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SAUSALITO PLANNING COMMISSION
Wednesday, December 15, 2010
Approved Minutes

Call to Order

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

Present: Chair Stan Bair, Vice Chair Stafford Keegin,
Commissioner Joan Cox, Commissioner Richard Graef,
Commissioner Bill Werner

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

Approval of Agenda

By consensus the Commission approved the agenda with the modification that Item 2 (Withy-McDonald Renovations) would be heard after Item 4. The motion passed 5-0.

Approval of Minutes

December 1, 2010

Chair Bair moved and Commissioner Werner seconded a motion to approve the Minutes of December 1, 2010 as amended. The motion passed 5-0.

Public Comments

None.

Public Hearings

- 1. DR 10-050, Design Review Permit, City of Sausalito, 100 Block of Harrison Avenue.** Design Review Permit for the installation of playground equipment, landscaping, and Americans with Disabilities Act accessibility improvements at Harrison Park along the 100 block of Harrison Avenue (APN 065-091-009).

The public hearing was opened. Associate Planner Burns presented the staff Report.

Commission question to staff:

- Are there plans for a sprinkler system or some means of watering the landscaping? *Staff responded there is a Condition of Approval that will require a final landscape plan, and based on the City's requirements an irrigation system would need to be installed.*

Presentation was made by Mike Langford, Sausalito Parks & Recreation Director.

1 The public comment period was opened.

2
3 Kate Sears, 163 Harrison Avenue, indicated the following:

- 4 • The greenery on all sides is part of what makes Harrison Park an intimate
5 setting. She could not tell from the plans how high landscaping would be, but it
6 would be good to maintain the green barrier between the park and Harrison
7 Avenue; that would improve the experience for those in the park and improve
8 the look of the park for people walking by.
- 9 • The new plan is terrific and she hopes they can get the project approved and
10 moved on quickly.

11
12 Susan Cleveland-Knowles, 590 Sausalito Blvd, indicated the following:

- 13 • She is the mother of two young children and is in favor of this project, which is
14 within walking distance from her home.

15
16 Stan Deck, 174 Harrison Avenue, indicated the following:

- 17 • He lives directly behind Harrison Park and supports the project.
- 18 • Initial concerns regarded the height and bulk of the equipment. The architect
19 has done a good job in bringing down the scale and while still having an
20 exciting park for children.
- 21 • Their concern was their view of the T-shaped swing, which has to be in that
22 position for safety reasons. If it has to be done that way, they are willing to
23 accept it.

24
25
26 Norah Frei, 284 Glen Drive, indicated the following:

- 27 • She is the mother of three small children and strongly supports this project.
- 28 • The play equipment is open and will not block the air and light of the neighbors.

29
30 Heather Richard, 300 Napa Street, indicated the following:

- 31 • She is the mother of two young children.
- 32 • Due to liability concerns and height restrictions a lot of parks are not
33 challenging enough for children, so she appreciates this project's effort to keep
34 the play structures physically challenging.

35
36 The public comment period was closed.

37
38 Commission question to Mr. Langford.

- 39 • What are the plans for greenery along the front fence on Harrison Avenue? *Mr.*
40 *Langford responded there would be extensive planting that will screen the*
41 *street. The ivy will be removed in order to replace the fence, but they will keep*
42 *a lot of the existing plantings to maintain the intimacy of the park. They also*
43 *propose to replace the chain link fence, now in disrepair, with a hog wire fence*
44 *that adjoins to the gate and will give the same visibility as the chain link fence.*

45
46
47 Staff comment:

- 48 • The Landscape Plan has a variety of Western Rosebud 15-gallon trees that will
49 be planted along the southern and western perimeters of the park as well as

1 eight or nine pink flowering 5-gallon shrubs. The Planning Commission can
2 consider conditioning more shrubs if they wish.

