

The regular meeting of the San Anselmo Planning Commission was called to order by Chairman John F. West at 8:00 p.m. in the City Hall on December 15, 1969. Representing the City Staff: John T. O'Rourke

1. ROLL CALL

Commissioners Present: Bernt, Creighton, Heinecke, Moore, Perry, Stuart, West  
Commissioners Absent: None

2. APPROVAL OF MINUTES

Commissioner Creighton moved the minutes of the meeting of December 1, 1969 be approved as written, seconded by Commissioner Stuart and unanimously approved.

3. OLD BUSINESS

None

4. NEW BUSINESS

A. REZONING APPLICATION - PUBLIC HEARING

- (1) Z-111 Application of Ronald Harder to rezone from R-1 (Single Family Residence District) to R-3 (Neighborhood Apartment District) A/P 7-213-54 and 7-213-56, commonly known as 55 Magnolia Avenue.

Mr. O'Rourke read the staff report indicating that these parcels are in an area designated for high residential density on the 1960 Campbell Master Plan, and are currently in the midst of a number of multiple residential zoned parcels.

Both Mr. Harder, the present owner, and Mr. Sestak, the proposed purchaser were present. Mr. Sestak said that there are a number of other apartment buildings in the neighborhood, and that the site has sufficient room for eight parking spaces. Seven spaces would be required, if the allowable seven units are constructed.

Commissioner West said that the parcels are in a district planned for R-3 development. The parcels, if combined, meet the minimum lot size and frontage requirements for R-3 development. He suggested that two conditions be imposed if the change of zoning is approved: the two parcels be combined as one, and an additional frontyard setback be imposed.

Commissioner Perry explained for the benefit of the applicants that it has been the policy of the Planning Commission to require an additional 7.5 foot frontyard setback along Magnolia Avenue in anticipation of future street widening, since Magnolia is a very narrow street. This means that the frontyard setback would be a total of 27.5 feet. Mr. Sestak said that they were aware of this, and their plans had taken this into account.

Commissioner Bernt moved that the Planning Commission recommend to the City Council that Z-111 Application of Ronald Harder to rezone from R-1 (Single Family Residence District) to R-3 (Neighborhood Apartment District) A/P 7-213-54 and 7-213-56, commonly known as 55 Magnolia Avenue, be approved subject to the condition that the lots be combined and an agreement approved by the City Attorney effecting this combining be entered into; and further subject to the condition that an additional 7.5 foot

frontyard setback restriction be imposed upon these two parcels. Commissioner Moore seconded the motion which was unanimously approved.

#### B. VARIANCE APPLICATION

- (1) ADJ. 415 Application of Douglas Trost (owner) and Samuel Farr (applicant) for a 0' frontyard setback variance to construct a carport at 90 Forest Avenue. A/P 7-013-02

This item was deleted from the Agenda due to the inadequate plans submitted by the applicants.

#### 5. MATTERS FOR CONSIDERATION OF PLANNING COMMISSION

- (1) Cable Car Burgers and Fisherman's Wharf Fish and Chips

Determination if this is a use permitted in a C-2 District

Mr. O'Rourke read the staff report which indicated that the two restaurants do have some take-out business, perhaps 20% of the total volume. No waitresses are employed, and food is obtained at the counter. The menus include some items which are designated "to go". Mr. O'Rourke said that he had also determined from telephone conversations that the food is served in disposable containers, and that Mr. Reilly, one of the firm's vice-presidents, had said they were unwilling to remove the "Food to Go" sign from the establishment.

Commissioner West explained that this is not a hearing on an application for a use permit - but rather to determine if this is a restaurant use permitted in a C-2 District. He explained that the architectural plans had come before the Design Review Committee for review and the question if this is an allowable use had come up at that time. Since the matter was beyond the purview of the Design Review Committee, the Planning Director had consulted the Planning Commission Chairman and they had concluded it was a matter for hearing before the Planning Commission.

Commissioner West read from the San Anselmo Municipal Code relative to uses permitted in C-2 and C-3 districts. The ordinance states that restaurants and cafes (but not drive-in or take-out establishments) were allowed in C-2 Districts. Drive-in and take-out establishments are permitted in a C-3 district with a use permit first had and obtained. If the Planning Commission determines this use comes under the category of a restaurant or cafe, then no use permit is necessary. If they determine this is a take-out establishment, then it is not permitted under any circumstances in the C-2 district.

Mr. Harry Kohl, architect, representing Cable Car Burgers and Fisherman's Wharf Fish & Chips said he feels this operation is not to any great degree a take-out establishment. In the Fish & Chips portion, food is frequently taken out, although tables are provided for customers use. He stated that very little volume of food is taken out in the Cable Car Burgers portion of the establishment. Mr. Kohl presented brochures and sample menus to all of the Commissioners.

Mr. William Kapranos, landscape architect, said he feels there should be a clear-cut definition as to what is a take-out establishment. He said he feels to use disposable serving containers and paper napkins does not indicate necessarily that the establishment is a take-out business, but rather that these short-cuts are necessary for maximum efficiency and profit.

