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SAUSALITO PLANNING COMMISSION
Wednesday, November 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

Absent: None

Staff: Community Development Director Jeremy Graves
Associate Planner Lilly Schinsing, City Attorney Mary Wagner

Approval of Agenda

Chair Keller moved and Commissioner Cox seconded a motion to approve the agenda. The motion passed 4-0.

Approval of Minutes

Commissioner Keegin moved and Vice Chair Bair seconded a motion to approve the Minutes of October 14, 2009 as corrected. The motion passed 3-0-1 (Keller – abstain).

Public Comments

None.

Public Hearings

1. **ENV 09-014, Initial Environmental Study/Mitigated Negative Declaration (IES/MND), Mallya, 300 Locust Street.** Initial Environmental Study/Mitigated Negative Declaration (IES/MND), which addresses the environmental impacts associated with construction and operation of a warehouse at 300 Locust Street (APN 064-087-07).
2. **DR/CUP 09-014, Design Review Permit and Conditional Use Permit, Mallya, 300 Locust Street.** Design Review Permit to allow for the construction and site improvements, including parking and landscaping, related to a new 6,600 +/- square foot warehouse and a Conditional Use Permit to allow a warehouse use at 300 Locust Street (APN 064-087-07). The project is subject to Heightened Review standards since the project exceeds 80% of the permitted building coverage and floor area limitations.

Vice Chair Bair moved and Commissioner Cox seconded a motion to continue the public hearing for Items 1 and 2 to the meeting of December 2, 2009. The motion passed 4-0.

1 **3. ENV 08-011, Initial Environmental Study/Mitigated Negative Declaration**
2 **(IES/MND), Bruce, 109/111 Marion Avenue.** Initial Environmental
3 Study/Mitigated Negative Declaration (IES/MND) which addresses the
4 environmental impacts associated with the subdivision of an existing 14,022
5 square foot parcel into two parcels 8,974 and 5,048 square feet in area; the
6 construction of a 2,504 square foot three story residence at the southern portion
7 of the lower parcel; a driveway encroachment into the Sausalito Boulevard right-
8 of-way and existing encroachments into the Marion Avenue right-of-way; the
9 installation of steps which would complete a partially installed walkway in the
10 South Street right-of-way between Edwards Avenue and Marion Avenue; and the
11 removal of protected trees at 109/111 Marion Avenue (APN 064-087-07).
12

13 The public hearing was opened. Associate Planner Schinsing presented the Staff
14 Report.

15
16 Presentation was made by Nick Pappani of Raney Planning & Management, the City's
17 environmental consultant.

18
19 Commission questions and comments to Mr. Pappani:

- 20
21 • If it were discovered there are migratory birds nesting in the heritage trees,
22 what would happen? *Mr. Pappani responded the mitigation measure states if*
23 *any nesting birds are found within the construction area, grading would either*
24 *stop or continue only after nests are protected by adequate setbacks as*
25 *determined by a qualified biologist. If permanent avoidance of the nest is not*
26 *feasible, impacts could be minimized by avoiding disturbances during the*
27 *nesting season, which is February through August.*
- 28 • What if migratory birds have been nesting in a particular tree or set of trees and
29 return to the same location each year? To remove those trees at some point
30 and replace them with 24" box trees would be inadequate. *Mr. Pappani*
31 *responded half the species that could occur on this project are not "site*
32 *faithful," and for those species that are site faithful, the area would still be*
33 *heavily vegetated.*
- 34 • How much traffic would go up to 490 Sausalito Boulevard, turn around, and
35 come back down? *Mr. Pappani responded that a total of 2,800 cubic yards*
36 *need to be removed from the site, but once they get the initial 80 cubic yards*
37 *off the site they would not have to employ that location at 490 Sausalito*
38 *Boulevard as a truck turn-around.*
- 39 • Would they be using smaller trucks after removing the initial 80 cubic yards?
40 *Mr. Pappani responded yes.*
- 41 • The noise generated from this project could be potentially significant with
42 serious mitigation measures required for the truck traffic, drilling, and heavy
43 excavation equipment. Construction noise during the "normal construction
44 hours" is not much mitigation and should be reevaluated to look for other
45 mitigation measures to reduce the impact of the noise on the neighborhood,
46 such as no Saturday construction or further limits on weekday construction
47 hours.
- 48 • What is the construction period at this phase of the project? *Mr. Pappani*
49 *responded 11-13 months from start to finish according to the project applicant.*
50

