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**SAUSALITO PLANNING COMMISSION**  
**Wednesday, March 18, 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 Joan Cox, Commissioner Stafford Keegin, Commissioner Eric Stout

Staff: Community Development Director Jeremy Graves  
Associate Planner Heidi Burns, Associate Planner Lilly Schinsing,  
Contract Planner Brian Stanke, City Attorney Mary Wagner

**Chair Keller moved and Commissioner Stout seconded a motion to approve the agenda. The motion passed 5-0.**

**Approval of Minutes**

None.

**Public Comments**

None.

**Commissioner Keegin indicated he would recuse himself from Items #1 and #2 because he lives within 500 feet of the project sites.**

**Public Hearings**

- 1. DR 08-034, Design Review Permit, DeSantis, 46 Santa Rosa Avenue.** A Design Review Permit to construct a 125 square foot addition to the western side of a single-family house on an 18,586 square foot lot at 46 Santa Rosa Avenue (APN 065-092-16). An approximately 117 square foot bath/laundry room on the northern side (rear) of the residence is proposed to be demolished and replaced with a porch. The public hearing was continued from the March 4, 2009 meeting.

The continued public hearing was re-opened. Associate Planner Schinsing presented the Staff Report.

Commission questions to staff:

- You have recently been to review the project's story poles from both 46 Santa Rosa and 44 Santa Rosa? *Staff responded yes, on March 10<sup>th</sup> at 46 Santa Rosa and this morning at 44 Santa Rosa.*
- The surveyor has certified the current story poles to be totally accurate? *Staff responded that is correct and the certification letter is in the Staff Report.*
- In a photograph submitted as part of late mail the story poles block a portion of the waterfront. Did staff consider the waterfront when forming the opinion that

1 there was no impact on the primary view? *Staff responded the story poles do*  
2 *not indicate that the structure will obstruct any of the water view. During a visit*  
3 *to 44 Santa Rosa Avenue staff saw views from the master bedroom and the*  
4 *dining room directly below it but does not recall seeing this particular view*  
5 *perspective.*

- 6 • Seeing this photograph, does that change your opinion that there is no impact  
7 on the primary view? *Staff responded this photograph does not appear to have*  
8 *been taken from a primary view location in the home.*
- 9 • What is your understanding of the only primary view? *Staff responded they*  
10 *were invited to see the master bedroom and the dining room directly below that,*  
11 *which are defined as primary views.*

12  
13 Brad Hubbell, the applicant, was available for questions and did not make a  
14 presentation.

15  
16 Commission questions and comments to the applicant:

- 17 • The US Department of the Interior Special Requirements for New Additions to  
18 Historic Buildings states if a change is being made to the exterior you have to  
19 first determine that the use cannot be met by altering non-character defining  
20 interior spaces. Have you considered alternate interior spaces to accomplish  
21 what you propose to accomplish by the addition on the exterior? *Mr. Hubbell*  
22 *responded they did look at that but all the interior spaces are already defined by*  
23 *existing uses, which is why they seek to remove an existing shed dormer*  
24 *addition, because those spaces don't fit within the existing footprint.*
- 25 • Do the story poles only show the outline of the proposal? *Mr. Hubbell*  
26 *responded that is correct.*
- 27 • How much would the roofline be extended? *Mr. Hubbell responded it would not*  
28 *be extended and that anything that can project beyond the wall line would be*  
29 *lower than the story poles and lower than the tape. The story poles go up as if*  
30 *they are passing through the structure of the roof to align with the top surface of*  
31 *the roof, so the story pole tapes depict the proposed roof surface. There will be*  
32 *no awning.*
- 33 • Would any wall be inside of the depicted projection? *Mr. Hubbell responded that*  
34 *is correct, the story poles denote the outside corners of the structure. Any*  
35 *further extension of the eaves beyond that would be lower, because they follow*  
36 *the same slope as the tape.*
- 37 • In the photograph taken February 24, 2009, if there is any protrusion beyond  
38 those story poles it blocks more view. *Mr. Hubbell responded that would be roof*  
39 *eave that goes out beyond there, just in front of the shrubs.*
- 40 • So the entire area up to the shrubs is going to be blocked? *Mr. Hubbell*  
41 *responded not the entire area, but that lower portion would be roof eave to the*  
42 *front of the shrubs.*
- 43 • What is the roof overhang on the edge of the shed roof? *Mr. Hubbell responded*  
44 *it is about a foot. It matches the existing roof overhang off to the side and*  
45 *includes the gutter.*
- 46 • Would that portion of the overhang protrude below the top portion of that story  
47 pole? *Mr. Hubbell responded that is correct, it would continue the line of that*  
48 *orange tape down and extend out beyond the story poles by a foot.*