3
4 Commission comments:

- 5 • The new plans are a tremendous improvement over the previous plans, which
6 contained substantial inconsistencies.
- 7 • Lowering the walls has made this project less architecturally imposing and
8 more of a playground.
- 9 • This project is well thought out and would be a nice addition to the
10 neighborhood.
- 11 • The architect and staff have done a great job of addressing some of the
12 Planning Commission's concerns from the July hearing and have met the
13 challenge of designing a very small "pocket park" to once again become a
14 jewel in this neighborhood.
- 15 • The important thing for the landscaping is that it be looked at from the point of
16 view of the children in the playground and that they feel like they are in a place
17 that is intimate for them, not just on the Harrison Avenue side, but everywhere.
18

19
20 Additional Condition of Approval:

- 21 • Staff shall inform Ms. Kate Sears when the Landscaping Plan will be coming
22 back so she may review it and offer suggestions to staff.
23

24 **Commissioner Werner moved and Commissioner Graef seconded a motion to**
25 **approve a Design Review Permit for the 100 block of Harrison Avenue with the**
26 **additional Condition of Approval. The motion passed 5-0.**
27

- 28 **3. ZOA 10-355, Zoning Ordinance Amendment—Standards for Single-Family**
29 **Dwellings in Two/Multi-Family Zoning Districts, City of Sausalito.** A Zoning
30 Ordinance Amendment modifying Zoning Ordinance Table 10-22-2 (Site
31 Development Standards—Residential Zoning Districts) to revise the maximum
32 site development standards for single-family dwellings in Two-Family (R-2-2.5)
33 and Multi-Family (R-3) Zoning Districts. This amendment is exempt from the
34 California Environmental Quality Act (CEQA) in accordance with Section
35 15061.b.3 of the CEQA Guidelines. Continued from December 1, 2010.
36

37 The continued public hearing was re-opened. Associate Planner Schinsing presented
38 the Staff Report.
39

40 Commission questions and comments to staff:

- 41 • A question raised at the last hearing on this matter was how this change in the
42 Zoning Ordinance interplays with existing ordinances concerning
43 Nonconformity. What about when someone vacates their house to try to sell it
44 and the house is empty for six months? Chapter 10.62.050 states,
45 "Nonconforming use of a structure or premises shall not be allowed under the
46 following conditions: Nonconforming use has been voluntarily vacated for six
47 months or more." *Staff responded it is "use" versus the "structure," so the*
48 *structure in this case in nonconforming. The use is not changing, so it is still a*
49 *residential use and that provision would not apply.*
50

- Much of the late mail received raises the issue of notice to the affected property owners. Does staff have any opinion about the City's obligation to give notice, other than the legal ad in the newspaper, with regard to the specific homeowners affected by this ordinance whose now-legal units would be rendered Legal Nonconforming by this ordinance? *Staff responded there is a distinction in the Government Code that if the ordinance would change the "allowed uses" then notices must be mailed to property owners who would potentially be affected by the ordinance. The Government Code does not require mailing when the ordinance does not involve a change in the allowed uses. The ordinance would not change the uses; only the standards that are applicable to the buildings that are being used for a particular purpose. More notice can be required, but staff correctly noticed it in accordance with the provisions of the Government Code.*
- Another issue raised in the late mail received is whether this is the type of matter that should be referred to the City Council's Legislative Committee for review and discussion before being presented to the Planning Commission. *Staff responded that is an issue for the City Council to consider. Not every ordinance amendment is required to go to Legislative Committee.*

The public comment period was opened.

John McCoy indicated the following:

- He did not hear about this project until recently. Many people have not heard of it at all, yet they are directly affected because they own properties within these zoning districts.
- He is opposed to revising these ordinances based on lack of notification to the parties directly affected. While staff may have met the letter of the law, one blurb in a newspaper when this issue will affect a large percentage of properties and diminish their development rights seems very inadequate.
- It should be conditioned that staff be required to notice each address within the zoning districts that will directly affected, and possibly beyond that as well.

