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SAUSALITO PLANNING COMMISSION
Wednesday, June 17, 2009
Approved Minutes

Call to Order

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

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

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

Chair Keller moved and Vice Chair Bair seconded a motion to approve the agenda. Motion is passed 4-0.

Approval of Minutes

None.

Public Comment

None.

Public Hearings

1. DR/VA/EP/LLA/MND 05-045, Modification of actions requested by the Planning Commission, City of Sausalito, Public Safety Facilities.

Modification of the actions requested by the Planning Commission on August 13, 2008 regarding: 1) replacing the brick pavers at the Police Station and Fire Station with scored concrete; 2) eliminating the circular planter area at the Police Station; and 3) alternative screening for the generator. The project site is 333 Johnson Street and 29 Caledonia Street (APN 065-061-06 and 065-062-17).

Associate Planner Lilly Schinsing presented the Staff Report.

Commission questions and comments to the Loren Umbertis, the Public Safety Facilities (PSF) Project Manager and Staff:

- Does the PSF Construction Committee have a target number they are looking for in terms of savings? *Mr. Umbertis responded their initial budget was based on the design drawings. The final design, which is the design that went to construction and is currently being built includes all the removed items, so any*

1 *addition from that would be an addition to the construction drawings and would*
2 *be an add to the job.*

- 3 • Where are we right now in terms of overall estimate for the cost of completion?
4 *Mr. Umbertis responded they are currently in construction and are currently with*
5 *change orders close to \$10 million.*
- 6 • Wasn't this was a fixed bid project that would have included these items that have
7 been approved. *Mr. Umbertis responded those items were removed from the*
8 *construction drawings, so what got authorized to go to bid was the construction*
9 *drawings that did not include them. Upon coming back to the Planning*
10 *Commission, the Planning Commission said they wanted those items back in.*
- 11 • Who had the authority to remove that from the construction drawings? *Staff*
12 *responded it was the PSF Coordinating Committee that gave direction to the*
13 *Project Architect to remove those items from the construction drawings that were*
14 *used for the bid documents.*
- 15 • When was the LEED certification green roof removed? *Staff responded they were*
16 *not aware of the green roof aspect and cannot comment.*
- 17 • We spent a couple of meetings on this last year and now we find they have been
18 taken it out and are coming back in as a change order. *The City Attorney*
19 *responded the Planning Commission approved the project and asked for other*
20 *details to come back, which is what came back to them in August of last year.*
21 *The bid documents went out prior to that, in July and August, so it was not a*
22 *matter of ignoring the Planning Commission's actions in August, it was a question*
23 *of timing.*
- 24 • What was the amount of the bond? *Mr. Umbertis responded it is roughly \$15*
25 *million. The City had hoped that bond would be earning interest at this point and*
26 *go to pay for additional items for the project. With the current economic crisis*
27 *there is no interest coming in from that bond; therefore the \$15 million is for the*
28 *cost of hard and soft construction costs.*
- 29 • What are the soft costs? *Mr. Umbertis responded he didn't know the soft costs,*
30 *because many of those are City-born costs. Between the sub-consultants there is*
31 *about \$3-4 million worth of work, so they're at about \$13-14 million right now.*
- 32 • What is the size of the generator? *Mr. Umbertis responded it would end up being*
33 *about 10-15' long and 6' deep.*

34
35
36
37 The public testimony period was opened. There being none, the public testimony period
38 was closed.

39 Commission comments:

- 40 • Staff's suggestion to paint the generator the color of the building makes sense.
- 41 • The flagpoles as shown don't line up properly. One needs to be moved forward.
- 42 • The screening material should be eliminated as suggested by the Applicant.
- 43 • At the August 2008 Commission meeting the brick pavers were of great concern
44 to the citizens of Sausalito and the Commission requested an addenda be sent
45 out so that pavers would be included in whatever bid came in.
- 46 • Regarding the brick pavers, we had a lot of input that that was something we
47 wanted. The pavers would not be unique in Sausalito. The planter would break
48 up that space. Removing some of the unique elements out for a very minimal
49 cost savings would place minimal cost over aesthetics.

