

Minutes of Town Council Meeting - July 23, 1985

Council met in Executive Session at 7:45 P.M on meet-and-confer. Mayor Ollinger convened the regular meeting at 8 o'clock with Councilmembers Toal and Capurro present; Councilmembers Wooliever and Cordingley absent.

2. OPEN TIME FOR PUBLIC DISCUSSION

John Livingston, 1365 San Anselmo Ave., responding to the staff report on the San Anselmo Ave. gate situation, urged the Council to not consider abandoning the gate, submitting written material, which was referred to the Traffic Safety Committee.

Bill Ham, 15 Belle Ave., cited a lack of sufficient off-street parking at his residence, alleging that his request for an on-street parking permit has been consistently denied. Referred to Traffic Safety Committee.

3. APPOINTMENTS

Planning Commission - Oliver Harle heretofore nominated for reappointment.

M/S Capurro, Toal to close nominations. Ayes all present.

Oliver Harle was thereby reappointed to a full term on the Planning Commission, running to August 18, 1989.

4. APPEAL OF THOMAS G. HENDRICKS FROM PLANNING COMMISSION GRANT OF VARIANCE, 27 OAKWOOD

The appellant, supported by a contingent of neighboring property owners, reiterated objections for construction on this site, contending soil instability would create drainage problems to the detriment of downslope property, refuting soils engineering reports to the contrary. Appellant Hendricks further contended that the variance was illegally granted inasmuch as a need therefor was not proved by the applicant as required by the Government Code. Oakwood Court residents complained of inconvenience and possible street damage caused by heavy equipment and building material storage during construction.

Council discussion acknowledged that a building permit for construction on this site could not be denied by the Town if a structure is placed within the setbacks and that the present plan would be more amenable to the neighborhood than one meeting setback requirements.

M/S Capurro, Toal to grant the appeal on the basis that the granting of this variance is detrimental to the health and safety of the neighborhood in view of the instability of the construction site. Motion passed on a 2 - 1 vote, Capurro and Toal voting Aye, Ollinger voting No.

Toal stated that he was voting Aye in spite of his belief that a structure built in accordance with the plan requiring this variance might be more advantageous to the neighborhood than a structure built within the setbacks.

5. APPEAL OF CARRIE ADELL, JOHANNA JOHNSON AND GEORGE MAGID FROM PLANNING COMMISSION GRANT OF VARIANCES FOR 515 SCENIC

Ted Rosen, 40 Canyon advised that there is a property line dispute involving his property and the subject 515 Scenic property which should be settled prior to proceeding with any construction.

Neighboring residents, while acknowledging the desirability of the provision for off-street parking, objected to the size of the proposed structure as being overwhelming for the site with an adverse visual impact upon the neighborhood, contending that the carport is designed to accommodate four vehicles where accommodation for two should suffice. Concerns were also

expressed as to possible hillside drainage problems resulting from construction over an under-ground spring.

A motion was made by Toal, which died for lack of a second, to grant the appeals.

Thereafter, Council referred back to applicant Salles with the suggestion that revised plans for a smaller structure be reviewed with the neighboring residents; that the property line dispute be settled; and the matter brought back to the Council at its August 13th meeting.

6. REVIEW OF AGREEMENT WITH WILLIAM HENDRICKSON FOR RECONSTRUCTION OF CREEK PARK SOUTH PEDESTRIAN BRIDGE

Staff advised the Council that the 1985-86 adopted budget includes \$20,000 as a match for this reconstruction, but the estimated cost of construction is \$49,500 and this agreement commits the Town to pay 50% of the construction cost up to the sum of \$24,750.

The Town Attorney noted that the Hold Harmless clause in the proposed agreement before the Council was being rewritten in consultation with Hendrickson's attorney, but has been otherwise approved as to legal form.

Councilmember Capurro suggested that sufficient lighting of the pedestrian bridge should be assured and that a time limit be placed on closure during construction.

M/S Toal, Capurro to approve the Agreement with William Hendrickson for Pedestrian Bridge Reconstruction, as amended, and authorize its execution by the Mayor and Town Clerk. Ayes all present.

7. PUBLIC HEARING: PLANNING COMMISSION RECOMMENDATION TO REZONE 51 ESSEX FROM R-3 TO SPD FOR 10 EXISTING UNITS, TO LEGALIZE AN 11TH UNIT AND PERMIT CONSTRUCTION OF A 12TH UNIT

Public hearing was opened and closed with no public input.

