



**CITY OF SAUSALITO  
PLANNING DIVISION  
MEMORANDUM**

Date: June 25, 2013  
To: Historic Landmarks Board (HLB)  
From: Heidi Scoble, Associate Planner   
Subject: **100 Harrison Street (APN: 065-124-18)**

**Project Request:**

The owner of 100 Harrison Street, Harrison Ventures, LLC, has submitted an application for the demolition of the existing single family residence and the new construction of three single family condominiums (see **Attachment 1**). The subject residence is a Noteworthy Structure and known as Nestledown.

**Background:**

In 2005, the property owner submitted an application to subdivide the lands of 100 Harrison Street. No modifications to the Noteworthy Structure would occur other than parceling off a portion of the land to allow the construction of a new single family residence to be located adjacent to 100 Harrison Street (see **Attachment 2**).

On June 8, 2005 the Planning Commission adopted Resolution No. 2005-23 approving the subdivision subject to the following conditions of approval relative to the preservation of the Nestledown structure and site:

- 1. No additional structures, with the exception of small accessory structures, shall be constructed on the 100 Harrison Avenue parcel occupied by the Nestledown residence. Only one-story detached accessory structures used as tool and storage sheds, play houses and similar uses, provided the total roof area does not exceed 120 square feet, may be constructed on the property. All accessory structures shall be designed to be architecturally consistent with the structure and landscape.*
- 2. No further subdivision of the 100 Harrison Avenue parcel shall be permitted.*
- 3. Design Review shall be required for any proposal to make an addition to, demolish a portion of, or otherwise modify the Nestledown residence at 100 Harrison Avenue. Design Review shall be conducted in accordance with Chapter 10.54 (Design Review Procedures).*
- 4. Design Review shall be subject to review and approval by the Historic Landmarks Board and the Planning Commission. A joint meeting shall be held to conduct the Design Review.*
- 5. To approve proposed new construction, alteration, or demolition, Design Review Findings specified in the Municipal Code Section 10.54 must be made. The Planning Commission and Historic Landmarks Board shall also*

*consider the extent to which the proposed work is compatible with the architectural and historical features of the structure. Special attention shall be given to alterations to noteworthy exterior design elements, roof structures, and the home's unique configuration of building mass and volume.*

6. *None of the conditions of this resolution shall prevent any measures of construction, alteration, or demolition necessary to correct the unsafe or dangerous condition of any portion of the 100 Harrison property, where such condition has been declared unsafe or dangerous by the building inspector or the fire chief, and where the proposed measures have been declared necessary by such official to correct the condition; provided, however, that only such work as is absolutely necessary to correct the unsafe or dangerous condition and is done with due regard for the preservation of the appearance of the property.*
7. *The owner, lessee, or other person in actual charge or possession of the 100 Harrison property shall keep in good repair all of the exterior portions of the Nestledown Residence, as well as all interior portions whose maintenance is necessary to prevent deterioration and decay of any exterior portion.*

The owner appealed the Planning Commission's resolution. The attached City Council staff report dated September 5, 2006 (see **Attachment 3**) provides a summary of the appeal and the information considered by the City Council. On September 19, 2006, the City Council adopted Resolution No. 4857 partially granting the appeal (see **Attachment 4**). Specifically, the City Council approved deleting Conditions 2, 3, 4, 5, 6, 7, 8, 19b, 19d, 19e, and 19f (see **Attachment 5**).

During the aforementioned appeal process, Carey and Co. prepared a Historic Resource Evaluation and DPR 523 forms (see **Attachment 2, pages 2-8 through 2-19**) indicating the property is not eligible for the State Register, however, the Planning Commission asserted in its review of the Carey and Co. report that although Nestledown may not be eligible for the State Register, the building still is a locally significant historic resource.

The question for the Historic Landmarks Board is whether the Board would like to provide a 50-year review and recommendation on the project or determine the findings of the Carey and Co. report are adequate and that no recommendation is warranted?

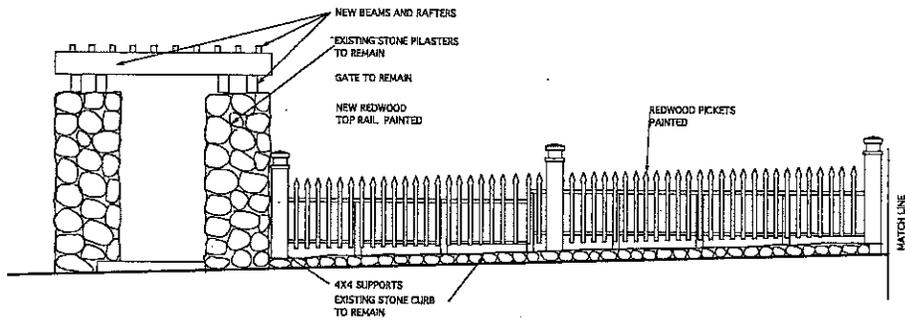
**Attachments:**

1. "Harrison Avenue Condominiums" dated June 11, 2013
2. Harrison Street Subdivision
3. City Council Staff Report dated September 5, 2006
4. City Council Resolution No. 4857 dated September 19, 2006
5. List of deleted conditions of approval

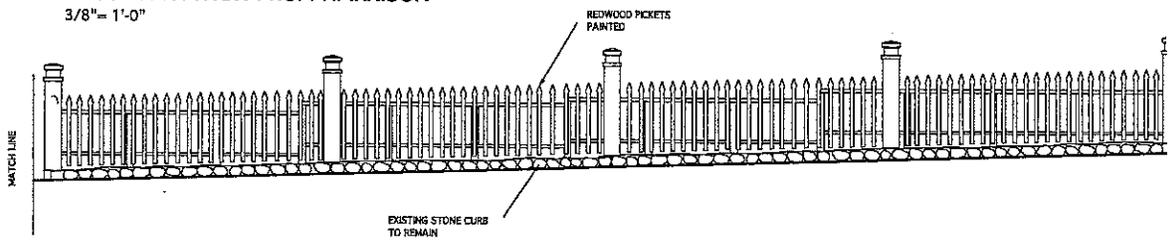


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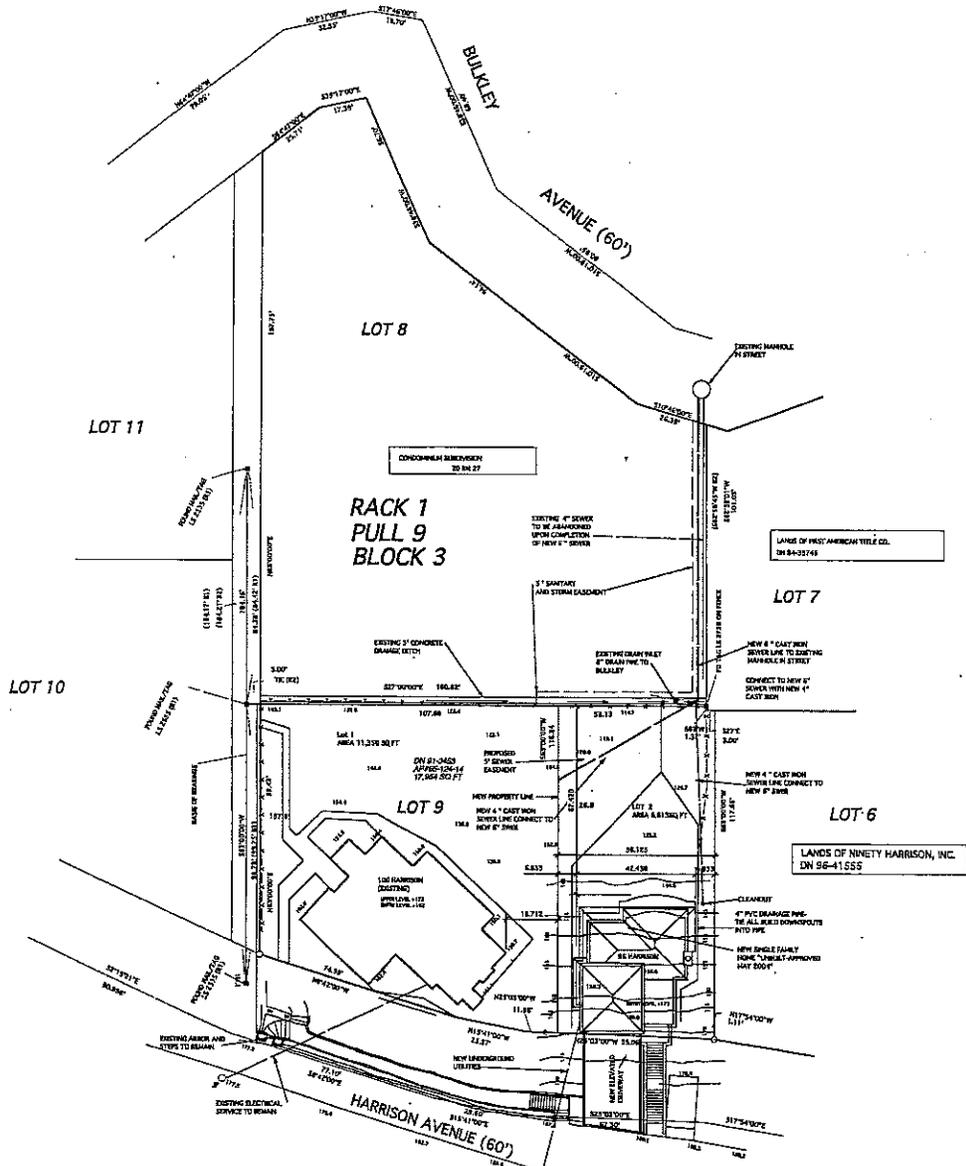




**EAST ELEVATION FROM HARRISON**  
 3/8" = 1'-0"



**EAST ELEVATION FROM HARRISON**  
 3/8" = 1'-0"



**NOTES:**

ALL DIMENSIONS ARE IN

- = FOUND MON
- = SET 1/2" REB
- R1 = 8 OS 65
- R2 = 20 RM 27

BASIS OF BEARINGS: N  
 NAIL/TAGS LS 253S AS  
 (188.17° R1) (188.21°  
 WHICH ROTATED 8 OS 6  
 COUNTERCLOCKWISE 1"

CENTERLINES OF BULK  
 AVENUES IS PER 1 RM 8

**LEGEND**

- FH = FIRE HYDRANT
- WH = WELLHEAD
- FL = FLOWLINE
- CONC = CONCRETE
- ASPH = ASPHALT
- RW = ROCK WALL
- CW = CONCRETE WA
- WM = WATER METER
- CTV = CABLE TELEV
- JP = JOINT POLE
- TW = TOP OF WALL
- MON = CITY MONUMENT
- ROW = RIGHT-OF-WAY

TENTA  
 1" = 20'

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# STAFF REPORT

## SAUSALITO CITY COUNCIL

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### AGENDA TITLE:

Appeal of a Planning Commission decision to approve a Tentative Map and recommend approval of an Encroachment Agreement for a subdivision and frontage improvements at 100 Harrison Avenue.

### STAFF RECOMMENDATION:

Staff recommends that the City Council review the historic evaluation of the 100 Harrison property prepared by consultant Carey & Co. and consider the recommendations provided by the Historic Landmarks Board and the Planning Commission. This information may inform Council action on whether the historic preservation conditions attached to the 100 Harrison lot split should remain as adopted, be revised, or be removed as requested by the appellant. Staff further recommends that the City Council modify Condition No. 22 in accordance with the recommendation of the City Attorney and grant the appellant's request to remove engineering-related Conditions 16, 19b, 19d, 19e and 19f from Resolution No. 2005-23.

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### SUMMARY

Appellant Mike Blatt is appealing multiple conditions from Planning Commission Resolution No. 2005-23 approving a Tentative Map and recommending approval of an Encroachment Agreement for a subdivision and frontage improvements at 100 Harrison Avenue. The appellant contests conditions of subdivision approval that encourage the preservation of the existing home at 100 Harrison (known as the Nestledown Residence), prohibiting additional development on the parcel, and prohibiting additional subdivision of the parcel containing the Nestledown Residence. The appellant also contests additional engineering-related conditions of approval and the condition which requires the appellant to indemnify and defend the City with respect to project related challenges. Staff recommends the removal of engineering-related conditions 16, 19b, 19d, 19e and 19f and the modification of Condition No. 22 all of which are discussed later in this report.

The Council previously considered this appeal on October 11, 2005 and November 1, 2005. At the November 1, 2005 hearing the Council determined that there was insufficient information to act on the subject appeal, and requested the preparation of a historic evaluation of the 100 Harrison property prepared by an independent historic preservation consultant. The Council requested that the Planning Commission and HLB review this report, along with all relevant

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Attachment 3 (106 pages)

information and materials, and to report back to the City Council prior to the Council's action on the subject appeal.

A report evaluating the historical significance of the 100 Harrison property was prepared by historic preservation consultant Carey & Co. The conclusion of this report is that the 100 Harrison residence and property does not retain a level of historic significance to be eligible for listing on the California Register of Historical Resources.

The Historic Landmarks Board reviewed the Carey & Co. report, conducted a site visit of the subject property, and reviewed all relevant background materials and documentation. As stated in a memorandum dated June 14, 2006, the Board agrees with the Carey & Co. conclusion that the subject property is not eligible for listing on the California Register of Historic Resources, and that the residence and grounds at 100 Harrison are not historically significant. The Board did find features located in the Harrison Ave public right-of-way (the rock pergola gated entrance and the stone wall, path and steps) to be historically significance.

The Planning Commission reviewed the Carey & Co. report, the HLB memorandum and all related materials at a public hearing on July 5, 2006. At this hearing the Commission expressed the opinion that the 100 Harrison property is a locally significant historic resource for the City of Sausalito and recommended that the historic preservation conditions attached to Resolution No. 2005-23 remain as approved. Upon arriving at this recommendation, the Commission made the following observations: 1) The City is not bound by California Register of Historic Resources (CRHR) criteria when determining the significance of local historic resources; 2) New information in the form of the Carey & Co. report and the HLB memorandum does not alter the conclusion that 100 Harrison is a locally significant historic resource; and 3) It is the site and its relationship to the neighborhood, rather than the structure itself, which contributes most to the property's historic significance.

## **APPEAL BACKGROUND**

On June 8, 2005 the Planning Commission adopted Resolution No. 2005-23 (attached) approving a tentative map and recommending approval of an encroachment agreement for a subdivision and street frontage improvements at 100 Harrison Avenue. Approval of the subdivision included conditions requiring Planning Commission and HLB approval for any exterior modifications to the home at 100 Harrison known as the Nestledown Residence, prohibiting additional development on the parcel, and prohibiting additional subdivision of the parcel containing the Nestledown Residence. The Commission concluded that the historical significance of the Nestledown Residence and property warranted these conditions designed to protect and preserve the Nestledown Residence and site. These conditions of approval were intended to implement stated goals of the City's General Plan calling for the protection and preservation of historically significant structures and properties.

On June 20, 2005, Raymond Blatt, representing the applicant Harrison Ventures LLC, submitted a letter (attached) appealing conditions 2, 3, 4, 5, 6, 7, 8, 15, 16, 17, 18, 19b, 19d, 19e, 19f and 22 from Planning Commission Resolution No. 2005-23. Mr. Blatt bases his appeal on the belief that the Planning Commission's decision to impose these conditions were "arbitrary and capricious", that the conditions do not satisfy the Nolan and Dolan "nexus" and

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"rough proportionality requirement", and that the decision was inconsistent with the previously stated intent of the City Council. Contested conditions 2-8 pertain to historic preservation requirements as described above. Conditions 15, 16, 17, 18, 19b, 19d, 19e and 19f subject to this appeal pertain to certain engineering-related conditions of approval. Condition 22 is a standard condition of approval included in all Planning Commission resolutions that requires the applicant to indemnify and defend the City with respect to any legal challenges to the project.

## **PRIOR COUNCIL REVIEW**

Mr. Blatt's appeal was first heard by the City Council on October 11, 2005. At this hearing Council discussion centered on the feasibility of allowing future site development relative to the Planning Commission's conditions of approval. The Council was also concerned with the internal consistency of the conditions of approval. Following Council deliberation, the Council continued the item and directed staff to return with revised conditions of approval that would clarify their concerns. Revisions to the Planning Commission Resolution No. 2005-23 included modifying condition 2 to require a Design Review permit for any proposed new structure on the 100 Harrison property, deleting condition 3, which would have prohibited additional subdivision of the 100 Harrison parcel, and deleting condition 5, which would have required HLB approval of all Design Review permits required for improvements to the property.

The City Council's second hearing of the subject appeal occurred on November 1, 2005. At this hearing a majority of the Council concluded that there was insufficient information at that time to act on Mr. Blatt's appeal, and that an independent third-party review of the 100 Harrison property was necessary. The Council therefore directed staff to hire an independent consultant to prepare an evaluation of the 100 Harrison property. The Council requested that the Planning Commission and HLB review this report, along with all relevant information and materials, and to report back to the City Council prior to the Council's action on the subject appeal.

## **CAREY & CO. EVALUATION**

Community Development Department staff hired historic preservation consulting firm Carey & Co. to prepare the 100 Harrison evaluation as requested by the City Council. This evaluation is included as Exhibit 1 to this staff report. The Carey & Co. evaluation consists of a summary of conclusions, and completed DPR 523 A, B & L forms. The conclusion of this report is that the 100 Harrison residence and property does not retain a level of historic significance to be eligible for listing on the California Register of Historical Resources.

The report includes research methods and materials, a physical description of the property, and a description of the property's historic context (ownership, architecture, gardens and grounds). The evaluation section of the report uses the California Register of Historical Resources (CRHR) eligibility criteria as a framework to analyze the historic significance of the property. The report finds the property to be ineligible for the CRHR under all four criteria.

## HLB REVIEW

As requested by the City Council, the HLB reviewed the Carey & Co. report, conducted a site visit of the 100 Harrison property, and reviewed all relevant materials. Materials reviewed by the HLB include forms, memorandums and letters prepared by the HLB or HLB members; reports prepared by the appellant's historic preservation consultant Mark Hubert; and various other documents relevant to the HLB's review. These materials, attached as exhibits to this report, are listed below.

### HLB Materials

- **Historic Resources Inventory, 1977** – Prepared by R.J. Tracy. Identifies 100 Harrison as historically significant due to association with TEK Cormac, basically original structure, in excellent condition.
- **HLB Memorandum, January 12, 2004** – Expresses concerns with impacts of new construction on open garden estate. Recommends measures to guarantee preservation of "Nestledown".
- **HLB Memorandum, April 22, 2004** – Identifies Nestledown residence, pergola, and Franciscan stone wall as structures exhibiting high historical significance.
- **HLB Memorandum, June 9, 2004** – Reiterates finding of Nestledown residence, pergola, Franciscan stone wall as exhibiting high historical significance.
- **Letter from HLB Chair, October 6, 2005** – Finds unchanged footprint from 1919, substantial alterations, much remains from Cormac era.

### Materials from Appellant

- **100 Harrison report prepared by Mark Hubert, April 25, 2005** – Concludes that the designation of the 100 Harrison residence as a Noteworthy Structure is not supported by any substantial evidence, that the structure's historical integrity has been "forfeited" from alterations over time, and that there is no record of evidence supporting the HLB's determination that the Nestledown residence is of high historical significance.
- **Letter from Mark Hubert, June 15, 2005** – Restates belief that staff has proceeded in error and that the City has not allowed for a full and open debate regarding the historical significance of the structure.

### Other Relevant Materials

- **Appeal letter from Raymond Blatt/ Harrison Ventures LLC, June 18, 2005.**
- **Planning Commission Resolution No. 2005-23** – Includes historic preservation conditions of approval for lot split.
- **City Council Minutes October 11 & November 1, 2005.**

The HLB prepared a memorandum dated June 14, 2006 summarizing the Board's conclusions regarding the historic significance of the subject property. As stated in this memorandum, the

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Board agrees with the majority of the findings in the Carey & Co. report. The Board finds that the 100 Harrison home known as the Nestledown residence is not historically significant. The Board agrees with the Carey & Co. conclusion that, due to the extent to which the home has been altered over time, the physical integrity of the home has been forfeited and its ability to convey historical significance has been undermined. The Board was unable to find any level of historical significance for all four CRHR eligibility criteria.

The Board did disagree with the Carey & Co. report regarding the significance of features located in the Harrison Ave public right-of-way. The Board found these features—including the rock pergola gated entrance and the stone wall, path and steps—to be historically significant. The Board noted that the rock pergola gated entrance is believed to have constructed around 1920 and is a unique feature directly associated with the Nestledown residence. The Carey & Co. report found these features to lack historical significance. Regarding the grounds within the property, the Board agreed with the Carey & Co. report that site features such as the stone walls, walkways and “gardens” to the rear of the home lack historical significance. While the Board believes that these site features contribute to a particularly pleasing ambiance, the Board did not find any of them to be significant based upon the four CRHR criteria.

## **PLANNING COMMISSION REVIEW**

As stated above, the City Council requested that the Planning Commission review the Carey & Co. report along with the HLB memorandum prior to Council action on the appeal. The Planning Commission reviewed the Carey & Co. report on July 5, 2006, along with the HLB memorandum and all additional materials previously reviewed by the HLB as identified above. At this hearing the Commission expressed the opinion that the 100 Harrison property is a locally significant historic resource for the City of Sausalito and recommended that the historic preservation conditions attached to Resolution No. 2005-23 remain as approved. Minutes from this hearing are attached to this staff report.

At the July 5, 2006 hearing a diversity of opinions were expressed by the four Commissioners present that evening. However, a consensus was expressed by the Commissioners on several main ideas, as summarized below:

1. The City is not bound by California Register of Historic Resources (CRHR) criteria when determining the significance of local historic resources. The Commission emphasized the belief that the City maintains “local control” over the identification of properties that are historically significant for the City of Sausalito. The Commission correctly noted that neither the Sausalito Municipal Code nor General Plan identify the CRHR criteria as the basis to determine historic significance. Several Commissioners stated that policy language in the General Plan should provide the framework to identify locally significant historic properties. The General Plan should provide this framework as it a local document identifying community-set standards developed through a public process.
2. New information in the form of the Carey & Co. report and the HLB memorandum does not alter the conclusion that 100 Harrison is a locally significant historic resource. One Commissioner stated the opinion that the Carey & Co. report does not refute recitals 8, 9 and 10 regarding the historic significance of the property as contained in Resolution No. 2005-23. Another Commissioner noted that the 1977 Historic Resources Inventory

and subsequent HLB memorandums identifying the property as significant remain valid and speak to the importance of the property to the community.

3. It is the site and its relationship to the neighborhood, rather than the structure itself, which contributes most to the property's historic significance. The "open garden estate style" property and its relationship to its surroundings is seen as worthy of preservation. Related to this idea is belief that the Sausalito Municipal Code and General Plan empower the City to protect and preserve properties or sites that may not contain historically significant structures but still possess unique aesthetic value. For example, General Plan policy CD-4.2 states that the City shall "maintain the uniqueness of community sub-areas and assure that sub-area attributes are protected and enhanced." One of ten overall goals of the General Plan identified in Section 1.7 is to "protect the present character of Sausalito's residential neighborhoods."

One Commissioner also emphasized the belief that even if the structure is found to not be historically significant, the contested conditions can and should remain to implement other General Plan policies. As stated above, General Plan policy CD-4.2 states that the City shall "maintain the uniqueness of community sub-areas and assure that sub-area attributes are protected and enhanced." The contested conditions prohibiting further subdivision of the site and restricting additional development could be seen as necessary to implement this and other policies relating to preserving neighborhood character. Doing so, the Commissioner noted, would be no less legally defensible as imposing the condition to implement policies relating to historic preservation.

Lastly, several Commissioners noted that this appeal provides the City Council with an opportunity to provide policy direction on how the City defines historically significant resources. As stated above, the Commission expressed the opinion that the City should not rely on the CHRH criteria to identify historically significant properties, and that community-set policies contained in the General Plan better reflect community values related to historic preservation.

## LEGAL ANALYSIS

Action on the subject appeal and broader policy direction regarding the identification of historic resources concerns legal questions on a City's ability to regulate development on private property. When the Planning Commission initially considered the 100 Harrison lot split application, the City Attorney advised the Commission that requiring the preservation of the Nestledown residence at 100 Harrison is legally defensible so long as such a condition implements general plan policies adopted to protect the health, safety, and welfare of the citizens of Sausalito. General Plan language cited for this purpose included one of the goals of the City's General Plan - to "preserve the historical character of Sausalito and its architectural and cultural diversity (General Plan Section 1.7) and Objective CD-7.0 - to "respect and maintain the exterior integrity of structures and sites in the Historic District and of all officially designated or recognized historic structures and sites outside the district."

