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**SAUSALITO PLANNING COMMISSION**  
**Wednesday, December 1, 2010**  
**Approved Minutes**

**Call to Order**

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

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

Absent: City Attorney Mary Wagner

Staff: Community Development Director Jeremy Graves  
Associate Planner Heidi Burns, Associate Planner Lilly Schinsing,

**Approval of Agenda**

Chair Bair moved and Vice Chair Keegin seconded a motion to approve the agenda. The motion passed 4-0.

Commissioner Cox arrived at the meeting.

**Approval of Minutes**

October 15, 2008

Chair Bair moved and Vice Chair Keegin seconded a motion to approve the Minutes as amended. The motion passed 3-0 with abstentions by Commissioner Graef and Commissioner Werner.

**Public Comments**

None.

**Public Hearings**

1. **VA/DR/EA 10-219, Variance, Design Review Permit, Encroachment Agreement, Tomassini, 22 Atwood Avenue.** Variance from the maximum building coverage limitations, a Design Review Permit, and an Encroachment Agreement to allow reconstruction of parking deck and stairs located in the Atwood Avenue public right-of-way fronting 22 Atwood Avenue, and the reconstruction of a retaining wall located in the North Street public right-of-way fronting the rear of property boundary at 22 Atwood Avenue (APN 065-203-02).

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

Commission questions and comments to staff:

- What portion of the City-owned land would the applicant's Encroachment Agreement cover? *Staff responded it would cover the entire length of the frontage of 22 Atwood due to the retaining wall. The applicant is proposing to*

1           *reconstruct the retaining wall up to the City-owned property, as well as the*  
2           *existing retaining wall's stairs.*

- 3           • The applicant's proposed copper awning over the front door off the new  
4           parking deck would also encroach and should be included in the Encroachment  
5           Agreement. *Staff responded an alternative is the applicant could modify the*  
6           *awning to be located entirely on their property.*
- 7           • Is the applicant proposing to extend the existing retaining wall? *Staff*  
8           *responded no, it is the in-kind replacement of that existing retaining wall, which*  
9           *the applicant is required to reconstruct by the Engineering Division.*
- 10          • Is the lower level of the structure still there? *Staff responded yes. When a*  
11          *Building Permit was issued in 2000 for a new foundation, which encompasses*  
12          *that lower level, it was determined during the plan check process that the lower*  
13          *level was still structurally sound and could support the two upper levels.*
- 14          • What is the reason for not having the balconies in the plan when the Building  
15          Permit was issued in 2000? *Staff responded the applicant was considering*  
16          *potentially adding the balconies to the development, but the previous owner*  
17          *was in a rush to get the entitlements approved so he could sell it and could not*  
18          *afford the additional Variance fee and uncertain timing of the approval process.*

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20  
21 Presentation was made by Peter Greenwood and Tim Tomassini.

22  
23 Commission questions to Mr. Greenwood:

- 24          • Are you saying that repair of the existing retaining wall would include  
25          encroaching onto your neighbor's property in order to accomplish that? *Mr.*  
26          *Greenwood responded they were hoping to get the neighbor to share in the*  
27          *repair costs, but they have not defined that yet. They would want to extend the*  
28          *wall up to the property line.*
- 29          • Is extending the retaining wall to the property line what is depicted on the  
30          application presented to the Commission this evening? *Staff has stated it is*  
31          *not. Mr. Greenwood responded it is. This is a right-of-way situation.*
- 32          • Are you now saying that the retaining wall extends onto your neighbor's  
33          property. *Mr. Greenwood responded it does and it is severely cracked.*

34  
35 Staff comment:

- 36          • The retaining wall does not encroach into the neighbor's property. Rather, both  
37          Mr. Tomassini and his neighbor encroach into the public right-of-way.

38  
39 Commission comment:

- 40          • The Commission does not have the authority to grant an Encroachment Permit  
41          on the adjacent neighbor's property in order to solve this problem.

42  
43 Commission question to Mr. Tomassini:

- 44          • Do you intend to use the gateway and stairs on North Street to access your  
45          property? *Mr. Tomassini responded no, because it is overgrown and he parks*  
46          *on the parking deck.*
- 47          • Is there any parking on that side of North Street? *Mr. Tomassini responded no.*

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

4 Commission questions and comments to staff:

- 5 • Instead of seeking an Encroachment Agreement to improve a retaining wall not  
6 on the applicant's property, would it be feasible to seek a financial contribution  
7 from the applicant for the City to repair the retaining wall on City property rather  
8 than extending the applicant's property? *Staff responded this requirement was*  
9 *from the Engineering Division and so staff cannot answer that question, but*  
10 *there is a greater private benefit from this retaining wall than a public benefit.*
- 11 • It is reasonable to have the applicant pay for the retaining wall since it does  
12 benefit him, but this is being treated as the applicant's property when it is on  
13 City property. *Staff responded that is how it is with all Encroachment*  
14 *Agreements, which by definition is private improvement on public property.*