1
2 Commission question of Mr. Umbertis:

- 3 • Is the PSF Construction Committee looking at other areas to cut costs? It would
4 be unfortunate if this were the only cost cutting savings found in the entire
5 building. *Mr. Umbertis responded there is a list of those items that were removed,*
6 *although he did not have it handy.*
- 7 • Do you have any idea what is the total amount that the Committee is targeting to
8 save? *Mr. Umbertis responded he did not know but he would provide that*
9 *information to Staff and the Planning Commission.*

10
11 Summary of Commission direction to Staff:

- 12 • Provide what the goal is for cost savings.
- 13 • Provide a list of cost saving actions that have been approved.
- 14 • Provide a list of cost saving actions that were not taken forward.
- 15 • Provide the timing with respect to the August 13, 2008 Planning Commission
16 meeting and when the bid went out to bid.

17
18
19 **Chair Keller moved and Commissioner Cox seconded a motion to continue the**
20 **public hearing on the Public Safety Facilities, to the next Planning Commission**
21 **meeting on July 1, 2009. The motion passed 5-0.**

- 22
23 **2. AP 09-070, Appeal of Staff Determination, Egri, 305 Harbor Drive.** Regarding
24 the status of the restaurant use at 305 Harbor Drive (APN 063-140-09). On May
25 6, 2009 Staff determined that since the restaurant use at the subject site had
26 ceased for more then six months the prior restaurant use was no longer a Legal
27 Nonconforming use and future uses at the site must be compliant with the
28 allowed uses prescribed in the Marinship Specific Plan and the Zoning
29 Ordinance.

30
31 Associate Planner Lilly Schinsing presented the Staff Report.

32
33 Commission questions of Staff:

- 34 • The appeal letter says Tim Dale of the Le Colonial restaurant submitted a letter of
35 intent to lease the property. Is that in the City's files? *Staff responded they did not*
36 *find that letter.*
- 37 • Are there logs of inquires regarding the properties? *Staff responded inquires in*
38 *letter form would go in the historic property file, but verbal inquires at the public*
39 *counter would not.*
- 40 • If an office tenant is Legal Nonconforming Use, would they be under a CUP?
41 *Staff responded if they are Legal Nonconforming they might be a continuation of*
42 *a use that existed at the time the Marinship Specific Plan was adopted. It's the*
43 *cessation of use for the specific period of time that's the problem with the Zoning*
44 *Ordinance.*
- 45 • If an office space cannot find a tenant, would we take the same position? *Staff*
46 *responded they would look at the individual circumstances. When there are*
47 *inquiries or Occupational Permits at the public counter for office use in the*
48 *Marinship Specific Plan area they determine how long the space has been*
49 *vacant.*

- 1 • What is Staff's procedure when a restaurateur comes to the public counter and is
2 interested in applying to occupy a vacant space, and would the owner of the
3 property accompany the Applicant? *Staff responded they would look up the*
4 *parcel on the Marinship Specific Plan and zoning map to see what regulations*
5 *restrict uses on that site, and then they would look at the subject files and the*
6 *prior permitting history. Usually tenants come to apply by themselves, but the*
7 *property owner is required to submit information on the Occupational Permit*
8 *itself, which goes on file.*
- 9 • If the owner of a building that is a restaurant space evicts a restaurant, is there a
10 process he can use to make sure that building always stays a restaurant, or does
11 he actually have to have an occupant in the space running a restaurant? Is there
12 any way to safeguard a building from being changed from any zoning? *Staff*
13 *responded according to the Nonconforming section of the Zoning Ordinance*
14 *there would need to be a restaurant occupant in the site. They aren't changing*
15 *the zoning; they just have to get a Conditional Use Permit, which allows the*
16 *Planning Commission to set conditions for operation of that use. It can change*
17 *through time, but it always has to continue to be that particular use. However, if*
18 *that use ceases for six months because of a voluntary action, then a new*
19 *Conditional Use Permit is required and it allows the City to set new conditions for*
20 *that. That is a standard procedure for Conditional Use Permits throughout the*
21 *state.*
- 22 • At any time did we advise the owner of this building that in the wake of the
23 enactment of the Marinship Specific Plan that this was the standard that would
24 be applied to it and that if they ever ceased the use for a period of six months or
25 a year, that they would then have to come in for a new permit? *Staff responded it*
26 *was required to be publicly noticed in the newspaper and noticing board, but*
27 *there is not a requirement for individual notices to be mailed to all property*
28 *owners.*

29
30
31 The public testimony period was opened.