California Government Code Section 66473.5 provides that no local agency shall approve a tentative map or a parcel map unless the legislative body finds that the proposed subdivision and the provisions for its design and improvement are consistent with the general plan or any specific plan. The Courts have generally found that the power to deny includes the power to

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approve with conditions. See, for example, *Nolan v. California Coastal Commission*, 483 US 825, 836 (1987). Thus, a local agency may impose such conditions on a subdivision as are necessary to ensure that it is consistent with the general plan.

It is also true, however, that there must be a nexus or connection between the conditions imposed and the impacts of the project. There must also be a connection between the conditions imposed and the policy or program that they are designed to implement.

In this case, Carey & Co. and the HLB reached a determination that the structure and grounds are not historically significant utilizing the CRHR criteria. The Planning Commission, however, believes that there is local historical significance particularly with respect to the "open garden estate" style. If the City Council wishes to continue to impose the conditions related to historic preservation they will need to be clearly tied to the factors that make these structures locally significant. Additional legal issues and analysis related to specific conditions are set forth below in conjunction with the discussion of those conditions.

## **APPROVAL PROCESS IF APPEAL IS GRANTED**

At the October 11 and November 1, 2005 City Council hearings on the subject appeal, the Council sought from staff clarification on the project approval and environmental review process for future projects at the subject property that would be required both with and without the contested historic preservation conditions. Below are the contested preservation conditions followed by a summary of how the removal of the condition would change the required project approval and environmental review process. Additional legal analysis is also provided below.

2. No additional structures, with the exception of small accessory structures, shall be constructed on the 100 Harrison Avenue parcel occupied by the Nestledown residence. Only one-story detached accessory structures used as tool and storage sheds, play houses and similar uses, provided the total roof area does not exceed 120 square feet, may be constructed on the property. All accessory structures shall be designed to be architecturally consistent with the structure and landscape.

*Removal of Condition 2 would enable the property owner to request approval for an additional structure exceeding 120 square feet of area within the 100 Harrison parcel. An accessory structure that is not a dwelling unit would require only a building permit provided that all applicable development standards (height, building coverage, etc.) are met. Neither the Planning Commission or the Historic Landmarks Board would not review the project and generally no environmental review would be required.*

*Removal of Condition 2 would also enable the property owner to propose the construction of additional dwelling units on the site. Such a proposal would require Planning Commission approval of a Design Review Permit. The Historic Landmarks Board would review the proposal and provide a recommendation to the Planning Commission regarding impacts to historic resources. The project would also be subject to environmental review, requiring the Planning Commission to determine if the proposal would result in any environmental impacts, including impacts to historic resources, as defined by the California Environmental Quality act (CEQA).*

3. No further subdivision of the 100 Harrison Avenue parcel shall be permitted.

*Removal of Condition 3 would enable the property owner to request approval of either a lot split or condominium subdivision of the existing structure or a proposed new structure. Due to the minimum parcel standards contained in the Zoning Ordinance, the most feasible lot split that would not require a variance would bisect the parcel length-wise through the existing Nestledown home. A proposal of this nature would require Planning Commission approval of a minor subdivision and Design Review permit for the demolition of the Nestledown home (parcel lines may not bisect structures). A minor subdivision also requires approval of the City Council. A Condominium Subdivision would require Planning Commission and City Council review and approval. Environmental review and HLB review with recommendation to the Planning Commission would also be required for a lot split or condominium conversion application involving the 100 Harrison property.*

*In this regard it is important to note that the same property owner cannot avoid the tentative and final map requirements in the Subdivision Map Act by "quartering" or successively subdividing four or fewer parcels. Bright v. Board of Supervisors, 66 Cal. App. 3d 191 (1977).*

*It is also important to note that California Government Code Section 66424.1 provides in part that "local agencies shall not, by ordinance or policy, prohibit consecutive subdivision of the same parcel or any portion thereof either by the same subdivider or a subsequent purchaser because the parcel was previously subdivided." This section could be interpreted to mean that further subdivision could be prohibited if such a restriction was based upon reasons other than the previous subdivision of the property – such as the preservation of an historic structure. However, there are not reported cases on point which would serve as authority for that position. Other mechanisms, such as changing applicable zoning in an area could also be utilized to prevent the creation of numerous small lots. This would have to be done on a broader basis, however, and not on a case by case determination.*

4. Design Review shall be required for any proposal to make an addition to, demolish a portion of, or otherwise modify the Nestledown residence at 100 Harrison Avenue. Design Review shall be conducted in accordance with Chapter 10.54 (Design Review Procedures).

*Removal of Condition 4 would mean that any project not meeting the Design Review thresholds as identified in Zoning Ordinance Chapter 10.54 would not require review and approval of a Design Review Permit by the Planning Commission. Improvements that would still require a Design Review Permit include substantial additions of floor area (300 square feet with new building coverage, 600 square feet without new building coverage, or 25 percent of existing floor area), increasing the height of the structure, or potentially obstructing public or private views. Assuming that no other discretionary approvals are required, a project that does not require Design Review would be exempt from CEQA and would not be reviewed by the HLB. Projects requiring Design Review would be subject to environmental and HLB review.*

5. Design Review shall be subject to review and approval by the Historic Landmarks Board and the Planning Commission. A joint meeting shall be held to conduct the Design Review.

*Removal of Condition 5 would mean that the HLB would not possess decision-making authority for Design Review Permit applications. Rather, the HLB would serve in an advisory capacity and provide a recommendation to the Planning Commission regarding the appropriateness of a proposed project.*

*At the prior City Council hearings the question arose regarding whether or not additional discretionary authority could be granted to the HLB through the mechanism of a subdivision map. The City Attorney has reviewed this issue and determined that the City Council has broad authority to delegate certain functions to boards and commissions unless the matter in question is statutorily reserved to the Council itself. The California Supreme Court has stated that "The doctrine prohibiting delegations of legislative power is not violated if the Legislature makes the fundamental policy decisions and leaves to some other body, public or private, the task of achieving the goals envisioned in the legislation." (Younger v. County of El Dorado (1971)5 Cal.3d 480 507.) In this case the criteria for conducting design review are well established and the HLB would be applying those criteria to a specific set of circumstances. While utilizing a condition on a map is not the usual place for the delegation of such authority it is not prohibited.*

6. To approve proposed new construction, alteration, or demolition, Design Review Findings specified in the Municipal Code Section 10.54 must be made. The Planning Commission and Historic Landmarks Board shall also consider the extent to which the proposed work is compatible with the architectural and historical features of the structure. Special attention shall be given to alterations to noteworthy exterior design elements, roof structures, and the home's unique configuration of building mass and volume.

*Condition 6 clarifies that Design Review Permit findings must be made to approve proposed new construction, alteration, or demolition, and identifies specific features of the existing structure that warrants special consideration in the Design Review process. Removal of this condition would not alter the required permitting and approval process.*

7. None of the conditions of this resolution shall prevent any measures of construction, alteration, or demolition necessary to correct the unsafe or dangerous condition of any portion of the 100 Harrison property, where such condition has been declared unsafe or dangerous by the building inspector or the fire chief, and where the proposed measures have been declared necessary by such official to correct the condition; provided, however, that only such work as is absolutely necessary to correct the unsafe or dangerous condition and is done with due regard for the preservation of the appearance of the property.

*Removal of Condition 7 would not alter the required permitting and approval process.*

8. The owner, lessee, or other person in actual charge or possession of the 100 Harrison property shall keep in good repair all of the exterior portions of the Nestledown Residence, as well as all interior portions whose maintenance is necessary to prevent deterioration and decay of any exterior portion.

*Removal of Condition 8 would not alter the required permitting and approval process.*

## **ENGINEERING-RELATED CONDITIONS**

As part of the subject appeal Mr. Blatt also requests the removal of multiple engineering-related conditions from Resolution No. 2005-23. Staff recommends that the City Council grant the appellant's request to remove engineering-related Conditions 16, 19b, 19d, 19e and 19f from Resolution No. 2005-23, and also recommends that conditions 15, 17, 18 remain in the resolution as approved by the Planning Commission. At the October 11, 2005 hearing the Council indicated support for following staff's recommendation on the removal of these conditions.

An explanation for staff's recommendations on the engineering-related conditions are provided below.

15. The City Council shall have approved the requested encroachment.

*The 100 Harrison subdivision and frontage improvements approved by the Planning Commission includes a new fence in the public right-of-way, which requires City Council approval of an Encroachment Agreement. **Staff recommends that the City Council uphold the Planning Commission's decision to include Condition 15 in Resolution No. 2005-23.***

16. A detailed site and project specific erosion and sedimentation control plan shall be submitted as part of the project grading (pier drilling) plans.

*An erosion and sedimentation control plan should not be required. Such a plan would have been necessary for the construction of a parking deck, but is no longer needed with the parking deck removed from the project. **Staff recommends that the City Council grant the appellant's request to remove Condition 16 from Resolution No. 2005-23.***

17. A traffic control plan shall be submitted for controlling traffic on Harrison Avenue during the construction process.

*Resolution of Approval No. 2005-23 recommends City Council approval of repairs to the public sidewalk, new concrete stairs, a new fence, and repairs to the existing stone curbs. All of this work requires the use of construction equipment, thus necessitating City review of a traffic control plan. **Staff recommends that the City Council uphold the Planning Commission's decision to include Condition 17 in Resolution No. 2005-23***

18. A construction staging plan and construction schedule shall be submitted for review and approval.

*Resolution of Approval No. 2005-23 recommends City Council approval of repairs to the public sidewalk, new concrete stairs, a new fence, and repairs to the existing stone curbs.*

*All of this work requires the use of construction equipment, thus necessitating City review of a construction staging plan and construction schedule. Staff recommends that the City Council uphold the Planning Commission's decision to include Condition 18 in Resolution No. 2005-23*

- 19.b All grading work shall be shown on a grading plan to be incorporated into the improvement plans. Grading plan shall include the location and size of all existing trees to be removed, and trees to remain. The plans shall show all measures identified in the Tree Protection Plan as needed, to protect trees during construction and all erosion control and storm water pollution prevention measures to be implemented. The grading plan shall clearly show all existing survey monuments and property corners and shall state that they shall be protected and preserved.

*Grading will not be necessary as part of the 100 Harrison subdivision and frontage improvements. Staff recommends that the City Council grant the appellant's request to remove Condition 19b from Resolution No. 2005-23.*

- 19.d Water from downspouts, roof leaders and hard surfaces shall be dissipated on-site and shall not be directly connected to a storm drain.

*Changes to existing drainage patterns would not occur as a result of the 100 Harrison subdivision and frontage improvements. A drainage plan would have been required for the construction of a parking deck, but is no longer needed with the parking deck removed from the project. Staff recommends that the City Council grant the appellant's request to remove Condition 19d from Resolution No. 2005-23.*

- 19.e Pavement removal and repaving will be subject to the review and approval of the City Engineer.

*Pavement removal or repaving will not be necessary as part of the 100 Harrison subdivision and frontage improvements. Staff recommends the removal of Condition 19e from Resolution 2005-23.*

- 19.f No construction shall be initiated until the improvement plans have been approved by the City, all applicable fees have been paid, an encroachment permit and/or grading permit has been issued, a project schedule has been submitted to the City Engineer and a pre-construction conference has been held with the City Engineer and City Building Official or their designees.

*A grading permit is not necessary as part of the 100 Harrison subdivision and frontage improvements. Staff recommends that the City Council grant the appellant's request to remove Condition 19f from Resolution No. 2005-23.*

## CONDITION RELATED TO INDEMNITY

The appellant contests conditions 22 which states that "the applicant shall indemnify the City for any and all costs, including without limitation attorneys' fees, in defending this project or any

portion of this project and shall reimburse the City for any costs incurred by the City's defense of the approval of the project."

The appellant is concerned that this condition is intended to apply to legal challenges to the approvals raised by the appellant. However, the purpose of this standard language is with respect to challenges by other parties.

Government Code Section 66474.9(b) provides that the City may require, as a condition to a map approval that the subdivider defend, indemnify and hold harmless the city against any claim or action brought within the 90 day time period set forth in Government Code Section 66499.37. Staff is recommending that the condition remain but that it be modified to comply with Government Code Section 66474.9(b) to read as follows:

"The applicant shall defend, indemnify and hold harmless the City, its elected and appointed officials, agents, officers, and employees from any claim, action or proceeding against the City or its elected and/or appointed officials, agents, officers and/or employees to attack, set aside, void or annul, the City's approval of the subdivision, which action is brought within the time period provided for in California Government Code Section 66499.37. The City shall promptly notify the applicant of any claim, action, or proceeding and the City shall cooperate fully in the defense."

## **SPECIAL CONSIDERATIONS IF COUNCIL WISHES TO MAINTAIN PRESERVATION CONDITIONS**

Staff recommends that the City Council direct staff to return to the September 19, 2006 hearing with a draft resolution on the subject appeal. If the Council wishes to follow the recommendation of the Planning Commission and retain the historic preservation conditions, staff requests that the City Council identify the factual basis to conclude that the property is worthy of preservation. At its July 5, 2005 hearing, the Planning Commission found the property to be of "local historic significance, noting that the "open garden estate style" of the property and its relationship to its surroundings render it worthy of preservation.

The Planning Commission also noted that the recitals in Resolution No. 2005-23 explaining the historic value of the property remain valid. Staff has concerns that these recitals conflict with the conclusions contained in the Carey & Co. report. For example, Resolution No. 2005-23 states that the subject property was found to be a "fine, nearly unaltered example of Sausalito's early Victorian architecture." The Carey & Co. report concludes that "100 Harrison is an extremely diluted example of construction in the Victorian style" and that the structure has been "greatly altered to the detriment of its physical integrity as well as its ability to convey and historic significance." The Historic Landmarks Board memorandum dated July 5, 2006 also states that, due to the extent to which the home has been altered over time, the physical integrity of the home has been forfeited and its ability to convey historical significance has been undermined.

Staff has identified below some of the notable features of the subject property as identified by the Planning Commission, Carey & Co. report, and the HLB:

- Character of the site and grounds: the “open garden estate” with pathways, stone and brick walls, the manner in which the home relates to its surroundings.
- Relationship to neighborhood: Existing home is set back from the street at a lower elevation, conveying a sense of seclusion within a lushly vegetated property.
- Architectural style: Described by Carey & Co. report as Folk Victorian.
- Architectural features: Including roof configuration, dormers, wood drop channel siding, fish scale wood shingles under gables, eave brackets, and windows.
- Improvements in right-of-way: The rock pergola gated entrance, Franciscan stone wall, path and steps were found to be historical significant by the HLB.
- Person: T.E.K. Cormac was previously identified by the HLB as a “prominent attorney.”

If the Council wishes to maintain the historic preservation conditions, staff suggests that the Council identify features listed above which contribute to the property’s “local historic significance.” The Council should also articulate *why* these specific features are locally significant. For example, the Council could find that the existing historical architectural features, such as the wood drop channel siding, fish scale wood shingles under gables, and eave brackets and represent an aesthetic sensibility typical for Sausalito architecture at the turn of the century. Staff would use this information to prepare a draft resolution identifying a factual basis to support the conclusion that the property is historically significant for Sausalito and worthy of preservation. Alternatively, if the City Council believes that there is an insufficient basis to find the property “locally historically significant”, staff would recommend that the Council direct staff to return with a draft resolution granting the appellant’s request to remove the preservation-related conditions.

## STAFF RECOMMENDATIONS

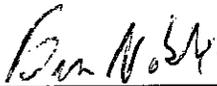
Staff recommends that the City Council review the historic evaluation of the 100 Harrison property prepared by consultant Carey & Co. and consider the recommendations provided by the Historic Landmarks Board and the Planning Commission. This information may inform Council action on whether the historic preservation conditions attached to the 100 Harrison lot split should remain as adopted, be revised, or be removed as requested by the appellant. Staff further recommends that the City Council modify Condition No. 22 in accordance with the recommendation of the City Attorney and grant the appellant’s request to remove engineering-related Conditions 16, 19b, 19d, 19e and 19f from Resolution No. 2005-23.

## ATTACHMENTS

1. Carey & Co 100 Harrison Historic Structure Report, April 2006
2. Planning Commission Minutes, July 5, 2006
3. HLB Memorandum, June 14, 2006
4. 100 Harrison report prepared by Mark Hubert, April 25, 2005
5. Letter to City Council from Mark Hubert, June 15, 2005

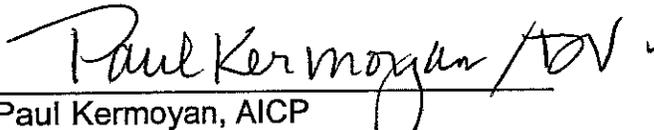
6. 100 Harrison Historic Resources Inventory, 1977
7. HLB Memorandum, January 12, 2004
8. HLB Memorandum, April 22, 2004
9. HLB Memorandum, June 9, 2004
10. Letter from HLB Chair, October 6, 2005
11. Appeal letter from Raymond Blatt/ Harrison Ventures LLC, June 18, 2005
12. Planning Commission Resolution No. 2005-23
13. City Council minutes October 11 & November 1, 2005

PREPARED BY:



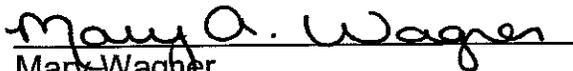
Ben Noble, AICP  
Associate Planner

REVIEWED BY:



Paul Kermoyan, AICP  
Community Development Department Director

REVIEWED BY:



Mary Wagner  
City Attorney

SUBMITTED BY:



Dana Whitson  
City Manager

Item #: 5.A  
Meeting Date: 9-05-06  
Page #: 14

# STAFF REPORT

## SAUSALITO PLANNING COMMISSION

**PROJECT:** AP 05-031/ 100 Harrison Avenue / APN 065-124-14

**MEETING DATE:** July 5, 2006

**STAFF:** Ben Noble, Associate Planner

**APPELLANT AND PROPERTY OWNER:** Mike Blatt of Harrison Ventures, LLC

### **REQUEST**

Mike Blatt of Harrison Ventures LLC has appealed to the City Council conditions of approval from Planning Commission Resolution No. 2005-23 for a subdivision and frontage improvements at 100 Harrison Avenue. The City Council, which considered the appeal on October 11 and November 1, 2005, requests that the Planning Commission review a historical evaluation of the 100 Harrison property prepared by consulting firm Carey & Co. Staff recommends that the Planning Commission provide a recommendation to the Council as to whether the historic preservation conditions attached to the 100 Harrison lot split should remain as adopted, be revised, or be removed as requested by the appellant.

### **BACKGROUND**

On June 8, 2005 the Planning Commission adopted Resolution No. 2005-23 (attached) approving a tentative map and recommending approval of an encroachment agreement for a subdivision and street frontage improvements at 100 Harrison Avenue. Approval of the subdivision included conditions requiring Planning Commission and HLB approval for any exterior modifications to the home at 100 Harrison known as the Nestledown Residence, prohibiting additional development on the parcel, and prohibiting additional subdivision of the parcel containing the Nestledown Residence. The Commission concluded that the historical significance of the Nestledown Residence and property warranted these conditions designed to protect and preserve the Nestledown Residence and site. These conditions of approval were intended to implement stated goals of the City's General Plan calling for the protection and preservation of historically significant structures and properties.

On June 20, 2005, Raymond Blatt, representing the applicant Harrison Ventures LLC, submitted a letter (attached) appealing conditions 2, 3, 4, 5, 6, 7, 8, 15, 16, 17, 18, 19b, 19d, 19e, 19f and 22 from Planning Commission Resolution No. 2005-23. Mr. Blatt bases his appeal on the belief that the Planning Commission's decision to impose these conditions were "arbitrary and capricious", that the conditions do not satisfy the Nolan and Dolan "nexus" and "rough proportionality requirement", and that the decision was inconsistent with the previously stated intent of the City Council. Contested conditions 2-8 pertain to historic preservation requirements as described above. The additional conditions subject to this appeal pertain to certain engineering-related conditions of approval.

Mr. Blatt's appeal was first heard by the City Council on October 11, 2005. At this hearing Council discussion centered on the feasibility of allowing future site development relative to the Planning Commission's conditions of approval. The Council was also concerned with the internal consistency of

the conditions of approval. Following Council deliberation, the Council continued the item and directed staff to return with revised conditions of approval that would clarify their concerns. Revisions to the Planning Commission resolution No. 2005-23 include modifying condition 2 to require a Design Review permit for any proposed new structure on the 100 Harrison property, deleting condition 2, which would have prohibited additional subdivision of the 100 Harrison parcel, and deleting condition 5, which would have required HLB approval of all Design Review permits required for improvements to the property.

The City Council's second hearing of the subject appeal occurred on November 1, 2005. At this hearing the Council reviewed the revised conditions of approval. Mr. Philip Blois, Chair of the Historic Landmarks Board, spoke before the Council and presented results of recent HLB research on the 100 Harrison property. Mr. Blois reported that substantial portions of the Nestledown residence appear to be original to the era that it was occupied by the Cormac family, that important elements of the first section of the house remain unaltered, and that the home represents a highly significant residence in Sausalito. Mr. Blois's October 6, 2005 memorandum stating these findings is attached to this memorandum.

At the November 1, 2005 hearing a majority of the Council concluded that there was insufficient information at that time to act on Mr. Blatt's appeal, and that an independent third-party review of the 100 Harrison property was necessary. The Council therefore directed staff to hire an independent consultant to prepare an evaluation of the 100 Harrison property. The Council requested that the Planning Commission and HLB review this report, along with all relevant information and materials, and to report back to the City Council prior to the Council's action on the subject appeal.

### **CAREY & CO. EVALUATION**

Community Development Department staff hired historic preservation consulting firm Carey & Co. to prepare the 100 Harrison evaluation as requested by the City Council. This evaluation is included as Exhibit 1 to this staff report. The Carey & Co. evaluation consists of a summary of conclusions, and completed DPR 523 A, B & L forms. The conclusion of this report is that the 100 Harrison residence and property does not retain a level of historic significance to be eligible for listing on the California Register of Historical Resources.

The report includes research methods and materials, a physical description of the property, and a description of the property's historic context (ownership, architecture, gardens and grounds). The evaluation section of the report uses the California Register of Historical Resources (CRHR) eligibility criteria as a framework to analyze the historic significance of the property. The report finds the property to be ineligible for the CRHR under all four criteria.

### **ADDITIONAL MATERIALS**

The City Council requests that the Planning Commission review the Carey & Co. report in the context of all applicable materials considered by the Council for Mr. Blatt's appeal. These materials include forms, memorandums and letters prepared by the HLB or HLB members; reports prepared by the appellant's historic preservation consultant Mark Hubert; and various other documents relevant to the HLB's review. These materials, attached as exhibits to this memorandum, are listed below.

HLB Materials

- **Historic Resources Inventory, 1977** – Prepared by R.J. Tracy. Identifies 100 Harrison as historically significant due to association with TEK Cormac, basically original structure, in excellent condition.
- **HLB Memorandum, January 12, 2004** – Expresses concerns with impacts of new construction on open garden estate. Recommends measures to guarantee preservation of "Nestledown".
- **HLB Memorandum, April 22, 2004** – Identifies Nestledown residence, pergola, and Franciscan stone wall as structures exhibiting high historical significance.
- **HLB Memorandum, June 9, 2004** – Reiterates finding of Nestledown residence, pergola, Franciscan stone wall as exhibiting high historical significance.
- **Letter from HLB Chair, October 6, 2005** – Finds unchanged footprint from 1919, substantial alterations, much remains from Cormac era.

Materials from Appellant

- **100 Harrison report prepared by Mark Hubert, April 25, 2005**– Concludes that the designation of the 100 Harrison residence as a Noteworthy Structure is not supported by any substantial evidence, that the structure's historical integrity has been "forfeited" from alterations over time, and that there is no record of evidence supporting the HLB's determination that the Nestledown residence is of high historical significance.
- **Letter from Mark Hubert, June 15, 2005** – Restates belief that staff has proceeded in error and that the City has not allowed for a full and open debate regarding the historical significance of the structure.