Michael Rex indicated the following:

- He submitted a letter dated December 10, 2010 objecting to both the process and content of this amendment.
- It is appropriate to send this to the Legislative Committee. This is why the Legislative Committee it is there, to provide a forum to vet complex matters such as this.
- Staff bringing the Commission an amendment this late to try to tweak and close loopholes suggests this is unfinished business and needs a roundtable type format with stakeholders.
- This amendment will have an enormous impact, because it is downzoning between 650 - 750 properties. These homeowners will lose a third of their floor area and building coverage. In the R-3 zone they will lose up to 44 percent of their floor area.
- The only ad in the MarinScope is one inch wide with fine print. Only a third of Sausalito residents receive the MarinScope, and not everyone reads it every week. If they did read it, all the ad said is the City intends to amend the

1 ordinance to revise maximum development standards. Nowhere in the notice
2 does it say affected homeowners will lose perhaps a third of their entitlement
3 for floor area. Although the notice is the legal minimum, it is insufficient.

- 4 • The Planning Commission should continue this hearing and direct staff to send
5 a letter to all of the 1,500 properties that could be impacted before the next
6 hearing.
- 7 • This nonconforming burden will limit the ability of the property owners to
8 renovate their homes. If they do not replicate or want to remodel more than 51
9 percent of the building structure, they will need a Variance. That is a very
10 significant burden that will devalue their property.
- 11 • The R-1-6 standards are for a minimum 6,000 square foot lot. It is unfair to
12 apply the same standard to lots half that size.
- 13 • People with small lots are being squeezed between two ordinances. If their lot
14 is less than 5,000 square feet they cannot add a second unit. Now with this
15 ordinance they will be penalized with a loss of floor area because they do not
16 add a second unit.
- 17 • This amendment is unnecessary because there are restrictions in Design
18 Review and the Heightened Review to meet these objectives.

19
20
21 Jesse Goff indicated the following:

- 22 • He had not heard of this amendment until this evening, but strongly objects to
23 it.
- 24 • This amendment would affect him in that it would reduce his ability to add floor
25 area coverage to his home. He and his wife bought their current 800 square
26 foot home with the goal of expanding up to 2,300 square feet in the future so
27 they could raise a family there. This decision was based on the current rules of
28 the R-3 zone and they have been saving for eight years for that expansion. If
29 this amendment passes they would suddenly find themselves unable to have
30 more children, because they would not have the space to do it. Their property
31 values would decrease enough that they would be underwater and stuck in an
32 800 square foot house unable to have the family they would like.

33
34 Alexander Anolik, Tiburon, indicated the following:

- 35 • He is trying to move back to Sausalito, where he lived for many years and still
36 owns properties, and objects to the amendment. He has hired an architect to
37 take a unit in one of his properties and make it into a house for himself and his
38 wife.
- 39 • He is now trying to sell the properties he has in Sausalito because he is
40 underwater on all of them. No offers have come in that are not below short
41 sales.
- 42 • The amendment would discourage family ownership and create a situation of
43 renters who do not have the appreciation of property the same as
44 homeowners.

45
46
47 Ravi Anand, San Francisco, indicated the following:

- 48 • He is an architect who practices in Sausalito.
- 49 • He was only yesterday informed of this matter.
- 50 • He wholeheartedly endorses statements made by Michael Rex in his letter.

- The amendment would have a devastating affect on many property owners who are totally unaware of this amendment. The people affected need to be made aware of what is happening.

Mattson Austin, 40 Marie Street, indicated the following:

- He only just found out about the ordinance amendment in the last few days.
- The standards the City is trying to fiddle with now were set up some time ago in an attempt to be fair to everybody. The City and various community factions spent years debating what was appropriate coverage for various lots of various sizes and determined the standards that exist today would be the proper standards for the future. The Planning Commission should be cautious in attempting to change that.
- The ordinance amendment will take away many people's property values and the City would end up in long, protracted litigation with them. The amount of liability the City will get into if it ends up being the test case on a constitutional takings problem is likely to be significant.

Sherry Faber indicated the following:

- She had only just heard of this meeting and the proposed amendment through Mr. Rex.
- That the Commission would even consider this matter during this time of crisis in the community with respect to property values is appalling. This community is hurting and needs the Commission to help their property values, not devalue them.
- In the past year she has represented four multi-unit homeowners in purchasing their properties. To devalue properties by downzoning them is incredibly unfair. Those property owners would have been at tonight's meeting and filled the room had the City noticed people properly.
- Why has the proposed zoning amendment even come about? If it is a matter of having enough affordable housing, the Commission should look at helping Nonconforming units become Conforming and doing a Variance for those property owners, of which there are many?