15  
16 Commission comments:

- 17 • The applicant plans to park two cars on the parking deck, but that deck can  
18 only handle one car. If two cars are parked in tandem, the tail end of the back  
19 car will stick out into the street.
- 20 • With respect to the retaining wall on North Street, the Encroachment  
21 Agreement is for this property only. If the City Engineer requires an extension  
22 of the wall, it is up to the City Engineer to figure out how to make it legitimate,  
23 not for the Commission to add a condition that says the encroachment goes  
24 over onto the adjacent property.
- 25 • A cleaner alternative is for the applicant to stop repair of the retaining wall at  
26 his virtual property line, turn it 90-degrees to the north, and let the neighbor's  
27 wall fall down. That is the neighbor's problem, not the applicant's.
- 28 • The virtual property line is not an issue; there is no property line there. There is  
29 a wall there in need of repair that terminates at the neighbor's garage. It is to  
30 the public benefit to have that wall repaired to retain the hillside.
- 31 • There are jurisdictional issues with regard to requiring the retaining wall to go  
32 onto the neighbor's property, but the Commission would like to give the  
33 applicant the opportunity to work out an arrangement with the neighbors to  
34 extend the wall onto their property. If the neighbor does not agree, the  
35 applicant can build the wall to run up towards his west property line as it  
36 extends between Atwood and North Street.
- 37 • It is important to repair the retaining wall. The resolution should be approved as  
38 written by staff and leave it to the property owners to resolve payment  
39 arrangements for that work which benefits both properties.
- 40 • Normally Variances for the decks would not be looked at favorably, because  
41 this is already way over permissible building coverage and it is Heightened  
42 Review, but this is a unique property in that the amount of public right-of-way,  
43 both in the front of the building and up against it in the back, makes the lot very  
44 small. Given that, and that there is going to be an Encroachment Agreement  
45 granting this property the obligation to repair the retaining wall and maintain the  
46 property, the Variances for the decks could be approved.
- 47 • The Commission should not change the wording of the resolution to call for a  
48 90-degree turn in the retaining wall to have it go up the hill because the  
49  
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1 Commission has not looked at the structural implications of that or of letting the  
2 remaining portion of the retaining wall that abuts the neighbor's garage  
3 deteriorate and fall down potentially.

- 4 • The City Engineer should talk to the Planning Department and the City  
5 Attorney regarding the limits in terms of what can be demanded regarding the  
6 retaining wall.
- 7 • The resolution should be approved as written, and then leave it to the applicant  
8 to go to the City Engineer and work out an appropriate solution. That gives the  
9 applicant the option of seeking a minor plan change that could be dealt with at  
10 the staff level and would not involve coming back to the Planning Commission.

11  
12 Additional Conditions of Approval:

- 13 • A Condition of Approval shall be added that authorizes the City Engineer to  
14 approve the shortening of the retaining wall in that particular extension area on  
15 the basis of the applicant providing an alternative design that ensures the  
16 stability of the hillside in that portion of the right-of-way on the applicant's side  
17 of the virtual property line. The intent is to allow the applicant to work with the  
18 City Engineer. Notification would need to be provided to the adjoining property  
19 owner.
- 20 • A description of the copper canopy shall be added to the Encroachment  
21 Agreement.

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23  
24 **Commissioner Werner moved and Vice Chair Keegin seconded a motion to**  
25 **approve a Variance, Design Review Permit, and an Encroachment Agreement for**  
26 **22 Atwood Avenue subject to an additional Condition of Approval. The motion**  
27 **passed 5-0.**

- 28  
29 **2. ZOA 10-355, Zoning Ordinance Amendment—Standards for Single Family**  
30 **Dwellings for Two- and Multi-family Zoning Districts, City of Sausalito.**  
31 Zoning Ordinance Amendment modifying Zoning Ordinance Table 10-22-2 (Site  
32 Development Standards-Residential Zoning Districts) to revise the maximum  
33 site development standards for single-family dwellings in Two-Family (R-2-2.5  
34 and R-2-5) and Multi-Family (R-3) Zoning Districts. This amendment is exempt  
35 from the California Environmental Quality Act (CEQA) in accordance with  
36 Section 15061.b.3 of the CEQA Guidelines.

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

40  
41 The public comment period was opened.