Other Relevant Materials

- **Appeal letter from Raymond Blatt/ Harrison Ventures LLC, June 18, 2005.**
- **Planning Commission Resolution No. 2005-23** – Includes historic preservation conditions of approval for lot split.
- **City Council Minutes October 11 & November 1, 2005.**

### **HLB REVIEW**

As requested by the City Council, the HLB has also reviewed the Carey & Co. report, conducted a site visit of the 100 Harrison property, and reviewed all relevant materials. The HLB has prepared a memorandum dated June 14, 2006 summarizing the Board's conclusions. As stated in this memorandum, the Board agrees with the majority of the findings in the Carey & Co. report. The Board finds that the 100 Harrison home known as the Nestledown residence is not historically significant. The Board agrees with the Carey & Co. conclusion that, due to the extent to which the home has been altered over time, the physical integrity of the home has been forfeited and its ability to convey historical significance has been undermined. The Board was unable to find any level of historical significance for all four CRHR eligibility criteria.

The Board did disagree with the Carey & Co. report regarding the significance of features located in the Harrison Ave public right-of-way. The Board found these features—including the rock pergola gated entrance and the stone wall, path and steps—to be historically significance. The Carey & Co. report found these features to lack historical significance. Regarding the grounds within the property, the Board agreed with the Carey & Co. report that site features such as the stone walls, walkways and "gardens" to the rear of the home lack historical significance. While the Board believes that these site features contribute to a particularly pleasing ambiance, the Board did not find any of them to be significant based upon the four CRHR criteria.

### **PLANNING COMMISSION REVIEW**

As stated above, the City Council has requested that the Planning Commission review the Carey & Co. report along with the HLB memorandum prior to Council action on the appeal. Staff recommends that the Planning Commission provide a recommendation to the Council as to whether the historic preservation conditions attached to the 100 Harrison lot split should remain as adopted, be revised, or be removed as requested by the appellant.

To formulate this recommendation the Planning Commission may wish to consider the following two questions. First, does the Planning Commission accept the conclusions of the Carey & Co. report and the HLB? As noted above, prior Historic Landmark Boards did find the home to be historically significant. However, three separate expert opinions—Carey & Co., the current HLB, and preservation architect Mark Hubert hired by the property owner—have all more recently concluded that the property is not historically significant. The Planning Commission may wish to consider the four criteria used to evaluate the significance of historic resources. These criteria, identified in the Carey & Co. report, include association with important events, association with important persons, embodiment of distinctive design or construction techniques, and potential to yield archeological or historical information. The three expert opinions identified above were not able to find the property significant (excluding the features in the right-of-way in the HLB's case) for any of these criteria.

Second, how does the City identify properties that are worthy of preservation? The conclusion that the 100 Harrison property is not historically significance is based on the four criteria discussed above to determine if a property is eligible for listing in the California Register of Historic Resources (CRHR). These criteria are used by the HLB when conducting 50-year reviews and are used to determine eligi-

for the National Register of Historic Places. Also, CEQA guidelines require lead agencies to find properties historically significant if they meet the criteria for listing on the CRHR. However, the City's General Plan and Municipal Code do not specifically require the City to use these criteria when identifying a property's eligibility for preservation either through designation as a historic landmark or listing on the local register. Municipal Code Section 8.44.040, for example, states that the City may designate as historic landmarks properties that have a "special character or special historical, architectural, or aesthetic interest or value." Zoning Ordinance Section 10.46.050.F states that to be listed on the local register a property must be "significant to local, regional, state or national history", but does not identify that the CRHR criteria shall be used to evaluate this significance.

Considering the absence of any specific reference to the CRHR criteria in the City's Municipal Code or General Plan, the Planning Commission may wish to consider the following question: Is a property found ineligible for the California Register of Historic Resources automatically considered unworthy of preservation within the City of Sausalito, or can an ineligible property that uniquely contributes to the City's visual character and community identity qualify as a candidate for preservation? In other words, can (and should) the City impose preservation requirements on the 100 Harrison property because it is found to be of "special aesthetic interest", even though it has been found ineligible for listing on the CRHR.

The answer to these questions is partly a legal matter relating to the limits on a City's ability to regulate development on private property. As explained when the Planning Commission considered the 100 Harrison lot split application, the City Attorney previously advised the Planning Commission that requiring the preservation of the Nestledown residence at 100 Harrison is legally defensible so long as such a condition implements general plan policies adopted to protect the health, safety, and welfare of the citizens of Sausalito. General Plan language cited for this purpose included one of the goals of the City's General Plan - to "preserve the historical character of Sausalito and its architectural and cultural diversity (General Plan Section 1.7) and Objective CD-7.0 - to "respect and maintain the exterior integrity of structures and sites in the Historic District and of all officially designated or recognized historic structures and sites outside the district."

If 100 Harrison is found to be of "special aesthetic interest" but not historically significant using the CRHR criteria, would it still be legally defensible to find that conditioning approval of the 100 Harrison lot split application on the preservation of the Nestledown residence is necessary to implement General Plan policies? General Plan policy CD-4.2 does state that the City shall "maintain the uniqueness of community sub-areas and assure that sub-area attributes are protected and enhanced." It could be argued that the preservation of the 100 Harrison home and site is necessary to maintain a certain character and ambience that is unique to that particular neighborhood. The City Attorney has reviewed this matter and has expressed concern with attaching preservation conditions to a property that has been found not historically significant using the criteria for listing on the CRHR. Staff intends to have a more formal opinion from the City Attorney on this matter for the July 5, 2006 hearing.

### **STAFF RECOMMENDATION**

Staff recommends that the Planning Commission provide a recommendation to the Council as to whether the historic preservation conditions attached to the 100 Harrison lot split should remain as adopted, be revised, or be removed as requested by the appellant. As this item is an appeal of a Planning

AP 05-031  
100 Harrison Avenue

Agenda Item Number 2  
July 5, 2006

Commission decision returned by the City Council to the Planning Commission, staff does not offer a specific recommendation on modifying these conditions. Staff recommends that the Planning Commission review the Carey & Co. report and the HLB memorandum and consider the discussion provided above in this staff report when arriving at its decision.

The Planning Commission should note that during the City Council appeal hearings the appellant made it clear that he intends to demolish the Nestledown residence and replace it with new construction. With this in mind, an alternative recommendation to the Council on this appeal would be to suggest new conditions of approval attached to the subdivision that would pertain to design criteria for future development on the site. For example, the Planning Commission could recommend conditions that would limit disturbance to site features in the rear of the property, or require a particular style of development that would reflect the era from when the Nestledown residence was originally constructed.

#### EXHIBITS

1. Carey & Co 100 Harrison Historic Structure Report, April 2006
2. HLB Memorandum, June 14, 2006
3. 100 Harrison report prepared by Mark Hubert, April 25, 2005
4. Letter to City Council from Mark Hubert, June 15, 2005
5. 100 Harrison Historic Resources Inventory, 1977
6. HLB Memorandum, January 12, 2004
7. HLB Memorandum, April 22, 2004
8. HLB Memorandum, June 9, 2004
9. Letter from HLB Chair, October 6, 2005
10. Appeal letter from Raymond Blatt/ Harrison Ventures LLC, June 18, 2005
11. Planning Commission Resolution No. 2005-23
12. City Council minutes October 11 & November 1, 2005

Sausalito Historical Landmarks Board

June 14, 2006

REVIEWED PROJECT: 100 Harrison Avenue, Sausalito

Comments regarding the Historical Resource Evaluation Report by Carey & Co. Inc dated April 26, 2006 prepared for 100 Harrison Avenue in Sausalito.

The HLB met at the site of 100 Harrison Avenue for a walk-through of the vacant property. This site visit was the first part of a publicly noticed meeting on June 5, 2006.

The owner, Mike Blatt, escorted the HLB through the house and adjoining outside areas.

After the walk-through the HLB re-convened the meeting at City Hall to discuss the above report. After discussion the HLB agreed with the findings of the Carey report. The consensus was that the findings, using the four criteria for historical significance, could not be made. While portions of the original structure were clearly intact, there have been many additions and remodels that undermine the historical integrity of the house.

The HLB had a differing view regarding several exterior elements on the property. The report notes the contribution the garden and grounds make to the physical setting of the house. Specific features such as a "rock pergola gated entrance" and "Franciscan" stone wall, path, and steps had been previously noted as significant. The HLB reaffirmed the previous board's findings that these features were historically significant. In further discussion with Mr. Blatt he stated that the front 20-25' of the property that includes the entrance and stone wall are in the public right of way. This area includes some landscaping. He stated that he did not intend to make any changes to this area in his proposed plan. The HLB recommends that if any modifications are proposed to the entrance or wall that the plans shall be reviewed by the HLB. The HLB found the garden and rear yard area of the property to have no historical significance.

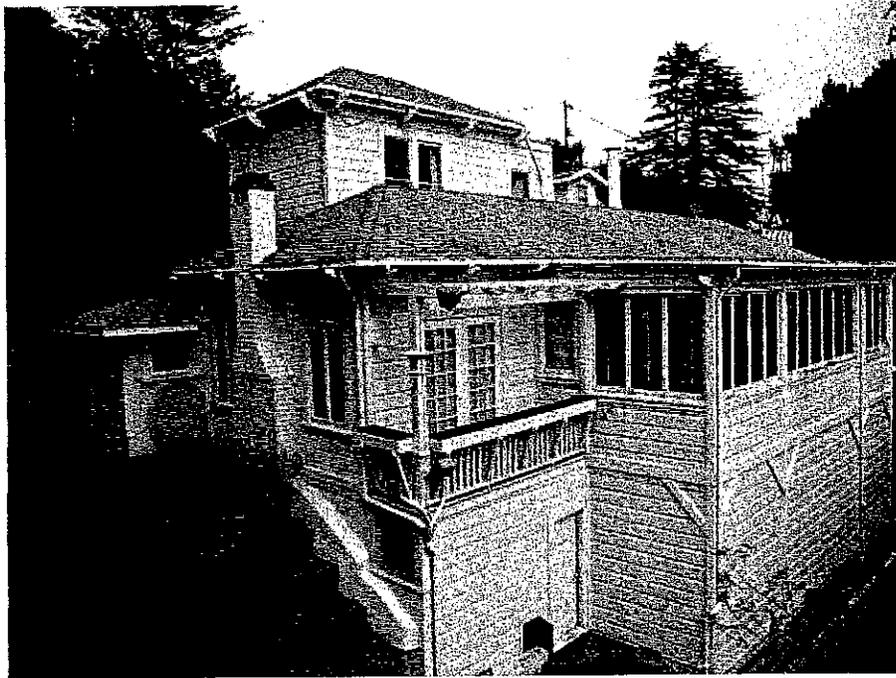
The site visit and findings report were attended and reviewed by the full Board consisting of:

Philip Blois, Chair, Sharon Berman, Alan Nichol, Vicki Nichols and Jason Weisberger

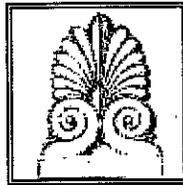
100 Harrison Avenue  
Sausalito, California

## HISTORIC STRUCTURE REPORT

April 2006

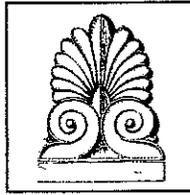


*Prepared for*  
City of Sausalito  
Community Development Department



Prepared by  
Carey & Co. Inc.

RECEIVED  
MAY 1 2006  
CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT



CAREY & CO. INC.  
ARCHITECTURE

100 Harrison Avenue  
Sausalito, California

April 26, 2006

## HISTORIC RESOURCE EVALUATION REPORT

Carey & Co., Inc. has been asked to prepare a Historic Resource Evaluation for the property located at 100 Harrison Avenue (APN 065-124-14) in Sausalito. We conducted a site visit, reviewed existing materials provided by the City of Sausalito, and undertook archival research including deed records, historic photographs, Sanborn maps, Marin County Directories, U.S. Census records, the Junior League Survey, Sausalito Historical Society Historic Resources Inventory, the Sausalito List of Noteworthy Structures, the California Office of Historic Preservation's Directory of Historic Properties for Marin County and the National and California Registers.

### CONCLUSION

It is Carey & Co.'s professional opinion that the house at 100 Harrison Avenue does not retain a level of historic significance to be eligible for listing on the California Register of Historical Resources.

The evaluation of historic significance under CRHR is a two step process. First, the historic significance of the property must be established. If the property appears to possess historic significance, then a determination of its physical integrity is conducted; that is, its authenticity as evidenced by the survival of physical characteristics that existed during the resource's period of significance. Since 100 Harrison Avenue has been determined not possess marked historic significance, the issue of its physical integrity is moot; however, that too is quite apparently poor based on visual examination.

A records check verified that 100 Harrison is not listed on the National or California Registers. It is listed in the California Office of Historic Preservation's Directory of Historic Properties for Marin County, due to the fact that it was included in a historic survey (probably the Sausalito Historical Society Historic Resources Inventory). In this directory it is given a California Historical Resource Status Code of "4S" (may become eligible for the National Register as a separate property), however the restructuring of the status codes in 2003 now makes it a "7N", denoting that its past ranking is invalid and it needs to be reevaluated. The house is also listed on the City of Sausalito's List of Noteworthy Structures; however, this list is not an official record of historic designation. In light of this information, it is Carey & Co.'s opinion that 100 Harrison is not a historic resource, and is not eligible for listing on the California Register of Historical Resources.

State of California The Resources Agency  
 DEPARTMENT OF PARKS AND RECREATION  
**PRIMARY RECORD**

Primary # \_\_\_\_\_  
 HRI # \_\_\_\_\_  
 Trinomial \_\_\_\_\_  
 NRHP Status Code \_\_\_\_\_

Other Listings \_\_\_\_\_  
 Review Code \_\_\_\_\_ Reviewer \_\_\_\_\_ Date \_\_\_\_\_

Page 1 of 10 \*Resource Name or #: (Assigned by recorder) 100 Harrison Ave.

P1. Other Identifier: Cornac House/Nestledown

\*P2. Location:  Not for Publication  Unrestricted

\*a. County Marin and (P2c, P2e, and P2b or P2d. Attach a Location Map as necessary.)

\*b. USGS 7.5' Quad \_\_\_\_\_ Date \_\_\_\_\_ T \_\_\_\_\_ ; R \_\_\_\_\_ ; \_\_\_\_\_ of \_\_\_\_\_ of Sec \_\_\_\_\_ ; \_\_\_\_\_ B.M.

c. Address 100 Harrison Ave. City Sausalito Zip 94965

d. UTM: (Give more than one for large and/or linear resources) Zone \_\_\_\_\_, \_\_\_\_\_ mE/ \_\_\_\_\_ mN

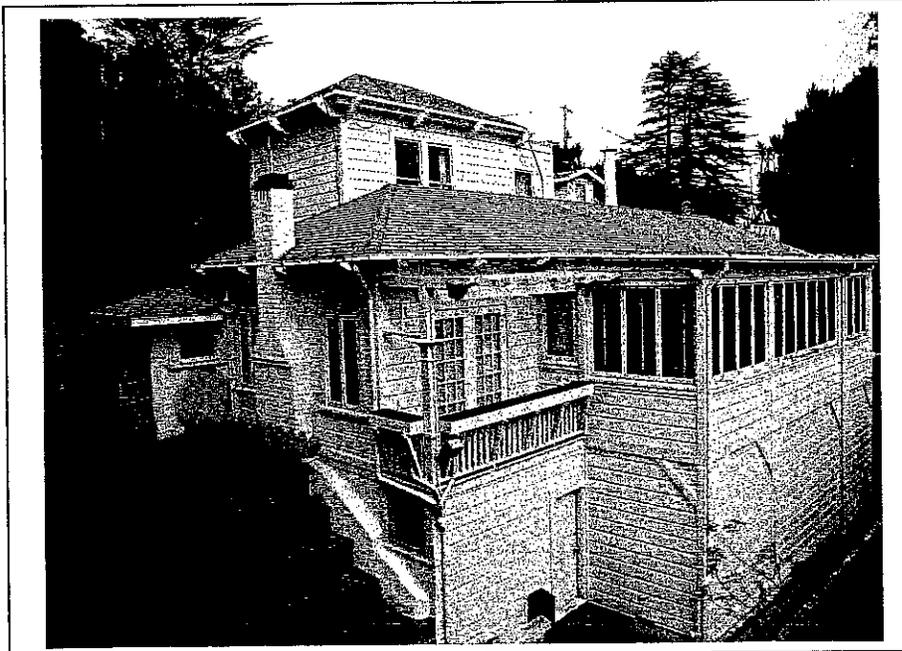
e. Other Locational Data: (e.g., parcel #, directions to resource, elevation, etc., as appropriate)  
 APN: 065-124-14

\*P3a. Description: (Describe resource and its major elements. Include design, materials, condition, alterations, size, setting, and boundaries)

The house at 100 Harrison Ave., is a one-and-a-half story house that sits on a steep hillside. The daylight basement is contained within a foundation of brick and poured concrete. The house has a complex plan made up of multiple additions from different time periods. The roof is a combination of gable and hip forms covered in composition shingle with overhanging eaves. One gable dormer is located on the west side of the gable roof, and two similar dormers are located on the east side of the gable roof. The walls of the house are clad in wood drop channel siding, with corner boards. Fish scale wood shingles exist in the gable ends and the eaves here are decorated with simple stick work. The gable roof also has eave brackets, while the hip roof portions have simple modillion eave brackets in some (See continuation sheet)

\*P3b. Resource Attributes: (List attributes and codes) HP2

\*P4. Resources Present:  Building  Structure  Object  Site  District  Element of District  Other (Isolates, etc.)  
 P5b. Description of Photo: (view, date, accession #) \_\_\_\_\_



\*P6. Date Constructed/Age and Source:  Historic  Prehistoric  
 Both  
1887

\*P7. Owner and Address: \_\_\_\_\_

\*P8. Recorded by: (Name, affiliation, and address)  
Carey & Co., Inc.  
460 Bush Street  
San Francisco, CA. 94108

\*P9. Date Recorded: April 13, 2006

\*P10. Survey Type: (Describe)  
Historic Resource Evaluation Report

\*P11. Report Citation: (Cite survey report and other sources, or enter "none.") \_\_\_\_\_

\*Attachments:  NONE  Location Map  Continuation Sheet  Building, Structure, and Object Record  
 Archaeological Record  District Record  Linear Feature Record  Milling Station Record  Rock Art Record  
 Artifact Record  Photograph Record  Other (List): \_\_\_\_\_

**BUILDING, STRUCTURE, AND OBJECT RECORD**

\*NRHP Status Code 6Z

Page 2 of 10 \*Resource Name or # (Assigned by recorder) 100 Harrison Ave.

B1. Historic Name: Cormac House/Nestledown

B2. Common Name: 100 Harrison Ave.

B3. Original Use: Residence B4. Present Use: Vacant

\*B5. Architectural Style: Folk Victorian, heavily altered

\*B6. Construction History: (Construction date, alterations, and date of alterations)  
Constructed 1887. Major additions (tower and east hip roofed portion) by 1909. Later additions to north, east, south, tower, etc. c.1960.

\*B7. Moved?  No  Yes  Unknown Date: N/A Original Location: N/A

\*B8. Related Features:  
Garden gate and walls.

B9a. Architect: Unknown b. Builder: Unknown

\*B10. Significance: Theme Residential Architecture Area Sausalito, CA

Period of Significance 1887 Property Type residential Applicable Criteria C

(Discuss importance in terms of historical or architectural context as defined by theme, period, and geographic scope. Also address integrity.)

**OWNERSHIP**

The house at 100 Harrison Avenue was built around 1887 for Thomas Cormac (often referred to as T.E.K. Cormac), a prominent San Francisco attorney. Cormac was born in Wales around 1846 and spent time in the military – as a Naval Academy cadet in Trieste and later as a Lieutenant in the Austro-Hungarian Army – before coming to the United States in 1868 to study law in Boston. He passed the Massachusetts Bar and practiced law that state for a time before coming to the Bay Area in 1880. Cormac served as the attorney for the British Consul in San Francisco and for the Public Administrator of San Francisco, Philip A. Roach. In 1890, he joined with Denis Donohoe Jr. and eventually became a partner in the law firm Cormac, Donohoe & Baum. In his personal life, Cormac was a cultured and fairly wealthy individual, owning a fine library (See continuation sheet)

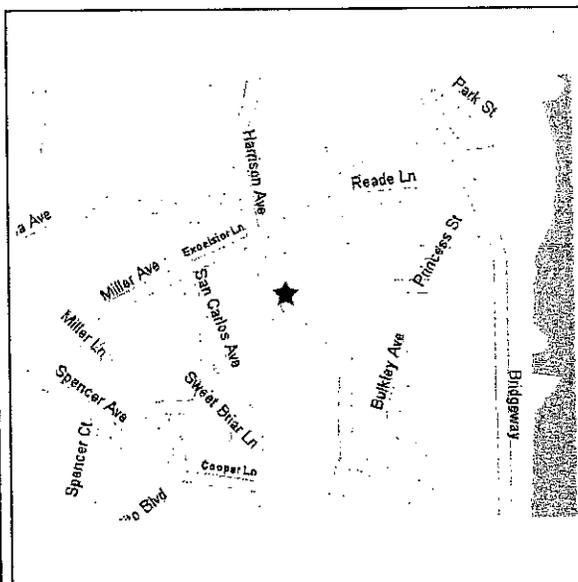
B11. Additional Resource Attributes: (List attributes and codes) HP2 -- single family dwelling

\*B12. References:  
(See continuation sheet)

B13. Remarks:

\*B14. Evaluator: Carey & Co., Inc.  
\*Date of Evaluation: April 13, 2006

(This space reserved for official comments.)



\*Recorded by: Carey & Co.Inc.

\*Date: 4/13/2006

Continuation

Update

### P3a. Description. Continued

locations. Original windows consist primarily of one-over-one double hung wood sashes with lambs tongues. A diamond pane casement window with wood muntins is located in the west dormer, while three-over-one wood casement windows are located in the east dormers. Non-original wood casement windows are located throughout much of the rest of the house.

The house is sited on a sloping lot and is surrounded by vegetation and winding walkways, some stone and brick walls and a gateway of stone pylons and a wood trellis.

### B10. Significance: Continued

and mingling in art circles. He apparently traveled to Europe every few years<sup>1</sup> and was a member of the Pacific Union club, an influential social organization in San Francisco.<sup>2</sup> He owned redwood timberlands in Mendocino County as well. He is noted as having owned a "well furnished and attractive home in Sausalito," indicating that he commuted to San Francisco to conduct business.<sup>3</sup>

McKenny's 8-County Directories list T.E.K. Cormac as living in Sausalito from 1884 to 1886, though no exact addresses are given in such early directories.<sup>4</sup> The first mention of Thomas Cormac in census records appears in 1910, when he was 64 years old. He is listed as a bachelor and was never married. He did, however, share the house on Harrison Avenue with his sister, Julia A. Groom, who was a widow. In the 1920 census records, Julia is listed as the head of household with Thomas Cormac as the other resident. Deed records indicate that title passed between brother and sister at some point in the early 1920s. In any case, they relinquished ownership of the house altogether by 1924.<sup>5</sup> By 1930, the census lists their address at an apartment building in downtown San Francisco; Thomas an unemployed plasterer and Julia a public school teacher; apparently victims of the Depression.

Deed records indicate that the house was sold to the Loucks some time in 1921 or 1924. This range of dates is supported by Marin County directories that list William E. Loucks and his wife, Bertha E., at 152 Harrison in 1925 (the address of 100 Harrison before a renumbering of the street took place). The 1920 census lists William Loucks occupation as the advertising manager for a packing company in San Francisco. He was originally from Kansas. The Loucks are not listed in directories again until 1946, but are still listed at 100 Harrison Avenue at that time. William Loucks is listed as retired by that time, and he and Bertha resided at the address until 1961.

William and Ferne Wachter purchased the house in 1963. They appear in a 1964 Marin County directory for the first time. The address is recorded as 126 Harrison, but may be due to the fact that they were also the owners of

<sup>1</sup> Shuck, Oscar T., ed., *History of the Bench and Bar of California*. Los Angeles: Commercial Printing House. 1901.

<sup>2</sup> San Francisco Blue Book.

<sup>3</sup> Shuck.

<sup>4</sup> In a 1912 Marin County directory, Julia A. Groom, Cormac's sister, appears with the note "res. Harrison Avenue."

<sup>5</sup> A deed dated March 16, 1924 shows a transaction between T.E.K. Cormac and Julia Groom and appears to be related to this property. Two other mortgage related deeds, dated April 21, 1921 and Sept. 30, 1924, show transactions between Julia Groom and the Loucks. Therefore, it is unclear when the property actually changed ownership; however, it can be assumed that by 1924 it was definitely owned by the Loucks. No other deeds related to these names or this property appear after 1924.