David Holub indicated the following:

- He had no notice of this matter and only just heard of it in the last few hours. He does not know yet if his home will be affected.
- It is striking that the unknown affected properties exceed the known affected properties. It is not known what the affect of this amendment will be; yet there are many people out there that have no idea if this will affect their property.
- He has been saving for years to remodel his home, and this definition of 51 percent is extremely broad, so even just fixing things and not even changing and increasing his floor area would make him subject to this amendment.
- He wants to know if his property will be affected by this amendment and he wants the City to give him notice if it plans to change the Zoning Ordinance in a way that could substantially affect his property value.
- He echoed the question of why is the City seeking to amend the Zoning Ordinance?

1 Mike Monsef, 211 Fourth Street, indicated the following:

- 2 • He was not noticed of the proposed amendment and only just found out a few
- 3 days ago.
- 4 • The public hearing regarding the Slope Ordinance was packed because of the
- 5 way it was announced, and the project was killed on the spot. A small notice in
- 6 the newspaper was not enough notice.
- 7 • The City can easily be sued for devaluing properties. He owns two properties
- 8 and plans an addition for his house.
- 9 • He asks that the matter be continued until proper notice has been given to all
- 10 who are affected.
- 11

12 Paula Fancher, 810 Spring Street, indicated the following:

- 13 • Her real estate agent, who told her she would likely be affected, informed her
- 14 of this matter one day ago.
- 15 • She does not understand why the City would do this, but if it does intend to
- 16 consider this kind of taking of property then it should send everyone in the R-2-
- 17 2.5 and R-3 zones notice so they can review the amendment and make
- 18 comments at a public hearing.
- 19

20 Susan Frank, 500 Turney Street, indicated the following:

- 21 • Her residence is in an R-2 zone.
- 22 • She only heard of this matter because she was at this meeting by chance. She
- 23 is not sure if her property will be affected, but she believes it will.
- 24 • The City needs to give proper notice to the affected property owners, which are
- 25 in the hundreds, and get their input. If not, they will be furious.
- 26

27 Rick Pulley indicated the following:

- 28 • He represents a Sausalito homeowner who could not attend the meeting.
- 29 • That homeowner bought her home in 2009 on a substandard 2,400 square foot
- 30 lot. She has spent the past year working with the City renovate the home and is
- 31 ready to submit for a Design Review. This ordinance amendment would not
- 32 allow her to build usable square footage. Her house is presently only 850
- 33 square feet. Under the amendment she could only build a 1,200 square foot
- 34 house, which is substandard.
- 35

36 Jeff Butler indicated the following:

- 37 • There are alternatives to rezoning to provide additional affordable housing,
- 38 such as faster permitting and planning approval, or having incentives to do
- 39 second units. Mill Valley allows an additional 500 square feet on a lot over
- 40 8,000 square feet in order to accommodate a second unit.
- 41

42 The public comment period was closed.

43 Commission comments:

- 44 • The impetus of this matter is it is a fairly regular occurrence in the R-2 and
- 45 above zoning districts that a duplex or multi-family structure is bought and the
- 46 owner brings in a plan where they want to build out to the maximum possible.
- 47 In many cases they are on very small lots, but the homeowner is able to take
- 48
- 49
- 50

1 advantage of the allowances for multi-family dwellings and apply them to
2 single-family dwellings, which create out of scale and out of character projects
3 with detrimental effects. Even Heightened Design Review does not give the
4 Commission an adequate means to prevent these homes that are very large
5 compared to the homes around them from being built. This amendment is an
6 effort to put some teeth in the regulations so that some of those mass and size
7 issues can be controlled. The single-family residences that were built with the
8 Site Development Standards meant for multi-family units are getting an FAR
9 windfall, as well as reducing the housing stock.