M/S Capurro, Toal to approve negative declaration. Ayes all present.

M/S Toal, Capurro to waive reading of ordinance. Ayes all present.

M/S Toal, Capurro to introduce an ordinance amending Ordinance 485 to change the classification of A/P 6-121-38, 51 Essex St., from R-3 to SPD for 12 units. Ayes all present.

8. PUBLIC HEARING: PLANNING COMMISSION RECOMMENDATION TO REZONE A/P NOS. 5-081-07 AND 5-081-19, BETWEEN VALLEY RD. AND CAMINO DE HERRERA, FROM R-1 TO R-1H TO COMBINE WITH A/P 5-031-35 FOR FIVE UNITS.

Public hearing was opened and closed with no public input.

M/S Capurro, Toal to approve negative declaration. Ayes all present.

M/S Toal, Capurro to waive reading of ordinance. Ayes all present.

M/S Toal, Capurro to introduce an ordinance amending Ordinance No. 485 to change the classification of A/P Nos. 5-081-07 and 5-081-19 from R-1 to R-1H for 5 units after being combined with A/P 5-031-35. Ayes all present.

9. CITY OF SAN RAFAEL REQUESTING JURISDICTION OF SAN ANSELMO PROPER PROPERTIES (15 PARCELS ON LONGWOOD DR.) FOR PURPOSES OF FORMING SUN VALLEY OPEN SPACE ASSESSMENT DISTRICT.

Representatives of the City of San Rafael's Bond Counsel and the Neighborhood Group supporting the Assessment District were present to respond to Council questions on the inclusion of these parcels within the proposed district. Council was informed that the individual affected property owners are being contacted and that to date 7 owners have signed the petition supporting the project.

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M/S Capurro, Toal to adopt Resolution No. 2043 granting jurisdiction to the City of San Rafael of the Longwood Drive properties located in the Town of San Anselmo for the purposes stated therein. Motion passed on a 2 - 1 vote with Toal voting no on the basis that he was not furnished proof that a majority of the affected property owners consent to inclusion in the Assessment District.

10. PUBLIC HEARING: (Cont.) CONSIDERATION OF DECLARING SPAULDING ST. SUBJECT TO PARKING ENFORCEMENT

Staff reported that David Hood has reported that bids have been solicited and he is read to award a construction contract; his loan was just approved; and he will be coming in for a building permit next week.

11. ORDINANCE REZONING A/P 7-282-19, 36 ROSS and 29/35 WOODLAND FROM R-3 TO SPD FOR 19 APARTMENTS.

M/S Toal, Capurro to adopt Ordinance No. 873 amending Ordinance No. 485 to change the classification of A/P 7-282-10 from R-3 to SPD for a total of 19 apartment units. Ayes all present.

12. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS, COMMENTS AND DIRECTIONS TO STAFF

Staff initiated items: The Council a) approved distribution of a Request for Proposal from consulting engineers for the Sir Francis Drake Blvd. project. b) Received a status report on the San Anselmo Ave. gate situation indicating it is not being used this summer and including a proposal that it be left open during the Drake construction project. c) Directed an item on the August 13 agenda for review of material furnished on Standards for Library Services. d) Authorized solicitation of bids for sale of Town-owned surplus lots.

Ollinger sought and received Council approval to send a letter to the San Francisco Foundation seeking funds for the purpose of hiring consultants for a Redevelopment Project for the Red Hill School site.

Ollinger requested Council consent of the adoption of a proclamation for Hiroshima Memorial Day. Majority Council opinion was to maintain policy of not endorsing extraneous situations.

13. CONSENT AGENDA

Items d & e were temporarily removed from the Consent Agenda for discussion: d) - Laurel Canyon Subdivision - staff advised that the developer's bond was received today and approval is conditioned on bond being acceptable to staff; e) - Willow Glen Subdivision - Ollinger questioned representatives present as to whether the plans included a bus turn-out lane. Was advised such lane is included.

M/S Toal, Capurro to pass Consent Agenda. Ayes all present.