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Continuation

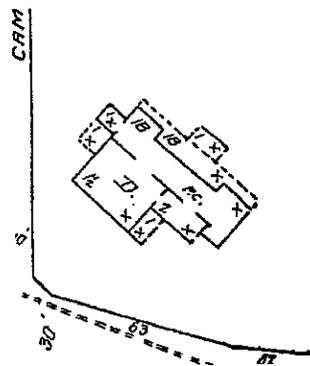
Update

the Alta Mira Hotel. The period of their ownership does not fall within the historic period. The Wachters may have been responsible for many of the additions made to the house.<sup>6</sup>

## ARCHITECTURE

Though Sanborn Maps for Sausalito exist for 1887 (coincidentally the same year as the house's construction) and later, the map area does not cover the parcel at the corner of Harrison Avenue and Excelsior Lane until 1909. No historic building permit records for the property exist.

1909 Sanborn Fire  
Insurance Map image  
of 100 Harrison Ave.  
showing house with  
possible early additions  
already in existence.



Based on visual assessment of architectural style and construction, Carey & Co. believes that the original house may have consisted of little more than the gable roofed mass making up the northwest portion of the house. The notable difference in roof form, style, foundation material, architectural detailing and the unusual floor plan points to this portion of the house having possibly been a simple hall-and-parlor Folk Victorian style dwelling.<sup>7</sup> Its Victorian fish scale shingles and spindle work in the gable ends are particularly different from the embellishments on the rest of the house. A combination of brick and poured concrete in the foundation also indicates different phases of construction. The transition between roof planes and the non-traditional shape of the current plan indicates that major additions, in the form of the east hip roofed portion and the tower, were added after the original construction. These features strongly suggest that the northwest gabled mass is older than any other part of the house.

Obviously, many early additions and alterations were made however, for by 1909<sup>8</sup> the house had already taken on a form similar to its current configuration. Some of the changes also show up in a 1910/1911 photograph of the house's northwest corner. The long hip roofed portion on the east side of the house and the tower at the southwest corner appear to be of the same vintage and were present by 1910 or 1911. The shallower, hip roofs and less ornate and stylistically different trim of these masses indicates that they are later additions; perhaps dating to the turn of the century when architectural forms were becoming more simplified and horizontal emphasis was becoming a trend. This form is embodied in the long linear form of the eastern mass.

<sup>6</sup> Hulbert, Mark. "100 Harrison, Sausalito. Summary of the historic resources record and field observations." April 25, 2005. p 3.

<sup>7</sup> McAlester, Virginia and Lee. *A Field Guide to American Houses*. Knopf, 1984. p 309-317.

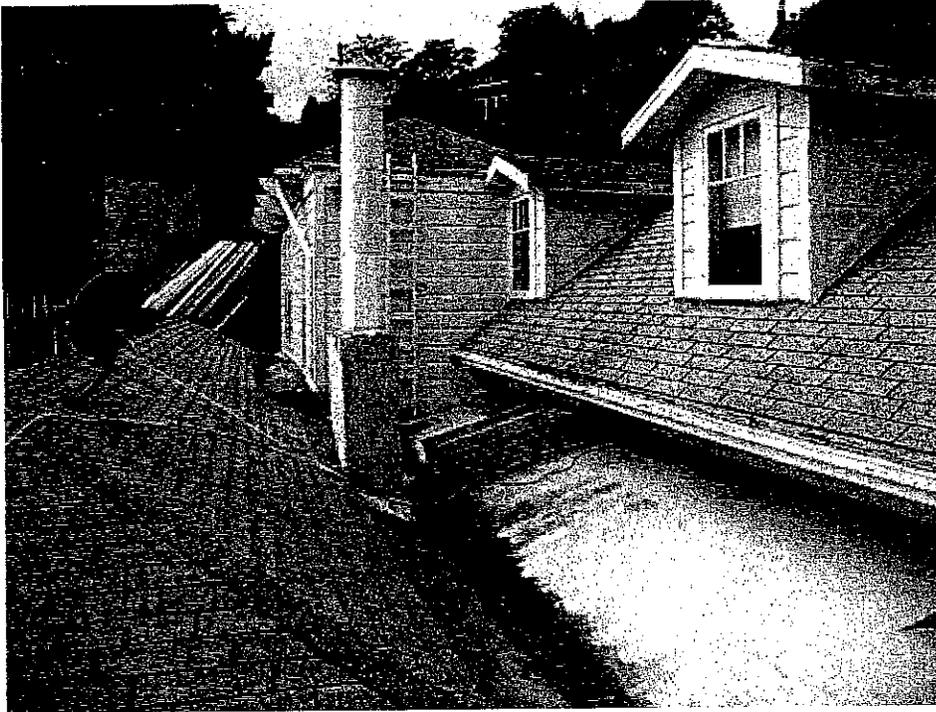
<sup>8</sup> Sanborn map.

\*Recorded by: Carey & Co.Inc.

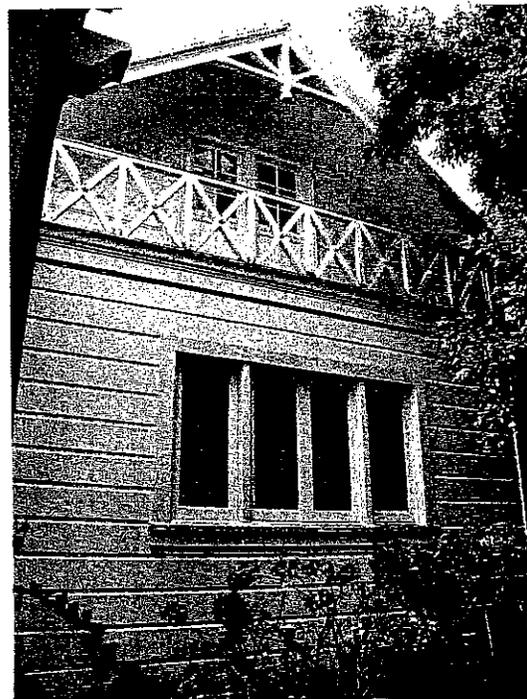
\*Date: 4/13/2006

Continuation

Update



*Roof looking south, illustrating awkward juncture between gable roof, tower, and eastern hip roofed mass. March, 2006.*



*Left: 1910/1911 photo of front (north) façade, showing original trim and details. Right: Similar view, March, 2006, showing 1<sup>st</sup> story/balcony addition.*

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\*Date: 4/13/2006

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Sanborn map images indicate that the house remained the same form until 1938 when the minor addition of an enclosed porch area was constructed at the southwest corner of the house, extending an existing porch. Sanborn maps show no further additions or alterations to the house.

As mentioned previously, alterations were likely undertaken during the Wachters' term of residence (after 1963); a period that is not addressed by Sanborn maps and does not lie within the historic period. It is pertinent however, to note that the first floor of the north elevation was extended, creating a balcony across the front of the house. The entry porch was rebuilt against this new plane. The east side of the house was also extended and enclosed, leaving only a small porch at the southeast corner of the house to represent the original extent and design of the east veranda. The basement under this addition was also likely enclosed. A bathroom addition was added that now projects from the south end of the house and the tower was extended a few feet to the north. The dormers on the roof of the northwest gable mass are subjects of some debate. The west dormer appears to be older than the east dormers, judging from its detailing and window type, however, the east dormers themselves have some age and stylistically appear to be of the same vintage as the hip roofed east mass and the tower. The windows in these dormers appear to date to around the turn of the century and the way that the tower extension collides with the southernmost dormer indicates that the dormers were present before the Wachter-era additions.



*100 Harrison Ave.,  
southeast view, showing  
manynon-historic  
alterations and additions.  
March, 2006.*

In whole, the non-historic additions essentially envelope much of the north and east sides of the house with new exterior wall surfaces. But the original form of the house had already been obscured by early additions and alterations pre-dating 1909. 100 Harrison Avenue is a structure that has been changing and evolving since the very early stages of its history. What exists now is an accumulation of periods and styles that is difficult to reconstruct.

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\*Date: 4/13/2006

Continuation

Update

The garden and grounds contribute to the physical setting of the house. A "rock pergola gated entrance" and "Franciscan' stone wall, path, and steps" were noted as significant features of the grounds at 100 Harrison.<sup>9</sup> The historic 1910/11 photograph clearly shows that the walls, steps and path were in existence at that time. The gate, entrance pillars and pergola are not visible in the photo, though a small gate with decorative wood gateposts appears to be located at the top of the path. It does not appear to be in the same location or orientation as the current stone pillars and gate, indicating that these features were added at a later date, perhaps in the 1920s<sup>10</sup>. The fence across the front of the property is a tall picket variety in the photo, while today it consists of a lattice fence of verticle and horizontal wood strips. A simple metal rail has been added along one side of the steps descending from the street to the yard. Concrete paths have also been added, connecting the stone steps to the front entrance of the house and the stone path that continues down the hill to the east of the house. Other modern steps and paths are located at the south end of the house as well.

## EVALUATION

### California Register of Historical Resources

This report uses the historic information discussed above to evaluate the property at 100 Harrison Avenue for historic significance, in particular it eligibility for listing in the California Register of Historical Resources (CRHR). To be potentially eligible for *individual* listing on the CRHR, a structure must usually be more than 50 years old, must have historic significance, and must retain its physical integrity. 100 Harrison Avenue was constructed approximately 119 years ago, and therefore meets the age requirement. In terms of historic significance, the California Register of Historical Resources evaluates a resource based on the following four criteria:

Criterion 1 (Event): Resources associated with events that have made a significant contribution to the broad patterns of local or regional history, or the cultural heritage of California or the United States.

Criterion 2 (Person): Resources associated with the lives of persons important to local, California or national history.

Criterion 3 (Design/Construction): Resources that embody the distinctive characteristics of a type, period, region or method of construction, or that represent the work of a master or possess high artistic values.

Criterion 4 (Information Potential): Resources that have yielded or have the potential to yield information important to the prehistory or history of the local area, California or the nation.

<sup>9</sup> Sausalito Historic Landmarks Board. Memo to Gordon Sweeny, city engineer, and Drummond Buckley, planning director, June 9, 2004.

<sup>10</sup> Date noted by Sausalito Historic Landmarks Board in Memo to Sausalito Planning Commission re: Historical Analysis for 100 Harrison Avenue, April 22, 2004. No source is cited for this date, however.

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\*Date: 4/13/2006

Continuation

Update

### Criterion 1 (Event)

Under CRHR Criterion 1, archival research yielded no information indicating that 100 Harrison Avenue has sufficient association with an event that has made a significant contribution to the broad patterns of local or regional history, or the cultural heritage of California or the United States. Though it is a building that was constructed early in Sausalito's history during a period of the town's initial development, "mere association with historic events or trends is not enough, in and of itself, to qualify under Criterion 1: the property's specific association must be considered important as well... Moreover, the property must have an important association with the event or historic trends, and it must retain historic integrity." Since the building played no specific or particularly important part in a historic event and the retention of its historic integrity is questionable, it is not eligible for the CRHR under Criterion 1.

### Criterion 2 (Person)

Under CRHR Criterion 2, research shows that 100 Harrison Avenue does not have an association with a significant person. The house was only under the ownership of two parties, the Cormac/Groom family and the Loucks, during the historic period and none of those people have proven to be of historical significance. The original owner of the building, Thomas Cormac, was a fairly prominent San Francisco attorney who merited a number of mentions in newspapers and publications of his day; however, no note of any particularly significant accomplishments exist to prove that he is of sufficient importance to fulfill this criterion. Therefore, 100 Harrison Avenue is not eligible for the CRHR under Criterion 2.

### Criterion 3 (Design/Construction)

100 Harrison Avenue is an extremely diluted example of construction in the Victorian Folk style. However, the structure does not sufficiently embody the distinctive characteristics of a type, period or method of construction, represent the work of a master, or possess high artistic values. The question of architecture is most pertinent in this case as previous reports have upheld it as the reason for the building's significance. Statements that 100 Harrison Avenue is of "high historical significance" are erroneous, as an analysis of its associations with historic people and events reveal nothing of great importance. As for it being a "fine, and nearly unaltered example of Sausalito's early Victorian architecture"<sup>11</sup>, simple visual observation proves that this statement is unfounded and that the house has indeed been greatly altered to the detriment of its physical integrity as well as its ability to convey any historic significance. To the untrained eye it would probably not even be able to convey the approximate date of its original construction.

It can be argued that even if the house retained its original appearance or were to be stripped of its additions and changes (even just down to those that can be considered historic), it would still not be of any particular architectural merit. Though old, the house would be a very simple, unremarkable, Victorian dwelling. The few characteristics that it has of its type are those that can be found on other similar buildings, of which many exist of a similar age and construction type throughout California. In fact, the historic additions do not strengthen the design or intent of the architecture in any way. Additionally, no architect has been associated with the property, let alone one that could be considered a master. The house also possesses no exemplary artistic values.

<sup>11</sup> A 10/11/05 Staff Report to the Sausalito City Council states that 100 Harrison was reviewed by the 1977 Historic Resources Inventory, a 2002 resurvey of noteworthy properties, and a 2004 HLB review.

\*Recorded by: Carey & Co.Inc.

\*Date: 4/13/2006

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The grounds and garden around the house retain a good deal of integrity in terms of the stone features such as paths, steps, and walls that have existed since at least 1910 or 1911. The fence across the front of the property has been replaced and the stone pillars, wood pergola and entry gate appear to have been later additions that replaced an original wooden gate and decorative wooden gateposts. The addition of metal handrails and connecting concrete walks have changed the appearance of the grounds slightly as well. Also of note, additions to the house have altered circulation patterns through the garden and effectively changed the intent and flow of the entrance from the street. For instance, the steps that once lead to a lawn in front of the north facade, now lead into the side of the north addition and force visitors to skirt the north end of the house to reach the front porch.

The stone walks, walls and steps retain good integrity and may be original to the construction of the house. The stone pillars and pergola entrance may have been historic additions but cannot be considered original to the property. The metal railings and concrete paths are certainly non-historic additions. While they provide interesting visual elements that define the grounds, none of these features are particularly characteristic of a type, period or method of construction, nor are they the work of a master or possess high artistic value. In addition, changes in the form of the house, itself, have altered the function and appearance of the garden space. For the reasons listed above, neither the house nor the grounds around it have sufficient integrity or notability to be considered eligible for the CRHR under Criterion 3.

#### Criterion 4 (Information Potential)

Archival research provided no indication that the building has the potential to yield exceptionally important information important to prehistory or history.

#### **Conclusion**

The evaluation of historic significance under CRHR is a two step process. First, the historic significance of the property must be established. If the property appears to possess historic significance, then a determination of its physical integrity is conducted; that is, its authenticity as evidenced by the survival of characteristics that existed during the resource's period of significance. Since 100 Harrison Avenue does not possess historic significance, the issue of its physical integrity is moot; however, that too is quite apparently poor. As discussed under the Architecture heading of this report, the fact that the house has undergone so many additions and alterations since early in its history obscures the intent of any original design or detailing.

A records check verified that 100 Harrison is not listed on the National or California Registers. It is listed in the California Office of Historic Preservation's Directory of Historic Properties for Marin County, due to the fact that it was included in a historic survey (probably the Sausalito Historical Society Historic Resources Inventory). In this directory it is given a California Historical Resource Status Code of "4S" (may become eligible for the National Register as a separate property), however the restructuring of the status codes in 2003 now makes it a "7N", denoting that its past ranking is invalid and it needs to be reevaluated. The house is also listed on the City of Sausalito's List of Noteworthy Structures; however, this list is not an official record of historic designation. In light of this information, it is Carey & Co.'s opinion that 100 Harrison is not a historic resource, and is not eligible for listing on the California Register of Historical Resources.

\*Recorded by: Carey & Co.Inc.

\*Date: 4/13/2006

Continuation

Update

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# PRESERVATION ARCHITECTURE

April 25, 2005

100 HARRISON AVENUE, SAUSALITO

Summary of the historic resources record and field observations

At the request of representatives of the current owners of the subject property, this evaluation was prepared in order to evaluate and summarize the potential historic significance of the existing, single family residence at 100 Harrison in Sausalito.

At their request, I also visited the property and, over the course of a morning, documented observations about its characteristics, interior as well as exterior. At that same time, photocopies of records related to this property were provided, including:

- Historic Resources inventory (HRI) form for 100 Harrison, dated 1977
- Historic photo of front of house at 100 Harrison, dated 1911 (handwritten on rear)
- Chain of Title to Property, August 2, 2002
- Sausalito Planning Commission Staff Report, re: 100 Harrison Avenue, dated April 13, 2005
- Memorandum from Sausalito Historic Landmarks Board to Sausalito Planning Commission, re: Historical Analysis of 100 Harrison Avenue, dated April 22, 2004
- A set of 4 images of the buildings' exterior, titled "20. McCormack House/Nestledown, 100 Harrison," undated (though presumably from the time that the HRI form was corrected in 1977).

This correspondence first addresses the available records, as they at present form the basis for the supposition that this residence is historically eligible. Thereafter, a summary of field observations provides physical evidence of the existing characteristics of this residence, and an initial evaluation of its integrity. The report then concludes with a statement of professional qualifications.

## Available Records

The available property records are, in fact, scant. To begin with, there are apparently no building permit records that establish any specific activities during what would constitute the historical period – from the late-1800s through the mid-1900s. This is an important point, in so much as there are no building records on which to establish chronological detail of the residence.

The records associated with the property's historic eligibility essentially consist of an Historic Resources Inventory (HRI) form prepared in 1977. It is the existence and content of this HRI that has been cited as the very basis for eligibility for historic resources listing and protection, per the Planning Commission staff report, which makes the following statement:

"The historic significance of what is commonly referred to as "Nestledown" residence at 100 Harrison Avenue is clearly demonstrated by the fact that it is included in the City of Sausalito Historic Resources Inventory of 'Noteworthy Structures'."

However, the contents of that record are essentially devoid of any information providing a basis for a finding of significance. The HRI form in question contains practically no information whatsoever. Just 14 words make up the requisite "description of the present physical appearance." These few words

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identify the high fence surrounding the property, yet mention no physical characteristic of the residence itself. Neither are any photos provided. Thus, the very record on which a finding of eligibility is based provides no descriptive or photographic evidence of the property. Yet, the "excellent condition" box is checked, and the description adds the comment: "Basically original structure."

The HRI forms are also intended to provide a statement and record of the property's significance. In this case, under the requisite statement of significance, there are several hand written notes that cite articles about the original owner. Again, there is no statement of significance, and no discussion of the history or architecture of the home, nor do the citations provide any specific information about the residence itself. Therefore, its basis for significance, according to this very form, is limited to its association with the original owner, a Mr. Cormac, Attorney. Yet, under the identification of the main theme of the historic resource, "architecture" is checked, though there is nothing whatsoever on these forms about the building, its siting, its property or its architecture.

This record is very poorly prepared. Its preparation evidently falls under the category of a windshield survey, whereby an initial reconnaissance of potential historic resources is made by simply driving (or walking) by properties. There is no evidence of any research or property documentation upon which a finding of significance can effectively be made. Yet the existence of this bare record is currently being cited as sufficient justification not only for its initial listing as a "noteworthy" structure, but for its furtherance on the Sausalito Historic Resources Inventory.

The historical record also contains a fine photograph, dated 1911 on the rear, of a portion of the front facade of the house. This provides the only available record of the house during its proposed period of significance. A comparison of this photo versus the house as it has stood since before 1977 indicates substantial alterations. The entire first story has been removed and the entry porch replaced by new construction. The new addition with a second floor deck and railing stand in front of what remains of the older home's facade. Even the original second floor windows have been removed and replaced with doors that provide access to a Second Floor balcony addition.

Thus, the primary facade of a building that is recorded in the HRI as being "original," and is further reported in the Planning Commission staff report as "...a fine, nearly unaltered example of Sausalito's early architecture," has in fact been substantially and irreparably altered.

Records of historical significance often reckon with the subject of historical integrity, a critical evaluation tool established by the U.S. Secretary of the Interior, and utilized to establish significance for the National and California Registers. Local historic resources listings also selectively address the issue of integrity. Indeed, the aforementioned staff report utilizes the phrase "historical integrity of the home and site" in its discussion under "Defining Historic Preservation," thus recognizing the matter of integrity.

In preservation practice, the term integrity refers to the extent to which a given property retains sufficient historical fabric with which to directly convey its meaning (i.e., significance). Per the HRI record, the historical significance of 100 Harrison is founded on its association with Mr. Cormac. Therefore, what is time and again referred to as the original structure must refer back to the period of his ownership, which was 1877 - 1921, when his descendant subsequently sold the property. On the basis of evaluating this one photo alone, it is clear that the subject residence has been sub-

stantially altered since the proposed period of significance. And further evaluation of the existing property confirms that it has been altered since the early-to-mid-1900s. In my judgment, as I further describe below, this residence is not original, having been altered to the extent that its integrity, and therefore potential significance, have been forfeited. Were Mr. Cormac to return to this place at this time, he may recognize the location of his former home, and perhaps aspects of the site, but he would recognize little of its original architectural form and character.

#### Field Observations

These observations do not pretend to make the case that the original residence is not extant, as portions of the original home are visible. Accordingly, the original residence appears to have consisted of two wings, east and west — where the latter would certainly have been the living wing, and the west wing the sleeping wing. Yet, even this assumption may be untrue, as there are apparently no historical records that substantiate the east wing. In fact, there is the possibility that the original home consisted of just the west portion, in the form of a victorian cottage.

It is my judgment that the original home is in fragments, to the extent that to a trained eye, its original form is not comprehensible within the overall assemblage. Instead, the overall character of this residence is of a rambling, mid-size residence of mixed vintage, though — at its exterior, dominantly of mid-20th century construction. Based on property ownership records, the alterations possibly date to post-WWII, or possibly the early 1960s, or a combination thereof. (In 1963, the property was acquired by a William Wachter, who also owned the adjoining Alta Mira Hotel. The basement of the current residence exhibits the wide range of additions and alterations that have taken place on this residence, including some storage rooms that look like older wine rooms. These rooms may date from the 1960s and the Wachters, for use as adjunct wine storage to the hotel.)

In any event, the overall, architectural character of this residence post dates the period of its origins and significance.

Records of the Sausalito Historic Landmarks Board indicate that members of that board made a recent site visit to confirm whether any site features, including the detached garage on Harrison, had historical significance. During that visit, the members extended their observations to the subject residence, making the sweeping statement that it had "high significance." Again, unfortunately, there is no record of any discussion or any recorded research or statements substantiating their observations.

When one enters this property through the stone portal at the corner of Harrison and Excelsior (see fig.1), then down the stone steps to the west of the residence, the observer encounters a largely intact elevation of the original residence (see fig.2), including its roof and a dormer. This, however, is the only exterior elevation that is largely intact, yet it too has been altered via an extension at its north end, and an enclosed porch at the south end. Moreover, an overall view of this side of the house from the street above reveals a second floor elevation above and to the south and east of the original elevation (see fig.3). It should be noted that, at the request of the City, the property owners intend to replace the existing fence and remove landscaping that block views, from Harrison, to the east and of the bay. Once done, the altered character of the house will dominate. Nevertheless, up close, ones' first impression is of an older residence.

This first impression does not extend to any of the other exterior elevations. From no other angle,

while knowing something of the original residence, could one accurately draw the conclusion that this is an intact, original residence.

From the north, which was and is the front of the residence, the original house is not even structurally intact. Here, the first story and its facade was extended northward, in so doing removing the lower half of the original front wall, while altering and obscuring the upper story, replacing the original entry porch, and extending what may have been the original living room wing. Thus, no more than 20% of the original residence can be seen from the front (see fig.4), and the extent of visible, original fabric is limited to the second story facade and roofline of the original west wing of the residence (see fig.5).

From the east, where views of the house are from below, there is little visible of the original residence (see fig.6). Here, the dominant aspect is apparently of a mid-20th c. addition, housing the aforementioned wine rooms at the lower level, and an enclosed sun room at the First Floor. Moreover, the extent to which this residence has been added to and altered is very obvious from above. Here, the east facing, second story addition dominates (see fig.7), the character of which is very simplified and plain. In this view, the roof of the original residence still stands (at the right side), yet has itself been altered with two new, east facing dormers (see Fig.8) that do not relate to the apparently original dormer on the west facing roof. And the eastern porch addition is also apparent under a flat, built-up roof.

From the south, the building is a compound form of various vintages, including the second story addition to the west and above. This second floor addition cuts into the south wall and roof of the original west wing in a very inappropriate way. Yet, from below, there also appears to be an older, exterior wall and chimney of the original east wing, again with various contemporary appendages to the south and east (see fig.9).

