



MEMORANDUM
PACIFIC GROVE CITY ATTORNEY

To: Chair, Members of the Pacific Grove Planning Commission, and Mr. Biggs

From: David C. Laredo, City Attorney

Subject: Non-Participation in Matters Pertaining to Conflicted Interests

Date: May 9, 2005

This memo responds the May 6, 2005 request of Jon Biggs, Community Development Director, seeking guidance for the City Planning Commission pertaining to the proper protocol Commission Members should follow in circumstances where a conflict of interest disables participation pursuant to the Fair Political Practices Act (California Government Code section 83112; CA Code of Regulations, Title 2, Division 6), or pursuant to other provisions of California law.

Violating conflict of interest laws is a serious matter that can lead to monetary fines and criminal penalties for public officials. California law on conflicting interests attempts not only to inhibit actual conflicts and self dealing, but also addresses the circumstance that a perceived conflict could enable personal interests to influence a public decision. When one has a conflicted interest, the official is not only prohibited from participating in the decision, but the official cannot influence others who participate in that decision.

The Fair Political Practices Act limits permissible participation in any governmental decision to that which does not have a reasonably foreseeable material financial effect on a public official's economic interests. Government Code section 87100 provides,

“No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.”

A Commission Member affected by a material conflict of interest must not only (a) disclose the particular circumstances which give rise to the conflicting interest and (b) recuse his or her self, but (c) the official must also leave the room. A limited exception, however, allows the official to remain in the Commission Chambers if the public official

chooses to speak to the matter. The official's participation still must be limited; the official can only speak at the same time, in the same manner, and subject to the same restrictions as apply to any member of the public. Under this limited exception, the public official is still required to disclose the nature of the conflict, and avoid participating or otherwise influencing the matter.

If and only if the interested official speaks on the matter, that official may remain in the Commission Chambers and listen to the remainder of any public discussion, together with members of the public. If the official chooses not to speak, however, he or she is required to leave the room until all discussion on the matter has ended.

A public official's decision to remain in the Commission Chambers, but not speak to the item for which he or she has a material conflict of interest, would constitute a technical violation of the Fair Political Practices Act (FPPA). Government Code section 91001 provides that whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith does not provide a defense to the offense. Instead, these factors only influence the application of remedies or sanctions during enforcement proceedings.

Please feel free to contact me should you have any questions.

MINUTES OF THE PACIFIC GROVE ARCHITECTURAL REVIEW BOARD

SITE REVIEW

May 24, 2005

City Manager Conference Room
Pacific Grove City Hall
300 Forest Avenue, Pacific Grove
12:00 PM

Boardmembers Present: Darlene Billstrom
Ken Hinshaw
David Prew
Maryanne L. Spradling
Dennis Tarmina, Vice Chair

Absent: Doug Howe, Chair

Vacancies: 1

Staff: Nelson

1. Public Comments

None

2. Agenda Item Presentations

Staff presented the projects on the Architectural Review Board Agenda and answered questions from Boardmembers.

3. Site Review

Boardmembers present visited the following sites:

- 1080 Lighthouse Avenue
- 312 Walnut Street

4. Adjournment

There being no further business, the meeting was adjourned at 1:50 p.m. in the field.

ARCHITECTURAL REVIEW BOARD MEETING

May 24, 2005

Council Chambers, Pacific Grove City Hall

300 Forest Avenue, Pacific Grove

4:00 p.m.

Tape: 05-11

Boardmembers Present: Darlene Billstrom
Ken Hinshaw
David Prew
Maryanne L. Spradling
Dennis Tarmina, Vice Chair

Absent: Doug Howe, Chair

Vacancies: 1

Staff: Nelson

1. APPROVAL OF MINUTES

Boardmember Prew noted the following correction to the May 10, 2005 regular meeting minutes regarding item 9(c) for a project at 1203 David Avenue. The application was continued to the May 24, 2005 meeting because the Planning Commission has not made a determination regarding the use permit and variance applications.

On a motion by Hinshaw-Spradling, the Board voted 5-0 to approve the minutes of the May 10, 2005, Architectural Review Board meeting as corrected.

2. COMMENTS FROM THE PUBLIC

None.

3. COMMUNICATIONS

None.

4. WRITTEN CORRESPONDENCE

None.