- 10 • The first line of the Site Development Standards state, “These standards are
11 not entitlements.” The City is not seeking to downzone or diminish property or
12 development rights. What they are doing is initiating a discussion about how to
13 create development standards that would preserve the character of this
14 beautiful city. Is it going in the right direction when single-family residences
15 take the place of multi-family residences and are they receiving a windfall in
16 terms of FAR that is not consistent with the rest of the neighborhood? The City
17 has lacked the ability to do much about it, but this amendment would take away
18 the ability to manipulate and take advantage of the code.
- 19 • The notice issue needs to be carefully considered. It would behoove the
20 Commission to gather feedback from all who might be affected by this
21 ordinance in its effort to determine how to balance the tension between
22 overdevelopment of a multi-family lot versus the pressures that are
23 experienced by someone like the homeowner represented by Mr. Pulley who
24 has a very small house or has purchased a substandard lot and who could be
25 squeezed by this ordinance.
- 26 • This is a political issue and the appropriate action is to send this matter to the
27 City Council and tell them to put it on the Legislative Committee’s agenda or
28 open it up to public hearing outside of the Planning Commission. It is not just
29 something that should be noticed to the owners of this affected property; it
30 affects the whole city.
- 31 • Perhaps there should be a public workshop where everyone is noticed. Let
32 owners of both single- and multi-family dwellings weigh in on the issue. The
33 matter needs to be opened up, people who may be affected by this zoning
34 amendment need to be noticed, and as much input as possible needs to be
35 gathered.
- 36 • This matter should not be sent to Council until the Commission has considered
37 the various options and given Council its input. This matter came before the
38 Commission for its review and for appropriate modification to be made. Now
39 having heard the issues from the public, a workshop or other kind of forum
40 where the public can give feedback should be held so the Commission can
41 make an informed decision and pass that recommendation on to the City
42 Council.

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46 Staff comments:

- 47 • Both the Zoning Ordinance and the Government Code require that Zoning
48 Ordinance amendments be first brought to the Planning Commission for a
49 recommendation to the City Council and that the Council then takes action. If
50 the Council makes modifications to that amendment that were not considered

1 by the Planning Commission it is required to go back for the Planning
2 Commission's considerations of those modifications and recommendations on
3 those changes.

- 4 • Council has often used the Planning Commission for the very purpose of what
5 is happening at this meeting: to vet out the issues that affect the Planning
6 Commission and its decision making process, often by conducting public
7 hearing workshops, and bringing those issues to the Council.
8

9 Commission question to staff:

- 10 • Did this matter come from the City Council in the first place? *Staff responded*
11 *this is one of the items suggested to be on the priority calendar by the Planning*
12 *Commission. Council followed that suggestion and put it above the line to*
13 *make it in the top half of its priorities.*
14

15 Commission comments:

- 16 • It may well be that the remedy is not with this particular language, but maybe
17 with the Heightened Design Review language, and it could easily be resolved
18 there rather than with this approach.
19
- 20 • The Commission would like an opportunity to work with some of the public who
21 spoke this evening and other community members to fully understand their
22 concerns and determine how to best address them before sending a
23 recommendation to Council.
24
- 25 • Before any other meeting there ought to be a very clear statement from the
26 City, perhaps in an article in the Marinscope, as to why this is being
27 considered, what the issues are and why it is necessary to remedy them.
28
- 29 • This ordinance amendment would not constitute takings nor diminish
30 development rights. It lowers development rights when someone does what
31 they were not supposed to do in that district in the first place

32 **Chair Bair moved and Commissioner Cox seconded a motion to continue the**
33 **public hearing to a date uncertain. The motion passed 5-0. Chair Bair and**
34 **Commissioner Cox will meet with staff to explore options to address the public's**
35 **concerns expressed tonight.**

- 36 **4. TM 09-068, Modification to Condition of Approval, Chang, 95 Cloudview**
37 **Road.** Modifications to the Conditions of Approval in Planning Commission
38 Resolution No. 2009-42, which approved a Tentative Minor Subdivision Map to
39 subdivide one parcel at 95 Cloudview Road (APN 065-191-76) into two
40 separate parcels. The requested modifications are related to a request to
41 demolish the accessory building on the resultant parcel.
42

43 The public hearing was opened. Associate Planner Schinsing presented the Staff
44 Report.
45

46 Commission questions to staff:

- 47 • The Project Description says the property owner is now interested in
48 demolishing the accessory building, but staff is giving the Commission
49 alternative Conditions of Approval, one if he demolishes and one if he does
50

