

**FINAL MINUTES
REGULAR PLANNING COMMISSION MEETING
JANUARY 26, 2010
CORTE MADERA TOWN HALL
CORTE MADERA**

COMMISSIONERS

PRESENT:

Chair Bruce Mace
Commissioner Richard Esteb
Commissioner Peter Schwartz
Commissioner Patrick Pagnillo
Commissioner Sloan Bailey

STAFF

PRESENT:

Dan Bell, Interim Planning Director
Larisa Roznowski, Associate Planner
Nancy Salcedo, Minute Recorder

1. OPENING

A. Call to Order

B. Pledge of Allegiance

C. Roll Call: All Commissioners were present.

2. PUBLIC COMMENT: None

3. CONSENT CALENDAR: None

4. CONTINUED HEARINGS: None

5. NEW HEARINGS

A. 113 WILLOW AVENUE, APPEAL NO. 09-002, SCOTT AND NICOLE SILVER (PROPERTY OWNERS), CYNTHIA VANDEVEER (APPELLANT)-An appeal of the Planning Director's interpretation that the deadline to appeal the approval of Design Review Permit No. 09-014 and Variance Permit No. 09-006 at 113 Willow Avenue expired on November 20, 2009, and that the appellant was not mailed public notice nor was the public notice posted in three public places at least ten calendar days prior to the Planning Commission's public hearing on November 10, 2009. (Zoning: R-2 Multiple Dwelling Residential District) (Planner: Larisa Roznowski)

Associate Planner Roznowski presented the staff report for which she used a slide presentation. She provided a list of significant events pertaining to this appeal:

August 19, 2009 – The Design Review and Variance Application for 113 Willow Avenue addition was submitted.

October 27, 2009 – Story poles were erected as required in the Design Review Submittal Checklist.

October 30, 2009 – Public notices for the November 10, 2009 Planning Commission hearing were mailed to properties within a 300-foot radius and public notice was posted in three public places as required per the Town Municipal Code.

November 10, 2009 – The Planning Commission approved Design Review Application 09-014 and Variance Application 09-006.

November 20, 2009 – Last day to appeal the Planning Commission's decision, which is 10 days after the decision was made as required by the Town's Municipal Code.

November 21, 2009 – Design Review and Variance Permits became effective.

November 23, 2009 – Ms. Van de Veer stated her intent to appeal the Planning Commission's decision.

November 24, 2009 – The Planning Director sent a letter to Ms. Van de Veer stating that November 20, 2009 was the 10-day appeal period expiration date.

December 3, 2009 – Ms. Van de Veer submitted an appeal of the Planning Director's interpretation that the last day to appeal the Planning Commission's approval was November 20, 2009 on grounds that no public notice was mailed and that no public notice was posted in three public places.

Associate Planner Roznowski concluded that all of the Town Municipal Code requirements and the story pole installation requirements were duly met. Public notices were mailed and posted as required, the Planning Commission held a public hearing as required, and the Design Review and Variance application was granted approval on November 10. Therefore, on November 20, ten calendar days after the date of the approval, the appeal period for Design Review and Variance Permit ended. Because no appeal was filed on or before the last day of the appeal period November 20, the approval of Design Review & Variance permits became effective on November 21 and

must stand as approved. No appeal may be made after the appeal period expired on November 20. In addition, Government Code Section 65093 provides that the failure of any person to receive notice shall not constitute grounds to invalidate the actions for which the notice was given. Staff recommends that the Planning Commission deny Appeal 09-002 by adopting the attached Resolution with factual Findings.

She added Town Attorney John Abaci was at the hearing to answer any questions.

Chair Mace asked for a presentation from the appellant.

Houman Chitsaz, attorney for the appellant, said that it was not his client's intent to kill the project, but rather to bring slight changes to the building that would have a huge impact on the value of the appellant's property. He said his client had not been able to make contact with the Silvers. He said that the permits involve not only design review issues, but also variance issues highlights the project's required noticing issues. He said he doesn't understand why his client never received notice. His client was on vacation as the hearing was held near the holiday season. He acknowledged that his client had received a letter from the Silvers saying that they may be thinking about the project, but in trying to contact the Silvers, his client received no response.

He added that November 21, 2009 was a Saturday, and that the next immediate business day was the day his client voiced her concern. He said that because the hearing was a joint design review and variance application, it is not clear that Government Code Section 65093 is discernable here, as the code section deals with court actions, not government proceedings such as Planning Commission hearings. He said he didn't believe that the code section mandates that the Commission does not hear this appeal beyond the 10-day appeal period.