Thus, there appear to be fragments of an original 1870s residence. The roof form and the west wall of the west wing essentially remain, while the remainder of its elevations have been altered or are lost. The south wall and the roof form of the east wing appear to also remain, although the remainder of this wing has been altered beyond recognition. Moreover, some building form would necessarily have stood between and linked the two wings. This form included the original entry and entry porch at the front (north), an important architectural feature that has been replaced in its entirety by an extension that makes no sense of the original form of the house (see fig.10). Finally, the interior plan and room uses provide no clue that one is inside a home of late 19th or early-20th century vintage. Whatever the original layout and uses were have been obscured practically beyond recognition. For example, was there an original second floor at the west wing, or was this an attic? Was there an original stair to this floor or attic? The current stair is obviously of recent vintage, associated as it is with the second floor addition. Is the fireplace location original? Although the existing chimney is obviously not of historic vintage. Where was the front wall of the original living room and entry? Where was the kitchen? The answers to these questions are not obvious — furthering the conclusion that the character of the house is far from original and intact.

In my professional judgment, and based on an evaluation of the records and of the property, as

detailed above, my initial conclusion is that the overall, exterior and interior character of this residence is that of relatively contemporary [mid-20th century] construction. There is no evidence that any past owner of this property took pride in having possession and stewardship of a vintage home. Its accretions have intentionally reformulated this home, while sacrificing most of its original fabric and character.

I will concur, however, that the entry gate at the corner of Harrison and Excelsior, with its stone pillars and signage identifying whatever was the "Nestledown" residence, and including the stone entry steps, appears to be of early vintage and is uniquely intact for this property.

Finally, there has also been mention that the stone path traversing the hill directly below and parallel to Harrison is itself an historic site feature. Frankly, I cannot possibly confirm or deny that judgment on the basis of visual observation, nor can I imagine anyone else honestly doing so.

#### Professional Profile

Mark Hulbert is an Historical Architect with over 20 years of professional preservation experience, in addition to which Mark holds a certificate in architectural conservation from UNESCO'S *International Centre for the Conservation and Restoration of Cultural Property*, in Rome, Italy. Mark is also a licensed California architect, with proven abilities in many aspects of existing and historic building planning, design and construction.

Mark has directed numerous projects for historic buildings and properties, including consulting preservation services to the National Park Service, the Yosemite Concession Services, the State and University of California, the General Services Administration, and municipalities throughout the Bay Area, as well as private historic building clients and stewards.

Mark's hands-on preservation consulting work provides qualified experience and judgment at the practical day-to-day level, as well as a broad perspective on pragmatic development, reuse and rehabilitation issues. Over the past decade, his work has increasingly addressed both structural rehabilitations and additions to historic buildings.

Specific areas of preservation expertise and consultation include:

- Interpretation of resources for property owners and project teams, including identification and development about relative significance of historic site and building areas, spaces and features.
- Evaluation of project goals, programmatic requirements and designs based on the U.S. Secretary of the Interior's *Standards for the Rehabilitation of Historic Properties*.
- Recommendations, plans and details for the protection and restoration of identified historic building materials and systems, including investigations and surveys documenting conditions and resulting in recommendations for the preservation, repair or replacement of assemblies, materials and systems.

Please refer to the attached resume for additional and more detailed project information.

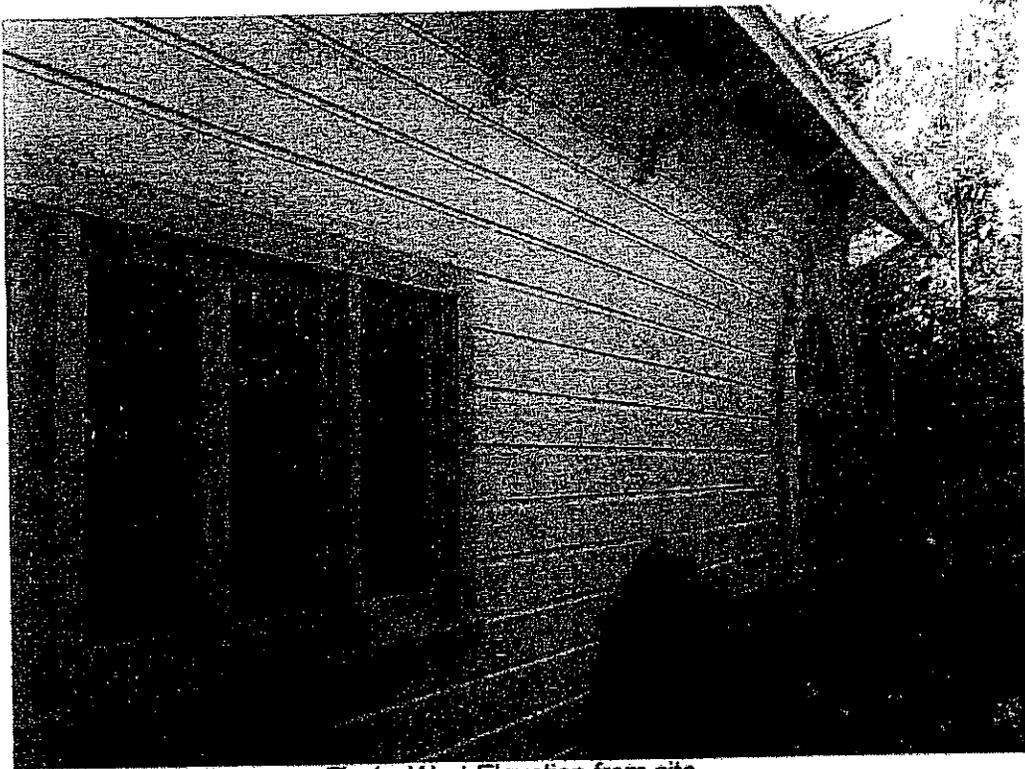


Fig.1 - West Elevation from site



Stone Entry Portal at Harrison and Excelsior



Fig. 3 - East facing dormers from roof

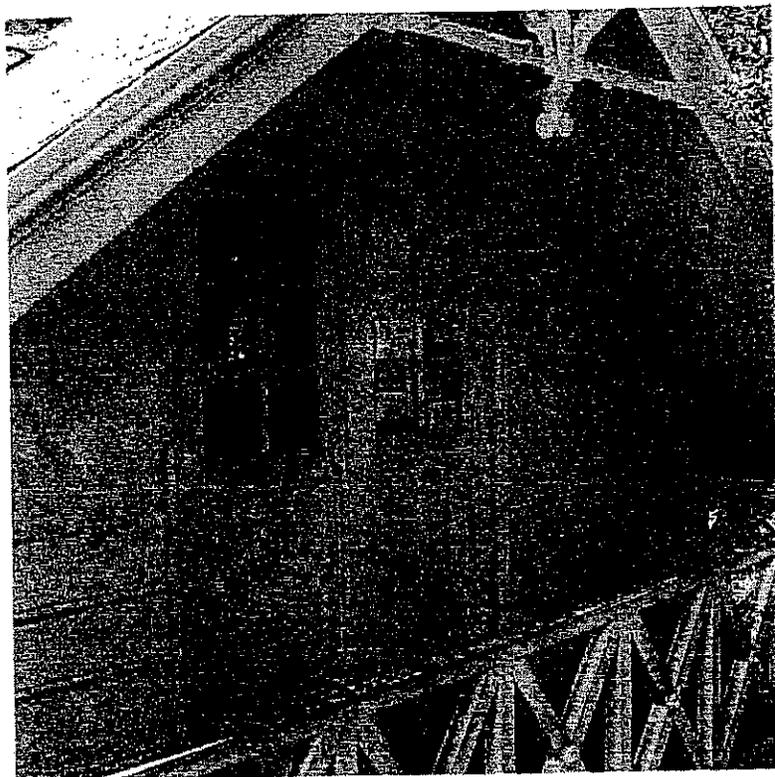


Fig. 4 - Partial North (front) elevation from roof



Fig.6 - East Elevation from site

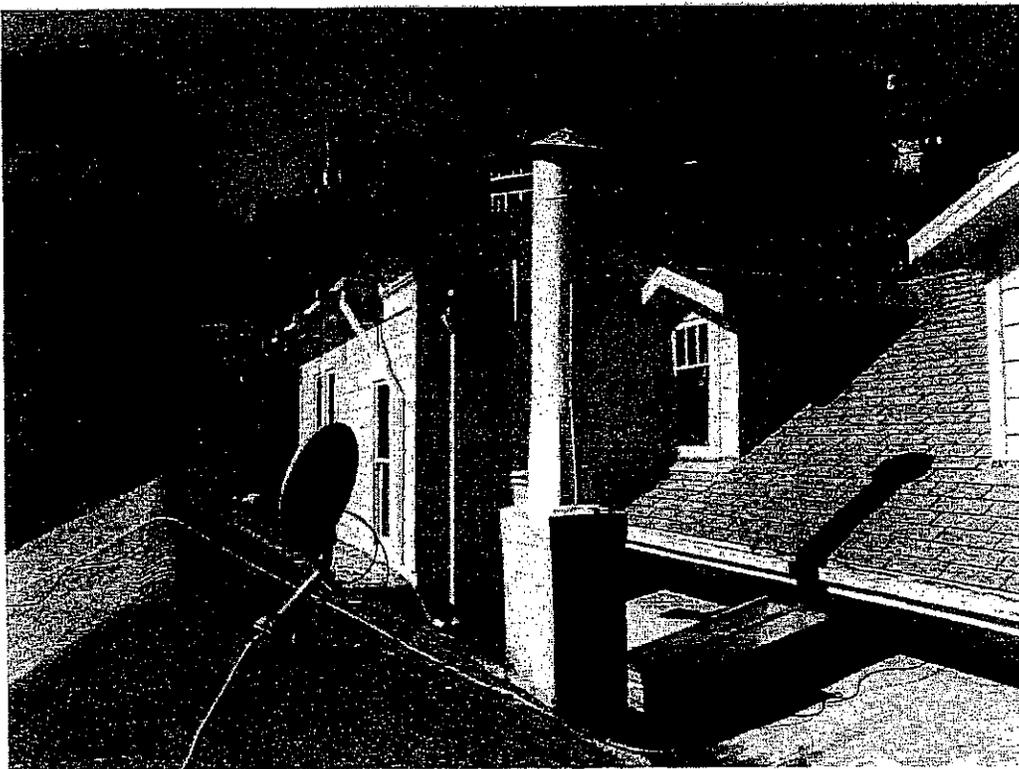


Fig.7 - Second Floor Addition from roof (looking south w/original roof at left)

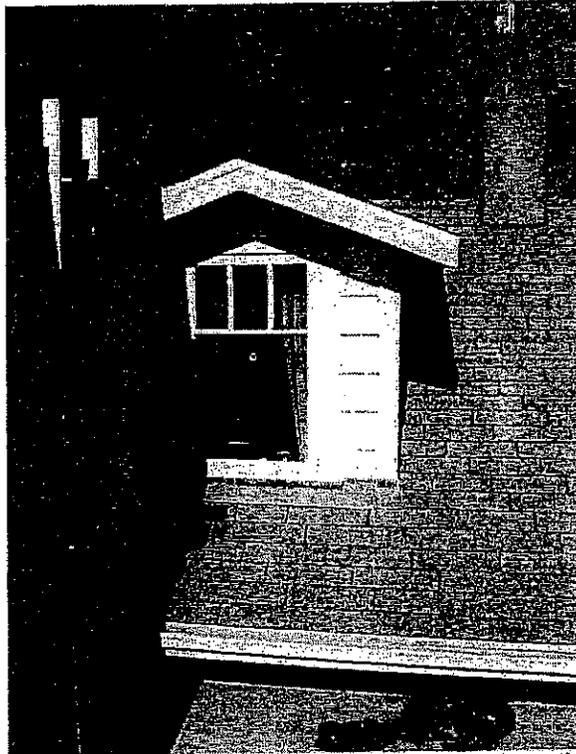


Fig.8 - Second Floor Addition from street at south



Fig.9 - Partial South elevation from site below

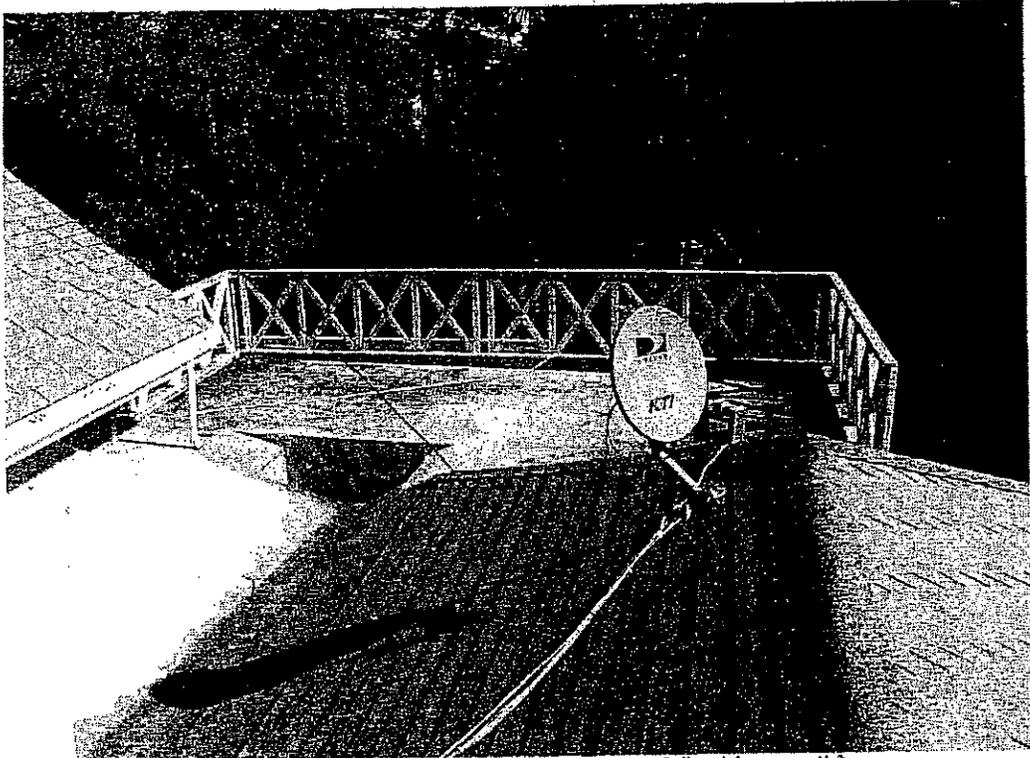


Fig.10 - View of Entry Extension from roof (looking north)

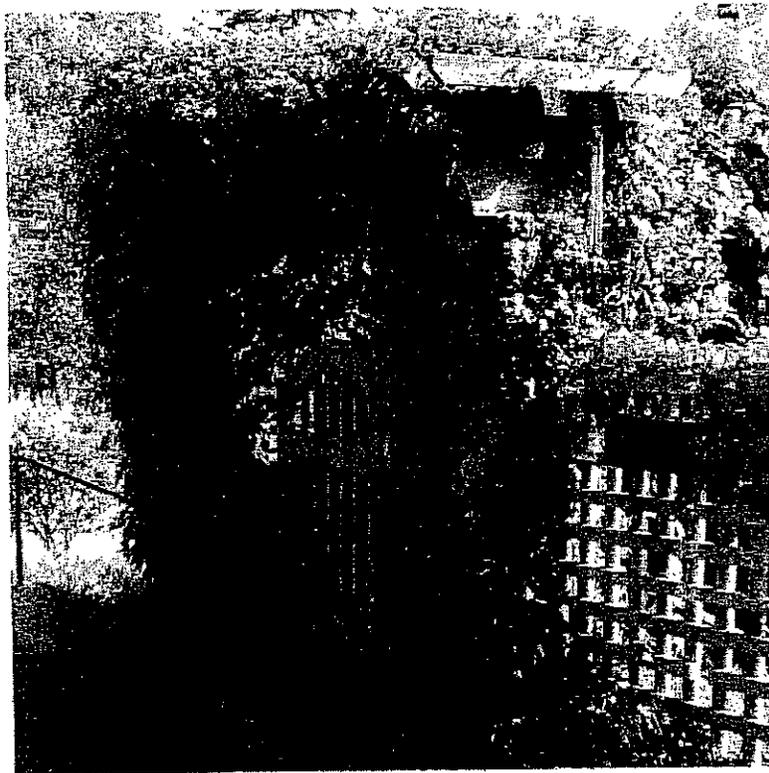


Fig. 11 - Stone Entry Portal at Harrison and Excelsior

# PRESERVATION ARCHITECTURE

## MARK HULBERT

Architect & Architectural Conservator

### Education

International Centre for the Conservation of Cultural Property, Rome, Italy.

North Carolina State University School of Design: B-ED.Arch, 1981.

Boston Architectural Center, Boston, MA, 1979-1980

Mercer County College, Trenton, NJ: A. Arch, 1977-1979

### Registration

Certificate in Architectural Conservation, ICCROM, 1996

California Architect C 21014, 1989

### Experience

2002- Mark Hulbert Preservation Architecture, Oakland, CA

1998-2002 Associate/ Architectural Conservator, CDRA, San Francisco

1990-1998 Architect/ Architectural Conservator, Page & Turnbull, San Francisco

1986-1989 Architect, Michael Rex Associates, Sausalito, CA

1984-1985 Architecture & Preservation, Buttrick, White & Burtis, NY, NY

1982-1984 Retail Planning, Interior & Industrial Design, Milton Glaser, NY, NY

1981-1982 Architecture & Preservation, William A. Hall & Associates, NY, NY

### Selected Projects

2003-2005

Spring Mansion Historic Architectural Evaluation, Berkeley

230 BayPlace EIR Consultation, Oakland

Ford Assembly Building Historic Preservation Consultation, Richmond

Love Ranch Preservation Consultation, Danville

Municipal Boathouse Historic Structures Report & Historical Consultation, Oakland

Studio One Arts Center Rehabilitation, Oakland

Terminal One Historic Resource Evaluation, Richmond

Clark Kerr Campus Historic Structures Reports & Historical Consultation, UC Berkeley

Warring Wall Preservation Plan, UC Berkeley

Cryer Ranch Rehabilitation Plan, Hayward

Meek House Rehabilitation Plan, Hayward

Hog Island Oyster Co. Addition, Marshall

Los Gatos High School Theatre Project

Old First Church Columbarium Chapel, San Francisco

Macdonald Avenue Master Plan, Richmond

Camera Obscura Historic Structure Report, San Francisco

Giannini Hall Seismic Safety Modifications, UC Berkeley

Saratoga Lanes Historic Report, San Jose

507 Almaden Historic Evaluation, San Jose

274 14th Street, Oakland 94612  
T 510 740 0146 F 510 808 0378

1998-2002

Berkeley Art Museum Seismic Retrofit, UC Berkeley  
Civic Center Master Plan, Richmond  
CalTrain Station Preservation Consultation, Palo Alto  
SummerHill Historic Homes, Palo Alto  
SF Port Northern Waterfront Historic District, San Francisco  
The Cliff House Rehabilitation & Addition, San Francisco  
Lucie Stern Community Theater Upgrade, Palo Alto  
Heritage Theatre Rehabilitation and Adaptive Reuse, Campbell  
Wawona Hotel Kitchen Wing Rehabilitation, Yosemite National Park  
Touro University Master Plan, Mare Island  
Clayburgh Building Historic Architectural Evaluation, San Francisco

1990-1998

Hearst Memorial Mining Building, University of California, Berkeley  
Geary Theater Rehabilitation, San Francisco  
Pacific Gas & Electric Company Seismic Retrofit, San Francisco  
California State Office Building, San Francisco  
U.S. Customs House Seismic Retrofit, San Francisco  
Leland Stanford Mansion Restoration, Sacramento  
University House, University of California, Berkeley  
Ahwahnee Hotel Historic Structure Report, Yosemite National Park  
Ahwahnee Hotel Kitchen Rehabilitation, Yosemite National Park  
Wawona Hotel Structural, Exiting & Life Safety Evaluations, Yosemite  
Naval Postgraduate School Plaster Restoration Project, Monterey  
Presidio of Monterey Historic Preservation Plan, Monterey  
Casa Arnesti Historic Structure Report and Rehabilitation, Monterey  
U.S. Court House Historic Preservation Plan, Los Angeles  
U.S. Customs House Historic Preservation Plan, San Francisco  
U.S. Appraisers' Building Historic Preservation Plan, San Francisco  
U.S. Court of Appeals Historic Preservation Plan, Pasadena  
The Episcopal Church of St. John, San Francisco  
Old First Church Alterations, San Francisco

**Affiliations**

International Centre for the Conservation of Cultural Property (ICCROM)  
United States Council on Monuments and Sites (USICOMOS)  
Association for Preservation Technology International (APT)  
Society of Architectural Historians (SAH)  
California Preservation Foundations (CPF)  
Oakland Heritage Alliance (OHA)  
Berkeley Architectural Heritage Association (BAHA)

# PRESERVATION ARCHITECTURE

June 15, 2005

To: The Sausalito City Council  
Re: 100 Harrison Avenue

Council Members:

This correspondence is intended to accompany and support an appeal of actions taken by the Sausalito Planning Commission with regard to the above listed property.

To begin with, I am an historic preservation consultant who was enlisted by the property owner to review the records relevant to the identification of this property as a noteworthy historic property. My credentials in this capacity are not slight. I practice preservation every day, and have over 20 years of professional preservation experience, along with a rewarding 3 year hiatus as an architect practicing in Sausalito. I am also a certified architectural conservator.

In my professional capacity, I reported on the subject residence to the property owners, and attended a pair of Sausalito Planning Commission meetings during May. The initial meeting of the 11th was simply continued without a hearing. Although the property owner requested that the Commission hear my statements at that time, as I was in attendance, the Commission stated that my comments be withheld until the following hearing. The matter was then heard by the Commission on the 25th.

At this hearing, it was obvious that my findings or statements were entirely unwelcome to the Commission. My participation in the form of a presentation was in fact precluded, as I was asked not to make comments to the Commission. The Commission clearly intended to avoid fact finding. The Commission's lack of consideration for myself and Mr. Blatt was deeply insulting, and was obviously so intended.

The character defining aspects of a potential historic resource require something in the form of meaningful definition. The Historic Resources Inventory form for 100 Harrison, which as far as I am aware constitutes the formal historic record for this property, is attached. No expertise is required to observe that this form is void of any meaningful information. I have read hundreds of these forms over the years, and not one has been so lacking of information. Yet, somehow, from this record the Planning Department made the following case: "100 Harrison Avenue was surveyed in 1977 by the Sausalito Historic Landmarks Board and found to be a fine, nearly unaltered example of Sausalito's early Victorian era architecture." The survey they refer to happens to be the attached record.

Based on my own review of the record and of the resource, this is factually untrue. The residence at 100 Harrison Avenue is a collection of forms and elements from many periods, spanning from the late 19th century to the mid-20th. Again, one needn't be an expert to observe this. The attached photo is of this residence. There are many obvious alterations within this one view. Please note, in particular, the contemporary dormer styles, as well as what must have been an original round window under the roof eave below and at the right, which has since been partially obscured by the middle roof.

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T 510 740 0146 F 510 808 0378

Furthermore, in both the Staff Report and at this hearing, the staff refers to the Secretary of the Interior's *Standards for Preservation* as a potential treatment of this residence. Yet, those very *Standards* are applied to historical resources of the highest significance, such as National Historic Landmarks. In the case of Historic Preservation Tax Credit Applications, under which projects must meet a very high standard, it is the *Standards for Rehabilitation* that are applied, not the *Standards for Preservation*.

I belabor this point because here we have both Planning Staff and Commissioners considering the application of the *Standards for Preservation* to a residence whose significance is not even defined. In which case, the building is not even suitable for preservation.

The most adamant Commissioner defended the historic designation of this residence on the basis of its being "cute and charming," which are not, of course, criteria for the designation of historic resources.

So, we witnessed a hearing where the Secretary of the Interior's *Standards for Preservation* are paired with the criteria of "cute and charming."

Frankly, it was apparent that the Planning Staff and Commission are not knowledgeable on this subject. Nor should they be. In fact, were I given the opportunity to speak, I was not going to present any discussion about this potential resource, but was instead going to say that the Planning Commission is not the appropriate venue for a debate about historic resources. The City has an Historic Landmark Board for that very purpose. In this case, the property owners were not afforded the opportunity to present their side of the case, but were handed what constitutes a de facto landmark designation through a Planning Commission channel. Such a method is surely inappropriate.