32
33 Presentation was made by the Appellant, Steve Egri.

34
35 Commission questions and comments to Mr. Egri:

- 36 • When did you acquire this property? *Mr. Egri responded he got a lease to buy in*
37 *1998 the property and it went through in 2002. At that time he inherited the*
38 *restaurant that was there with the lease.*
- 39 • When you did your research to acquire the building in 2002 I assume you
40 reviewed the Zoning Administrative Resolution document dated 1997, which
41 states that, "Under the Marinship Plan the existing 100-seat restaurant predates
42 the Marinship Plan and is therefore considered a Legal Nonconforming use." *Mr.*
43 *Egri responded "right."*
- 44 • Regarding the letter from Tim Dale of Le Colonial restaurant dated June 8, 2009,
45 which stated he had been in negotiations to lease the space and was informed
46 by the Planning Department he would need a CUP and based on the
47 requirements presented he pulled out of the deal, did that not send up a red flag
48 and concern you at that time? Did you not go down to the Planning Department
49 and question them? *Mr. Egri responded there were several interested parties and*
50

1 *he didn't ask them at first until Tim Dale pulled out and never gave him a*
2 *response and then he started to wonder why. He believed he had a Use Permit*
3 *and two Conditional Use Permits and he had no reason to believe what he was*
4 *telling prospects was wrong. When he finally figured out something was wrong,*
5 *he sent a person to the Planning Department to ask what would be required to*
6 *open the restaurant and that's when he found out a Conditional Use Permit was*
7 *needed.*

- 8 • The CUP predated the Marinship Specific Plan, hence it falls into a Legal
9 Nonconforming, and it was grandfathered in, but that grandfathering doesn't carry
10 on in perpetuity. There has to be a time limit on it based on certain criteria, in this
11 case it was either six or twelve month vacancy.

12
13 Bonnie McGregor, 90A Princess Street, indicated the following:

- 14 • Has been a resident of Sausalito for 30 years and encourages allowing this
15 property and owner to proceed to offer a facility to prospective tenants that will be
16 viable for them and the City.
- 17 • The cost of doing any kind of business today is considerably more than it used to
18 be, so to saddle a city the size of Sausalito with restrictive policies borders on
19 unconscionable.
- 20 • Questions the City's desire to bring in more tax revenue in a down economy,
21 particularly by refusing to allow this facility to continue to operate under the
22 current seating capacity.
- 23 • Questions the City's position on forcing a local citizen and property owner to
24 either dispose of this property and leave, or demolish the property and
25 reconstruct as some other use. The cost of doing that is prohibitive, and why
26 should he when it's already been set up as a restaurant?

27
28
29 Zack Egri, a UC Davis student, indicated the following:

- 30 • Is the son of the Applicant. His father's veterinary clinic is next door to the site
31 and he has enjoyed eating there over the years.

32
33 Michael Gordon indicated the following:

- 34 • Has been a resident of Sausalito for 18 years. Is an accountant with an office in
35 Sausalito.
- 36 • Questions the City's interpretation, when it can be interpreted either way, and
37 how they would rule that it should be a 40-seat restaurant as opposed to a 100-
38 seat restaurant.
- 39 • He personally sat in on meetings between the Applicant and Tim Dale of Le
40 Colonial and can vouch that negotiations between them occurred and that Mr.
41 Dale "dropped off the map." He has himself put in 15-20 phone calls to Mr. Dale
42 and has gotten no response.

43
44
45 Jeff Irving indicated the following:

- 46 • He and his business partner were approached by a group of investors in January
47 2009 to help run a restaurant at the site. He went to the public counter of the
48 Planning Department and was told the parcel was Existing Permitted restaurant,
49 100 seats, and was told he might need a Conditional Use Permit for music. Two
50 weeks later, the first week of February, he was called and told that opinion was

1 no longer valid. When asked for this decision to be put in writing it took until May
2 6th and as a consequence the investors, the liquor license and all interest in the
3 project went away, because investors would not sit for five months waiting for a
4 written decision from the City.

- 5 • The initial interpretation of the Marinship Plan, which is this is a Legal Existing
6 restaurant, was circumvented by the creative use of something written in 1997. It
7 doesn't make sense or incorporate the spirit of the Marinship Specific Plan, which
8 was to leave things as they were.
- 9 • Hopes the Planning Commission will reconsider Staff's decision.
- 10 • The thousands of dollars spent in good faith after they were told the restaurant
11 was Existing Legal Permitted is gone because of the subsequent change and
12 decision.
- 13 • How many office spaces have been subject to the same criteria? Is there any
14 record of any case that's been similar to this one?