Commissioner Moore inquired of Mr. Kohl, what the percentage of take-out was in each operation. Mr. Kohl answered very little in Cable Car Burgers, perhaps 20% in Fisherman's Wharf Fish &

Chips. He could not provide information as to peak hour traffic, or busiest days. Commissioner West asked what is the seating capacity of the establishments and was told 43 persons in the Cable Car Burger portion and 30 persons in the Fish and Chips portion. The Fish and Chips portion is a smaller area.

Skip Stewart of 130 Madrone Avenue, said he is disturbed at seeing small towns being commercialized by strip development. He pointed out the possible traffic congestion and trash problem which might be created by a take-out restaurant being allowed to locate on this site.

John Palunko of 21 Tamalpais Avenue, said he feels that the argument what is a take-out restaurant should be settled, and he asked in what ways will the San Anselmo operation of Cable Car Burgers and Fish and Chips differ from their other operations already in business around the Bay Area. He was told this operation will be the same as those in other areas.

Terry Savage of 142 Sequoia Drive said he feels that San Anselmo has all the take-out restaurant problems it needs, and that this application would constitute a take-out establishment.

Dan Goltz of 4 Canyon Road, said he feels that the matter that should be considered is if the packaging entices people to take the food out, it is going to cause traffic congestion and litter problems. He feels this operation will have a considerable amount of take-out customers.

Dr. Richard Galbreath of 22 Belle Avenue said he feels if the food is going to be taken home and eaten, this is one matter; but if the food is to be eaten while driving and the containers disposed of on the streets and surrounding area, then this is an entirely different matter.

Commissioner Bernt said he feels there is no question this is a take-out operation. The vice-president says he will not take down the take-out sign, and the plates, etc. are designed for take-out. There are many San Francisco cafeterias which are programmed for fast service and efficient operation, and they use regular china plates, not disposable plates.

Commissioner Perry said he feels this is clearly not a restaurant use - a restaurant is geared for on-site service. This business is programmed for packaging food to be eaten on or off the premises, and no waitresses are employed. He said he does not feel it is necessary to define the amount of take-out to classify an operation a take-out operation. He suggested perhaps the Planning Commission should present the facts to the City Attorney and ask him for a finding.

Commissioner Moore said he feels a restaurant is a business in which very close to 100% of the service is on-site service. When a business is overt in promoting its take-out service it is clear they are counting on this portion of the business for financial success.

Commissioner Creighton said he feels this application is a combination of both on-site and take-out service. With a seating capacity of 73 persons, it seems to fit the restaurant category better than the take-out category.

Commissioner Stuart pointed out two menu items which were specifically "to go" items, and said he feels this alone would indicate it is a take-out establishment.

Commissioner Moore said he feels that the fact that the applicant is offering free promotional items only on take-out orders indicates its ultimate aim is for a take-out business.

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Commissioner Heinecke said that he had visited both Cable car Burgers and Fisherman's Wharf Fish and Chips restaurants in the Fremont Shopping Center. There was a sign on the front of the Fish and Chips establishment advertising the take-out service, and take-out menus were displayed by the cash register in the Cable Car Burgers establishment. The counterman at the Fish & Chips establishment estimated that the majority of their business was take-out.

Commissioner West said he has some trouble with the concept of what is a take-out restaurant, i.e., what are the characteristics of a take-out business and what percentage of the volume indicates a take-out business. He said he is prepared to determine what is a take-out, but not is this proposed establishment a take-out. In the absence of a specific definition of a take-out establishment, he could only find that this is a take-out to protect the city under any circumstances. He questioned if the Commission was tackling a legal problem - and forming a definition which would be a guideline in the future. He said he feels the Fish & Chips establishment probably is a take-out, but the Cable Car Burger does not seem to be quite the same situation.

Commissioner Perry suggested that the Commission make a finding that this is a take-out establishment and spell out the reasons the finding is based on: type of packaging, lack of waitresses, advertising, etc.

Commissioner Bernt moved that the Commission find the Cable Car Burgers and Fisherman's Wharf Fish & Chips operation as constituted is a take-out business, therefore, is not permitted in a C-2 District. This finding is based on the following indications: (1) promotional material indicates it is a take-out, (2) the proposed sign indicates it is a take-out, (3) the physical plan and degree of self-service suggests take-out, (4) the product and its accouterments suggests take-out. Commissioner Moore seconded the motion which was approved by the following vote:

AYES: Heinecke, Moore, Perry, Stuart, Bernt, West  
NOES: Creighton

Commissioner West informed the representative of Cable Car Burgers and Fisherman's Wharf Fish & Chips that the Commission had found the business to be a take-out operation, therefore, not a permitted use in a C-2 District, and also of the right to appeal the decision to the City Council within ten days from this date.

Commissioner Bernt moved the meeting be adjourned; the motion was seconded by Commissioner Perry and unanimously approved. The meeting was adjourned at 10:20 p.m.

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JOHN F. WEST, CHAIRMAN