What adds further to the inappropriateness of this hearing is the fact that the HLB was not in the loop, simply because there was no proposal to alter or modify the subject resource.

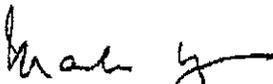
I repeat: there was no application to modify or alter this residence.

Moreover, in the course of this hearing, the Commission extended the proposed protection of the residence to the site and to its landscape. Quite matter of factly — they simply deemed it so, without anything in the form of fact or even discussion to support their intent. Again, the record provides no case that the property or its landscape have historical significance.

Finally, something else I would have stated had I been provided the fair opportunity to do so, is that we are not arguing against historic designation or preservation. This is simply not a "remarkably intact Victorian house." Perhaps it has some other historic significance, but that is not its significance. To deem it so, without any supporting evidence, is counterproductive with respect to Sausalito's preservation efforts.

I support the property owners in their request for the fair, open and honest consideration of this property.

Thank you,



Mark Hulbert

HISTORIC RESOURCES INVENTORY

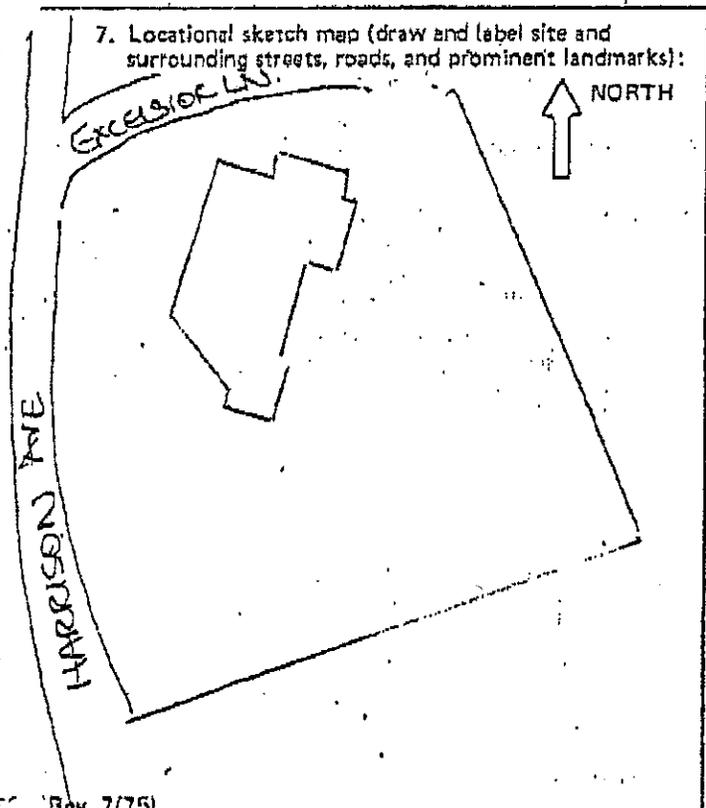
Location 10/8/77  
 IDENTIFICATION #70

(State or Territory) \_\_\_\_\_  
 Lat \_\_\_\_\_ Lon \_\_\_\_\_ Elev \_\_\_\_\_ Sig \_\_\_\_\_  
 Adm \_\_\_\_\_ T2 \_\_\_\_\_ T3 \_\_\_\_\_ Cas \_\_\_\_\_ HABS \_\_\_\_\_ HAER \_\_\_\_\_ Fed \_\_\_\_\_

1. Common name: NESTLEDOWN
2. Historic name, if known: Nestledown / McGowan House T.E.R. CORMAC  
MRS GRAYM SN 3/13/1897 3:1  
BROTHERS STEEL
3. Street or rural address: 100 Harrison Ave  
 City: Sausalito ZIP: 94965 County: Marin
4. Present owner, if known: Wm Wachter Address: 100 Harrison  
 City: Sausalito ZIP: 94965 Ownership is: Public  Private
5. Present Use: residence Original Use: residence
- Other past uses: \_\_\_\_\_

DESCRIPTION

6. Briefly describe the present physical appearance of the site or structure and describe any major alterations from its original condition:
- Composite architecture. Surrounded by high fence, unable to see from road.
- Basically original structure



8. Approximate property size:  
 Lot size (in feet) Frontage 150  
 Depth 150  
 or approx. acreage \_\_\_\_\_
9. Condition: (check one)  
 a. Excellent  b. Good  c. Fair   
 d. Deteriorated  e. No longer in existence
10. Is the feature a. Altered?  b. Unaltered?
11. Surroundings: (Check more than one if necessary)  
 a. Open land  b. Scattered buildings   
 c. Densely built-up  d. Residential   
 e. Commercial  f. Industrial   
 g. Other
12. Threats to site:  
 a. None known  b. Private development   
 c. Zoning  d. Public Works project   
 e. Vandalism  f. Other

14. Primary exterior building material: a. St  b. Brick  c. Stucco  d.  e. Wood   
f. Other

15. Is the structure: a. On its original site?  b. Moved?  c. Unknown?

16. Year of initial construction 1887 This date is: a. Factual  b. Estimated  *Earliest known date  
see # 77-314*

17. Architect (if known): \_\_\_\_\_

18. Builder (if known): TEK Cormack

19. Related features: a. Barn  b. Carriage house  c. Outhouse  d. Shed(s)  e. Formal garden(s)   
f. Windmill  g. Watertower/tankhouse  h. Other  i. None

#### SIGNIFICANCE

20. Briefly state historical and/or architectural importance (include dates, events, and persons associated with the site when known):

*Corr. 10/8/1892 SN 9/2/1892 3:2 GROOM - CORMAC*

*1887 Director TEK Cormack, Attorney at Law  
Sausalito News 9/2/1892*

*W.E & B.S. LOCKS owner, 1924 Real Estate appraisal*

21. Main theme of the historic resource: (Check only one): a. Architecture  b. Arts & Leisure   
c. Economic/Industrial  d. Exploration/Settlement  e. Government  f. Military   
g. Religion  h. Social/Education

22. Sources: List books, documents, surveys, personal interviews, and their dates:

23. Date form prepared: 1977 By (name): R.J. Tracy  
Address: 30 Girard City: Sausalito ZIP: 94965  
Phone: \_\_\_\_\_ Organization: Sausalito Historical Society

(State Use Only)

HISTORIC RESOURCES INVENTORY

Transaction 10/8/77  
IDENTIFICATION #70

(State or  
 Lot \_\_\_\_\_ Lon \_\_\_\_\_ Era \_\_\_\_\_ Sig \_\_\_\_\_  
 Adm. T2 T3 Co. HABS HAER Fed \_\_\_\_\_

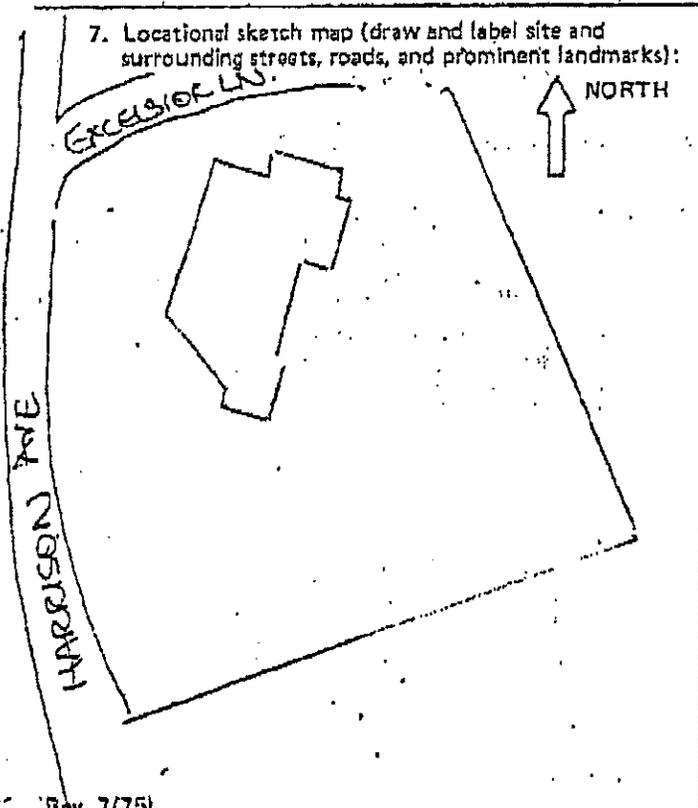
1. Common name: NESTLEDOWN  
 2. Historic name, if known: Nestledown / ~~McLennan Hoopie~~ T.E.K. CORNAC  
 3. Street or rural address: 100 Harrison Ave  
 City: Sausalito ZIP: 94965 County: Marin  
 4. Present owner, if known: Wm Wachter Address: 100 Harrison  
 City: Sausalito ZIP: 94965 Ownership is: Public  Private   
 5. Present Use: residence Original Use: residence  
 Other past uses: \_\_\_\_\_

MRS GROOM SN 3/13/1897 3:1  
BROTHER & SISTER

DESCRIPTION

6. Briefly describe the present physical appearance of the site or structure and describe any major alterations from its original condition:

Composite architecture. Surrounded by high fence, unable to see from road.  
 Basically original structure



8. Approximate property size:  
 Lot size (in feet) Frontage 150  
 Depth 150  
 or approx. acreage \_\_\_\_\_

9. Condition: (check one)  
 a. Excellent  b. Good  c. Fair   
 d. Deteriorated  e. No longer in existence

10. Is the feature a. Altered?  b. Unaltered?

11. Surroundings: (Check more than one if necessary)  
 a. Open land  b. Scattered buildings   
 c. Densely built-up  d. Residential   
 e. Commercial  f. Industrial   
 g. Other

12. Threats to site:  
 a. None known  b. Private development   
 c. Zoning  d. Public Works project   
 e. Vandalism  f. Other

14. Primary exterior building material: a. St  b. Brick  c. Stucco  d.  e. Wood  f. Other

15. Is the structure: a. On its original site?  b. Moved?  c. Unknown?

6. Year of initial construction: 1887 This date is: a. Factual  b. Estimated  *earliest known date sec. # 77-314*

17. Architect (if known): \_\_\_\_\_

18. Builder (if known): T.E.K. Cormack

19. Related features: a. Barn  b. Carriage house  c. Outhouse  d. Shed(s)  e. Formal garden(s)  f. Windmill  g. Watertower/tankhouse  h. Other  i. None

SIGNIFICANCE

20. Briefly state historical and/or architectural importance (include dates, events, and persons associated with the site when known):

*Corr. 10/8/1892 SN 9/2/1892 3:2 GROOM - CORMACK*

*1887 Directory T.E.K. Cormack, Attorney at Law  
Sausal News 9/2/1892*

*W.E & BS LOCKS owner, 1924 Real Estate appraisal*

21. Main theme of the historic resource: (Check only one): a. Architecture  b. Arts & Leisure  c. Economic/Industrial  d. Exploration/Settlement  e. Government  f. Military  g. Religion  h. Social/Education

22. Sources: List books, documents, surveys, personal interviews, and their dates:

23. Date form prepared: 1977 By (name): R.J. Tracy  
Address: 30 Girard City: Sausalito ZIP: 94065  
Phone: \_\_\_\_\_ Organization: Sausalito Historical Society

(State Use Only)

## M E M O R A N D U M

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TO: Sausalito Planning Commission  
FROM: Sausalito Historic Landmarks Board  
RE: 100 Harrison Avenue – APN 065-124-14  
DATE: January 12, 2004

As this application as proposed will be constructed on a recognized historically significant "Noteworthy" property within Sausalito that directly adjoins the western edge of the Downtown Historic District and is also listed with the California State Office of Historical Preservation, the Historic Landmarks Board (HLB) contributed its knowledge and expertise for the proposed changes to this property.

Being the property is of historical significance and it's adjoining the Downtown Central Commercial Historic District, the board reviewed the application for compatibility with the following policies and objectives from the 1995 "Sausalito General Plan - Community Design and Historical Preservation Element":

- Policy CD-1.3  
Neighborhood Compatibility. Provide that all new residential structures, all residential structures that are to be removed and replaced, and those structures that are to be significantly remodeled, are designed to complement their setting and the other buildings in the neighborhood.
- Policy CD-1.4  
Construction Near Historic Districts or Landmarks. Enhance the historic quality of established districts and landmark structures by encouraging new construction or alterations to existing structures in the general vicinity to demonstrate compatibility with them.
- Objective CD-7.0  
Respect and Maintain the Exterior Integrity of Historic Structures and Sites. Respect and maintain the exterior integrity of structures and sites in the Historic District and of all officially designated or recognized historic structures and sites outside the district.

### Brief description and history of 100 Harrison Avenue

Prominent Attorney and early Sausalito resident T.E.K Cormac built the residence known as "Nestledown" in 1887. The wood framed home is composed of Victorian Stick and Queen Anne architecture - horizontal wood lap siding, decorative under eave brackets, cut diamond cut shingles in the gables, and detail casement moldings. The rooflines are a mixture of hip and gable construction.

The home was surveyed in 1977 by the Sausalito Historic Landmarks Board and found to be a fine, nearly unaltered example of Sausalito's early Victorian era architecture. In May 2002, the board revisited the property during a resurvey of "Noteworthy" properties, and at that time the structure was found to still be a contributing example of this early Sausalito period.

At the Historic Landmarks Board (HLB) meeting of October 22, 2003, the board appointed HLB Board Chair Seth Hodgson and Vice-Chair Sherri Corker to review this application and to report back to the board on November 5, 2003 with their comments. Hodgson and Corker reviewed the plans, visited the site and concurred two general concerns regarding this proposal, which were forwarded to the board, including:

- New construction on the open garden area of an intact 1880s Victorian villa estate
- The proposed plain Mediterranean design of the application possibly not being in keeping with its direct neighbors or the "Nestledown" house

At the meeting of November 5, 2003, neighboring residents of an adjoining property voiced concerns regarding the proposed development. The Historic Landmarks Board concurred there was a compatibility issue with the historical fabric of existing historical structure on the site and possibly with other neighboring structures. A memorandum from the board dated November 7, 2003 was delivered to staff and forwarded to the applicant.

On November 19, 2003, Hodgson and Corker met with the applicants Mike Blatt and Architect Ken Taub and toured the proposed building site. Board concerns and suggestions were discussed in detail and the applicant agreed to make revisions they would later present to the board.

At the December 10, 2003 HLB meeting, the board reviewed the modifications to the application and agreed they did in fact relieve many concerns regarding the plainness of the architecture.

There still remains a concern by members that stucco is not an appropriate exterior material for this site. The Commission may wish to consider requesting other exterior materials such as wooden horizontal painted lap siding that would be more compatible and complementing to the existing "Nestledown" house. The Board also recommends that the Commission consider an agreement be required to guarantee the continued preservation and existence of the historical "Nestledown" house.

**At the meeting of December 10, 2003 a motion was made, second and carried by the board to approve the modifications shown on plans as revised dated October 27, 2003 incorporating the following modifications:**

- Garage roof was changed from a flat roof to a hip roofline with Mission clay tiles
- Muntins were added to all windows and doors to break up the plain glazing
- Natural stone was added to the foundation walls surrounding the structure

AYES: Corker, Warren and Chair Hodgson

NOES:

ABSTAIN: Mitchell, Sears

ABSENT:

## M E M O R A N D U M

---

TO: Sausalito Planning Commission  
FROM: Sausalito Historic Landmarks Board  
RE: Historical Analysis for 100 Harrison Avenue  
DATE: April 22, 2004

At the request of the Planning Commission, the Historic Landmarks Board (HLB) has conducted an historical analysis of the site, existing "Nestiedown" residence, and the fence and garage structures within the Harrison Avenue public right of way.

On March 24, 2004, the HLB made a site visit to 100 Harrison Avenue, focusing on the wooden fence and garage structures, per the Planning Commission's request. After thorough discussion and public testimony, the board found No Significance to the garage structure or existing fence along Harrison Avenue. However, the board finds High Significance to the following elements (see attached map):

1. The "Nestiedown" Residence
2. Rock pergola gated entrance near the Northwestern corner of the property, within the Harrison Avenue right of way. Constructed in about 1920, it's a unique feature directly associated with the existing residence.
3. "Franciscan" stone wall, path, and steps within the Harrison Avenue right of way, just inside the wooden fence. This stonework should be repaired and enhanced as necessary.

It is the HLB's understanding the property owner, Mr. Blatt intends to subdivide the current parcel approximately near the previous, now invalid lot line to create a separate parcel for a new residence to be located. With this proposed subdivision, Mr. Blatt is proposing to construct a new two-car parking structure and fence fronting 100 Harrison, within the Harrison Avenue right of way. The HLB foresees no concern connected to this subdivision and new parking structure, however, the Board requests review by the HLB of the proposed parking structure and fence designs prior to their approval.

Last but not least, we identify with the City Engineer, Gordon Sweeney's concern regarding the existing fence within the Harrison Avenue right of way. The present lattice wooden fence obscures the water view and creates a walled corridor appearance along that stretch of Harrison. The HLB recommended to Mr. Blatt, in which he agreed, to replicate or find a similar fencing which previously adorned this frontage of the street, as seen in a 1911

photograph of Nestledown (see attached). The historical fence appears to have had a height of no more than 42 inches, and recreated, it would drastically reduce the bulk and reopen the vista to the water from Harrison Avenue, yet separate the paved Harrison Avenue and the steep downhill slope.

**The Sausalito Historic Landmarks Board, at their publicly noticed meeting April 22, 2004 approved this memorandum by the following vote:**

AYES: Blois, Warren, and Chair Hodgson  
NOES:  
ABSTAIN: Sears  
ABSENT: Corker

100 Harrison Avenue  
"Nestledown"

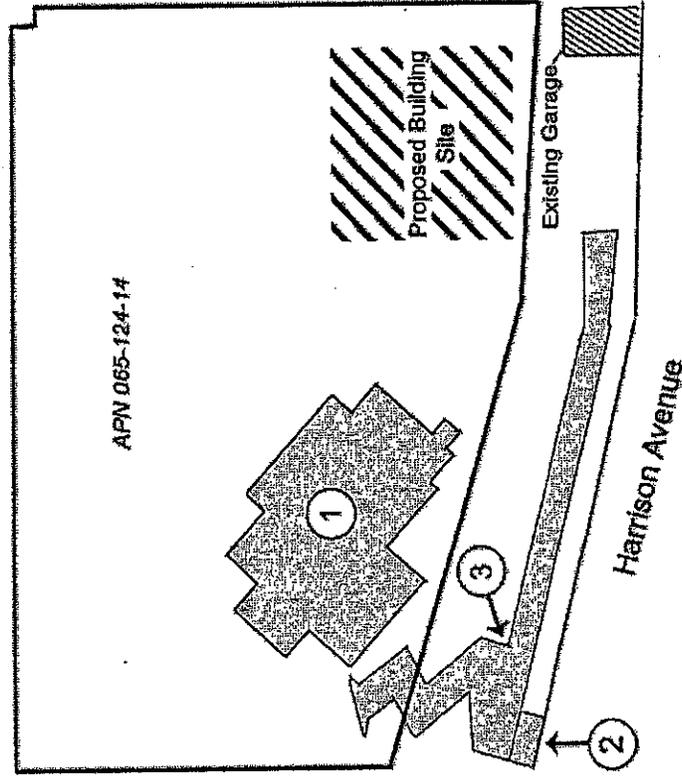
Historically Significant Features

Prepared by:

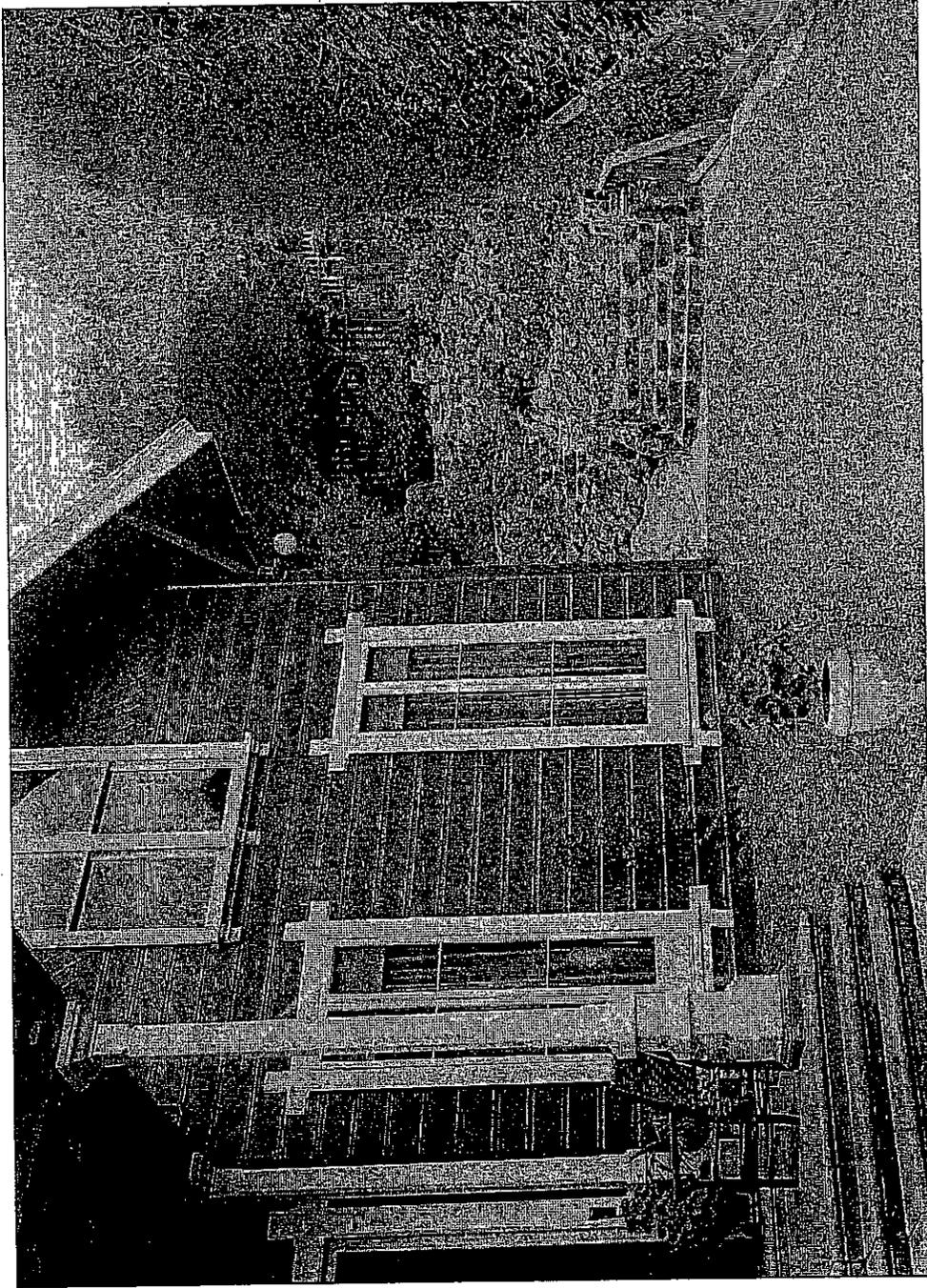
The Sausalito Historic Landmarks Board

April 22, 2004

1. "Nestledown" Residence
2. Stone Gated Entry Pergola
3. Stone Walls, Path, & Steps



Not to Scale



100 Harrison Avenue – “Nestledown”  
1911 Photo

*Image Source: Sausalito Historical Society*

M E M O R A N D U M

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TO: Gordon Sweeney, City Engineer  
Drummond Buckley, Planning Director

FROM: Sausalito Historic Landmarks Board

RE: 100 Harrison Avenue

DATE: June 9, 2004

RECEIVED  
JUL 15 2004  
CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

At the request of property owner, Mike Blatt of Harrison Ventures LLC, the Historic Landmarks Board (HLB) reviewed the proposed plans for a new 2-car parking deck, wooden fence and steps to serve the existing home at 100 Harrison Avenue.

The HLB takes great interest in the 100 Harrison Avenue property, as it is a well noted and documented early Sausalito villa home, constructed in 1887. As such, the HLB has worked with Mr. Blatt in detail to preserve this rare early architectural example of Sausalito's past.

In a memo dated April 22, 2004, the HLB noted three prominent and significant features which should be preserved:

1. The "Nestledown" Residence
2. Rock pergola gated entrance
3. "Franciscan" stone wall, path, and steps

In this same memo, the HLB found no significance to the existing wooden lattice fence and garage structures.

