to impose these types of conditions, legal
35 research should be done to be sure the Commission is not taking away the
36 rights of prospective buyers.
- 37 • Perhaps the applicant could enter into a Consent Agreement, which is often
38 done on Conditions of Approval, which would restrict any subsequent buyer of
39 that property. It would be better to switch the burden to a subsequent property
40 owner to justify going beyond the 80% coverage, which now triggers the
41 Heightened Design Review.

42
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44 City Attorney comments:

- 45 • If the Commission has specific concerns those can be appropriately addressed
46 in the approval process. There are legal concerns about telling a project owner
47 before knowing what the project will be that it has been predetermined that
48 aspects of the project cannot be that way when there is a process set out in the
49 Zoning Ordinance to allow projects to be that way.

1 Commission question to the City Attorney:

- 2
- 3 • If an applicant requests under the Subdivision Act to subdivide and create a
4 6,000 square foot lot that complies with the Zoning Ordinance, is the
5 Commission obligated to vote in favor or that? Can the Commission restrict
6 certain narrow aspects of the development of that lot? *The City Attorney*
7 *responded the Commission has a lot of discretion under the Subdivision Map*
8 *Act about lot splits. The Commission has the ability to deny an application if*
9 *they cannot make the necessary findings.*

10 Comments from Mr. Rex, the applicant:

- 11
- 12 • The Commission cannot have it both ways. The Commission asked to remove
13 drawings that show a house could be put on the lot that fits in nicely and meets
14 all codes, but the Commission cannot judge it. Then the Commission suggests
15 conditions that pre-judge what might come before the Commission in the
16 future. It is not right to pre-judge a project and remove property rights. A project
17 should be judged on its own merits. He would not agree to remove those rights
18 out of context without an application.
 - 19 • There are many lots in Sausalito less than 6,000 square feet. It is considered
20 by local standards to be a normal lot.

21 Commission questions and comments to Mr. Rex and Mr. Irving Chang, the property
22 owner's representative:

- 23
- 24 • There are a lot of other questions that could be asked when we're looking
25 at approving a minimum lot and we're not willing to consent to giving away
26 some of the maximum entitlements. This could take a lot longer. *Mr. Rex*
27 *responded they would like approval tonight, so he is willing to meet part*
28 *way and accept a Condition of Approval that a future house on this lot*
29 *would not have a variance, but he is not willing to lock into never going*
30 *within 80% of the maximum floor area ratio (FAR) or building coverage.*
31 *That is excessive, inappropriate, and pre-judges an application.*
 - 32 • Your concept drawing implies that is something that would be acceptable
33 to your client, and yet you are not willing to accept parameters that would
34 restrict your client to that very concept.
 - 35 • Would your client be willing to compromise on the 80% of FAR and we'll
36 leave the variances out there?
 - 37 • They could agree to put a restriction that would carry forward any future
38 house would be 2,200 square feet, which would be outside of the 80%.
39 *Irving Chang responded he is the brother of the owner, Lowell Chang. His*
40 *brother does not intend to sell the second lot for now, but he would like to*
41 *have the option to do so. He doesn't know if in 5-10 years that 80% is*
42 *going to dramatically drop. Mr. Rex responded the Commission is asking*
43 *him and Mr. Chang to approve something and they don't know to what*
44 *they are agreeing in terms of its impacts. If the Commission puts on*
45 *restrictions that is pre-judging what may be submitted. The limitation of*
46 *Heightened Design Review in advance of an application is not*
47 *appropriate.*
- 48
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- 1 • If you do not get an approval will you need to go back to your client to get
2 his okay? *Mr. Rex responded he assumes the owner would not want to*
3 *agree to something that would require him to give up a property right*
4 *without knowing its impact. If the project cannot be approved this evening*
5 *his preference would be a continuance so he can speak to his client and*
6 *the City Attorney can investigate the legality of the Commission placing*
7 *restrictions in the Conditions of Approval.*
8

9 Commission comments:

- 10 • We have guidance under the law for how to consider subdividing a parcel.
11 • If the Commission imposes its restrictions in the Conditions of Approval, the
12 applicant will appeal it and most likely the City Council will go against it.
13 • This issue needs further investigation before a decision is made.
14 • We should be concerned about handcuffing the next Commission and its ability
15 to deal with a house being built on a minimum sized lot. If it is possible to
16 impose the conditions we have discussed, we should be able to consider it at
17 the next available meeting.
18 • We should find out what the City Attorney has to say regarding what are the
19 constraints on imposing these Conditions of Approval.
20 • We need a comparison of the other lot sizes in the area.
21

22
23 **Vice Chair Bair moved and Commissioner Cox seconded a motion to continue the**
24 **public hearing for 95 Cloudview Road to the meeting of December 2, 2009 to give**
25 **the applicant opportunity to consult with his client and the City Attorney to**
26 **research the legality of the Commission placing restrictions on the Conditions of**
27 **Approval. The motion passed 4-0.**
28

29 **Approval of Minutes**

30 **Commissioner Cox moved and Commissioner Stout seconded a motion to**
31 **approve the minutes of September 23, 2009 as amended. The motion passed 4-0.**
32

33 **Old Business**

34 None.
35

36 **New Business**

37 None.
38

39 **Communications**
40

41 **Adjournment**

42 The meeting was adjourned at 9:30 p.m.
43
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45
46 /s/ JEREMY GRAVES
47 Submitted by
48 Jeremy Graves, AICP
49 Community Development Director

46 /s/ STAN BAIR
47 Approved by
48 Stan Bair
49 Vice-Chair CDD\Plan Comm\Minutes\2009\10-28-Approved
50