5. CITY COUNCIL ACTIONS

None

6. PLANNING COMMISSION ACTIONS

None

7. SUBCOMMITTEE REPORTS

Staff reported Subcommittee approvals for the following projects:

- 305 1/2 Bishop Avenue
- 622 19th Street

8. ITEMS WITHDRAWN

None.

9. REQUESTS FOR CONTINUANCE

On a motion by Billstrom-Prew, the Board voted 5-0 to continue the following items to the June 14, 2005 Architectural Review Board meeting.

9(a) Project Address: 515 12th Street

A request to continue Architectural Approval application No. 3448-05 for proposed exterior modifications to an existing nonconforming duplex including an addition to enclose an existing carport to create an attached garage to the June 28, 2005 meeting to allow the applicant to be present. (Applicant Teri Takikawa, Takikawa Designs).

10(c) Project Address 172 16th Street

Sign Permit Application No. 05-0991 for proposed new signage for a professional use in a portion of an existing commercial building (Applicant: Northwest Signs)

11(f) Project Address: 1273 Buena Vista Avenue

A request to continue Architectural Approval Application No. 3438-05 for proposed additions, including a detached accessory building, and exterior alterations to a one-story single-family dwelling to the June 14, 2005 meeting to allow the Planning Commission to review and take action regarding a use permit application. (Applicant: Craig Riddell) (Continued from 4/26/05)

On a motion by Billstrom-Prew the Board **voted 5-0 to approve continuance of items 9(a) and 11(f) to the requested meetings.** The Board opted not to continue item 10(c) and approved the item on the consent agenda.

10. CONSENT AGENDA

a. Project Address: 1080 Lighthouse Avenue

Architectural Approval Application No. 3470-05 (Final) for proposed one-story additions to a one-story single-family dwelling. (Applicant: Paul W. Davis)

b. Project Address: 1-80 Country Club Gate (units 1 through 80)

Architectural Approval Application No. 3468-05 (Final) for a roofing materials change for all single-family dwellings and outbuildings in the Country Club Gate Planned Unit Development (Applicant: Country Club Gate Homeowners Association)

c. Project Address: 172 16th Street

Sign Permit Application No. 05-0991 for proposed new signage for a professional use in a portion of an existing commercial building (Applicant: Northwest Signs)

On a motion by Prew-Hinshaw, the Board voted 5-0 to approve the consent agenda.

Approvals are based on the standard finding for approval of an architectural approval application.

11. REGULAR AGENDA

a. Project Address: *112 13th Street

Historic Preservation Permit Application No. 04-0187 and Architectural Approval Application No. 3413-04 (Final) to convert an existing duplex to a single-family residence including construction of an addition to enlarge an existing second-story. The proposed addition follows a nonconforming building line and encroaches five feet into the required eight foot rear yard setback to a distance of three feet from the rear property line. The residence has a one foot eave that extends to a distance of two feet from the rear property line. The property is listed on the City's Historic Resources Inventory and is within an archaeologically sensitive area. (Applicant: Fred Flatley) (Continued from 5/10/05)

Vice-Chair Tarmina opened the public hearing.

Fred Flatley, property owner, presented the application.

There being no other speakers, the public hearing was closed.

On a motion by Hinshaw-Spradling, the Board voted 5-0 to approve Historic Preservation Permit No. 04-0187 based on the findings and conditions in the agenda report.

On a motion by Hinshaw-Spradling, the Board voted 5-0 to grant final approval of Architectural Approval Application No. 3413-04 based on the standard finding for architectural approval.

b. Project Address: *312 Walnut Street

Historic Preservation Permit Application No. 05-0191 and Architectural Approval Application No. 3457-05 to allow additions of more than 120 square feet to a single-family dwelling that has fewer than the required two off-street parking spaces, and connect an existing detached, nonconforming one-car garage (substandard in size and encroaching into required setbacks) to the residence. The proposed project includes construction of a front porch landing that projects into the required front yard setback a distance greater than permitted, and also includes the construction of a one-car carport in tandem with the existing garage. The proposed carport encroaches into required front and side yard setbacks, and the distance between the carport opening and the front property line is less than the minimum required 20' distance. The proposed building site coverage exceeds the maximum permitted 45%. The property is included on the City's Historic Resources Inventory. (Applicant: James D. McCord, architect) (Continued from 5/10/05)

Vice-Chair Tarmina opened the public hearing.

