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SAUSALITO PLANNING COMMISSION
Wednesday, June 1, 2011
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 Lilly Schinsing, City Attorney Mary Wagner

Approval of Agenda

Chair Bair moved and Commissioner Cox seconded a motion to approve the agenda. The motion passed 5-0.

Public Comments

None.

Approval of Minutes

None.

Public Hearings

1. **VA 11-108, Variance, Jacobs, 109 Cloudview Trail.** Variance from parking requirements to maintain the one off-street parking configuration at 109 Cloudview Trail (APN 064-276-03).

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

Commission questions to staff:

- The Zoning Ordinance requires an applicant for a Variance to deliver as-is drawings depicting the property at the time the Variance is being requested, but the drawing presented to the Commission was submitted in 1971 with the original application to build the house. Has the applicant provided a current as-is drawing? *Staff responded no. Staff found it sufficient to use the drawings that were approved, but as-is drawings can be requested of the applicant and the hearing continued.*
- The drawings presented to the Commission are not accurate, because at the time of the original application to build the house, the parking pad was not obstructed by boulders or was still there, so it cannot be certified that today the site is as it is depicted in the drawings. *Staff responded they could not certify that.*

- 1 • If that off-street parking spot were there, how would it be accessed? *Staff*
2 *responded from the plan it appears that some sort of access was proposed to*
3 *leads to the parking spot.*
- 4 • Is the shaded area the road as it presently exists? *Staff responded it is the*
5 *existing road, as indicated on the Building Permit plans from 1971.*

7 Commission comments:

- 8 • The road has been substantially widened since the 1971 plans.
- 9 • The Commission is hesitant to deliberate on this matter without an as-is
10 drawing of the site, as it would be too difficult to make an informed decision
11 without knowing where the road is.

13 Commission questions to staff:

- 14 • Has the City asked the applicant for up-to-date plans of the site and not
15 received them? *Staff responded their courtesy notices and compliance orders*
16 *are based on the contention that the off-street parking space was not provided.*
17 *Staff has not received anything from the applicant stating they are providing the*
18 *second off-street parking space.*
- 19 • Page 16 of the Staff Report shows a photograph of the home with a car in the
20 driveway of the garage. The easement runs up to the front wall of the garage,
21 so when the homeowners parks in the driveway of the garage they are in the
22 easement, correct? *Staff responded that is correct according to the Building*
23 *Permit plans.*
- 24 • Is it correct that the burden of proof is on the applicant to prove that they are
25 entitled to a Variance? *Staff responded the applicant is required to submit a*
26 *Letter of Justification, because they are requesting relief to the requirements of*
27 *the Zoning Ordinance.*

29 Presentation was made by Mark and Betsy Jacobs, the applicants.

31 The public comment period was opened.

32 Fritz Warren indicated the following:

- 33 • He installed the road, now known as Cloudview Trail, in 1949-1950. At the time
34 it was a road easement and called Wolfback Road. The surveyor put stakes in
35 the centerline of the road easement and he horizontally measured out 20 feet
36 on either side to make the road.
- 37 • The applicant wishes to eliminate the 40-foot wide road easement. The whole
38 plan was that each property owner would own one-half of the road easement
39 that supplied the area.
- 40 • The Jacobs have installed a rock garden that utilizes the full 20 feet of their
41 easement. If they have the ability to do that it will set a precedent for their
42 owners to do the same, and then the road will be lost. The concept of granting
43 a Variance to allow development in the road easement should not even be on
44 the table.
- 45 • The subject off-street parking spot was accessible in 1971, but then Mr. Jacobs
46 put in a rock garden and created an elevation change, in effect blocking the
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1 use of that road, because his neighbors were using that part of his property to
2 maneuver their vehicles.

- 3 • This road does not conform to the Fire Code's requirement of 20 feet of
4 unimpeded roadway.
- 5 • He concurs totally with Staff's assessment of the situation.
6

7 Mr. Jacobs' rebuttal comments:

- 8 • California law allows them to make any use they want of that unused portion of
9 the easement, such a rock garden, et cetera, as long as it is not being used as
10 a roadway. It is not being used as a roadway and never has been.
- 11 • This is an exceptional circumstance, which is there is plenty of off-street
12 parking spaces that can meet the Parking Ordinance. There is no other
13 property on Wolfback Ridge that is having their basic property right taken
14 away from them because of something that is worthless to anyone. It is an
15 unused easement and has never been used.
- 16 • Regarding the question of practical difficulty or unnecessary hardship, this
17 hillside is a very unusual situation. There is a landslide area to the left of the
18 garage that would cause an undue hardship in order to provide another off-
19 street parking space when there are plenty of existing spaces.
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21 The public comment period was closed.
22