1 The public comment period was opened.

2
3 Jorge Lee, 108 Marion Avenue, indicated the following:

- 4 • Who hired the environmental consultant? *The Commission responded Raney*
5 *Planning and Management was hired by the City.*

6
7 Paula Bruce, Applicant, 109 Marion Avenue, indicated the following:

- 8 • Regarding mitigation measures for construction noise, the contractor told her
9 all his equipment is Tier 3 equipment, which is the best available for noise
10 reduction.

11
12 John Dervin indicated the following:

- 13 • He has only heard Tier 3 referred to as an air quality standard as it refers to
14 emissions from machinery exhaust.

15
16 Paula Bruce, indicated the following:

- 17 • Her contractor specifically stated Tier 3 pertains to noise reduction.

18
19 The public comment period was closed.

20
21 Commission comment:

- 22 • At the next presentation Mr. Pappani should explain in greater detail what Ms.
23 Bruce's contractor's noise mitigation measures might be and clarify if Tier
24 Three also pertains to noise reduction.

25
26 Staff comment:

- 27 • Mr. Pappani will not be in attendance at the December 2, 2009 Commission
28 meeting, but public comments will be forwarded to him.

29
30 Commission question to Staff:

- 31 • If a representative of Raney Planning and Management will not be at the
32 December 2, 2009 meeting could they submit something to the Commission in
33 writing pertaining to the concerns regarding noise mitigation? *Staff responded*
34 *that staff will provide written responses to the Commission following the close*
35 *of the public comment period. If the Commission does not find the responses*
36 *acceptable it can request revisions. During the next two Commission meetings*
37 *when public comments are taken the consultant will not be in attendance, but*
38 *the full minutes of the meetings will be forwarded to the consultant for*
39 *preparation of written responses.*

40
41
42 **Chair Keller moved and Commissioner Cox seconded a motion to continue the**
43 **public comment for the IES/MND/MND to the meeting of December 2, 2009. The**
44 **motion passed 4-0.**
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1 **4. AP 09-094, Appeal of an Administrative Decision, Clipper Yacht Harbor, 350**
2 **Harbor Drive.** Appeal of an Administrative Decision that 1) the seating for Fish
3 restaurant must comply with Planning Commission Resolution No. 4732 which
4 allows for 22 outdoor seats and 48 indoor seats, and 2) a single-seat bench
5 should be no longer than 24 inches.
6

7 The public hearing was opened. Associate Planner Schinsing presented the Staff
8 Report. She noted that seven letters received after preparation of the staff report had
9 been distributed to the Planning Commission.
10