- a. Approved minutes of meeting of July 9, 1985.
- b. Approved warrants Nos. 839 - 857 totalling \$168,563.25 for June 1 - 15, 1985.
- c. Adopted Resolution No. 2044 accepting offer of dedication from Maria Cabora for an easement on San Anselmo Ave.
- d. Approved final map and authorized execution of Subdivision Agreement Laurel Canyon Subdivision.
- e. Approved final map and authorized execution of Subdivision Agreement Willow Glen Subdivision.
- f. Awarded contract for Carlson Avenue/Valley Road drainage construction to W. K. McLellan in the amount of \$42,386.50 and authorized a project contingency fund of \$4,614, for a total allotment of \$47,000.
- g. Adopted Resolution No. 2045 repealing Resolution No. 1658 relating to incentive compensation for police and fire employees.
- h. Adopted Resolution No. 2046 amending Resolution No. 2039 setting

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- management compensation.
- i. Accepted contract with Massa Construction Co. at Memorial Park as completed, and authorize recording of Notice of Completion, with 10% retention to be held for 30 days.
  - j. Adopted Resolution No. 2047 approving Ross Valley Paramedic tax levy for 1985-86 as set by Board of Directors.

ADJOURNED at 10:45 P.M. to regular meeting August 13, 1985.

Libby Hanson, Secretary

PARTIAL TRANSCRIPT OF HEARING ON  
APPEAL OF VARIANCE GRANT 27 OAKWOOD

Ollinger: I recognize this has been before us on several occasions as well as through the Planning Commission and I know all of you probably feel this is sort of a broken record - restating some of the same concerns. For my own response to this, I know the house has been reduced in size - that was one of my main concerns before. Just the whole bulk of the house and the way it sat on the hill and the way it sat on that slope, I felt it did not fit the lot nor fit the conditions. I think the architect has responded to that concern - it gets down to whose engineer is right in a sense. There have been studies and I appreciate your concern for the slope stability. A lot of lots in this Town and other towns have similar conditions. First I would ask about living below this house, I often wonder about the house above me and that does not have anywhere near the foundation that this one does. This is not an excuse - I am just pointing out a condition. Also, a person raised a question about damage to the road. The applicant has to post a bond in constructing his building and in so doing it also covers any damage to the road. So it is his responsibility to take care of the road if it is damaged during the course of construction. That is all I have to say right now. Woody -

Capurro: Well, as the Mayor says this has been before us many times. I think we have all read all of the literature on it and we are all informed as to what the problems are. The site is very steep, there is no question about it. I am really concerned about some of the drainage. I know there are a lot of slides in San Anselmo, especially in the winter time. I am really concerned about the people who live down below - as far as their health and safety. It is really a nice design, but its just too bad in my opinion the site is so darn steep. I would be in favor of denying the variance.

Toal: I would like to know one thing - the variance is 20' setback from the front, so if the appeal is denied the applicant can come back theoretically and push the design down the hill 20', which will be close to the neighbors and he would not be able to get into his house - it would be very difficult because he would be about 20' below, but if you move it down 20' you can build it - right? So my mind is do we deny the variance and let the applicant do whatever he wants to do and build it down below. Worse than on this sketch, or do we let it be built close to Oakwood..... The higher up the hill, it will be safer. That is what the Planning Commission reasons are. If it is built downslope, it will be more dangerous for the neighbors as it would..... and we would have no control. That is my problem - what do the people down below want? Because it will be built - there is no question about it. Prices are high, I realize that, and more and more we see difficult sites being developed. So

there will be a house - it will be 20' down closer to you. So my question is - want do you want? I don't know.

Ollinger: Woody, I would like to point out to you one of the things.... You know the house that we had on Floribel, where the Town was responsible. The same construction they used in that house was similar to this. So this is.....

Capurro: You know I am in construction. I am quite familiar with all types of construction.

Ollinger: I really have a concern myself on what the alternative is. If we do not give the variance, then a house can be built 20' further down the slope, which to my mind, seeing enough houses built around this Town, 20' down the slope is going to create a bigger monster, uglier, more difficult and I think that the situation.... You would be less satisfied. That is a real concern I have. I do not have any answer on that, but the fact of going further down the slope with no setbacks, it wouldn't even come before us. If he goes back to a standard house with no variances, built all within the setbacks, it goes strictly through the building department. There are no public hearings, there are no conditions put on other than what the Public Works Department put on it. It seems to me we are looking at a situation where conditions put on by the Planning Commission - there are a number of conditions that they have to follow through. The burden of proof is on the architect and on the soils engineer and the owner of that lot - to respond to the concerns that you people gave raised, which are perfectly legitimate. You have concerns that both the Planning Commission, myself and the rest of the Council had in the hearings that we had on this house before. To my mind I don't think that alternative is a very acceptable one, frankly.