After reviewing the proposed plans, the HLB offered the following recommendations during discussion:

1. Resurfacing of exposed dirt pathway should be decomposed granite
2. The new fence should be of redwood or comparable material
3. The decorative posts shown on plans at the most Southern entrance should also be used to define the entrance to the parking structure.

4. If necessary (or required), save and relocate existing gate found in pergola entry further downhill
5. On the parking deck, stamp contrasting pattern into cement to outline pathway crossing driveway

**The Sausalito Historic Landmarks Board, at their publicly noticed meeting June 9, 2004 approved the contents of this memorandum by the following vote:**

**AYES:** Corker, Blois, Warren, and Chair Hodgson  
**NOES:**  
**ABSTAIN:** Sears  
**ABSENT:**

October 6, 2005

100 Harrison Avenue, Sausalito

At the request of the Sausalito Planning Department staff, the Historic Landmarks Board has performed further research into the historic records of 100 Harrison Avenue (also known as Nestledown) for the purpose of providing more background information to the Sausalito City Council. The focus of this research was for the time period of 1887 to 1924. Resources that were used included Sausalito Building Department files and Historical Society archives.

The Nestledown residence was occupied by TEK Cormac and/or his sister Mrs. Groom from the time of its completion in 1887 until its sale to William and Bertha Loucks in 1921. TEK Cormac was an attorney practicing in San Francisco at the turn of the last century. His practice included serving as counsel to the British Consul in S.F. He represented the British guardian of the young heir to the Hanbury fortune in what was apparently the infamous Banta courtcase in S.F. in 1917. Cormac is also listed as a member of the Pacific Union Club of S.F. in 1905 and 1924.

The earliest plan of the house appears in the Sanborn volume of 1919. This volume contains small scale overhead plans of all of the structures within Sausalito at the time. The city streets are shown and the individual homes are accurately located on their lots. The Sanborn Maps (as they are called) were prepared for the fire insurance industry as a record of what was physically extant on site and therefore what these insurance companies were covering in their policies. So accuracy was required in these thumbnail plans. The Sanborn Map of 1919 shows the basic footprint or outline of Nestledown to be virtually unchanged between then and an aerial view from 2004 (see attached). Some changes have occurred and these include the longer roof extension along the southeast side and a diagonal roof filled in corner at the southwest side (assuming north is to the top of the page).

This plan is shown again in the 1924 Real Estate Tax Assessment (see attached). Also a thumbnail plan, the sketch shows the same features as the 1919 Sanborn Map and further document the size of the house at the time. Note: Appraisal Form shows address as 152 Harrison which was the old address numbering system and was later changed throughout town.

A photo of the front corner of the house from 1911 shows what may well be the original appearance of the structure (see attached). Since this photo was taken, substantial alterations have occurred that have obliterated some of the original detailing shown here, but much also remains. Still existing in this view are the roof eave and overhang elements, including decorated knee braces; wood siding

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OCT 06 2005

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

and fishscale wood shingles. Around the side of the house the wood siding is continuous and at the rear of the first floor several windows still have the wood trim shown in the 1911 photo.

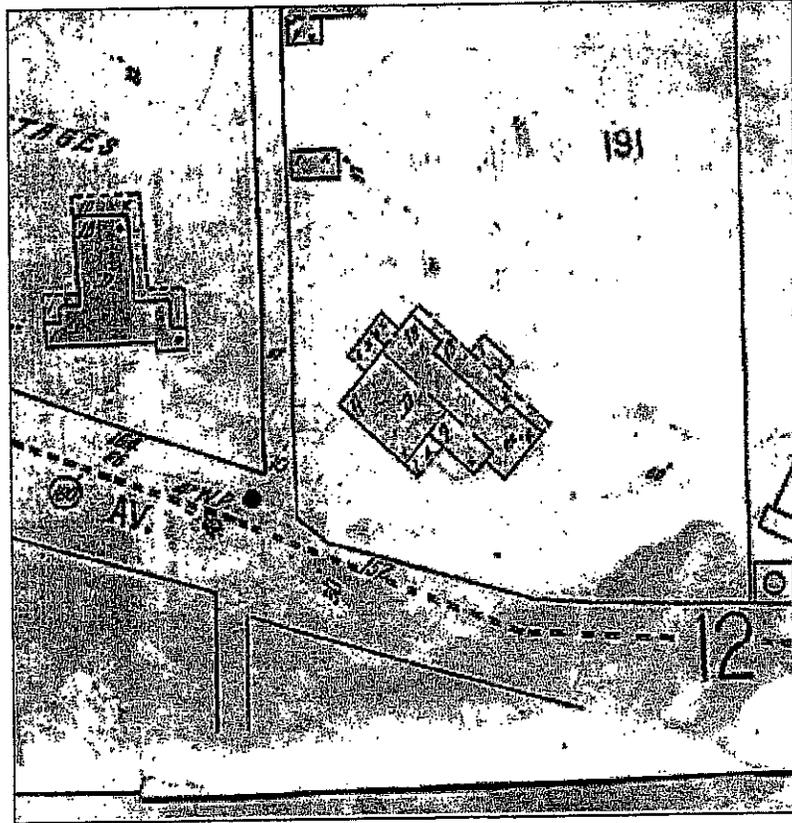
By observation alone, without documentation, it appears that the original structure was probably the western half of the current house. The front (north west) corner is shown in the 1911 photo. This conclusion is drawn primarily from the roof assemblies which are easily visible from the uphill slopes. Typical cottages and smaller homes from this era (1887) had very simple gable-style roofs of one straight ridge and two equal sloping sides. The Nestledown roof is a collision of a few simple gable roofs both abutting and parallel. Simply stated, no one would build such a roof at one time; this is a roof that is assembled over time as horizontal additions are made over time. While not original to the 1887 house, these additions are in-place at the time of the 1919 Sanborn Map.

Clearly, substantial portions of the Nestledown house are original to the era that it was occupied by the Cormac family. Also, important elements of the first sections of the house are still unaltered. These features securely anchor the structure, as it appears today, true to the era of its original occupants and is a highly significant residence in Sausalito. This was determined as such by the HLB in its Memorandum of April 22, 2004 (see attached).

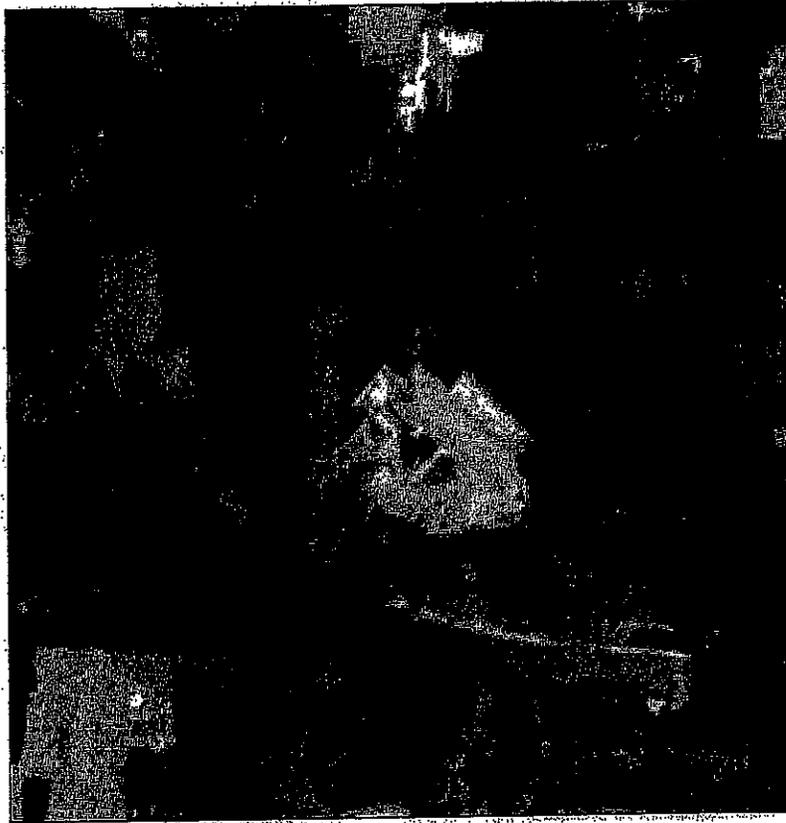
Researchers were Vicki Nichols & Philip Blois

Report prepared by Philip Blois

“Nestledown”  
100 Harrison Avenue



June, 1919 Sanborn Fire Map  
Source: Sausalito Historical Society



February 27, 2004 Aerial Photo  
Source: <http://www.terra-server.com>

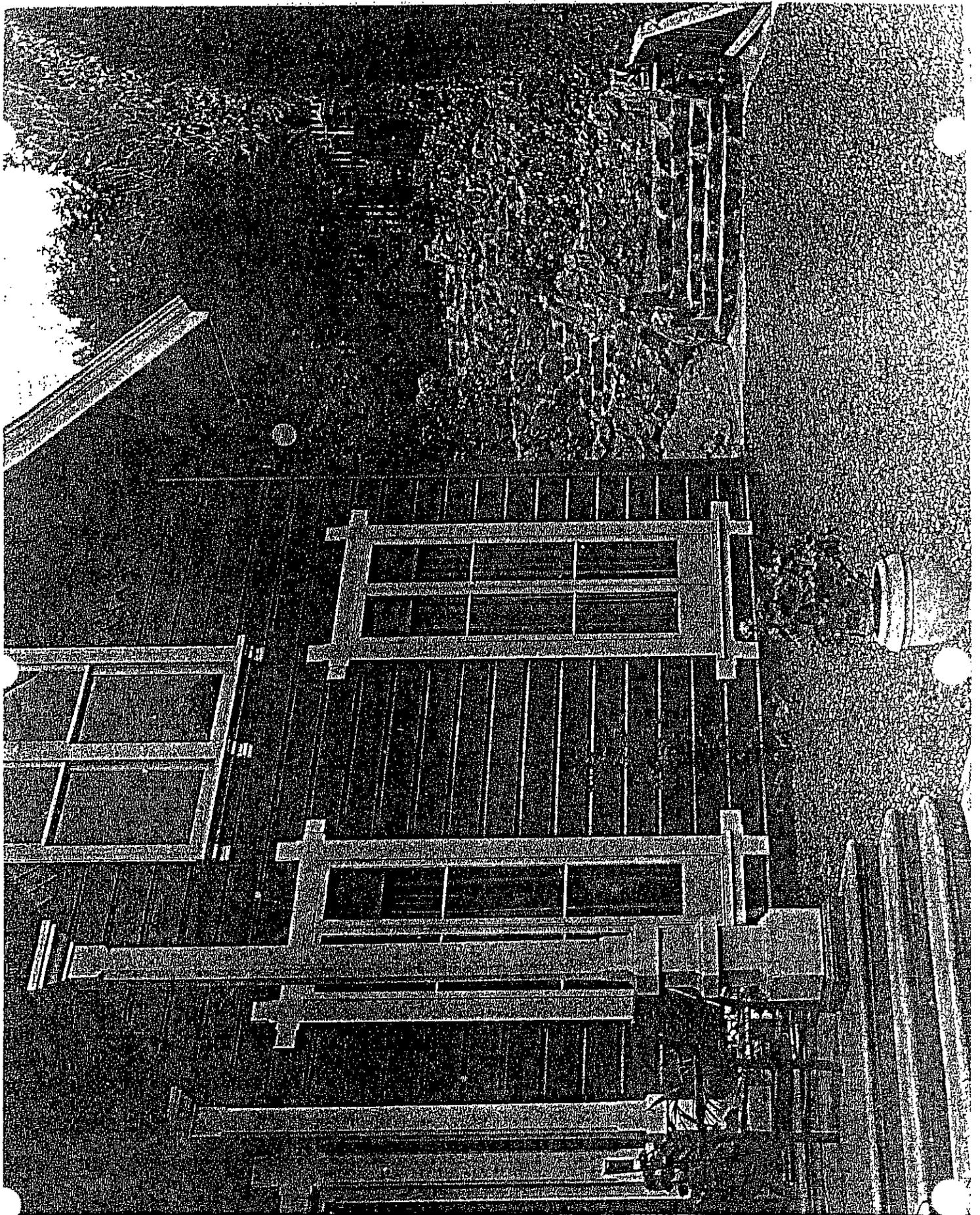
# "Nestledown" 100 Harrison Avenue

## BUILDING APPRAISAL FORM REVALUATION OF REAL ESTATE FOR THE 1924 ASSESSMENT SAUSALITO, CALIFORNIA

No. 162 Harrison Ave SE EXAMINED BY 0  
 OWNER W. E. & B. S. Loucks DATE:  
 LOT No. 6-9 BIL. No. 3 AS PER SANBORN MAP, Page 8 Blk. 19

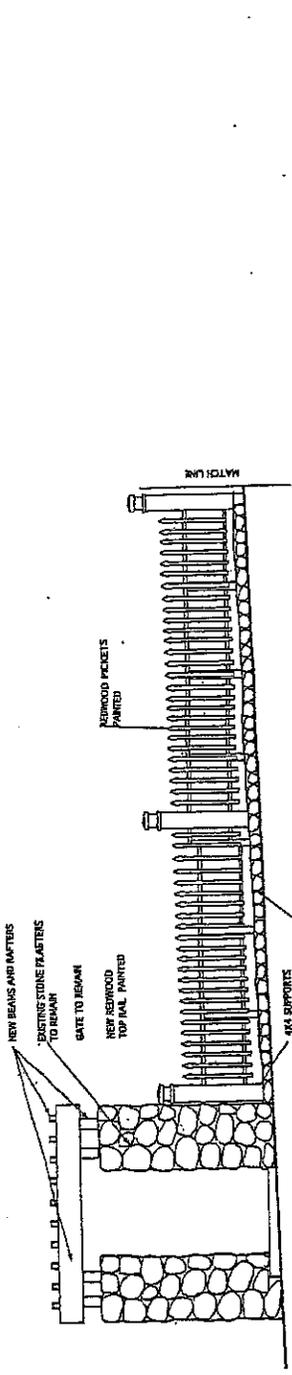
SUBDIVISION OR TRACTS per Official Map of Lands of the Sausalito Land & Ferry Co. Class. 3  
 ESTIMATORS FIELD NOTES  
 BUILDING VALUE:  
 Total sq. ft. 2,270  
 Total cub. ft. 12,370  
 Price per sq. ft. 1.50  
 Price per cub. ft. 1.50  
 Building 1,000  
 Basement 1,000  
 Heat 5  
 Out Buildings  
 Total Cost 1,000  
 Dep. Val. 1,000  
 Dep. Value 1,000  
 Dep. Cent. Utility Dep.  
 Present Value 1,000

CLASS	CONSTRUCTION	ROOF	LIGHTING	OCCUPANCY - Dwelling, Retail, Public
Hotels	Class A - Structural Steel	Flat, Hip, Gables, Dormer	Gas, Electric	Basement, 10 ft. x 10 ft. x 10 ft.
Loft Bldgs.	Terra cotta floors	Cupola, Ordinary	Good, Medium	WALLS - Lat. Grade
Warehouses	Rein. concrete	Plain	Good	CONDITION, Good, Medium, Poor, BUILT
Stores & Offices	Frame	Tile, Shingle, Tin, Gravel	ELEVATOR	Living Room
& Theaters	Heavy Medium	Composition	Sidewalk Elevator	Bath
Offices	Light	PARTITIONS	Freight	Kitchen
& Theaters	Light	Brick, Tile, Concrete, Plaster Wood	Passenger	Hardwood Floor
Hospitals	Class B	Inside Finish	Electric	Hardwood Fin.
Library	Class C	Inside Finish	Hydraulic	STAIRS
California	Class D	Plaster Wood	TERRAZZO	Store
Residence	Good, Med. Cheap	Plaster Wood	Cobblestone	Cement Floor
Flat	EXHIBITION	Plaster Wood	Brick, Plaster	Unfinished
Apartment	Bay Windows	Plaster Wood	Stone, Wood	Lobby
Garage	Balconies, No. Enclosed Br.	Plaster Wood	Plaster	Offices
Shed	Pressed Brick	Plaster Wood	Ornamental	REMARKS - Enumerate Special Features
Barn	Blue Brick	Plaster Wood	Miscellaneous	
Church	Terra Cotta	Plaster Wood	Fire Escapes	
School	Art Stone	Plaster Wood	Metal Windows	
Bank	Plaster, Mol. Lath	Plaster Wood	Cornice	
Shop	Wood Lath	Plaster Wood	Sprinkler	
Garage	Shakes, Rustic	Plaster Wood	Marbles	
FOUNDATION	Siding, Board and Battens	Plaster Wood	Venilliding	
Stone	CONCRETE	Plaster Wood	Ceilings	
Concrete	CONCRETE	Plaster Wood	Stairways	
Brick	CONCRETE	Plaster Wood	DECORATING	
Wood	CONCRETE	Plaster Wood	Ornamental	
Deep, Shallow	CONCRETE	Plaster Wood	Medium	

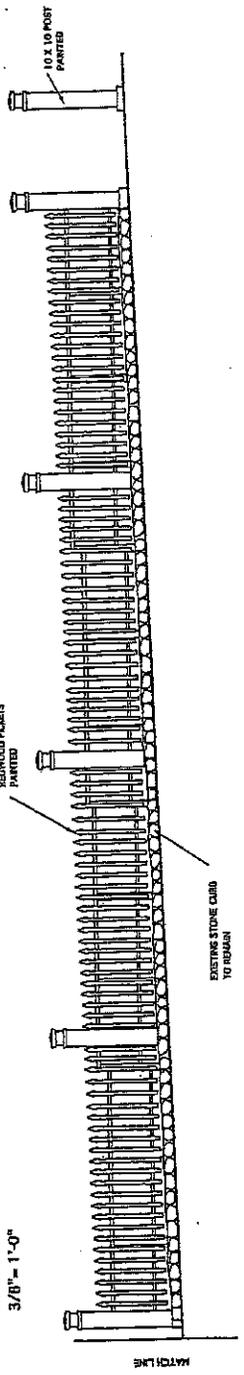




REVISED PER N.R. 6/10/09	REVISED PER CITY LETTER DATE 07/22/04- 728001	REVISED PER PLANNING COMMISSION DATE 5/11/03	KENT TAU, ARCHITECT 1001 BUIDGEWAY, #236 SAUSALITO, CA 94965 (415) 331-7166	HARRISON 96 AND 100 SAUSALITO, CA	DETAILS AND ELEVATIONS OF FRONTAGE	SHEET A1.1
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EAST ELEVATION FROM HARRISON  
3/8" = 1'-0"



EAST ELEVATION FROM HARRISON  
3/8" = 1'-0"

# Harrison Ventures LLC

28 Bulkley Avenue  
Sausalito, CA 94965

# RECEIVED

JUN 20 2005

June 18, 2005

Paul Kermoyen  
City of Sausalito  
420 Litho Street  
Sausalito, CA 94965

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

Re: Resolution No. 2005-23

## To Whom It May Concern:

As of this date we have decided to appeal portions of the Resolution of the Sausalito Planning Commission Approving Tentative Map and Recommending Approval of Encroachment Agreement Application TM/EP 04-045 for a Subdivision, and Frontage Improvements as 100 Harrison Avenue.

Specifically we are appealing conditions 2, 3, 4, 5, 6, 7, 8, 15, 16, 17, 18, 19b, 19d, 19e, 19f and 22 because (a) the commissions decision to impose these conditions to this application are arbitrary and capricious; (b) the conditions do not satisfy the Nolan and Dolan "nexus" and "rough proportionality" requirement; and (c) the planning commission decision is inconsistent with the previously stated intent of the City Council as detailed below.

On May 4, 2004 City Council Meeting Harrison Ventures LLC appeared to appeal a denial by the Planning Commission for the 96 Harrison application. At that meeting the City Council overturned the Planning Commission:

**"Mayor Albritton moved, seconded by Councilmember Albert, to direct staff to return with a resolution granting the appeal and permitting the construction of the proposed structure as per the alternate site plan, Sheet A-1 (revised plans dated April 28) with the following additional conditions:**

**The applicant return to the Planning Commission for the completion of the approval of design modifications for the removing the existing garage and replacing it with a parking deck and construction of two parking spaces immediately above the 100 Harrison property.**

**The applicant shall provide the pedestrian walkway as contained in the City Engineer's memo and indeed all conditions contained in the City Engineer's report dated December 15, 2003 and in addition to Condition 8, that the geotechnical report include review of the stability of existing vegetation as well as the existing spring and storm water run off.**

*(Councilmember Keller asked if the motion could include a direction to pursue a lot split? The Council agreed it would not be appropriate as a condition of approval, but would strongly urge the applicant to investigate the possibility of doing so.)"*

We were of course skeptical of going back in front of the Planning Commission for approval of a project that they denied that we successfully overturned, but we believed that the City Council was very clear in their direction of what they wanted and that the two conditions and one desire were small issues that the Planning Commission would not be able to exert any biased influence over.

Nine months later, on March 9, 2005 Harrison Ventures LLC appeared in front of the Planning Commission for the approval of a resolution prepared by the Planning Staff and with Staff recommendation of approval that addressed the City Councils direction. As mentioned by the City Council several times in their meeting, they wished that the applicant would have worked harder in trying to reach a resolution with the planning staff and planning commission. In the nine months we worked diligently with the planning staff to address all their concerns and help them draft a resolution that encompassed the City Council directions. This draft resolution is attached for your review.

At that meeting former Planning Commissioner John Pettit remarked "there has been a suggestion that the only reason the parking deck made it into the plan was to preserve the historic structure." Before this comment the linking of the parking pad and the nature of 100 Harrison had never been enjoined. Commissioner Pettit asked if the applicant would have any problem adding conditions that made the parking deck encroachment conditional on the historic building being maintained in its present form. Commissioner Pettit then went on to suggest that perhaps the City could charge a fee for the rental of the city right of way land that was being encroached upon. When asked if he would agree to this blatant attempt to rewrite the Resolution prepared by the staff at the direction of City Council, Raymond Blatt responded that no he would not agree to that. Raymond Blatt responded that the parking pad was located at the direction of the City Council and also the City Planning Staff. John Pettit cut off Mr. Blatt and went on to say that "they (the applicant) may end up with that condition in there anyway and he (Mr. Blatt) can appeal it if he likes."

We must remind the Council that the application for 96 Harrison had no effect on the structure at 100 Harrison. We have not applied for anything to be done to that building. We had discussions with the Historic Lands Board before submitting the application for 96 Harrison and they had supported the project. In a memorandum dated April 22, 2004 the HLB wrote "the HLB foresees no concern connected to this subdivision and new parking structure." In the same letter the HLB found high significance in the structure located at 100 Harrison but never advised that there needed to be a designation, limitations or conditions put upon this application or resolution. Perhaps this is because we were not proposing to do anything to the structure located at 100 Harrison.

Nevertheless, the Planning Commission asked staff to return with a resolution containing the condition of Historic designation for the 100 Harrison structure for the right to have a parking pad located in the right of way. After the meeting we asked staff to just remove the parking pad as it was one of the items that we could live without and this would keep the historic designation process in the proper venue at the Historic Lands Board. Planning staff denied our suggestion.

On May 25, 2005 the staff prepared a new resolution of approval and recommended its approval. The resolution included the parking pad and also the historic designation of the structure located at 100 Harrison. At that meeting staff told the Planning Commission that they had consulted the City Attorney and that it was not "legally defensible" to link a historic designation to the parking pad, BUT that it was "legally defensible" if it was linked to the lot split.

As you can see the planning commission and staff is attempting to make the facts fit their conclusion. They had at this time heard no informed or expert opinion on the historical significance of 100 Harrison and none of the commissioners or staff have any qualifications to make such a determination.

Although we still believe that this was not the proper time or venue to have a discussion on the historic merits of the structure located at 100 Harrison we hired one of the preeminent historic consultant and preservation firms to perform an analysis on the structure. Preservation Architecture prepared a report that we provided to the City. The report concluded that the structure was not historic because of the many additions that had been done over the years. We again thought that this was an issue to be debated at the HLB meetings but because of the planning commissions efforts to leapfrog the historic designation process both the owner and the HLB were not afforded that luxury. In fact this strong armed tactic only puts both sides at odds because of the time crunch forced on both the applicant and HLB.

We asked Mark Hulbert of Preservation Architecture to be present at the next Planning Commission meeting to give his expert opinion and informed answers to any question the Planning Commission might have. At the meeting only one commissioner asked one question and that question had nothing to do with either his qualifications, his historic opinion of the property or how he came to that conclusion. They completely dismissed the expert analysis and did not want to be confused with the facts, because they had already made up their minds. Mark Hulbert prepared a letter based on his observations of the planning commission that I have attached.