11 A presentation was made by William Ziegler, the appellant, and Bill Foss, a co-owner of
12 Fish Restaurant:
13

14 Commission questions and comments to Mr. Ziegler:

- 15 • Where do you think this would put the Planning Commission and the City if
16 your appeal were granted? How would we enforce the CUP we think we have?
17 *Mr. Ziegler responded they would never put all 70 seats outside, obviously, but*
18 *the restaurant needs the flexibility of putting seats outside on nice weather*
19 *days.*
- 20 • There was clear language in the 2004 CUP regarding the seating plan and how
21 can we get around that? *Mr. Ziegler responded the CUP was approved for 70*
22 *seats, but not specifically for 22 seats outside and 48 inside.*
- 23 • When this was approved for the additional seats there was an attached floor
24 plan, which is referenced in the Conditions of Approval. At that time the
25 applicant had an opportunity to address the actual seating plan, which was
26 drawn up by the applicant's architect. The applicant accepted the Conditions
27 of Approval as written. *Mr. Ziegler responded the City had the same*
28 *opportunity for five years and didn't say anything.*
- 29 • The City has allowed Fish to operate and given the restaurant a fair amount of
30 latitude for the last five years. *Mr. Ziegler responded at some point the City is*
31 *stuck with what it does.*
- 32 • Are you saying that because the City hasn't enforced this for the last five years
33 you want this grandfathered? *Mr. Ziegler responded yes, but the Commission*
34 *has to look at how the plan was interpreted and why it was drawn up. The plan*
35 *was submitted to show ADA access, not to say they would keep the furniture*
36 *the way it is shown in the plan. This is an overly zealous interpretation of the*
37 *plan.*
- 38 • It is not a matter of just interpretation; it is clear the language is based on the
39 floor plan drawing. Under the CUP that we're being asked to interpret, and that
40 staff has interpreted, there is the ability to change the clear language of what
41 that CUP was. *Mr. Ziegler responded the CUP does not need to be changed*
42 *and the Commission does not have that power, but the Commission could say*
43 *it agrees with an interpretation of the CUP that allows more flexibility and*
44 *recommend to Council that it be interpreted as such, and still make the findings*
45 *that were made in 2004.*
- 46 • This is an appeal that is before the Planning Commission and will not go to the
47 City Council. If you want to Commission to recommend to the Council to allow
48 flexibility on your CUP, the proper forum would be for you to apply to change
49
50

1 your CUP to have the flexibility to move your 70 permitted seats inside and out,
2 but that is not before us tonight. What is before us tonight is you are asking us
3 to overturn staff's interpretation of a seating plan that Fish submitted to the City
4 Council in 2004. The resolution states, "Approval of this application is limited to
5 the project plans titled 'Fish restaurant seating plan' submitted June 3,2004."
6 *Mr. Ziegler responded he is not asking to amend the CUP, he is asking the*
7 *Commission to recommend flexibility in the interpretation of it.*

- 8 • If you want us to recommend to Council flexibility in the interpretation of the
9 CUP you have chosen an inappropriate forum to do that. You are asking the
10 Commission to overturn the City staff's interpretation of very plain language
11 and plans that were attached and we have not heard from you a justification for
12 doing that.
- 13 • The question is who is going to "make a suggestion to the City Council"? If we
14 uphold the appeal, then we have the Commission's interpretation that is directly
15 contrary to a CUP that is out there and it is not going to get appealed to the
16 City Council. You are asking the Commission in this case to find language in
17 the CUP that is not there. *Mr. Ziegler responded by quoting a paragraph from*
18 *the Staff Report of 2/11/09, page 5, that he believes gives the Commission the*
19 *authority. "In June 2003 the Zoning Ordinance was amended and a provision*
20 *was added allowing the Zoning Administrator to amend existing Conditional*
21 *Use Permit approval which do not alter the general intent of the original*
22 *approval granted by the Planning Commission. See Exhibit P for Zoning*
23 *Ordinance Section 10.8.040. Furthermore, the Zoning Administrator is*
24 *authorized to transfer the original hearing jurisdiction to the Planning*
25 *Commission. Therefore the Planning Commission is authorized to amend*
26 *existing Conditional Use Permit approvals which do not alter the general intent*
27 *of the original approval granted by the Planning Commission."*

28
29
30 The public comment period was opened.

31
32 Jeffrey Nestel (phonetic) indicated the following:

- 33 • Fish is exactly what Sausalito wants and they should be supported.
- 34 • Discussing the issue of how many seats can be inside or outside is a waste of
35 money and time.

36
37 Larry Collins indicated the following:

- 38 • He is the President of the San Francisco Crab Boat Owners Association.
- 39 • Fish restaurant is important to Sausalito's economy and traditions.
- 40 • Ken Belov does what he can to help local fishermen by donating time and
41 money. The commercial fishing community needs Fish to thrive.
- 42 • He urges the Commission to give Fish the flexibility to move their seating
43 inside and outside depending on the weather.
- 44 • He has sold fish to many men, but never one who cares as much about
45 sustainable fishing as Mr. Belov.

46
47 Susan Trott (phonetic) indicated the following:

- 48 • She agrees with other comments regarding what a remarkable place Fish is,
49 and the food they serve is delicious.