1 The public comment period was opened.  
2

3 Edward Murphy, 44 Santa Rosa Avenue, indicated the following:

- 4 • He lives directly behind the project site.
- 5 • There is water in the view from their master bedroom and trees and bushes  
6 from the dining room view. Both views will be impacted severely by a large  
7 structure right in the middle.
- 8 • The real issue is how much of a view is there of anything other than the bushes  
9 and how much of it is going to be taken up by the extension into that view? The  
10 view is not just water, but also outdoor space, trees, bushes, et cetera. He  
11 believes the definition of primary view includes those because the word  
12 "natural" appears in the definition.
- 13 • The proposed structure's roof extends out 9.5' from the side of the house, is 16'  
14 off the ground at its highest point, and 12.5' off the ground at its lowest point  
15 with a very large roof that will be sitting in the middle of that view, as will the  
16 wall of the structure.  
17

18  
19 Commission questions and comments to Mr. Murphy:

- 20 • The photograph the Commission was looking at earlier, where was it taken from  
21 and what size lens did you use? *Mr. Murphy responded the photograph was*  
22 *taken from the middle of three windows in the master bedroom. He did not*  
23 *know what size lens he used.*
- 24 • You've taken this photograph from a totally different angle than what you  
25 showed me when I was there. The primary view looks more realistic on the first  
26 photograph you submitted. *Mr. Murphy responded the origin of the story pole in*  
27 *the middle of the roof is not where it appears on the plans, and that was what*  
28 *he was trying to show from the third window, which is the most west of the*  
29 *windows.*
- 30 • Are you questioning the authenticity of the story poles? *Mr. Murphy said he*  
31 *questioned the authenticity before, but someone went to the site and raised the*  
32 *tape up so it goes higher on the roof than it did when he took that picture.*
- 33 • The surveyor has certified the story poles and they did nothing to change the  
34 height of them. *Mr. Murphy responded the poles maybe, but the tape that goes*  
35 *from the top of the pole up to the roof that shows where the roof begins has*  
36 *changed.*
- 37 • The only thing that they added was the orange tape that goes from the story  
38 pole that is mounted on the current structure to the roofline. *Mr. Murphy*  
39 *responded the pole on the right was supposed to be the high point of the roof*  
40 *before it starts sloping down, and on the plan it shows that the high point is level*  
41 *to this ridge that goes along the side of the house. The picture he took shows*  
42 *that it clearly was not level to that.*
- 43 • At the last meeting we talked at length about the effects perspective can play on  
44 someone's eye and that was why we asked the Applicant to go back and add  
45 additional tape. The tape simply runs from the story pole on the roof to the  
46 ridgeline so that we can see exactly where the pole hits the ridgeline. It appears  
47 to be at different heights depending on perspective. In order to gain clarification  
48 on your issue with how high the story pole on the roof was we had them run  
49 these additional tapes.  
50

- 1 • There is not any type of impact on your water view. The problem is the oak tree  
2 across the street, because it is going to grow up and totally block your view.  
3 The proposed ridgeline is below the tree line. *Mr. Murphy responded that the*  
4 *trees are part of the view, that the primary view includes other things and is not*  
5 *limited to the visible water. Building a structure in that space when it's not*  
6 *necessary is something that should not be approved.*  
7 • The definition of view does not include trees, shrubs, or anything of that nature.  
8 *Mr. Murphy responded it says, "and/or including significant aesthetic, cultural,*  
9 *natural or historic features," and contended that the natural feature part of it*  
10 *does include trees and bushes that are a part of the landscape.*

11  
12 Julie McMillan Murphy, 44 Santa Rosa Avenue, indicated the following:

- 13 • She has provided the Commission with alternative designs that would address  
14 their needs and avoid building in the open corridor space.  
15 • She requests the hearing be continued so they can talk with the DeSantises  
16 and try to work out a better solution.  
17 • Both 44 and 46 Santa Rosa Avenue are listed in the Historic Register and  
18 should be treated with equal respect.  
19

20  
21 Bob Capron, indicated the following:

- 22 • He visited 44 Santa Rosa Avenue and looked at the view from the master  
23 bedroom. That view is the only avenue for a view and believes it is a primary  
24 view as defined in the Ordinance.  
25 • If the house extension at 46 Santa Rosa Avenue were moved around the side  
26 as Mrs. Murphy's plans show the DeSantises would have exactly what they're  
27 looking for now and a more efficient use of the interior space.  
28

29 Commission question to the Mr. Hubbell:

- 30 • In designing this addition and removing the box shape that is at the rear of the  
31 house to open up the patio area did you give any consideration to internalizing  
32 the bathroom and laundry room in another configuration? *Mr. Hubbell*  
33 *responded no, because the uses of those rooms were already taken up by*  
34 *existing use.*  
35