James, D. McCord, architect, presented the project.

There being no other speakers, the public hearing was closed.

During deliberation some members of the Board expressed concerns regarding the flat roof of the proposed dormers, the proposed carport's impact on open yard, and the appropriateness of the proposed front porch and stair with regard to the historic architectural style of the house.

On a motion by Prew-Billstrom, the Board voted 5-0 to continue the item to the June 14, 2005 meeting to allow the applicant to restudy the proposed project in light of the comments of the Board members.

The Board moved item 11(e) to ensure that a quorum would be available to consider the item.

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(Prior to this item Board member Prew left the room due to a conflict of interest.)

c. Project Address: *510 Willow Street

Architectural Approval Application No. 3464-05 for a proposed second-story addition to a one-story single-family dwelling that is included in the City's Historic Resources Inventory. (Applicant: David Prew) (Continued from 5/10/05)

Vice-Chair Tarmina opened the public hearing.

Paul Simpson, applicant's representative, presented the application.

There being no other speakers the public hearing was closed.

On a motion by Billstrom-Spradling, the Board voted 4-0 to grant final approval of the application based on the standard finding for architectural approval..

(Boardmember Prew returned prior to the next item)

d. Project Address: *214 3rd Street

Architectural Approval Application No. 3443-05 for a proposed new detached garage/accessory building on a site developed with a single-family dwelling. (Applicant: Jeff Edmonds) (Continued from 4/12/05)

Vice-Chair Tarmina noted that correspondence received from Mary Heney was distributed to the Board at the site review meeting; the public hearing was opened.

Fernando Gutierrez and Linda Lloyd, property owners, presented the project revisions.

Pete Motta, in opposition, referred to the project alternatives distributed to the Board at the site review meeting.

Mary Heney, 218 Third Street, in opposition.

There being no other speakers, the public hearing was closed.

The Board consensus was that the project revisions represented a reasonable solution in terms of project design.

On a motion by Hinshaw-Spradling, the Board voted 5-0 to grant concept approval.

e. Project Address: 214 5th Street

Architectural Approval Application No. 3455-05 for proposed exterior alterations to a 3-unit dwelling group. (Applicant: Michael Whirlow)
(Continued from 4/26/05)

Vice-Chair Tarmina opened the public hearing.

Michael Whirlow, applicant, presented the application.

Diane Schwartz, 218 5th Street, in opposition.

During deliberation the Board members expressed concern with the piecemeal approach to building alterations. The Board noted that the revised railing was not significantly different from the original submittal and recommended that the applicant consult a licensed architect to explore design alternatives to identify a railing style that is more compatible with the building and to develop a cohesive program for alterations.

On a motion by Prew-Hinshaw, the Board voted 5-0 to refer the item to the applicant for restudy.

f. Project Address: 1203 David Avenue

Architectural Approval Application No. 3461-05 (Final) for proposed exterior alterations and change in roof pitch to an existing detached accessory building. (Applicant: Jeanne C. Byrne, Architect) (Continued from 5/10/05)

Vice-Chair Tarmina opened the public hearing.

Jeanne C. Byrne, Architect, presented the application.

There being no other speakers the public hearing was closed.

On a motion by Billstrom-Prew, the Board voted 5-0 to grant final approval of the application based on the standard finding for architectural approval.

g. Project Address: *275 Spruce Avenue

Architectural Approval Application No. 3456-05 remodel and additions, including a second-story addition, to a one-story single-family residence that is listed on the City's Historic Resources Inventory (Applicant: Eric Miller Architects)

Vice-Chair Tarmina noted that since items 11(h) and 11(i) are applications for projects on the same property the applications would be reviewed and deliberated concurrently; however, each of the applications requires a separate Board action. The public hearing was opened.

Mark Ellis, for Eric Miller Architects, presented the application.

There being no other speakers the public hearing was closed.

Board members made the following comments during deliberation:

Prew-concerns regarding the appropriateness of the front dormer and about building massing on a narrow lot.

Spradling-the proposed addition to the primary residence has kept the integrity of the house. With regard to the second unit, the unit should be no larger than 600 square feet; however, the proposed unit is beautifully designed.