- 1 • The City is obliged to keep Fish prospering in Sausalito. It doesn't seem such a
2 big deal to give them the flexibility of moving their tables and benches around.
3

4 Claudia Kennedy indicated the following:

- 5 • She enthusiastically seconds Ms. Trott's remarks.
6 • Why is Fish's outside seating is limited to 22 seats? It is a commercial area,
7 there is no parking impact, and there is no residential impact. Can't the City just
8 be flexible and let a good, profitable business that brings money into the city
9 thrive?
10

11 Gary Dedricks (phonetic) indicated the following:

- 12 • He and his wife specialize in writing about businesses that are sustainable and
13 green. Fish is a leader in being green and sustainable and being role models
14 and are outstanding in that respect.
15 • Fish needs and deserves to survive. They need the flexibility to do their
16 business in a way that ensures they can continue to be a local, Bay Area, and
17 international resource.
18
19

20 Kenny Belov, co-owner of Fish restaurant, indicated the following:

- 21 • He submitted to the Commission letters from a biologist for the Bay Institute,
22 the Chair of the Pacific Coast Fisherman's Federation, and local residents, and
23 a poll taken by Fish as to where customers would prefer to sit.
24 • Not being able to move Fish's seating outside in good weather would take
25 away the community's ability to enjoy the waterfront and take away what the
26 Marinship is for the community, a marine-based business. They support the
27 local fleet and local businesses.
28

29 Keith Kennedy indicated the following:

- 30 • He urges the Commission to help the owners of Fish find a solution so it can
31 continue to thrive.
32

33 Rebecca Sheboya (phonetic) indicated the following:

- 34 • She believes the referenced seating plan was necessary to show ADA access,
35 but it was not meant to indicate how the seating should forever be.
36 • In restaurants it is routine to push tables together, seats taken away, et cetera.
37

38 Megan Smith indicated the following:

- 39 • She has been the executive chef at Fish restaurant since last April.
40 • It is common practice in restaurants she has worked in to move seats around.
41 • Fish treats their staff really well; it is a great place to work. If they can't move
42 the seats outside during nice weather they will likely have to reduce the staff.
43
44

45 Edward Limos (phonetic) indicated the following:

- 46 • He is employed by Fish restaurant.
47 • Fish does not advertise but still has a steady client base and pays taxes each
48 year that help sustain Sausalito.
49 • They have never added more tables than what they had when they opened.
50

- 1 • He doesn't understand why it is a problem to move seats inside and outside
2 when Fish has been approved to have 50 more seats.
3

4 Matthew Naythons indicated the following:

- 5 • He has been a Sausalito resident since 1972 and supports Fish restaurant.
6

7 Dave Healy (phonetic) indicated the following:

- 8 • He owns a business on Gate Five Road.
9 • Time spent meeting and discussing Fish's seating is time that could be spent
10 on other important things.
11

12 John Dervin (phonetic) indicated the following:

- 13 • He was a fisherman for 18 years.
14 • Although the owners of Fish talk about sustainability, they pollute the air by
15 burning wood at the restaurant every day and are not environmentally
16 sensitive.
17 • More seats for Fish restaurant means more smoke.
18
19

20 The public comment period was closed.
21

22 Commission questions to staff:

- 23 • If someone hired Fish for a party and has 70 guests and they want to be
24 outside, does that mean the group would be limited to 22 people outside and
25 the rest have to eat inside, or could they for that particular event have 70
26 people outside? *Staff responded the way staff has interpreted the resolution*
27 *with the seating plan there are 22 seats outside, so people can stand outside.*
28 • If the restaurant has 22 seats outside and 48 seats inside and a customer
29 wants to eat outside, but the tables outside are all full, can the customer bring
30 another table outside? *Staff responded Fish could move its 22 outside seats*
31 *around outside however they like and can move their 48 inside seats around*
32 *inside however they like. Staff has interpreted the resolution that was approved*
33 *by Council a certain way. If the Planning Commission disagrees with staff's*
34 *interpretation it is within its purview to change that.*
35 • If the Planning Commission disagrees with that interpretation is it within the
36 Commission's purview to interpret that 70-seat format in a different way, and if
37 we do change that, does it go back to the Council for approval? *Staff*
38 *responded the item before the Commission is an appeal of an administrative*
39 *interpretation by the Community Development Department. If the Commission*
40 *disagrees with that interpretation it is within the Commission's purview to tell*
41 *staff what they think it means. It will not automatically go to the City Council; it*
42 *would have to be appealed to the City Council.*
43 • If the Planning Commission overturns staff's interpretation, what happens
44 then? *Staff responded then that is the interpretation of the resolution that would*
45 *stand. There is a ten-day appeal period during which anyone could appeal the*
46 *Commission's decision to the City Council.*
47 • Ordinance 10.80.040, cited by Mr. Ziegler, states, "Extensions of or
48 amendments to existing variance and Conditional Use Permit approvals which
49 do not alter the general intent of the original approval granted by the Planning
50