36 Vicki Nichols, 117 Caledonia Street, indicated the following:

- 37 • She is a member of the Historic Landmarks Board (HLB).  
38 • There may have been a typographic error regarding a chimney, but the HLB did  
39 not review a chimney at their last joint meeting with the Planning Commission.  
40 • Mr. Murphy has expressed concerns about the HLB's decision, but the HLB  
41 does not consider view impacts, so she doesn't feel the HLB was remiss in their  
42 review of the project.  
43

44  
45 Commission questions to staff:

- 46 • What is the actual distance of the proposed addition from the Murphy's house?  
47 *Staff responded the distance from the existing laundry/bath of 46 Santa Rosa to*  
48 *the residence at 44 Santa Rosa is 75', so the addition would be nearer to 85'-*  
49 *90'.*  
50

- 1           • Is it correct to assume that because of the distance between these two houses  
2           the only time the Murphy residence will be shaded by the DeSantis residence is  
3           at sunrise or shortly thereafter? *Staff responded they also found there would be*  
4           *no light or air impacts due to the distance and the existing vegetation at the*  
5           *property line.*  
6

7 Mr. DeSantis rebuttal to public testimony:

- 8           • With respect to the Murphy's concerns about light and air, he has discussed it  
9           with them and brought in an arborist to look at the tree line that will border the  
10          new addition.  
11          • He is next to Campbell Hall, which has a lot of activities, so there is not only the  
12          concern to open up the view for the Murphy's, but to still have thick enough  
13          shrubbery to form a buffer between his residence and Campbell Hall.  
14

15 Commission question to Mr. DeSantis:

- 16           • Is it your arborist's view that the trees could be thinned? *Mr. DeSantis responded*  
17           *yes, the trees could be thinned and still allow a buffer between his residence and*  
18           *Campbell Hall.*  
19

20  
21 The public testimony period was closed.

22 Commission comments:

- 23           • This hip roof would cause no noticeable impact on the primary view at 44 Santa  
24           Rosa Avenue. The proposed roofline is below the tree line and does not directly  
25           impact their water view.  
26           • Mr. DeSantis has offered to continue to prune and open up the view for the  
27           Murphy's more than they have now, and that could be conditioned in the  
28           approval process if it gets that far and used as a baseline.  
29           • Opening up the back area makes more sense for the Murphys.  
30           • The lean-to structure in back is far enough from the neighboring properties that  
31           there should not be any noise problems when it is taken down.  
32           • The photograph from the middle window doesn't represent the primary visit. The  
33           pictures that show the story poles with the trees or the vegetation between them  
34           and the larger horizon beyond are more accurate.  
35  
36

37 Commission questions to Mr. DeSantis:

- 38           • Would you have a problem with conditioning that whatever trimming or pruning  
39           you do is to the satisfaction of the Murphys if it is within reason and still  
40           protecting your own privacy? *Mr. DeSantis responded he would not have a*  
41           *problem with that.*  
42           • Do you have a problem if we set it as a baseline after you've pruned some of  
43           these trees? *Mr. DeSantis responded he would not have a problem with that. He*  
44           *would not cut it back free-form to optimize the Murphy's view, but would establish*  
45           *a baseline subject to the constraint that he retains his privacy vis-à-vis Campbell*  
46           *Hall.*  
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1 **Chair Keller moved and Vice Chair Bair seconded a motion approve a Design**  
2 **Review Permit for 46 Santa Rosa Avenue, subject to the conditions listed in the**  
3 **staff report. The motion passed 3-1 (Cox-No).**  
4

- 5 **2. DR 02-070, Design Review Permit Extension, Binkley, 55 Santa Rosa**  
6 **Avenue.** Extension of a Design Review Permit for demolition of an existing  
7 single-family residence and construction of a new single-family residence at  
8 55 Santa Rosa Avenue (APN 065-123-17). The public hearing was continued  
9 from the February 25, 2009 Commission meeting.  
10

11 The continued public hearing was re-opened. Contract Planner Brian Stanke presented  
12 the Staff Report.  
13

14 Commission questions to Staff:

- 15
- 16 • In the file of the original approval are there certified plans for the story poles?  
17 *Staff responded there is a letter from September 2003 certifying the story*  
18 *poles. It is not clear if the heights for those story poles are the same as the*  
19 *heights in the approved plans, which staff does not have.*
  - 20 • What certainty do we have that the structure the applicant is proposing to build  
21 with approved plans is going to be the height that was shown by the story poles  
22 back in 2003? What will the City Building Inspector use as his baseline to  
23 checks plans? *Staff responded they added a second Condition of Approval*  
24 *requiring a survey be done before the City Building Inspector starts the*  
25 *inspections for the roof. They would use the elevations above sea level called*  
26 *out in the approved plans.*
  - 27 • It has been over five years since the plans were approved. There are now  
28 issues from the neighbors concerned about the view and what would be built.  
29 Is it within our purview to require the applicant to re-install story poles so  
30 everyone can be clear about this? *Staff responded the story poles could be re-*  
31 *installed if the Commission wished to continue the public hearing, but that*  
32 *would open up the whole Design Review Permit. If the Commission wished to*  
33 *do that, it would be better to deny the extension and let the applicant re-apply.*  
34

