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SAUSALITO PLANNING COMMISSION
Wednesday, July 20, 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, Commissioner Joan Cox, Commissioner Richard Graef, Commissioner Bill Werner

Absent: Vice Chair Stafford Keegin

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

Community Development Director Graves indicated the applicant for Item 2, 525 Sausalito Boulevard (Lilienthal), had requested the public hearing be continued to a date uncertain.

Chair Bair moved and Commissioner Cox seconded a motion to continue the public hearing for Item 2, 525 Sausalito Boulevard (Lilienthal), to a date uncertain. The motion passed 4-0.

Approval of Agenda

Commissioner Cox moved and Commissioner Werner seconded a motion to approve the agenda as amended. The motion passed 4-0.

Public Comments

None.

Approval of Minutes

July 6, 2011

Commissioner Cox moved and Commissioner Werner seconded a motion to postpone approval of the July 6, 2011 minutes. The motion passed 4-0.

Public Hearings

- 1. DR 11-130, Design Review Permit, Foote, 27 Central Avenue.** An after-the-fact Design Review Permit for exterior renovations to an existing residence at 27 Central Avenue (APN 065-231-02). Continued from the July 6, 2011 Planning Commission meeting.

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

1 The public comment period was opened.

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3 Presentation was made by Ginger Foote, the applicant.

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5 **Vice Chair Bair indicated he had not visited either 27 or 31 Central Avenue and**
6 **had not met with the Footes or Mrs. Rupert.**

7
8 **Commissioner Cox indicated she had visited both 27 and 31 Central Avenue and**
9 **met with the Footes and Mrs. Rupert.**

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11 **Commissioner Graef indicated he had visited both 27 and 31 Central Avenue and**
12 **met with the Footes and Mrs. Rupert.**

13
14 **Commissioner Werner indicated he had visited both 27 and 31 Central Avenue**
15 **and met with the Footes and Mrs. Rupert.**

16
17 David Spurgeon indicated the following:

- 18 • He is an architect and recently found one of his original drawings of Mrs.
- 19 Rupert's addition done 25 years ago.
- 20 • At face value it appears the applicant blatantly started adding approximately
- 21 200 square feet to their project after the fact, although they had plenty of time
- 22 to properly apply for a permit to expand their footprint. The planning for that
- 23 additional square footage did not come out of nowhere and had to have taken
- 24 place long before the applicant "got caught."
- 25 • If the Planning Commission approves this project as an after-the-fact project, it
- 26 sends a tacit admission to the citizens of Sausalito that if they cheat the
- 27 Planning Commission will forgive them. The Planning Commission has an
- 28 obligation to do the right thing in this matter and should send the applicant back
- 29 to square one.
- 30
- 31

32 Commission question to Mr. Spurgeon:

- 33 • Did you design the addition project for Mrs. Rupert's residence at 31 Central
- 34 Avenue 25 years ago? *Mr. Spurgeon responded yes. The addition they did at*
- 35 *that time did not effect any changes in her current view; it is the same as it has*
- 36 *always been.*
- 37

38 Bill Ziegler, representing Mrs. Rupert at 31 Central Avenue, indicated the following:

- 39 • One of Mrs. Rupert's issues is privacy. From the applicant's new expanded
- 40 deck they can look back directly into Mrs. Rupert's home. Mrs. Rupert's front
- 41 windows have always been without curtains so she can enjoy the view. At night
- 42 she will now be open to observation from 27 Central and will be have to install
- 43 curtains.
- 44 • Retroactive approval of a Design Review application is not necessarily a big
- 45 issue if no harm is done and no one objects, but problems occur when there
- 46 are issues with neighbors.
- 47 • The reasons for Design Review procedures are clear. Under City Code Section
- 48 10.54.050 review is required if the project has the potential to impair views or if
- 49
- 50

1 the potential visual impact of the exposed under framing is a matter that should
2 be looked at.

- 3 • Four things that should occur under the code are public notice, story poles
4 where there is a view issue, site photographs presented before the application
5 is decided upon, and the presentation of expert testimony if necessary. In this
6 case Mrs. Rupert was deprived of all four of these rights. Instead there is now a
7 situation that works in the reverse, with sympathy with the applicant not to
8 cause them undue expense.
9