1 Commission." So the Zoning Administrator has the power to amend an existing
2 Conditional Use Permit so long as it does not alter the general intent of the
3 original approval granted by the Planning Commission? *Staff responded*
4 *Ordinance 10.50.180, Changes to an Approved Project, which reads, "The*
5 *Community Development Director may authorize minor changes to an*
6 *approved site plan, architecture, or nature of approved use provided the*
7 *changes meet the following requirements," is closer to this situation.*

- 8 • Which ordinance did the applicant apply to the Community Director under?
9 *Staff responded neither. Staff sent the letter because the City Council had*
10 *made a decision and they wanted it to be clear in all parties' minds what rules*
11 *applied after the Council made its decision to deny the applicant's request for*
12 *an exception to the Marinship Specific Plan. The applicant decided to appeal*
13 *that letter rather than apply for changes to an approved project or apply for an*
14 *amendment to the Conditional Use Permit that could be reviewed by the*
15 *Zoning Administrator.*
- 16 • If the applicant applied for an amendment under Ordinance 10.80.040 the
17 Community Development Director could transfer original hearing jurisdiction on
18 that decision to the Planning Commission? *Staff responded that is correct,*
19 *assuming the Development Director had original hearing jurisdiction to begin*
20 *with and it didn't have to come to the Planning Commission anyway.*

21
22 Commission comments:

- 23 • The City Council did not intend for this to be an exact statement of how these
24 seats are to be laid out. The very next resolution says, "At no time shall the
25 restaurant seating exceed a maximum of 70 seats," but doesn't say whether
26 inside or outside. There is room here for a more flexible interpretation, because
27 there is ambiguity here and we have a right to try to try to resolve it.
- 28 • The only way we could uphold the appeal would be pursuant to the ordinance
29 that the Community Development Director did not utilize, which gives him the
30 power to amend existing Conditional Use Permit approvals which do not alter
31 the general intent of the original approval granted by the Planning Commission.
32 But even in order to do that we would have to find that there was no intent by
33 the City Council to restrict the outdoor seating to 22 seats. The one thing that
34 we should consider is the testimony from Mr. Foss, the co-owner, that during
35 his testimony to the City Council he talked about moving seats inside and
36 outside and that therefore perhaps there was some ambiguity about whether
37 that seating plan was schematic or exact.
- 38 • For Fish to have the flexibility of being able to move seats outside they should
39 come back and apply for an amendment to the existing Conditional Use Permit,
40 if that is the cleanest way for them to go without the Commission overriding a
41 reasonable interpretation by staff of the original 2004 CUP.

42
43 Commission questions to staff:

- 44 • If Fish applies to the Planning Commission for an amended CUP would it have
45 to be approved by City Council? *Staff responded no.*
- 46 • Are we dealing with a CUP or is this some other governmental entitlement that
47 has Conditions of Approval? *Staff responded it is the CUP and the exception to*
48 *the Marinship Specific Plan. The seating plan is in the resolution approving the*
49
50

1 *exception to the Marinship Specific Plan that was adopted by the City Council,*
2 *but there is information in the Staff Report that went to Council that talks about*
3 *changes going through a CUP process, so staff needs to review that.*
4

5 Commission question to Mr. Ziegler:

- 6 • It is important the Commission understands its options in order to make an
7 informed decision and to be sure it is acting within its authority. Would the
8 applicant agree to continue this hearing to a date certain? *Mr. Ziegler*
9 *responded he would be willing to continue the hearing to a date certain.*

10
11 Staff comment:

- 12 • Both the CUP and the exception to the *Marinship Specific Plan* need to be
13 modified, because both talk about the seating. This needs a CUP approval plus
14 an approval by the City Council to allow the 70 seats to be indoor or outdoor.