He challenged the Commission's Findings that there were no significant impacts on neighbors.

Chair Mace interjected that the appeal discussion must be limited to the appeal of the Planning Director's interpretation, and not get into Findings or other design review issues.

Chair Mace asked Town Attorney Abaci whether it was appropriate to limit this discussion.

Town Attorney Abaci said the Planning Commission's determination tonight is limited to whether the hearing had adequate public noticing and whether the appeal was filed

within the 10-day appeal period, and is not about the design review application at the prior hearing.

Regarding the notice of public hearing, Mr. Chitsaz summarized that the issue was with the variance and whether his client's procedural due process was met. He concluded that he did not believe that an appeal was either technically or substantively not allowed.

Commissioner Esteb asked for the appellant's vacation dates.

Mr. Chitsaz said didn't know the dates.

Commissioner Esteb asked why, when the appellant noted the story poles had been erected, did she not pursue the issue at that time with the Town.

Commissioner Schwartz asked for clarification on the connection between the government code section and noticing.

Commissioner Bailey also asked to know the dates of the vacation period.

The appellant's fiancé said the appellant returned from vacation on Nov 4, 2009, having left three weeks prior.

Interim Planning Director Bell said both design review and variance permits have same appeal period.

Mr. Chitsaz, in response to Commissioner Schwartz's question, that the issue wasn't with the 10-day appeal period, but rather with Government Code Section 65093, and its relation to court action.

Chair Mace asked for comments from the public.

Jim Rizzo of 16 Serra Street said that it is difficult enough for applicants to work with design review plans and government approvals, and we cannot undermine the ability of staff and professionals performing their jobs. It would be a travesty to see these approvals overturned. He said he had talked to his neighbors 14 Serra Street and at 145 Willow Avenue and could speak for them in saying that the Silvers should be allowed to move ahead with their permit approvals. He noted that the variance was not for the building, but for parking.

Commissioner Bailey asked Town Attorney Abaci whether the Commission's purpose tonight was purely fact-finding of noticing and the appeal period, which Town Attorney Abaci confirmed.

Commissioner Bailey asked whether, once the Commission had made those Findings, they had any discretion to do anything else.

Town Attorney Abaci confirmed that if the Commission made those Findings, the Planning Director's interpretation was correct and the appeal would be denied.

Commissioner Esteb said he was sorry that the appellant was on vacation, but that the rules governing this process have to be followed. He noted that the appellant did see the story poles, but that she didn't follow up on the project with the Town. He concluded that staff has acted with due diligence.

Commissioner Pagnillo said if the Commission were to approve such an appeal, it would increase the potential for more. The appellant had story poles and a letter from the owner as warning, and must act on a timely basis.

Chair Mace said he can make the Findings that noticing was done in due process.

MOTION: Moved by Commissioner Bailey, seconded by Commissioner Pagnillo to deny Appeal 09-002 by adopting the attached Resolution with factual Findings.

Ayes: Commissioners Mace, Bailey, Pagnillo, Schwartz, and Esteb
Noes:
Abstain:
Absent:

6. ROUTINE AND OTHER MATTERS

A. REPORTS AND ANNOUNCEMENTS

i. Commissioners: Commissioner Esteb attended the Town Council meeting.

ii. Director: Interim Planning Director Bell said Bob Pendoley is continuing efforts on the Housing Element. A Housing Element workshop has been arranged at the Commission's next meeting on February 9, 2010 at 7 P.M., lasting approximately one hour.

B. MINUTES: Planning Commission Meeting Minutes of December 8, 2009.

MOTION: Moved by Commissioner Esteb, seconded by Commissioner Pagnillo to approve the Planning Commission Meeting Minutes of December 8, 2009. With the following change:

Commission Esteb's comment on page 10, line 5 should read that Commissioner Esteb: "wouldn't support anything short of full compliance. As a professional architect, he said he must comply with the building code in the work he does, and that he likewise feels that he has to uphold the building code in this capacity as a Planning Commissioner."

Ayes: Commissioners Mace, Bailey, Pagnillo, Schwartz, and Esteb

Noes:

Abstain:

Absent:

7. ADJOURNMENT: The meeting was adjourned at 8:03 pm. The next Planning Commission Regular Meeting is to be February 9, 2009 at 7:00 p.m. in the Corte Madera Council Chambers, 300 Tamalpais Drive.