35 Staff comment:

- 36
- 37 • The approved plans show what the height above sea level was. Two problems  
38 arose when Design Review Permit came back for the extension: 1) Sometime  
39 after the plans were approved a different set of plans was put in the planning  
40 binder that weren't the approved plans and had a different height, and 2) The  
41 elevation drawings show the height above sea level twice, one with the  
42 approved height and one with a different height.  
43

44 Commission questions to Staff:

- 45
- 46 • Wouldn't the building inspector deny the plans if there are different heights that  
47 were approved? *Staff responded they would stop the plan review and tell the*  
48 *applicant they could not move forward until it was corrected.*
  - 49 • Are there any documents in the file that suggests the 2003 Commission  
50 approved the 251.5' above sea level? *Staff responded no, there was nothing in*  
*the Staff Report, the resolution, or the plans in the file that suggested that. Mr.*

1           *Capron had two concerns: 1) When did they file the approved plans? and, 2)*  
2           *Was the height on the approved plans really what the 2003 Commission*  
3           *thought it was adopting, or did the Commission think they were adopting a*  
4           *lower height than what was on the plans?*

- 5           • Staff's presentation said the construction drawings would be revised to be  
6           consistent, but haven't the drawings already passed through one of the  
7           approval phases? *Staff responded the construction drawings finished Plan*  
8           *Check, had been signed off by the building inspector, and were going through*  
9           *planning approval when the inconsistency in the roof height was discovered.*  
10           *The applicants now need the time extension before they can go further.*
- 11           • The applicant is asking to lower the pad by half a foot. Does that mean they're  
12           cutting into the ground more? *Staff responded yes, the approved plans on the*  
13           *west side of the property are cutting down 2.5' and they're proposing to cut*  
14           *down an additional 6".*
- 15           • Does that have any geotechnical impact? *Staff responded it has no*  
16           *geotechnical impact. The applicant will need to submit new drawings for Plan*  
17           *Check showing the additional cut and additional retaining wall.*
- 18           • What about drainage and other subsidiary concerns? *Staff responded that*  
19           *would be more of a building or engineering issue.*

20  
21  
22           Presentation was made by Charles Mitchell, the applicant and trustee of the Binkley  
23           Living Trust.

24  
25           The public comment period was opened.

26  
27           Robert Capron, 81 Cypress Place, indicated the following:

- 28           • He is an attorney, a member of Christ Church, and appearing on the behalf of  
29           the Church.
- 30           • Staff had distributed his letter dated March 17, 2009.
- 31           • The Church is concerned the panoramic view from the rectory dining room will  
32           be impaired by the project in a way not represented during the proceedings in  
33           1999 and there will be no way to ask the City to stop the construction.
- 34           • The plans that were originally submitted and later modified called for a  
35           maximum roofline elevation of 253.5' above sea level. When the December  
36           2003 permit was approved staff recommended the building pad be dug 2-2.5'  
37           down from the existing grade to minimize view impacts to Christ Church.  
38           Taking the grading down from the contour 2' and adding 17' to it gets 251.5',  
39           not 253.5'.
- 40           • The Commission said the Design Review application complies with the  
41           requirements of the Zoning Code as outlined in the December 2003 Staff  
42           Report. The Planning Commission concluded the plans received on November  
43           24, 2003, with 253.5', are inconsistent with the Staff Report.
- 44           • There are two alternatives to satisfy their concerns. 1) Continue the hearing  
45           tonight and set the story poles; or 2) Deny the continuation and let the  
46           applicant submit a new application on complete plans, the grounds being the  
47           absence of due diligence to prosecute the permit.

- 1 • Nothing happened from December 10, 2003 to April 2007. All that happened  
2 after that was in December 2007 the applicant submitted working drawings and  
3 addressed architectural and Plan Check considerations. That is not due  
4 diligence.  
5

6 Commission comment to Mr. Capron:

- 7 • At the Commission meeting of November 5, 2003 height above grade was  
8 discussed, the fact that the applicant lowered the roof from 22.5' above grade  
9 to 16.5' above existing grade, or 15.5' lower than what the code allows. That is  
10 an objective standard by which the state of affairs five years ago could be  
11 measured. This is something that can be measured and ascertained. *Mr.*  
12 *Capron responded he agrees. The question is does that conflict with the*  
13 *elevation of 253.5'? If the 16.5' gives a height that is different than 253.5', then*  
14 *what do they do when their view is at stake?*  
15