10 Commission questions to Mr. Ziegler:

- 11 • Would you prefer the Planning Commission tell the Footes to tear the deck
12 down? *Mr. Ziegler responded the Planning Commission needs to consider
13 whether the Footes will lose a substantial property right, but in considering that
14 right the Commission cannot consider the money the Footes have already
15 spent, because that was done improperly. If the Planning Commission does
16 not think there is a substantial property right at stake in favor of the Footes, the
17 Planning Commission cannot approve this project and the Footes will have to
18 suffer the consequences.*
- 19 • Is Mrs. Rupert objecting to this to the extent that if the Planning Commission
20 does not approve this project after-the-fact she is willing to have the Footes
21 tear the deck down and apply again? *Mr. Ziegler responded Mrs. Rupert is not
22 vindictive and there is the alternative that the parties work it out. There were
23 two proposals presented to Mrs. Rupert by David McLaird, the Foote's
24 contractor, that she seriously considered, one that she much preferred over
25 the other.*
- 26 • Were the negotiations that took place solely concerning the deck, or were
27 there other requirements that Mrs. Rupert had for any settlement? *Mr. Ziegler
28 responded he was not a party to those negotiations, but his understanding is
29 there was a tree issue involved, but that was not pursued. After the last
30 meeting he indicated to the contractor that Mrs. Rupert would be open to a
31 proposal, but it was not responded to. He does not know the status of any of
32 the proposals made by the contractor.*
33
34

35 Sharyl Rupert, 31 Central Avenue, indicated the following:

- 36 • She and her husband purchased their home in 1969. The one outstanding
37 feature of the property is its view highlighted by the San Francisco skyline.
- 38 • When the City informed her in November 2010 that the Footes were to replace
39 their deck, she was not concerned because the new deck was to be virtually
40 identical to the deck that had been on their house more than 40 years. She
41 was distressed over a tree-trimming incident in mid-November, but still did not
42 doubt the intentions of the Footes when they began work on their decks.
- 43 • On December 17, 2010 workmen at the Foote's site installed a large upright
44 beam, then slotted in an enormous horizontal beam. The two beams alone,
45 even without decking, almost obliterated most of her view of the San Francisco
46 skyline. She called the planning staff and was informed the Foote's permit was
47 only for an in-kind deck, but that the planning office was closed for the
48 holidays. In mid-January she was notified the Footes had applied for a
49 retroactive permit to retain their now enormous deck. She expressed her view
50

1 concerns and objections, but this was the first opportunity for her to do so, after
2 the deck was already completed.

- 3 • The contractor, David McLaird, proposed amendments to the Foote's deck. He
4 placed orange markers on the deck and noted in large letters the
5 measurements he had proposed. Mr. McLaird told her the deck railing had
6 been built and offered to put up a segment of it so she could determine its
7 effect. That was never done.
- 8 • Two proposals were marked in orange tape, and both would have been
9 satisfactory to her, although one she far preferred over the other. Mr. McLaird
10 told her he would bring the revised plans per their verbal agreement to her so
11 she could sign off on the proposal she preferred. She never heard from Mr.
12 McLaird again.
- 13 • She had a two-hour meeting with the Footes in March 2011 in which Scott
14 Foote suggested another solution, which addressed some, but not all, of her
15 view issues and was an expanded version of the less desirable plan suggested
16 by David McLaird months before. This plan suggested by Mr. Foote is not the
17 plan before the Planning Commission today, which was never discussed with
18 her and does nothing to address her view issues.
- 19 • Peter Greenwood, the Foote's architect, has suggested since she has a good
20 view otherwise she should be required to give up its most valuable element,
21 the San Francisco skyline. Mr. Greenwood has done a mathematical
22 calculation proposing that this illegal deck takes away 6.8% of her view, but
23 that 6.8% amounts to 100-percent of her San Francisco skyline view from her
24 primary viewing windows.
- 25 • The Footes have a much wider view than her and have multiple windows in
26 their home from which they have can view the San Francisco skyline. It is
27 unreasonable that she should be required to donate her San Francisco skyline
28 view to them, a view she has had for the past 42 years.
- 29 • If the Footes had followed what they knew to be the required process, or if the
30 professionals had followed the proper permit procedures, she would have had
31 an opportunity early on to express her view concerns before the deck was built.
32 A creative architect could have designed a deck to give the Footes everything
33 they wanted while protecting her treasured view. The Footes, their architect,
34 and their contractor all abused the permit process and that should not be
35 allowed.
36
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38 Scott Foote's rebuttal comments:

- 39 • When they visited Mrs. Rupert there was only one option available, which was
40 not satisfactory to them.
- 41 • When they had letters from Mrs. Rupert wanting the establishment of what they
42 considered a view easement across their property and a modified plan that did
43 not work, they did not know where to go.
- 44 • Mrs. Rupert said she had approved a proposal, but that has not been given to
45 them.
46

47 Commission questions to Mr. Foote:

- 48 • What do you understand to be what Mrs. Rupert would approve? *Mr. Foote*
49 *responded they had proposed having a beam on the corner moved back three*
50