15
16
17 George Higby, 12 Cypress Place, indicated the following:

- 18 • Is a licensed California realtor and a licensed California yacht broker.
- 19 • His office is nearby and he hears comments about when is the restaurant going
20 to open almost daily from his customers and neighbors.
- 21 • He can't understand what causes a glitch in a grandfathered situation in a slow
22 market.
- 23 • Appreciates the Marinship is trying to protect the Marin heritage of Sausalito, but
24 to let this restaurant go, particularly with the fervent and local clientele it has had,
25 would be a huge mistake.

26
27 Harvey Krasnicore (phonetic) indicated the following:

- 28 • Is an architect who has lived in the area 20 years and is here to support Mr. Egri.
- 29 • Doesn't believe the restaurant will work with only 40 seats.

30
31 Helmut Rygan (phonetic) indicated the following:

- 32 • Works on the fuel dock for Clipper Yacht Harbor.
- 33 • The restaurant at that site has a history of serving the skippers and local people.
- 34 • Hopes the Planning Commission will reconsider the Staff's recommendation.

35
36
37 Eric Hendrix indicated the following:

- 38 • Was born and raised in Sausalito and is the co-owner of Forbes Island restaurant
39 in San Francisco.
- 40 • Ten restaurants in Sausalito have closed.
- 41 • He can understand how it may have slipped Mr. Egri's mind to check on why
42 potential tenants were backing out because there are a lot of people who come
43 to look at such places and it is hard to know who is serious.
- 44 • He looked into this property over a year ago and was told he needed a CUP.
- 45 • He urges the support of the Planning Commission in getting the restaurant back
46 up and letting it be a 100-seat restaurant again, because in a restaurant of that
47 square footage he wouldn't be able to recap any of the rent on a 40-seat
48 restaurant.

1 Maggie Ward indicated the following:

- 2 • Read excerpts from two letters:
 - 3 ○ From Robin Petrovitch, Managing Director of Heath Ceramics, who
 - 4 supports the appeal. "The challenge of financial viability for any restaurant
 - 5 is closely tied to its capacity."
 - 6 ○ From the broker who currently has the restaurant for lease. "Besides being
 - 7 in one of the worst economies of the century, we've encountered stiff
 - 8 resistance from very qualified and often well known restaurateurs who
 - 9 have looked at the property eagerly but then have backed away when the
 - 10 available seating currently sanctioned by the City is revealed. A showing
 - 11 with a prominent restaurant company president just this week revealed the
 - 12 crux of the problem in getting the place leased. His comment was
 - 13 basically, 'There is no way a knowledgeable company can operate there
 - 14 with such limited seating and make the bottom line work.' This has been
 - 15 the general problem and response to every showing of the property we
 - 16 have had. It just cannot work with such limited seating even though the
 - 17 building and space are ripe for another good restaurant to serve the
 - 18 community. We would highly recommend revisiting this site and the issues
 - 19 at hand and try to amend current thinking and limitations to operation."
- 20 • This site has had 39 years as a restaurant, but there were several lapses of
- 21 years, so there is a history of them being vacant when it was not contested.
- 22 • The prior owner submitted a letter and advised Mr. Egri that there wasn't a
- 23 problem like this, which addresses the question why Mr. Egri didn't come to the
- 24 Planning Department sooner as other people assured him it wasn't a problem.
- 25
- 26

27 Vicki Nichols, 117 Caledonia, indicated the following:

- 28 • Has been going to the restaurant at that site since the 1970s.
- 29 • Believes when the Marinship Plan was done it was a snapshot of the businesses
- 30 in that area and the intent was not to displace anyone, so it acknowledged every
- 31 business that was there and called them legal at that time for the Plan, but
- 32 they're Nonconforming to the new guidelines of the Plan.
- 33 • Regarding the zoning, it's saying that they're Existing Legal Permitted, they're
- 34 permitted under the Plan because they were already there, so the language isn't
- 35 uniform because it's two different things.
- 36 • The potential restaurateur who comes in could ask for a CUP, which has a
- 37 \$3,000 fee with the gamble that they may be denied or not be allowed to expand
- 38 or request additional seats. Perhaps there is a way for a hardship, since there
- 39 has been misunderstanding about this, to make the fee lower.
- 40 • While she agrees the Commission has to apply the Marinship Specific Plan,
- 41 thinks there are deficiencies or inconsistencies in it.
- 42
- 43