Hinshaw-shares other Board members concerns regarding the square footage of the second unit, suggested that the yard is large enough to accommodate a one-story second unit. With regard to the proposed addition to the primary unit, the proposed addition engulfs the original cottage, prefers an addition that is moved back and lower, does not support the front dormer.

Billstrom-agrees with other Board members comments. The proposed stone on the front steps is not in keeping with the original house, prefers use of shingles instead of stone. The proposed addition to the primary house is too nice, the addition needs to be simpler. With regard to the second unit, agrees with comments made by Board members.

Tarmina-agrees that the addition to the primary house is too busy. Although the second unit is well designed, concerned that by approving an increase in maximum permitted square footage the Planning Commission has created a precedent for use of design elements to exceed the maximum permitted square footage for second units.

A motion by Tarmina-Spradling to grant concept approval for the second unit application failed on a 3-2 vote, with Hinshaw and Billstrom voting no.

On a motion by Billstrom-Hinshaw, the Board voted 5-0 to refer Architectural Approval Application No. 3456-05 to the applicant to restudy the proposed addition to the one-story single-family residence; and, on a motion by Hinshaw-Billstrom, the Board voted 5-0 to refer Architectural Approval Application No. 3469-05 to the applicant to restudy design issues identified by the Board for the proposed secondary housing unit. Both items were continued to the June 14, 2005 meeting.

Board member Spradling left the meeting at 6:25 p.m.

h. Project Address: 948 Sea Palm Avenue

Architectural Approval Application No. 3396-04 (Final) for first and second-story additions to a one-story single-family dwelling. (Applicant: Sarita Chavez-Silverman)

Vice-Chair Tarmina opened the public hearing.

Sarita Chavez-Silverman, owner, presented the project.

Darren Davis, project designer, responded to Board member questions.

There being no other speakers, the public hearing was closed.

On a motion by Tarmina-Prew, the Board voted 4-0 to grant final approval for Architectural Approval Application No. 3396-04 subject to the use of stucco on the chimney based on the standard finding for architectural approval.

i. Project Address: 1108 Seaview Avenue

Architectural Approval Application No. 3407-04 (Final) for a proposed two-story addition to a one-story single-family dwelling (Applicant: Nelson Larios)

Vice-Chair Tarmina opened the public hearing.

Darren Davis, project designer, presented the application.

There being no other speakers, the public hearing was closed.

On a motion by Billstrom-Prew, the Board voted 4-0 to grant final approval for Architectural Approval Application No. 3407-04 based on the standard finding for architectural approval.

j. Project Address: 2832 Forest Hill Boulevard

Architectural Approval Application No. 3465-05 for proposed exterior alterations and a two-story addition to a single-family dwelling (Applicant: Robert McIntyre)

Vice-Chair Tarmina opened the public hearing.

Robert McIntyre, architect, presented the application.

There being no other speakers, the public hearing was closed.

On a motion by Prew-Billstrom, the Board voted 4-0 to grant final approval for Architectural Approval Application No. 3465 based on the standard finding for architectural approval.

12. REPORTS OF BOARD MEMEBERS

None.

13. ADJOURNMENT

There being no further business the meeting was adjourned at 6:40 p.m.

**BARBARA NELSON
ACTING SECRETARY**

* Building identified on the Pacific Grove Historic Resources Inventory.

**CITY OF PACIFIC GROVE
HISTORIC RESOURCES COMMITTEE**

SITE REVIEW MEETING MINUTES

May 11, 2005

12:00 p.m.

Community Development Department Conference Room

Pacific Grove City Hall

Committee Members Present: Billstrom, Cohen, Hinshaw, Houser, Riddell

Absent: Rose, Puckett

Vacancy: None

Staff: Nelson

The members visited the following sites that are the subjects of regular agenda items scheduled for public hearing at today's meeting.

- 163 Pacific Street

There being no further business, the meeting was adjourned at 12:20 p.m. at the site.

CITY OF PACIFIC GROVE
HISTORIC RESOURCES COMMITTEE

MINUTES

May 11, 2005
Tape #05-03
4:00 p.m.
Council Chambers, Pacific Grove City Hall

1. ROLL CALL

Present: Billstrom, Cohen, Hinshaw, Houser, Rose, Riddell

Absent: Puckett

Vacancy: None

Staff: Biggs, Nelson

2. APPROVAL OF MINUTES

On a motion by Hinshaw-Houser, the Committee voted 6-0, to **approve the minutes of the April 13, 2005 site review and regular meetings.**

3. COMMENTS FROM THE PUBLIC

None

4. ITEMS TO BE CONTINUED OR WITHDRAWN

None

5. CONSENT AGENDA

None.