1 *feet, and that is what they understand Mrs. Rupert would agree with.*

- 2 • Have you ever heard that there was some design that Mrs. Rupert would agree
- 3 with prior to this meeting? *Mr. Foote responded that is what he heard from Mrs.*
- 4 *Rupert at this meeting, but they were not aware of that prior.*
- 5 • Did your contractor make two different proposals to Mrs. Rupert? *Mr. Foote*
- 6 *responded Mr. McLaird discussed two options with Mrs. Rupert, he brought it*
- 7 *back to them, they discussed the options with Mrs. Rupert and asked her to*
- 8 *come back to their house to review the tree issues, and she never would talk to*
- 9 *them again.*
- 10 • Did your contractor have your authority to propose those two options to Mrs.
- 11 Rupert? *Mr. Foote responded yes.*
- 12 • According to Mrs. Rupert she was amenable to those two options, one more
- 13 than the other. Is her preferred option no longer on the table? *Mr. Foote*
- 14 *responded the option that he is talking about is very much on the table, but the*
- 15 *other option is not acceptable.*

16
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18 Peter Greenwood, architect, indicated the following:

- 19 • Mrs. Rupert has two windows, one of which looks out onto the deck. When one
- 20 is sitting in the center of that window or the center of that deck none of the San
- 21 Francisco skyline is diminished. From the other window, where the loveseat is,
- 22 6.8%, or three degrees, of the view is diminished.
- 23 • What exactly is the view of San Francisco has to be established. It is a long
- 24 shoreline. Taking the bearings from the Bank of America building downtown
- 25 where most of the lights are, it can be seen from both windows.

26
27 The public comment period was closed.

28
29 Commission questions to staff:

- 30 • Was the notch on the southeastern corner of the deck, which is shown in the
- 31 drawing, made at the request of the planning staff, or why is that there? *Staff*
- 32 *responded the notch is there because the deck is in the five-foot setback and*
- 33 *new construction needs to be set back five feet from the property line.*
- 34 • If the notch were not taken out, would that require a variance? *Staff responded*
- 35 *building to the edge of the deck would require a variance.*

36
37 Commission comments:

- 38 • What is most disturbing is the fact that what was built was not what was
- 39 approved, which is a primary part of this matter.
- 40 • A little bit of the San Francisco view is compromised if the project stays the
- 41 way it is, but that is not a huge detriment.
- 42 • The concern is how to deal with the fact that there is an as-built deck that was
- 43 not approved and the Commission is being asked to approve a modification of
- 44 it partly to mitigate some of the view impairment and partly to set back for the
- 45 required setback, which will require some demolition in any event even to
- 46 achieve that.
- 47 • There does not appear to have been any true agreement between the two
- 48 neighbors.

- 1 • The view is not just visible from the alcove of Mrs. Rupert's house, but does
2 extend back into the great room. There is a difference in the view impairment of
3 the deck as it is built now and the proposed notched deck.
- 4 • When viewing San Francisco from Mrs. Rupert's house, that small piece of
5 view that was lost was a little jewel. It is understandable that its loss would be
6 distressing. The problem with any of the solutions is that the fundamental loss
7 of view is caused because of the northeasterly post that goes up to support the
8 two major beams that extend under the deck, and those two major beams are
9 what slice the majority of the view itself. Any solution that keeps that post going
10 the full height and has beams on it will continue to block the same view that it
11 blocks now.
- 12 • The northeasterly post that supports the two major beams was not part of the
13 original deck. The southeasterly most post and the next two posts in the center
14 of the house were there to hold up the old deck. The northeasterly corner post
15 was extended to hold up the deck extension.
- 16 • When one gets a permit and is approved to do what they say they are going to
17 do, but then does something else, there is the potential of a penalty to be paid
18 for that. That penalty ought to be that the northernmost 100 square feet, which
19 is the addition including the post extension, should be removed, which would
20 alleviate the view problem from Mrs. Rupert's property. The notch on the
21 southern corner could remain with a variance. The deck would then remain as
22 it originally was plus an extension of a couple of feet to the east, which gives
23 the Footes what was approved and then some.
- 24 • The applicants have the choice of letting the Commission vote, which would
25 result in a denial, or they can continue the hearing to a date uncertain and have
26 their architect prepare plans along the lines suggested by the Commission or
27 some other solution that they may negotiate with Mrs. Rupert and bring it back
28 to the Commission with the understanding that the Commission may be willing
29 to grant a variance for the other corner that does affect any views.
- 30 • The purpose of the Design Review process is to minimize obstruction of
31 primary views from private property, and the definition of a view includes any
32 view of the San Francisco Bay and/or the City of San Francisco. Because the
33 City of San Francisco view is a part of the definition of view, the fact that this
34 structure right now cuts out so much of the view of San Francisco is important.
35 One is not entitled to a panoramic view, but the view of San Francisco is not
36 panoramic; it is only partially viewable now and becomes much less so with the
37 deck as built.
- 38 • One of the findings the Commission has to make in order to approve the
39 Design Review Permit is that the proposed project has been located and
40 designed to minimize obstruction of public views and primary views from
41 private property, and as currently designed that finding cannot be made.
- 42 • Retroactive approvals come before the Commission too often and are so often
43 approved for whatever reason that people are getting used to it, which is not
44 appropriate and wastes the time of staff and the Commission and should not
45 be listened to.
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1 Staff comment:

- 2
- 3 • The Zoning Ordinance allows the Zoning Administrator to consider variances in setbacks. The notch on the southern corner concerns a side yard setback. The Zoning Administrator could handle that matter during a Zoning Administrator hearing in August.
- 6

7 The public comment period was opened.

8

9 Scott Foote, 27 Central Avenue, indicated the following:

- 10
- 11 • If the Zoning Administrator can approve a variance for the notch in the southern corner of the deck and a signed agreement could be made between the two neighbors and brought to staff, they can proceed.
- 13

14 The public comment period was closed.

15

16 Commission comments:

- 17
- 18 • One of the reasons staff had to bring this matter before the Planning Commission is that projects for existing single-family residences that have the potential to impair views from other properties must go through Design Review. If the solution the Footes propose does not have the potential to impair views from other properties, then it does not have to come before the Planning Commission and the project can be approved by staff.
 - 24 • As a fallback this matter could be scheduled for the September 7, 2011 Planning Commission meeting. If the proposed solution is one that staff is not comfortable approving at the Zoning Administrator level, then it would come back to the Planning Commission on September 7th.
- 28

29 Commission question to staff:

- 30
- 31 • What happens if there is no agreement between the two neighbors or staff and the Footes agree on something and Mrs. Rupert does not? Does Mrs. Rupert have an appeal? *Staff responded the project would only no longer need a Design Review Permit if Mrs. Rupert concurs that her view is no longer impaired. If she has not agreed to that, then it is automatically comes back to the Planning Commission by default.*
- 36

37 **Commissioner Werner moved to continue the public hearing for 27 Central Avenue to the meeting of September 7, 2011.**

38

39 Amendment to the motion:

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- 41 • If Mrs. Rupert and the Footes agree on a solution that staff can approve at the Zoning Ordinance level staff shall do so and remove the matter from the Planning Commission's agenda for the September 7, 2011 meeting.
- 44

45 **Commissioner Werner so amended the motion.**

46

47 **Commissioner Cox seconded the amended motion.**

48

49 Amendment to the amended motion:

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- 1 • The southeast two foot, six inch by five foot notch shown on the drawings shall
2 be reviewed by the Zoning Administrator for a variance.
3

4 **Commissioner Werner so amended the motion.**

5
6 **Commissioner Cox seconded the twice-amended motion.**

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8 **The twice-amended motion passed 4-0.**
9

10 **Old Business**

11 None.

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13 **New Business**

14 None.

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16 **Communications**

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18 **Staff**

- 19
- 20 • The agenda of the City Council meeting of July 26, 2011 will contain:
 - 21 ○ Discussion of the Draft EIR on the America's Cup.
 - 22 ○ Three actions on the Historic Design Guidelines – approve the Initial
 - 23 Study/Negative Declaration, review the comments on the Historic Design
 - 24 Guidelines, and conduct the first reading of the Zoning Ordinance
 - 25 Amendment.
 - 26 • Chair Bair and Commissioners Cox and Graef attended the Housing Element
 - 27 workshop on July 16, 2011.
 - 28 • The Subcommittee for the Single-Family standards will meet on July 28, 2011.
 - 29 • Staff made a presentation to the City Council on the Omnibus Zoning
 - 30 Ordinance at their July 19, 2011 meeting. The City Council directed the report
 - 31 to the Legislative Committee with the goal to bring it to the Planning
 - 32 Commission for review and recommendation in September with the first set of
 - 33 items the Committee agrees are ready to go forward, with other items to
 - 34 follow.
 - 35 • The agenda of the Planning Commission meeting of September 7, 2011 will
 - 36 contain the downtown restrooms matter. The Director of Public Works is
 - 37 working on project revisions that will be on the agenda and is making
 - 38 modifications that will address some of the concerns the Commission
 - 39 identified at the last meeting.
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42 **Adjournment**

43 The meeting was adjourned at 7:59 p.m.

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

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_____ Approved by
Stan Bair
Chair