16 Vicki Nichols, 117 Caledonia Street, indicated the following:

- 17 • This building was listed as being built in 1919. In 2000 the historic regulations  
18 were changed to require that construction on every structure over 50 years be  
19 reviewed. She assumes a review was done, but cannot find the HLB report  
20 anywhere and wonders if staff has a copy? *Staff responded yes, it was issued*  
21 *in 2002 for an earlier design review application that was withdrawn.*  
22 • Was there a review done of the current plans by the Historic Landmarks  
23 Board? *Staff responded once the structure was found to be not significant it*  
24 *doesn't need to go back to HLB.*  
25 • Because this has gone on longer than a normal permit it is only fair that story  
26 poles be reinstalled.  
27  
28

29 The public comment period was closed.  
30

31 Commission comments:

- 32 • Because there is a minor modification that is a reason to deny and get new  
33 drawings with accurate numbers, put up new story poles, and let everyone in  
34 the community see what will be built there. The proposed minor modification  
35 changes what was approved, and since we are a new commission we need to  
36 see what this minor modification is and how it affects the surrounding drainage,  
37 the neighbors' yards, et cetera.  
38 • There are concerns about the minor modifications and we haven't heard  
39 whether the applicant would be willing to take that out in order to get approval.  
40 • From 2007 on there was a backlog of projects, so we may be penalizing the  
41 Binkley Trust by saying they weren't diligent when in fact there may have been  
42 causes outside their control.  
43 • The neighbors do not have a right to review this project again. If the Planning  
44 Commission was wrong back in 2003 regarding the height, everyone was  
45 satisfied at the time. The only reason the height issue came up is because Mr.  
46 Capron and staff noticed it when looking at the construction drawings, but that  
47 doesn't change what the Planning Commission approved.  
48  
49  
50



- There is a death and another chronic illness involved and that is a reasonable basis to ascribe to the property owner diligence where there is not a lot of evidence one way or the other.
- None of the members of the 2003 Planning Commission are on the Commission now and the 2003 homeowner is no longer alive, making it very difficult for the Commission to have the ability to enforce the intention of the 2003 Commission. There are plans in the file, current staff do not know the plans' source, and that is troubling. There is also a big issue at stake, the view corridor. There is a lot of testimony from 2003 about the applicant's willingness to preserve that view corridor in exchange for the church removing its objection to his design. We should go through some process to ensure the plans that we believe were approved can be comported with the announced intention of the 2003 Commission. Over time memories fade and personnel change, and that is a reason that due diligence is an aspect of the approval of an extension of a Design Review Permit.
- If the story poles were reinstalled and they comported with the 16.5' above grade, which everyone acknowledged was a part of the plans, I would be comfortable extending the permit.
- If the applicant came back and said he was submitting the original plans with no changes I could approve that, because that is what we are voting on, extending something that was approved six years ago. Those are the only plans I will approve, because it is an extension of design review, not a change.
- It is a two-sided situation. We have to give deference to what the 2003 Planning Commissions have done, but from a neighborhood standpoint, given the level of contention and emotion involved in some projects, we don't want to open that up again in a neighborhood to talk of things that have already been discussed in very extended detail.
- The half-foot down isn't a concern, because the 253.5' is the operative roofline. The view is dependent on the roofline, not what the interior spaces are. We start with establishing the roofline and then move down, so I'm not as concerned about an analysis that starts at the grade and moves up.
- I would not have a big problem with lowering the grade by a half a foot so long as provisions were made for safety of the soils and drainage, et cetera. The reason I looked at grade is because at the time of the application Dr. Binkley stated that he had lowered the roofline so it was only 16.5' above grade. There does appear to be some inconsistency in the record on whether it was 251.5' or 253.5'. If we did story poles and they turned out to be both 253.5' above sea level and the roofline 16.5' above grade, then we would know that was what was agreed to and the extension could be approved.

Commission question to staff:

- If we required the applicant to either reinstall story poles or do some type of plumb line that runs at 253.5', and have some determination as to where that exists above grade and exactly where the roofline will be, can we do that without denying the Design Review Permit as it stands and requiring them apply for a new one? *Staff responded if the applicant agrees with that request it is possible, or the applicant could ask for straight approval or denial.*

1 Commission comments:

- 2 • The way this is going the extension of the Design Review Permit will not be  
3 approved as it stands tonight. The Commission has a responsibility to do its  
4 due diligence. The biggest concern is people's memories fade and staff and  
5 commissioners change. We need some continuity and baseline and it seems  
6 that this 253.5' is what was approved.
- 7 • If the applicant puts up story poles or a plumb line that shows the 253.5' that  
8 would set the record straight and satisfy Christ Church and the neighbors if  
9 they could see once again what the roofline would be. Since this would be by  
10 agreement and only for that purpose, it could be only for a week or so, long  
11 enough for the Church and the commissioners to look at it. If that doesn't  
12 satisfy people then the Commission would deny the extension.
- 13 • We have testimony from several members of the Church that the proposed  
14 plans preserved their view corridor. If the story poles go up and there is no  
15 view, then we know there is a problem. Under those circumstances I would be  
16 inclined to deny the extension based on lack of due diligence.
- 17 • This is a way that the applicant has a chance to avoid a new project design  
18 review if it looks like one would think it would look from the rectory given that  
19 there was extensive discussion about this in 2003, and also for the applicant to  
20 possibly avoid an appeal as well.
- 21 • We are reopening this for further investigation of facts that are confusing, not  
22 for design review from neighbors who had the opportunity five years ago to  
23 comment and didn't.
- 24 • There is no requirement that that the applicant reinstall the story poles, nor do  
25 they need to agree to at this meeting. They could ask for a continuance and  
26 ask for advice from their architect because their legal rights could be impacted.