23 Commission comments:

- 24 • The issue here is not whether there should be a Variance, but whether the
25 definition of a street has been correctly interpreted by the staff.
- 26 • The definition of a street is, "it is customarily used for automobile traffic and for
27 providing vehicle access." A street needs to have both of those. The paved
28 portion of the roadway is a street, because it is customarily used for automobile
29 travel, but the portion of the easement is not. If the definition of street is
30 incorrect and it is just a paved area, then the applicant's contention that the
31 non-street is available for parking and that a Variance is not required is correct.
- 32 • The Zoning Ordinance says, "providing vehicle access to abutting property,"
33 not parking. The Commission regularly gives encroachment agreements in the
34 street right-of-way to access onsite parking. The Commission cannot give an
35 Encroachment Agreement here because this is not City property, it is a private
36 road, and it is defined as a road easement on that drawing, and should be
37 defined as such in the Tentative Map, the Final Map, and the Parcel Map, not
38 as a place to park.
39

40 Staff comments:

- 41 • The issue is not the interpretation of a definition of a street. The issue is this is
42 a private easement that has granted other easement holders rights within that
43 area and the City cannot unilaterally grant different rights.
- 44 • The analogy to a public right-of-way is a good one, because in that
45 circumstance the City requires an Encroachment Agreement to put any
46 improvements that are not street improvements in that right-of-way.
- 47 • In this circumstance the other easement holders have not said that granted
48 easement area could be used for private parking. It is not in the City's purview
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1 to alter the existing property rights of all the other easement holders, nor is the
2 City impacting this property owner's rights, because it is not telling them what
3 to do or not do with their property, but is saying they need to comply with the
4 City's requirements for off-street parking. If they cannot comply with those
5 requirements, they can ask the Commission for a Variance.
6

7 Commission comments:

- 8 • This is a private easement that serves at least 18-20 other properties. The
9 Heath case cited by the applicant cites an abandoned easement that serves
10 one single piece of property. If that is the basis upon this is presumed to be a
11 taking, it does not apply.
- 12 • The Commission can no more grant a Variance, as the applicant is suggesting,
13 from the definition of street on private public right-of-way than an
14 Encroachment Permit. They are both out of the question.
- 15 • The application does not meet criteria for a Variance to the Zoning Ordinance,
16 but there is a provision in the Zoning Ordinance for appealing an administrative
17 determination and that would be the proper approach for this applicant to
18 determine where this street begins and ends under this definition.
- 19 • The Wolfback Ridge Homeowners Association paves and pays for that road.
20 Why have they not weighed in on this as the entity that has substantial
21 responsibility? Whether the applicant can park in the easement is an issue
22 between them and the Homeowners Association.
- 23 • The Dedication Map and the plan for all of these homes dedicates 20 feet of an
24 easement on each piece of property, so that is an HOA issue as to the use of
25 that property.
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28 Staff comment:

- 29 • The City does not allow people to utilize other property or property that is
30 burdened with rights of another to satisfy their project without the permission of
31 the other property holders. It is staff's recommendation that the Commission
32 continues that and not utilize a definition interpretation to impact other people's
33 property rights, because all those other easement holders have rights in that
34 easement as well. This has been the subject of extensive litigation involving
35 One Cloudview Trail and it has gone to the court of appeals at least twice.
36

37 Commission comments:

- 38 • In his letter Mark Jacobs is seeking a Variance to the definition of off-street
39 parking, but that is not a Variance the Commission can grant. The only
40 Variance the Commission can grant is to the Zoning Ordinance requiring these
41 two spots that are not on the easement belonging to the Wolfback Ridge HOA.
42 The Commission cannot make the findings necessary to grant that Variance,
43 which is the only Variance the Commission legally could grant were it so
44 inclined.
- 45 • That applicant has a compelling argument in his favor; but the Commission
46 cannot give him that.
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49 **Commissioner Cox moved and Chair Bair seconded a motion to deny the**
50 **approval of a Variance for 109 Cloudview Trail. The motion passed 5-0.**

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Old Business

None.

New Business

None.

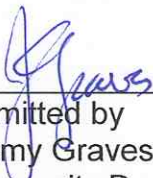
Communications

Staff

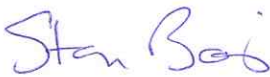
- Copies of the Initial Environmental Study/Negative Declaration for the Hillside Design Guidelines have been distributed along with a Staff Report providing an overview of the review process for the assorted design guidelines as well the environmental document and timeline. With this distribution the 20-day comment period on the environmental document commences. At the next Planning Commission meeting on June 15th a public hearing will be scheduled on the environmental review document on the Historic Design Guidelines as well as a proposed text amendment to amend the findings for approval of Design Review Permits. Copies of the draft environmental document will also be distributed to the Historic Landmarks Board and City Council and will be posted on the City's web site.

Adjournment

The meeting was adjourned at 7:55 p.m.



Submitted by
Jeremy Graves, AICP
Community Development Director



Approved by
Stan Bair
Chair

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