Hendricks: Your remarks really call for a response and because we really have considered the option that you are talking about and in one way - with all due respect - it is like rearranging deck chairs on the Lusitania. Whether it is with a variance or without a variance, the point is that there is an application before you for a variance and you have two concerns: Government Code Section 6596 "is one necessary?" If one is not necessary, it has to be denied - it is that simple; the other issue is in terms of the danger of health and safety. I just think that you really should not lend your support to this variance. If that happens, then we have to rely on the city staff for dealing with this particular matter, but I do not think the Council ought to lend its support to this variance. We have thought about that, we really have and I think the variance should be denied.

Shevnikov: We do have the interests of the downslope and upslope neighbors. I think it is very crucial that you consider that we have thought over all of the alternatives and

we are adamantly opposed to this particular application. I know what your thought processes are concerning the alternative. We ask you unanimously to deny the application.

Ollinger: You are saying you are willing to accept the house 20' down the slope.

(no intelligible answer).

Toal: Why is that? Please explain it to me, that is suicide.

Shevnikov: I think Mr. Hendricks said it best.

Ollinger: I think you are putting this in worse condition. It is going to be the same safety condition. You have to respond to the same engineering conditions. The house is probably going to sit up on stilts a lot higher. That would be my guess.

Hendricks: That is all very true - That is why I remarked facetiously that you are talking about rearranging deck chairs on the Lusitania because either condition is not satisfactory, but from a legal standpoint I think you are much worse served in terms of granting this variance when we know - and you admitted it - that there is no need for the variance. If that is the case, just deny the variance. We are the people who are going to pay the price on it and we are asking you to deny the variance.

Shevenikov: One more thing. Without revealing any legal strategy that might carry on after this evening, we are attempting to urge you to deny the application now. Whatever happens in the future we will respond to that particular incident. Please do not try to second guess, but we urge you again to deny the application.

Toal: You cannot respond to that at all. If we deny he can build and go ahead. That is astounding. You mean you want to put me in a position to let somebody build.....

Hendricks: All we are asking for is for you to deny the variance.

Toal: .....nonsense. I am concerned about your safety. If the building comes down on your property - that is suicidal. That is nonsense, that is not good. It should be built up higher.

Hendricks: We don't agree with that. You are making an assumption that it is safe. There is no safe way to construct. Again, it is like rearranging chairs on the Lusitania.

Mrs. Valesquez: .....it seems to me at the same time Mr. Hendricks says it is not necessary to have a variance, he is secretly hoping that the denial will kill the project.

Mr. Valesquez: I would like to make a comment that I have had to make at every Commission hearing. The people in their letters say: "we are not engineers, we are not soils experts, we know nothing about it really", but tonight they want to be geologists too and I have gone out and I have four different letters from civil engineers.... and I've talked to even more than that and we have architects and everybody says the obvious thing to do is to build it where Doug wants to put the house.

Miller: I have lived on the site 40 years. Every year we lose trees, every year the soil slides. ....I would like to know why they did not make any borings. The report says "by observation". We would like to see somebody make some borings. We think it is very dangerous. It is not in the best interest of the community, and it is not in the best interest of the health and welfare and the happiness and well-being of everybody in this room. We think if you approve this variance and the house is built, what you have done is to set a time bomb and it is going to go off some day and I would like to know is the architect, the engineer - are they going to come back and pay people for their loss. Deny the variance and stop this foolishness.

Ollinger: We will be able to deny the variance, but we can't deny the house.

Capurro: I think it is a very unsuitable slope, and I think it is really steep and I am concerned about the drainage and I am concerned about the health and safety of the people in that area. I will so move to uphold the appeal and deny the Planning Commission grant of variance at 27 Oakwood.

Toal: I will second for discussion purposes. I want to say one thing: I still don't know which way to go because I think it is the best thing that we allow this building to be built the way it is designed, and I think you are wrong in opposing this variance. However, you are all people who are concerned about the neighborhood and you all show up so if you are that deeply concerned I will say I am going to vote for the motion, but just want to go on record that you are flat wrong and do not come back ever and say I didn't warn you.

Roll call vote - Ayes: Capurro, Toal; No, Ollinger.  
Ollinger: Your appeal has been upheld.

Hadden Roth to Capurro - Did you give your reasons for the denial in your motion to be read into the record?

Ollinger: Yes

Clerk: No.

Capurro: I talked about the unstable slope, health and safety and drainage.