42  
43 Carter Maser, Bonita Street, indicated the following:

- 44 • He asked if someone has a duplex and they choose to become a single family  
45 home, making no changes to any of the ratios, could the City block that? *Staff*  
46 *responded one of the intents of the draft ordinance would be to limit the*  
47 *number of conversions occurring in Sausalito. If the duplex did exceed the*  
48 *maximum development standards in terms of floor area, building coverage, or*  
49 *impervious surface for the Single Family Zoning District, then a conversion*  
50

1           *could not happen unless the project received a Variance, the intent being to*  
2           *preserve that portion of Sausalito's housing stock, which includes rental*  
3           *housing and duplexes. Another option the property owner could have is to*  
4           *make the residence smaller to comply with the standards of the R-16 district.*  
5

6 The public comment period was closed.  
7

8 Commission question to staff:  
9

- 10       • All but one of the Commissioners lives in the affected districts. Is that a conflict  
11       of interest? *Staff responded it is a conflict of interest only if the proposed*  
12       *Zoning Ordinance amendments affect the Commissioners in a manner different*  
13       *than the public at large.*

14 Commission comments:  
15

- 16       • This ordinance should be adopted because in the R-2-2.5 and R-3 districts it is  
17       not uncommon for owners to want to knock down a building and put a larger  
18       building on a site, which they can then use as a .65 FAR.
- 19       • The reductions would be substantial, in the R-2-2.5 a 30-percent reduction in  
20       allowable FAR in coverage, and in the R-3 almost 44-percent.
- 21       • This ordinance will create up to 1,020 Legal Nonconforming units that will  
22       require an encroachment agreement and/or variance to make changes to the  
23       existing units.
- 24       • Chapter 10.62.050 states, "Nonconforming use of a structure or premises shall  
25       not be allowed under the following conditions: nonconforming use has been  
26       voluntarily vacated for six months or more." That means if a Legally  
27       Nonconforming house is vacated for six months while on the market it  
28       becomes illegal. More thought needs to be given to how this proposed  
29       ordinance interplays with the Nonconforming Uses and Structures Ordinance,  
30       because it would not be fair to impose that kind of financial hardship on owners  
31       so that they cannot move out of their house until it is sold for fear that it will  
32       remain vacant for six months and then no longer be conforming, and perhaps  
33       unsalable.
- 34       • Chapter 10.62.050A3 states, "A Nonconforming structure or portion thereof that  
35       is involuntarily demolished may be replicated if Building Permits are issues  
36       within one year of involuntary demolition." If an earthquake demolishes a  
37       structure, it would impose an extraordinary hardship on a homeowner who has  
38       done nothing wrong, but who is now rendered Legally Nonconforming.
- 39       • Chapter 10.62.050A6 states, "Any Nonconforming structure that is either  
40       voluntarily or involuntarily partially demolished may be remodeled as long as  
41       the new building elements comply with code and the nonconforming portion of  
42       the building is not demolished." If a building is involuntarily demolished, for  
43       example by earthquake, it cannot be remodeled without a Variance. In this  
44       case the entire building is now Nonconforming.
- 45       • If a house is demolished in an earthquake, the owner will meet the hardship  
46       requirements of a Variance. Also the City will pass a special emergency  
47       ordinance.
- 48       • Any time the Zoning Ordinance is amended or adopted anew, it will create  
49       nonconforming uses.  
50

- Rather than simply referencing Chapter 10.62.050 the language in the new ordinance should be rewritten to be appropriate to the revised ordinance, so that this ordinance has its own vehicle for the substitution, replacement, or extension of the Legal Nonconforming structures that will be created by its enactment.
- The Commission supports the ordinance in principle but wants staff to clarify the consequences of the Legal Nonconforming portion of the existing Zoning Ordinance as it might relate to various options that a homeowner would have to go through.

**Commissioner Werner moved and Commissioner Cox seconded a motion to continue the public hearing for Zoning Ordinance Amendment—Standards for Single Family Dwellings for Two and Multi-family Zoning Districts to the meeting of December 15, 2010 with direction to staff to explore the Nonconformity aspects of the draft ordinance. The motion passed 5-0.**

**Old Business**

None.

**New Business**

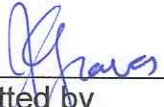
None.

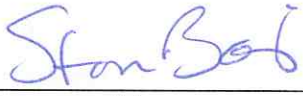
**Staff Communications**

- The Veteran Administration has is planning on demolishing the existing structure at 25 Libertyship and constructing a new smaller building, plus a parking lot. At the last City Council meeting Council directed staff to:
  - Continue to express to the VA the community's concerns regarding the historical nature of that structure and the possibly that it would be eligible for a listing on the National Register,
  - Contact the respective elected officials at the state and federal level regarding the structure.
  - Retain a consultant to further evaluate the historical integrity of that structure.
  - Work with the Historic Landmarks Board to initiate the process to place that structure on the City's local register. That designation would eventually make its way to the Planning Commission who would be asked to make a recommendation to City Council for placing that structure on the City's local register.

**Adjournment**

The meeting was adjourned at 8:35 p.m.

  
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Submitted by  
Jeremy Graves, AICP  
Community Development Director

  
\_\_\_\_\_  
Approved by  
Stan Bair  
Chair