1 not. Is the owner seeking to demolish this building by this amendment? *Staff*
2 *responded no, the owner would need to apply for a Demolition Permit through*
3 *the Building Division to do that. The owner requested these Conditions of*
4 *Approval in order to give him the option of demolishing the building.*
5

6 Presentation was made by Michael Rex, the applicant.
7

8 Commission question to Mr. Rex:

- 9
- 10 • In order to record the Final Map with the language as it is the concern is that
11 the accessory structure would just sit there and now not have a primary
12 structure. *Mr. Rex responded it is still one lot until the Final Map is recorded,*
13 *and the map will only be recorded when the building is either converted into a*
14 *dwelling or torn down.*

15 The public comment period was opened. Being none, the public comment period was
16 closed.
17

18 Commission comments:

- 19
- 20 • By coming up with amendments to Conditions of Approval of a Tentative Map
21 the Commission would be giving legal sanction to the owner hedging his bets.
 - 22 • The preference is to retain the building as an accessory dwelling because there
23 is a need for extra housing stock in Sausalito. What was promised when the
24 Commission was asked to approve the lot subdivision was that there would be
25 two dwelling units as a result of the split. The Commission's initial requirement
26 that the accessory building remain on the second lot and be converted into that
27 lot's primary dwelling unit should be retained.

28
29 Correction to Conditions of Approval:

- 30
- 31 • The word "providing" in the second to last line of Condition 10-B should be
32 changed to "provided."

33 **Chair Bair moved and Commissioner Graef seconded a motion to approve**
34 **modifications to Conditions of Approval for 95 Cloudview Road. The motion**
35 **passed 5-0.**
36

- 37
- 38 **2. DR 10-144, Design Review Permit, Withy-McDonald, 99 Miller Lane.** Design
39 Review Permit to allow a 1,825 square foot two-story addition within the
40 footprint of the existing single-family residential dwelling, landscaping, and patio
41 improvements with Heightened Design Review to allow the project site to
42 exceed 80% of the floor area and building coverage limitations permitted for the
43 single-family residence located at 99 Miller Lane (APN 065-151-41).

44 **Vice Chair Keegin indicated he would recuse himself because he lives within 500**
45 **feet of the subject property.**
46

47 The public hearing was opened. Associate Planner Burns presented the Staff Report.

48
49 Presentation was made by Ray Withy and Michael Rex, the owner and applicant.
50

1
2 The public comment period was opened. Being none, the public comment period was
3 closed.
4

5 **Commission comments:**

- 6
- 7 • The Commission is delighted to see the architecture of Theodore Bernardi
8 being maintained and enhanced.
 - 9 • This is a well-done project on a lovely site.
 - 10 • The owners obviously take great pride in their home and in maintaining the
11 vision of Mr. Bernardi.

12 **Additional Condition of Approval:**

- 13
- 14 • Prior to issuance of a Construction Permit the applicant shall obtain Planning
15 Commission approval of a Tree Removal Permit.

16
17 **Commissioner Werner moved and Chair Bair seconded a motion to approve a
18 Design Review Permit for 99 Miller Lane subject to the additional Condition of
19 Approval. The motion passed 4-0.**

20
21 **Old Business**

22 None.

23
24 **New Business**

25
26 **5. 2011 Planning Commission Meeting Calendar**

27
28 The public hearing was opened. Community Development Director Graves presented
29 the Staff Report.

30
31 **Commissioner Werner moved and Commissioner Cox seconded a motion to
32 approve the 2011 Planning Commission Meeting Calendar. The motion passed 4-
33 0.**

34
35 **Communications—Planning Commission**

- 36
- 37 • The Commission requests that staff put on a future agenda an item with respect
38 to generating a written policy requiring that written communications to the
39 Planning Commission be delivered prior to the distribution of the packet, which is
40 the close of business on the Friday before the hearing.

41 **Adjournment**

42 The meeting was adjourned at 9:46 p.m.

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46 _____
47 Submitted by
48 Jeremy Graves, AICP
49 Community Development Director

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46 _____
47 Approved by
48 Stan Bair
49 Chair