6. REGULAR AGENDA

BY CONSENSUS IT WAS AGREED TO CONSIDER ITEM 6.A. AT THE END OF THE AGENDA TO ALLOW THE APPLICANT'S REPRESENTATIVE TO BE PRESENT

6.B DISCUSSION OF AMENDMENTS TO THE HISTORIC PRESERVATION ORDINANCE INCLUDING RELATED COMMITTEE WORK PROGRAM REVISIONS.

Billstrom - summarized her proposed changes to the historic preservation ordinance.

Biggs - commented regarding the Planning Commission's work program as it relates to the Historic Resources Committee. Proposed ordinance amendments also require City Council approval to amend the Committee's work program, and explained the current lack of staff resources to carry out proposed changes.

Hinshaw - the Committee should have the ability to remove property from the Inventory.

Houser - wants to review changes proposed by Billstrom in writing before the Committee makes a recommendation; does not support an amendment that includes a rolling date inventory.

Cohen - supports proposed amendments and would like to see the previous work regarding the proposed amendments included in the agenda packet.

Riddell - review of the work program is in order.

Chairperson Billstrom opened public comment.

Gary Sprader commented regarding the proposed historic preservation ordinance changes; also noted that the Architectural Review Board can approved changes that destroy the character of buildings.

There were no other speakers.

The consensus of the Committee was to **agendize this item for further discussion at the June 8, 2005 meeting.**

COMMITTEE MEMBER ROSE STEPPED DOWN AND LEFT THE MEETING PRIOR TO CONSIDERATION OF ITEM 6.A DUE TO A FINANCIAL CONFLICT OF INTEREST (PROPERTY OWNERSHIP WITHIN 500 FEET OF THE SUBJECT PROPERTY)

6.A A PUBLIC HEARING TO DETERMINE WHETHER TO INITIATE THE PROCESS AND TO DETERMINE WHETHER THE PROPERTY AT 163 PACIFIC STREET SHOULD BE ADDED TO THE CITY'S HISTORIC RESOURCES INVENTORY (Nelson)

Nelson presented the staff report summarizing information from the 1928 Building Classification and Computation Record, 1926 Sanborn map and building permit documents.

Chairperson Billstrom opened the public hearing.

Speakers:

- Joseph Rock, the property owner's representative, stated that the owner is not interested in having the property included on the Historic Resources Inventory.

There being no other speakers, the Chairperson closed the public hearing.

Committee members made the following comments during deliberation:

Hinshaw - the property meets evaluation criteria 23.76.025(h), (i), and (j) because the residence is an established visual feature in the neighborhood, the original footprint, siding, and windows remain present and Pacific Street is part of the oldest developed area of the city.

Houser - this is a unique house because of the angled façade, supports adding to the Historic Resources Inventory.

Cohen - supports adding the property to the Historic Resources Inventory based on the evaluation criteria cited by Committee member Hinshaw.

Billstrom - agrees with comments made by Committee member Hinshaw.

Riddell - agrees with comments made by Committee member Hinshaw.

On a motion by Hinshaw-Houser, the Committee voted 5-0 to: **(1) initiate the process, and (2) add the property at 163 Pacific Street to the City's Historic Resources Inventory.** Based on review of the documents included in the agenda packet and visual observation of the present exterior character of the residence, the Committee determined that the property meets the evaluation criteria set forth in Municipal Code Sections 23.76.025 (i), (j), and (k) and therefore should be added to the City's Historic Resources Inventory.

COMMITTEE MEMBER ROSE RETURNED TO THE MEETING.

7. REPORTS OF OTHER COMMITTEES

None

8. REPORTS OF COMMITTEE MEMBERS

Hinshaw commented on Old Del Monte Hotel tour and reported on a conversation with Fire Department Division Chief Gunter regarding sprinkler requirements in historic residences.

9. REPORTS FROM STAFF

None

10. AGENDA FORECAST

None.

11. ADJOURNMENT

There being no further business, the meeting was adjourned at 4:55 p.m.

BARBARA NELSON
Secretary