44 Ken Friedman indicated the following:

- 45 • Is a 33 year resident of Mill Valley.
- 46 • Anyone interested in renting this restaurant, though they may have the
- 47 opportunity to appeal for more seats at a later time, might be very wary and move
- 48 on to the next restaurant opportunity because of the process required.
- 49 • Should the City be weighing in on what the dialogue may or may not have been
- 50 between a potential renter and owner? Perhaps the City could have called the

1 Applicant and let him know people were making inquiries but they were not
2 allowed to move forward because they are bailing out.

- 3 • The 40-seats in a 100-seat space isn't going to work.
- 4 • During the weekdays Harbor Drive is dead with no foot traffic anymore. It would
5 help the City to get a business in there.
6

7 Tom Hoover, 300 Napa Street, indicated the following:

- 8 • Has lived in Sausalito over 40 years.
- 9 • Part of the Marinship Specific Plan is that you can have restaurants if you can
10 prove a need for it. The reason all the restaurants in that space have been
11 successful is they serve a need in the local community, not just tourists. As a
12 citizen he supports a restaurant going back in there.
13

14 Shell Schnieder indicated the following:

- 15 • Has lived in Sausalito her whole life.
- 16 • The subject building is iconic. People know about it and they come to town for
17 the restaurant that is there.
- 18 • She does boat work down on Clipper. A lot of her business has slowed down, not
19 just due to the economy, but also due to there being no restaurant in the building.
20 It would be worthwhile for her and other local businesses to have a restaurant
21 there again.
- 22 • Believes 40 seats would be ridiculous.
23

24 Michael Gordon asked the following question:

- 25 • Is the Applicant being denied partially because of how he chose to accept his
26 settlement also?
27

28 The public testimony period was closed.
29

30 Commission question to Staff:

- 31 • Regarding Mr. Gordon's question, in August 2007 when Saylor's Landing was
32 evicted and he said he had four months from the judges, when did the time start
33 for the six-month countdown, or the one-year countdown? When does the time
34 start? *Staff responded it starts from when the use ceases, and the use would
35 cease on the last day the restaurant was opened.*
- 36 • It was my understanding that Mr. Egri said the judges required them to pay four
37 more additional months of lease time, so they're leasing it for another four
38 months then? *Staff responded that its interpretation is based upon what the
39 Zoning Ordinance says, not the lease. The Zoning Ordinance talks about the
40 use, and if people cannot go to that restaurant to eat after the restaurant closes,
41 it doesn't matter whether the lease is continued or not. From the Zoning
42 Ordinance perspective the use has ceased.*
43

44 Commission comments:

- 45 • Pursuant to the Zoning Ordinance's definition of "use," it's not certain that the use
46 as a restaurant has ceased. Based on the correspondence and comments heard
47 this evening the owner has not attempted to change the manner in which this
48 restaurant was utilized or the purpose for which it was built. The definition says
49

1 "or may be occupied or maintained." The definition doesn't say "the purpose for
2 which the structure is currently used," it says, "the purpose for which it is
3 designed or intended," and under that definition the use of the restaurant has not
4 ceased; it has been consistently maintained by the Applicant and the would-be
5 tenants. For that reason it continues to be an Existing Legal Permitted use
6 pursuant to the Marinship Specific Plan.