15
16 Commission question to staff:

- 17 • The only way the Commission could grant Fish the flexibility they are seeking is
18 to overrule staff's interpretation of a City Council resolution? *Staff responded*
19 *the Commission could make a different interpretation of that language than*
20 *staff did.*

21
22 Comment by Mr. Ziegler:

- 23 • If the Commission were inclined to continue the public hearing, he would
24 suggest it be conditioned that the applicant comes back with a plan with limits
25 to be approved by the Commission.

26
27 Commission comments:

- 28 • We are going to have to bring it back to the Commission if the applicant is
29 going to submit a plan to the Commission, because staff has interpreted it one
30 way and the Commission is suggesting it is ambiguous and would like to see a
31 different interpretation.
- 32 • We would also need some guidance from the applicant as to what would even
33 be an appropriate interpretation.

34
35 Comment by Mr. Ziegler:

- 36 • On the busiest of days Fish never seats more than 55. There are ten bar stools
37 that never move, so somewhere between 55-60 seats allows them to continue
38 with its current pace.

39
40 Commission question to Mr. Ziegler:

- 41 • Are you okay with the 48 seats inside during the colder winter months? *Mr.*
42 *Ziegler responded the Fire Department puts 79 seats on the inside, but he*
43 *doesn't know how many could actually fit, but it could probably be up to 60.*

44
45 Commission comments:

- 46 • We should not overrule staff on their decision regarding the resolution and
47 would favor an amended CUP. Staff made a reasonable interpretation and they
48 are citing an ordinance that says that the Community Development Director
49 are citing an ordinance that says that the Community Development Director
50

1 may authorize minor changes where the changes do not involve a feature of
2 the project that was specifically addressed or was a basis for the project's
3 Conditions of Approval.
4

5 Staff comment:

- 6
- 7 • Staff would be troubled by a decision which indicates the absence of wording in
8 a resolution creates ambiguity if the issue is clearly shown on the plans
9 attached to the resolution.

10 Commission comments:

- 11
- 12 • The ambiguity is not in reference to the plan; it is the reference to the plan and
13 the subsequent reference to 70 seats anywhere that creates an ambiguity.
 - 14 • The way this has proceeded is troubling with accusations that because no one
15 stopped Fish from doing this that it is suddenly okay and the Commission
16 should just grandfather this in. It is also troubling that a floor plan was
17 submitted to us with seats and Fish is telling us that they had the intention from
18 the beginning to use picnic benches. There needs to be respect for the staff
19 and what they are trying to do.
 - 20 • Fish should give serious consideration to a CUP.

21
22 **Chair Keller moved and Commissioner Keegin seconded a motion to continue the**
23 **public hearing for 350 Harbor Drive to the first meeting in February 2010. The**
24 **motion passed 4-0.**

25
26 **Old Business**

27 None.

28
29 **New Business**

30 **5. Planning Commission Meeting Calendar—January and February 2010.**

31
32 **Commissioner Cox moved and Chair Keller seconded a motion to approve the**
33 **calendar for January and February 2010 as recommended by staff. The motion**
34 **passed 4-0.**

35
36 **Communications**

- 37
- 38 • Staff—On November 17th the City Council took testimony regarding Peet's Coffee
39 and continued further consideration of the Zoning Ordinance amendment, to the
40 January 12, 2010 meeting. The meeting was well attended with testimony evenly
41 split with half in favor and half opposed.

42
43 **Adjournment**

44 The meeting was adjourned at 9:35 p.m.

45
46
47 /s/ JEREMY GRAVES
48 Submitted by
49 Jeremy Graves, AICP
50 Community Development Director

46
47 /s/ BILL KELLER
48 Approved by
49 Bill Keller
50 Chair CDD\Plan Comm\Minutes\2009\11-18-09-Approved