27  
28  
29 Mr. Finsand, the applicant, requested that the public hearing be continued to a date  
30 uncertain.

31  
32 **Chair Keller moved and Vice Chair Bair seconded a motion to continue the public**  
33 **hearing for 55 Santa Rosa Avenue to a date uncertain with suggestion to the**  
34 **applicant to take the issue of reinstalling the story poles under advisement with**  
35 **their architect and return their request for an extension to the Commission. The**  
36 **motion passed 4-0.**

37  
38 **Commissioner Keegin returned to the public meeting.**

- 39  
40  
41 **3. DR/VA/TR 04-038, Design Review Permit, Variances, Tree Removal**  
42 **Permit, Woodrow, 9 Edwards Avenue.** Design Review Permit and two  
43 Variances for a 10' tall retaining wall and patio constructed without permits in  
44 the side yard setback at 9 Edwards Avenue (APN 065-302-74). The retaining  
45 wall is located 6" to 1' from the northeastern property line shared with 1  
46 Edwards Avenue. A Tree Removal Permit for a protected tree previously  
47 removed without a permit.

48  
49 The public hearing was opened. Associate Planner Heidi Burns presented the Staff  
50 Report.

1 Commission comment to staff:

- 2
- 3 • The Governor's Office of Planning and Research (OPR) has background  
4 information on variances. According to OPR, the initial requirement to approve  
5 a variance is a finding that there are special circumstances applicable to the  
6 proposed site that distinguishes it from nearby properties with the same zoning.  
7 I did not see any evidence this property is distinguishable in size, shape,  
8 topography, location or surroundings to the neighboring properties. *Staff  
9 responded that when staff reviewed this project in 2007 they believed it was  
10 supportable based on the topography of the site and the soil conditions. If the  
11 Commission wishes staff can further analyze what was done in 2005.*

12 Presentation was made by Philip Woodrow, the owner, and Lawrence Karp, the owner's  
13 geotechnical engineer.  
14

15 Commission comments and questions to Mr. Karp:

- 16
- 17 • Have you considered the landslide just north of 9 Edwards subsequent to  
18 2005? *Mr. Karp responded it has nothing to do with this property, because the  
19 radiolarian chert at 9 Edwards is bedded favorably into the hill. The stability of  
20 this project is dependent upon the lateral and subjacent support provided from  
21 below and the activating forces from above. There is another wall above this  
22 property that is tied into this, and two or three walls above that are tied back  
23 with anchors that go into the ground. He evaluated Ann Watson's property at 1  
24 Edwards on six occasions, most recently two weeks ago, and there is  
25 absolutely no movement on her property or of that wall. He has also evaluated  
26 the site and the adjacent sites. This is a standard underpinning pit. Mr. Karp is  
27 also a licensed architect and is of the opinion that the wall and wood fences are  
28 an improvement and a good solution, because the applicants will no longer be  
29 able to look down on Ms. Watson's house, but will look down at her roof. Ms.  
30 Watson's light comes from the south that runs between the two buildings, so  
31 her light will not be changed.*
  - 32 • Is it true that the wall's provisions for drainage are just holes drilled into the  
33 side of it, with the water draining through and onto other properties? *Mr. Karp  
34 responded this is true, but there is a collection system planned for the front.*
  - 35 • If the weight of that initial concrete were removed and it went back to the  
36 original level of that patio, would it be safer, not as safe, or no difference? *Mr.  
37 Karp responded it would not be as safe, because there is no weight of the  
38 concrete bearing on Ms. Watson's wall. The concrete is anchored to the back  
39 wall, so the whole thing is a box. The fill behind it doesn't load the wall but  
40 provides a vertical load that acts as a counterfort to the wall of returning.  
41 Otherwise the wall would have a bend in it.*
  - 42 • What are the options to get this so there are not two variances? *Mr. Karp  
43 responded there isn't anything else to do. If the wall were lowered back to the  
44 permitted condition it wouldn't be as good as adding the counterfort. If steps  
45 were added a person walking down the steps would be able to look into Ms.  
46 Watson's house.*
- 47  
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1 The public comment period was opened.  
2