- 7 • Because of the nature of the use and how it is connected to the way the building
8 has been constructed and remains in that form that this is something different
9 than a Legal Nonconforming use that has expired, and so this falls into a crack in
10 this system that doesn't require the Marinship Specific Plan to apply in the
11 respect that the Applicant would have to come and get a restaurant use and then
12 ask for the additional 60 seats.
- 13 • Exhibit L, an excerpt of the Marinship Specific Plan, says that, "Offices, retail
14 uses and restaurants with more seats than permitted which existed prior to April
15 5, 1988 may remain." It doesn't say remain so long as they keep their doors open
16 or have no vacancies or there is no hiatus in tenant. The way this is written, if the
17 owner sought to change the use to an office, then that office building would be
18 subject to the requirements of the Marinship Specific Plan, and if not a
19 Conforming Use, then they would have to get a new CUP, but the way this reads,
20 the existing CUP No. 517, remains viable.
- 21 • There has been a large Staff turnover. Is there any chance that somebody did
22 not know this six-month rule? In good faith with small print between a Non-Legal
23 Conforming and a Legal Conforming and between the Marinship Specific Plan
24 and the City Plan, especially with these economic times, it doesn't make sense.
25 We're here for the community, and for me we should approve the appeal.
- 26 • Following are ambiguities in the ordinance.
 - 27 ○ What is a use?
 - 28 ○ When does the cessation of a use start?
 - 29 ○ What is the business, which is being permitted, and does it include the
30 business of renting the restaurant as well as operating the restaurant?
 - 31 ○ Is the existing Legal Permitted the same as the Legal Nonconforming
32 even though those two terms appear on the same page?
- 33 • We should support the appeal with some reluctance because the Staff was stuck
34 with an unclear ordinance from which to draw a conclusion. Because of the
35 ambiguities in the ordinance, coupled with the phenomenal community support
36 this evening, we should not want to terminate a long-term, well established
37 business in Sausalito on a legal basis that wasn't really clear, so we should
38 support the appeal.
- 39 • We need to realize the Applicant is not a restaurateur; he is the property owner.
40 Whatever business that goes in as a restaurant has to be viable. There is no
41 guarantee that the Applicant will be able to get a tenant in that space.
- 42 • 40 seats probably doesn't work, but that's a relationship between the landlord
43 and what he's charging his tenant and what the tenant can afford.
- 44 • This be brought into compliance, get a Conditional Use Permit. He could come
45 back and get an amendment or exception to that Conditional Use Permit and get
46 more seats, we should not support the appeal because Staff's interpretation is
47 correct.
- 48
- 49
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- 1 • If the Planning Commission approves the appeal, the Commissioners should
2 think about not grandfathering this in perpetuity. We should give the Applicant
3 some kind of time limit to work within, and if not, then it has to be brought back in
4 conformance.
- 5 • The Marinship Specific Plan intended that the Legal Nonconforming uses
6 continue in perpetuity until the use ceased.
- 7 • If we grant a CUP for 40 seats and force the property owner to apply for an
8 exception to increase the number of seats to 100 it would have to be approved
9 by City Council and they could say no.
- 10 • The record clearly shows that a concerted effort was made on a continuous basis
11 to rent this facility as a restaurant as in the past without changing the scope or
12 nature or the intensity of the use and those are significant factors in the
13 determination of the Planning Commission.
- 14 • This is not analogous to the situation with Fish restaurant, which involved a
15 significant intensification of the permitted use well in excess of what the
16 Marinship Specific Plan allowed. This is the continuation, without any
17 intensification, of an existing use that has been in place for a long period of time.
18

19
20 **Commissioner Cox moved and Vice Chair Bair seconded a motion to uphold the**
21 **appeal of Staff determination regarding 305 Harbor Drive and to direct Staff to**
22 **return with a resolution. The motion passed 3-1 (No-Keller).**
23

- 24 **3. DR/NC 08-018, Approval of a Design Review Permit, Hothem, 122 San**
25 **Carlos Avenue.** A Design Review Permit to demolish an existing two-story
26 detached garage at 122 San Carlos Avenue (APN 065-123-07) located in
27 conformance with the required front and side setbacks. Also requesting approval
28 of a Nonconformity Permit to allow the height of the replacement garage to
29 remain at its current 9' height at the front of the property line.
30

31 Commissioners Keegin and Stout indicated they would be recusing themselves from the
32 Item since they reside within 500' of the subject property.
33

34 Chair Keller indicated although Commissioners Keegin and Stout had recused
35 themselves there is still a quorum, but for the Design Review Permit to be approved it
36 would need to be a vote of 3-0.
37

38 Assistant Planner Alison Thornberry presented the Staff Report.
39

40 Presentation was made by the Applicant.
41

42 Commission question to Applicant:

- 43 • Do you have any problems with Staff's recommendations about the two
44 conditions? *The Applicant responded no, he didn't.*
45

46 The public testimony period was opened.
47

48 Diane (inaudible), 114 San Carlos Avenue, indicated the following:
49
50

- Her property abuts the subject property and they share a fence. Asked what certain lines on the slides are. *Staff responded one is the property line adjoining the two properties and others indicate where the building on the subject property is currently located and where it will be relocated to be 5' away from the property line. The Applicant clarified that the garage, which encroaches on a 5' setback by 2', is moving away from the property line by 5'.*
- Suggested the stairs coming from the garage door be on the side, because the oak tree has been dying for years.