3 Michael Hicks, Structural Engineer for neighbor Ann Watson, indicated the following:

- 4 • He is a principal with Fulcrum Structural Engineering of San Francisco.
- 5 • He is not certain the solution presented by Mr. Karp will work and would like  
6 more time to review the project.  
7

8 Commission questions to Mr. Hicks:

- 9 • What solution would you recommend? *Mr. Hicks responded he would like to*  
10 *see if they could determine whether the reinforcing as shown on the plans has*  
11 *been installed and see if there are any inspection reports or photographs to*  
12 *verify it. He would also like to have someone independent of the entire process*  
13 *review it.*  
14

15 Todd Teachout, City Engineer, indicated the following:

- 16 • His recollection of this project's continuance from the December 7, 2005  
17 Commission meeting was to allow for the evaluation of the drainage and to  
18 enable follow-up on a Plan Check comment regarding the structure of the wall.
- 19 • His role in the project has been mostly as an administrator, not an involved  
20 expert.
- 21 • During the meeting of December 7, 2005 there was a heated discussion about  
22 drainage involving ground water and surface water issues. The continuance  
23 didn't make a distinction between the two.
- 24 • The JL Engineering plans show a collection system, not built yet, to be  
25 adequate for dealing with the surface water issues.
- 26 • Mr. Karp did a very thorough analysis of the groundwater drainage issue and  
27 has come up with a reasonable solution that will limit neighborhood  
28 inconvenience, conform with the City's codes, allow the applicant to be  
29 satisfied, and minimize possible negative impacts to Ms. Watson at 1 Edwards  
30 Avenue.  
31  
32

33 Commission questions to Mr. Teachout:

- 34 • Given the nature of the deficiencies that Mr. Karp reports do you think it would  
35 be prudent to have this peer reviewed, or should the Commission go with this  
36 report? *Mr. Teachout responded he believed every effort was made to provide*  
37 *a good solution and didn't think there would be a lot of value in a peer review.*
- 38 • How long has Mr. Karp's report been available? *Mr. Teachout responded Mr.*  
39 *Karp's report was submitted in July of 2008.*
- 40 • Would someone who had an interest in this have access to that report? *Mr.*  
41 *Teachout responded that Ms. Watson did come in a couple of times following*  
42 *the December 2005 meeting. Staff responded that a report becomes public*  
43 *record once it is filed, but Ms. Watson would not have had access to the report*  
44 *when she visited because it was not done until last year.*  
45  
46

47 Yolanda Manzone, Counsel for Ms. Watson, indicated the following:

- 48 • There are four main reasons they are requesting a continuance: 1) Substitution  
49 of counsel; 2) Lack of sufficient record to allow the Commission to make the  
50

- 1 required findings for the variance; 3) Severe risk of health and safety because  
2 of the landslide issues; and 4) Maintain the integrity of the planning process.
- 3 • Ms. Watson's letters and emails came in late today because she was never  
4 advised that the old engineer had been replaced and a report was done and  
5 filed. It was public record, but over the course of this long project it is  
6 unreasonable to ask Ms. Watson to call every month to find out what is going  
7 on. Ms. Watson's counsel, John Sharp, is involved in a very long trial and he  
8 could not be at tonight's meeting, requiring Ms. Manzone to step in.
  - 9 • Regarding the missing 2005 record, there were a number of things requested  
10 of the project applicant: 1) Drainage report; 2) Hydraulic studies; and 3)  
11 Independent peer review. None of these things have happened thus far.
  - 12 • Regarding the landslide issue, staff has stated, "The exceptional circumstances  
13 of the project include steepness of the slope, instability of the hillside, and  
14 proximity of nearby structures." This is the justification for granting a variance  
15 that will in effect legalize the creation of further instability on the hillside. The  
16 legitimate debate among accredited and certified engineers is grounds enough  
17 for a continuance so the issue may fully vetted.
  - 18 • There was never any environmental review of this project, which was justified  
19 by the categorical exemption under CEQA for minor alterations and land use.  
20 That exemption does not apply because it requires a slope of only 20% and the  
21 slope here exceeds 40%. Even if the exemption did apply, CEQA exemptions  
22 can only be used if it will not cause any other problems. It says, "The CEQA  
23 exemption cannot be used where there is a reasonable possibility that the  
24 activity will have a significant effect on the environment due to unusual  
25 circumstances," and the exceptional circumstances of the project include the  
26 steepness of the slope and instability of the hillside.
  - 27 • Because of the missing minutes it has been left up to recollections and various  
28 notes to figure out what the 2005 Planning Commission really intended. A  
29 continuance would allow time to complete a full and accurate record to  
30 maintain the integrity of the planning process and minimize the City's liability.

31  
32  
33 Staff comment:

- 34 • It has been stated a couple of times that the "minutes have gone missing,"  
35 which implies some misdoing. The recording equipment didn't work that  
36 evening. There was no intentional alteration of records.