The public testimony period was closed.

Chair Keller moved and Commissioner Cox seconded a motion to approve the Design Review Permit and Nonconformity Permit to demolish and reconstruct a detached garage at 122 San Carlos Avenue. The motion passed 3-0.

Commissioners Keegin and Stout returned to the meeting.

- 4. ZOA 09-002, Construction Time Limit Regulations,** The addition of a new section in the Zoning Ordinance which establishes time limit regulations for construction projects; and amendment of Zoning Ordinance Sections 10.54.040 and 10.54.050, and Chapter 10.62 regarding the expiration of certain permits. These amendments are exempt from the California Environmental Quality Act (CEQA) in accordance with Section 15305 of the CEQA Guidelines. Continued from June 3, 2009 meeting.

City Attorney Mary Wagner presented the Staff Report.

Commission questions of Staff:

- Can you outline where the nexus would be for applicants who currently have a permit outstanding and at some point would fall under the new construction time limit ordinance, how that would happen, if at all? *Staff responded the cleanest way would be for it to only be applicable to projects approved after the regulations go into effect. It is also justifiable to say it applies to projects that have not yet pulled a Building Permit and that may have been permitted. It is more a gray area if it is applied to projects already being constructed, because those applicants could make the argument that they vested their rights and would not be subject to any new regulations. Penalties are different, but Staff would need to do more research in order to give a more definitive answer.*
- Would that also apply to a project where the applicant is red tagged and they need to get a new Building Permit or an extension of a Building Permit? *Staff responded it would apply if there were modifications to the project. If an applicant's Building Permit lapsed or they were red tagged, that language would have to be built in. A lapse in a Building Permit is justifiable, but a red tag might be a more difficult argument to make.*
- Can we get clarification on the red tag issue, because I would like to see something linked to that with regard to red tagging? *Staff responded the red tag would not be the vehicle for that; it would be an issuance of a new Building Permit or issuance of a Design Review Permit. As it is currently drafted, if an*

1 applicant is doing something beyond their Design Review Approval they will be
2 tagged, and if they want to continue they would need to come back to the
3 Planning Commission for permission. That is already covered under the
4 ordinance and there is concern using the red tag would be too broad.

- 5 • Building Permit was changed to Construction Permit. Staff responded that in
6 reviewing the definitions in the Zoning Ordinance there is a definition for a
7 Construction Permit, but not for a Building Permit. The one for the Construction
8 Permit is broader and includes a Demolition Permit and Grading Permit as well
9 as a Building Permit.
- 10 • As currently drafted the applicable time limit can only be extended prior to the
11 commencement of construction. Subsequent to the commencement of
12 construction an unforeseen or unforeseeable event could result in a request for a
13 time extension. The ordinance should provide the ability for applicants to seek a
14 time limit extension, if through no fault of their own, encounter unforeseeable
15 issues after construction begins. Staff responded there is a process that allows
16 the owner to file a statement with the Community Development Director when
17 there is a failure to meet time limits and the owner feels it was caused by
18 circumstances beyond his control. Waiting until the time limit has not been met
19 provides incentive to get the project in on time.

21 **Commissioner Keegin moved and Commissioner Cox seconded a motion to**
22 **recommend City Council approval of the ordinance with the minor technical**
23 **modifications that were discussed, plus give consideration for the modification of**
24 **that ordinance to allow for a time extension after the commencement of**
25 **construction resulting from the discovery of an unforeseen or unforeseeable**
26 **condition. The motion passed 5-0.**

29 **Old Business**

30 None.

32 **New Business**

33 None.

35 **Adjournment**

36 The meeting was adjourned at 10:03 p.m.

39 /s/ JEREMY GRAVES

40 Submitted by
41 Jeremy Graves, AICP
42 Community Development Director
43

39 /s/ BILL KELLER

40 Approved by
41 Bill Keller
42 Chair
43

44 CDD\Plan Comm\Minutes\2009\06-17-09-Approved