37  
38 Ann Watson, 1 Edwards Avenue, indicated the following:

- 39 • She owns the property directly below the subject property.
  - 40 • If the applicant builds the 6' wall with no elevation and with the at-grade patio  
41 being replaced, she would have no problem with that.
  - 42 • Her notes show the 2005 Planning Commission agreed this project needed  
43 independent peer review and drainage and hydrological studies and that the  
44 applicant had to pay for it, because that was the price of doing something  
45 illegally.
  - 46 • When Assistant Planner Ben Noble left the City he called Ms. Watson and said,  
47 "I have documented the record to show that Mr. Woodrow has not been  
48 compliant with what we've been asking him to do." Ms. Watson tried to get that  
49 record and was told staff could not find the file.
- 50

1 Commission questions to Ms. Watson:

- 2 • We have an engineer who has put his reputation on the line, has done  
3 extensive work in Sausalito, and who is very positive about what he believes  
4 the solution can be to what exists right now, a solution that would minimize any  
5 additional impact to you, because it will be done within the applicant's property  
6 and will stabilize and strengthen that wall. What do you want to see there? *Ms.*  
7 *Watson responded she wants the Commission to do what the 2005*  
8 *Commission originally said they were going to do. The best solution for her is*  
9 *for the Commission to say to the applicant, "You don't lie to the Planning*  
10 *Department and tell us you're going to do one thing and do another, so go back*  
11 *and do what you were told." Her second solution is to point out that the*  
12 *Commission required independent peer review because there was so much*  
13 *concern they wanted it to be independent of Philips, her engineer, and the*  
14 *applicant's engineer. Mr. Karp's report clearly states the scope of his review*  
15 *was solely to obtain support for getting the variance, not to look at the project in*  
16 *an impartial manner or to give alternatives.*
- 17 • If an independent peer review of Mr. Karp's recommendations agrees with his  
18 findings and recommendations, will you go with that? *Ms. Watson responded it*  
19 *should not be about whether Mr. Karp's solution is reasonable. The peer review*  
20 *should be a totally de novo review.*
- 21 • What did the 2005 Planning Commission ask the applicant to peer review? *Ms.*  
22 *Watson responded they were asked to peer review what was done at the site,*  
23 *see if it had structural integrity, and propose solutions to any problems. That is*  
24 *what she is asking for now, not for the applicant to come in with a solution that*  
25 *suits only him and somebody peer reviewing that.*
- 26 • At the 2005 meeting had the patio been poured and the wall already there? If  
27 so, was there an engineer's report that existed at that meeting or had already  
28 been done as to the implications of that? *Ms. Watson responded yes, the patio*  
29 *and wall had been built and Mr. Halbert, Mr. Karp's predecessor, did what is*  
30 *called "as built calculations" at the direction of the City, which were then*  
31 *questioned by her engineer and Sal Lucido of the Phillips Group. The Planning*  
32 *Commission then asked for independent peer review.*
- 33 • What do you anticipate bringing back to the Commission with further  
34 investigation? *Ms. Watson responded they want Mr. Hicks to be able to give a*  
35 *rebuttal to Mr. Karp, although she will waive that if the Commission is willing to*  
36 *do an independent peer review. They would also like time for her new attorney*  
37 *to go through her extensive file and speak to her former attorney so she can be*  
38 *brought up to speed.*

39  
40  
41 The public comment period was closed.

42  
43 **Chair Keller moved and Vice Chair Bair seconded a motion to continue the public**  
44 **hearing for 9 Edwards Avenue to a date uncertain, with an independent peer**  
45 **review at the applicant's expense by a firm selected by staff to review the project**  
46 **to date and Mr. Karp's recommendation/solution for the current issue, with the**  
47 **amendment that staff make an analysis of the neighborhood to see how this**  
48 **property is distinguishable from the other properties as required by the first**  
49 **requirement for the finding of a variance. The motion passed 5-0.**  
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**Old Business**

None.

**New Business**

**4. Planning Commission Representatives on Housing Element Committee.**

Commissioners Stout and Cox volunteered to be the Planning Commission representatives on the Housing Element Committee.

**5. Planning Commission Representatives on Undergrounding Committee.**

Commissioner Stout volunteered to be Planning Commission representative on the Undergrounding Committee.

**Communications**

- Staff:
  - The appeal of the Subway restaurant will be held in front of the City Council on March 24, 2009 at 7:00pm.
  - The Chris Henry appeal for 660 Bridgeway, the second story, has been tentatively scheduled for April 7, 2009.

**Adjournment**

The meeting was adjourned at 10:37 p.m.

          /s/ JEREMY GRAVES            
Submitted by  
Jeremy Graves, AICP  
Community Development Director

          /s/ BILL KELLER            
Approved by  
Bill Keller  
Chair

CDD\Plan Comm\Minutes\2009\03-18-09-Approved