The Planning Commission wasn't finished yet. The Planning Commission wanted to not only designate the structure as historic but also the bare land the structure rests on. The Planning Commission also wanted there to be a condition that the lot could not be split any more even though it is a large R-3 zoned parcel and that the structure could not be added to unless it was a ancillary structure, like a storage barn. Also, the planning commission wanted the parking pad to be omitted from the resolution. So the item that set off this debate was completely taken out anyway. The Planning Commission then asked the staff to return with another resolution of approval with even more conditions.

We asked staff to just omit the lot split as it was only applied for at the direction of the City Council and City Staff. We were told that in order to get approval for 96 Harrison we had to receive the Planning Commission approval on this resolution as directed by the City Council. This made no sense at all, the proposed resolution had not one item that the City Council directed the applicant to do. The City Council asked the applicant to:

1. Remove existing garage and replace with a parking pad. OMITTED BY PLANNING COMMISSION.
2. Provide pedestrian walkway.
3. Urged applicant to apply for a lot split. WHICH WE DID ONLY TO OPEN UP A OPPORTUNITY FOR THE PLANNING COMMISSION TO HAVE A "LEGALLY DEFENSIBLE" WAY TO INFLUENCE THEIR WILL UPON PRIVATE PROPERTY.

Now we must again remind the Council that we did not propose to do anything with the structure located at 100 Harrison and that any improvements or modifications to 100 Harrison still would have to be applied for to the Planning Commission. We believe this designation does not give either the applicant or the Historic Lands Board the adequate time necessary to make an informed opinion on the history or future of the structure located at 100 Harrison. By approving this appeal you would not be agreeing that 100 Harrison is historic or not historic, and we are not asking you to. We believe that issue is something that should be decided by the Historical Lands Board and when if at anytime we apply to improve or make modifications to the actual building. We believe that was the intent of the suggestion by the City Council for a lot split. To make these two buildings set on two separate lots so that they were not enjoined.

On May 25, 2005 Planning Commission approved a resolution with conditions designating 100 Harrison and the land it rests upon as Historic. It omitted the parking pad for 100 Harrison so that house has no off street parking and also has several conditions that aren't even applicable to the resolution.

**We are asking the City Council to uphold the appeal of the Resolution of the Sausalito Planning Commission Approving Tentative Map and Recommending Approval of Encroachment Agreement Application TM/EP 04-045 for a Subdivision, and Frontage Improvements as 100 Harrison Avenue and to approve the original Resolution prepared by the Planning Staff dated March 9, 2005. We believe this resolution is most representative of what the City Council had approved and directed the staff to present to the planning commission. ORIGINAL RESOLUTION IS ATTACHED.**

**We are also asking for the City Council to direct staff to process the building permit for 96 Harrison. Although the issues surrounding the resolution we are now appealing have no bearing on the actual structure, the planning staff has told us repeatedly that they cannot process the building permit until this lot line issue is resolved. It has been 13 months since the City Council upheld our appeal and 4 months since all plans have been back from the Phillips Group plan checkers.**

We are appealing Conditions of Approval numbers:

2, 3, 4, 5, 6, 7 and 8

These conditional all are concerned with the historic preservation of 100 Harrison. These conditions should not be attached to the above application and resolution because the HLB and applicant have not been given the opportunity to have an informed and expert debate on the issue. Also, the issues that gave rise to the City having the "legally defensible" reason to attach historic designation were the creation of the city planning staff and planning commission with the aid of the City Attorney to opportunistically take control of the property. Applicant asked repeatedly to omit those items from the application only to be denied.

15. There is no encroachment necessary for this application as the planning commission denied the parking structure that was asked for by the City Council. This condition does not apply to this application and should therefore be omitted from the resolution.
16. This condition applies to the application and permit for 96 Harrison not the tentative map and frontage plan for 96/100 Harrison. There should not be a erosion and sedimentation control plan for a lot split. Therefore this condition should be omitted from the resolution.
17. This condition applies directly to the building application and permit for 96 Harrison. A traffic control plan already has been submitted for that project. A traffic control plan is not necessary and is not applicable to a lot split application. Therefore this condition should be omitted from the resolution.
18. This condition applies directly to the building application and permit for 96 Harrison. A construction staging plan already has been submitted for that project. A construction staging plan is not necessary and is not applicable to a lot split application. Therefore this condition should be omitted from the resolution.
- 19b. This condition applies directly to the building application and permit for 96 Harrison. A grading plan has already been submitted for that project. A grading plan is not necessary and is not applicable to a lot split application. Therefore this condition should be omitted from the resolution.
- 19d. This condition applies directly to the building application and permit for 96 Harrison. There will be no water from downspouts, roof leaders and hard surfaces for the tentative map. This condition is not necessary and is not

applicable to a lot split application. Therefore this condition should be omitted from the resolution.

- 19e. There will be no pavement removal or repaving since the parking structure that the City Council asked for was denied by the Planning Commission. This condition is not applicable to this resolution and should therefore be omitted.
- 19f. This resolution is for the approval of a tentative map and a frontage plan. There will be no grading associated with this resolution. Therefore this condition should be omitted from the resolution.
- 22. The City Staff and Planning Commission has always known that we would appeal the current resolution. We should not and will not agree to indemnify the City to defend its obviously erred resolution from us. The City should defend itself for its decision on this application since even the applicant does not agree with it. If the current planning commission resolution is not reversed as was done at the previous City Council meeting this condition should be omitted.

Regards,



Raymond Blatt  
Managing Member

**RESOLUTION NO. 2005 – 23**

**RESOLUTION OF THE SAUSALITO PLANNING COMMISSION  
APPROVING TENTATIVE MAP AND RECOMMENDING APPROVAL OF  
ENCROACHMENT AGREEMENT APPLICATION TM/EP 04-045 FOR A SUBDIVISION,  
AND FRONTAGE IMPROVEMENTS AT 100 HARRISON AVENUE**

---

WHEREAS, an application has been filed by the applicant, Ken Taub, on behalf of the property owner Harrison Ventures LL, requesting Planning Commission approval of a Tentative Map and Encroachment Agreement for a subdivision, parking deck and frontage improvements at 100 Harrison Avenue (APN 065-124-14); and

WHEREAS, the Planning Commission conducted duly noticed public meetings on March 9, 2005, May 25, 2005 and June 9, 2005 in the manner prescribed by local ordinance, at which time all interested persons were given an opportunity to be heard; and

WHEREAS, the Planning Commission finds that the proposed project is categorically exempt from the requirements of CEQA pursuant to Section 15301 and 15315; and

WHEREAS, the Planning Commission has reviewed and considered the tentative map titled "Tentative Map for 96 100 Harrison Ave." stamped received by the City of Sausalito on June 2, 2005, and the project plans titled "Lot Split and Frontage Plan of 96 and 100 Harrison", dated May 31, 2005 and stamped received June 2, 2005; and

WHEREAS, the Planning Commission has received and considered oral and written testimony on the subject application and obtained evidence from site visits; and

WHEREAS, the Planning Commission has reviewed and considered the information contained in the March 9, 2005, May 25, 2005, and June 8, 2005 staff reports for the proposed project; and

WHEREAS, the Planning Commission has reviewed City Council Resolution 4710-A which approved on appeal the project known as 96 Harrison with the following conditions: (a) the applicant apply for Planning Commission design review approval to remove the existing garage and replace it with a two-car parking deck immediately above the 100 Harrison property, and (b) the applicant make improvements to the pedestrian walkway in the public right-of-way as described in the City Engineer's memo dated December 15, 2003; and

WHEREAS, the residence known as "Nestledown" at 100 Harrison Avenue is included in the City of Sausalito Historic Resources Inventory of "Noteworthy Structures";

and

WHEREAS, the Nestledown residence at 100 Harrison Avenue was surveyed in 1977 by the Sausalito Historic Landmarks Board and found to be a fine, nearly unaltered example of Sausalito's early Victorian era architecture. In May 2002, the Board revisited the property during a resurvey of "Noteworthy" properties, and at that time the structure was found to still be a contributing example of this early Sausalito period; and

WHEREAS, the Planning Commission has determined that the Nestledown residence is of historic significance and worthy of preservation. The home, constructed in 1887 by Prominent Attorney and early Sausalito resident T.E.K Cormac, is characteristic of Victorian Stick and Queen Anne architecture - horizontal wood lap siding, decorative under eave brackets, fishscale and diamond cut shingles in the gables, and detail casement moldings. The rooflines are a mixture of hip and gable construction.

WHEREAS, the Planning Commission's review of the subdivision reveals that no future development should be permitted on 100 Harrison (Lot 1 as shown on the attached Tentative Parcel Map) given that any additional development has the ability to detract from the historical integrity of the Nestledown residence; and

WHEREAS, the Planning Commission finds that the subdivision is necessary to locate the Nestledown residence on its own individual parcel in order to preserve the historic integrity of the residence as further defined within the conditions of approval; and

WHEREAS, the planning Commission finds that the further subdivision of 100 Harrison Avenue (Lot 1) into two or more additional parcels would negatively impact the unique site characteristics which contribute to the property's historical significance; and

WHEREAS, the Planning Commission has determined that the location of a previously proposed two-car parking deck in the Harrison Avenue right-of-way adjacent to the Nestledown Residence would be detrimental to the historic integrity of the property; and

WHEREAS the Planning Commission finds that, as conditioned herein, the proposed project complies with the requirements of the Zoning Code as outlined in the staff report; and

WHEREAS, the Planning Commission finds that, as conditioned herein, the proposed project complies with the General Plan as outlined in the staff report; and

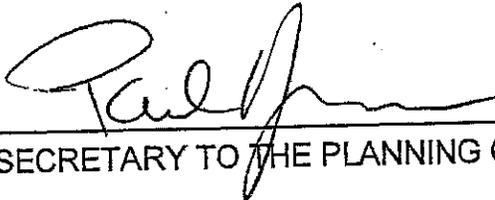
WHEREAS, the Planning Commission finds that, as conditioned herein, the proposed project complies with the Subdivision Map Act and City of Sausalito Ordinance No. 430;

NOW, THEREFORE, THE PLANNING COMMISSION HEREBY RESOLVES AS FOLLOWS:

1. The Minor Subdivision is approved, and the Encroachment Permit recommended for approval, as outlined in the attached findings (Attachment A).
2. The Minor Subdivision is approved and Encroachment Permit recommended for approval for tentative map entitled "Tentative Map for 96 100 Harrison Ave." stamped received by the City of Sausalito on February 14, 2005, and the project plans titled "Lot Split and Frontage Plan of 96 and 100 Harrison", dated November 24, 2004 and stamped received February 14, 2005 (Attachment B), subject to the attached conditions of approval (Attachment C)

RESOLUTION PASSED AND ADOPTED, at the regular meeting of the Sausalito Planning Commission on the 8th day of June 2005, by the following vote:

AYES:	Commissioner:	Vice Chair Kellman, Peterson, Bossio, Keller
NOES:	Commissioner:	
ABSENT:	Commissioner:	Chair Leone

  
\_\_\_\_\_  
SECRETARY TO THE PLANNING COMMISSION

PLANNING COMMISSION HEARING  
June 8, 2005  
APPLICATION NO. TM/EP 04-045  
100 Harrison Avenue

ATTACHMENT A: FINDINGS

**1. SUBDIVISION MAP ACT FINDINGS**

Pursuant to California Government Code Section 66474 (Subdivision Map Act), it has been found that the requested minor subdivision may be issued based on the following findings:

A) The proposed map is consistent with applicable general and specific plans.

*The proposed tentative map conforms to all applicable General Plan policies.*

B) The design or improvement of the proposed subdivision is consistent with applicable general and specific plans.

*The proposed subdivision is consistent with the minimum parcel requirements for lots in the R-3 zone as well as all other applicable standards.*

C) The site is physically suitable for the type of development.

*The site is physically suitable for the residential development proposed, though further development on or subdivision of the 100 Harrison lot is not permitted due to the contributions of the site to the historic integrity of the Nestledown residence.*

D) The site is physically suitable for the proposed density of development.

*There are no existing physical conditions on the site that appear to prohibit the proposed residential density.*

E) The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

*The proposed subdivision would not cause substantial environmental damage in that a condition has been attached to this resolution that would not allow further development of the lot—as well as further subdivision of the lot—in order to preserve the historical integrity of the Nestledown residence.*

- F) The design of the subdivision or type of improvement is not likely to cause serious public health problems.

*It is not likely that the proposed project will cause serious public health problems.*

- G) The design of the subdivision or the type of improvement will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

*There are no public easements recorded on the subject property.*

## 2. SUBDIVISION ORDINANCE FINDINGS

Pursuant to City of Sausalito's Subdivision Ordinance, Ordinance No. 430, it has been found that the requested minor subdivision may be issued based on the following findings:

- A) The size and shape of lots shall be such as is proper for the locality in which the subdivision is situated. All lots must be adequately drained.

*The size of both of the proposed lots meets minimum parcel requirements for size, width, and frontage, and is consistent with lot sizes and configurations in the immediate neighborhood.*

- B) In a subdivision in which the lots may be resubdivided at some future time, the location of lot lines and other details of layout shall be such that resubdivision may readily take place without violating the requirements of this Ordinance of the Zoning Ordinance and without interfering with the orderly extension of adjacent streets and highways.

*Due to the size and configuration of the lot resubdivision is not a possibility for this property. However, standards could change or a variance could be granted to allow for further subdivision. The Planning Commission has therefore prohibited further subdivision of the lot in order to protect and preserve the historic integrity of the Nestledown residence.*

- C) Lots with less than thirty feet of frontage on a street will not be permitted.

*Both lots would have more than 30 feet of frontage on Harrison Avenue.*

- D) The side lines of lots will be required to run at right angles to the street upon which the lot faces, as far as practicable.

*The newly created property line would intersect the front property line to the greatest extent possible.*

- E) All lots shall be suitable for the purposes for which they are intended to be sold, and no dangerous areas, or areas subject to inundation may be subdivided for residential purposes.

*The lots are suitable for residential use.*

- F) In the event that the subdivision is traversed by all water courses, channels streams, or creeks, the subdivider shall dedicate rights of way or easements for storm drainage purposes conforming substantially with the lines of such water courses, channels, streams, or creeks, or shall provide by dedication further and sufficient rights of way or easements as shall be required for structures or channel changes or both, to dispose of such surface and storm waters.

*There are no apparent water courses traversing the subdivision.*

- G) In all respects, the subdivision will be considered in relation to the Zoning Ordinance, street and highway plan, community design plan and other parts of the Master Plan of the City or preliminary plans made in anticipation thereof.

*The subdivision has been reviewed in consideration of requirements in the Zoning Ordinance, General Plan, Subdivision Ordinance, and Subdivision Map Act.*

## **2. ENCROACHMENT PERMIT FINDINGS**

Pursuant to the City of Sausalito Municipal Code Chapter 10.56 (Encroachment Agreements), it has been found that the Planning Commission can recommend approval of the requested Encroachment Agreement be issued based on the following findings:

- A) The proposed encroachment is compatible with the surrounding area and will either improve or not significantly diminish visual or physical public enjoyment of the streetscape upon which the encroachment is proposed.

*The proposed project design incorporates recommendations made by the Historic Landmarks Board and appears to be compatible with both with the 100 Harrison property and the surrounding neighborhood.*

- B) The encroachment will not adversely affect the usability or enjoyment of adjoining parcels nor create or extend an undesirable land use precedent.

*The proposed encroachment includes the replacement of an existing fence necessary*

*for public safety and designed to be historically sensitive to the site.*

- C) The encroachment is necessary to the reasonable use and enjoyment of the property and the extent of the encroachment is justifiable.

*Replacement of existing fence is necessary for public safety.*

- D) The proposed encroachment will not adversely affect the public circulation nor create or constitute a hazard to public safety.

*It does not appear that the proposed encroachment will adversely affect the public circulation nor create or constitute a hazard to public safety.*

- E) The value of the proposed improvements will not prejudice a policy decision to terminate the encroachment nor preclude or make difficult the establishment or improvement of streets or pedestrian ways.

*The value of the proposed improvements are not anticipated to prejudice any future policy decisions to terminate the encroachments nor preclude or make difficult the establishment or improvement of streets or pedestrian ways.*

NOTES

ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF

● = FOUND MONUMENTATION AS NOTED

○ = SET 1/2" REBAR/CAP L5 5787

RI = 8'05" BS  
 RE = 4'20" RM 27

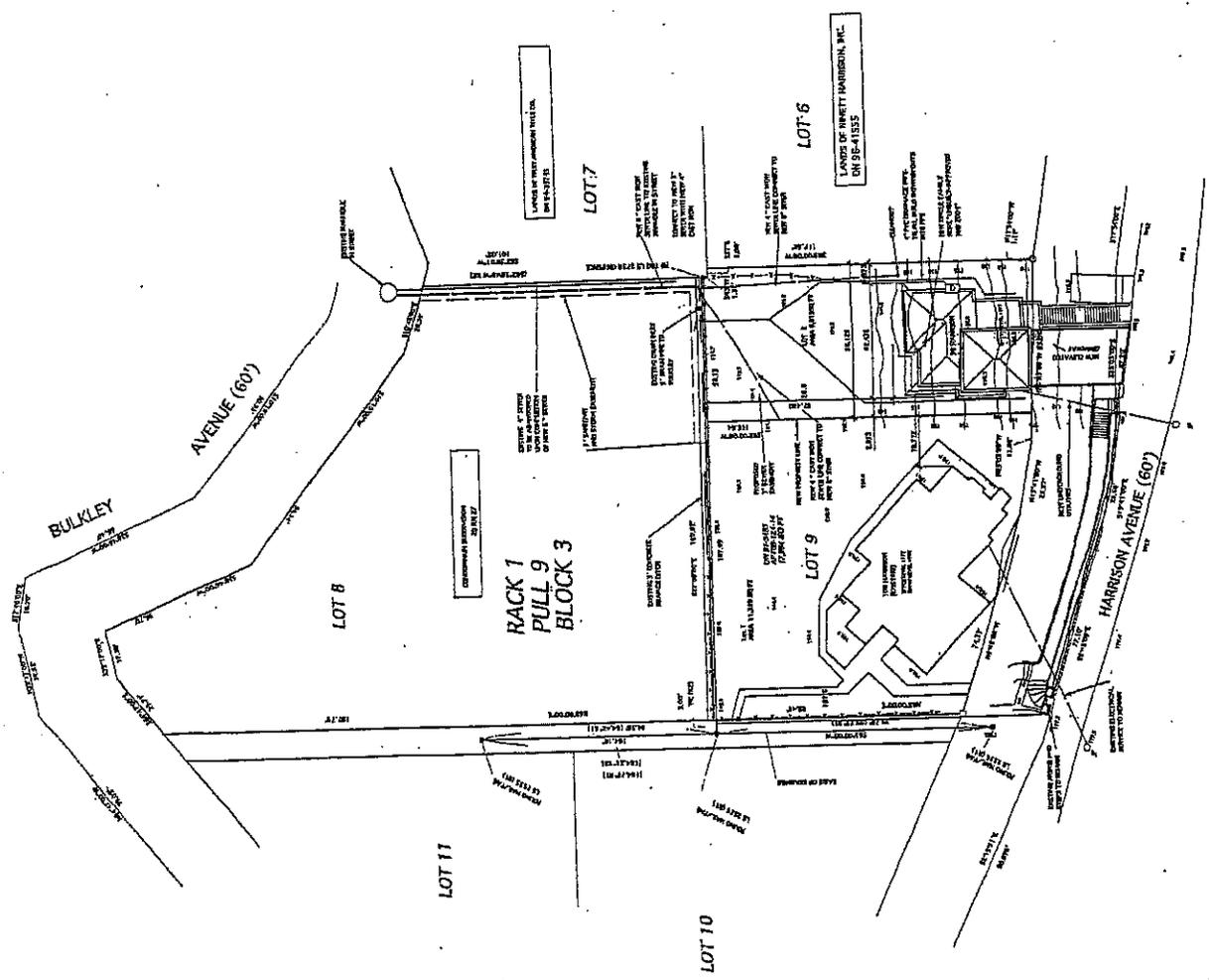
BASES OF BEARINGS, NOTED BETWEEN FOUND  
 NAIL TAGS IS 2.535 AS SHOWN, MEASURED 188.16',  
 (188.17' RT) (188.31' RT). BEARING IS PER 20 RM 27  
 WHICH ROTATED 8'05" BS BEARINGS  
 COUNTERCLOCKWISE 1'43"12"

CENTERLINES OF BULKLEY AND HARRISON  
 AVENUES IS PER 1 RM 89

- LEGEND
- FI - FIRE HYDRANT
  - WH - WELHEAD
  - FL - FLOWLINE
  - CONC - CONCRETE
  - ASPH - ASPHALT
  - RM - ROCK WALL
  - CW - CONCRETE WALL
  - WM - WATER METER
  - CTV - CABLE TELEVISION
  - JP - JOINT POLE
  - TV - TOP OF WALL
  - MON - CITY MONUMENT
  - ROW - RIGHT/OFF-WAY



TENTATIVE MAP  
 1"=20'-0"



PLANNING COMMISSION HEARING  
May 25, 2005  
APPLICATION NO. TM/EP 04-045  
100 Harrison Avenue

ATTACHMENT C: CONDITIONS OF APPROVAL

1. The approval is limited to the proposed plans titled "Tentative Map for 96 100 Harrison Ave." stamped received by the City of Sausalito on February 14, 2005, and the project plans titled "Lot Split and Frontage Plan of 96 and 100 Harrison", dated November 24, 2004 and stamped received February 14, 2005.

Conditions of Approval for the Minor Subdivision: Preservation of the Nestledown Structure and Site

2. No additional structures, with the exception of small accessory structures, shall be constructed on the 100 Harrison Avenue parcel occupied by the Nestledown residence. Only one-story detached accessory structures used as tool and storage sheds, play houses and similar uses, provided the total roof area does not exceed 120 square feet, may be constructed on the property. All accessory structures shall be designed to be architecturally consistent with the structure and landscape.
3. No further subdivision of the 100 Harrison Avenue parcel shall be permitted.
4. Design Review shall be required for any proposal to make an addition to, demolish a portion of, or otherwise modify the Nestledown residence at 100 Harrison Avenue. Design Review shall be conducted in accordance with Chapter 10.54 (Design Review Procedures).
5. Design Review shall be subject to review and approval by the Historic Landmarks Board and the Planning Commission. A joint meeting shall be held to conduct the Design Review.
6. To approve proposed new construction, alteration, or demolition, Design Review Findings specified in the Municipal Code Section 10.54 must be made. The Planning Commission and Historic Landmarks Board shall also consider the extent to which the proposed work is compatible with the architectural and historical features of the structure. Special attention shall be given to alterations to noteworthy exterior design elements, roof structures, and the home's unique configuration of building mass and volume.
7. None of the conditions of this resolution shall prevent any measures of construction, alteration, or demolition necessary to correct the unsafe or dangerous condition of any portion of the 100 Harrison property, where such condition has been declared unsafe

or dangerous by the building inspector or the fire chief, and where the proposed measures have been declared necessary by such official to correct the condition; provided, however, that only such work as is absolutely necessary to correct the unsafe or dangerous condition and is done with due regard for the preservation of the appearance of the property.

8. The owner, lessee, or other person in actual charge or possession of the 100 Harrison property shall keep in good repair all of the exterior portions of the Nestledown Residence, as well as all interior portions whose maintenance is necessary to prevent deterioration and decay of any exterior portion.

#### Parcel Map

9. After approval of the Tentative Map the applicant shall submit a Parcel Map as defined in the State Subdivision Map Act and prepared by a Licensed Surveyor or qualified Civil Engineer for review and approval to the City Engineer's Office. The Parcel Map shall conform to the approved tentative map and the requirements of the State Subdivision Map Act and the City Subdivision Ordinance. The Parcel Map shall show all parcels, rights-of-way and easements dedications, the assessor's parcel number, total area of land being subdivided (in acres) and total number of lots being created. Upon recording of the Parcel Map at the County, the Subdivision shall be valid.
10. Prior to recordation of the Parcel Map the applicant shall secure all necessary easements for utilities, drainage and access needed to serve any of the parcels of the subdivision.
11. Prior to recordation of the Parcel Map each parcel must place all existing overhead utility service lines to the buildings underground and any utility lines that cross another property shall be within easements shown on the map.
12. Prior to recordation of the Parcel Map the existing sewer laterals shall be video taped and any necessary repairs shall be made in accordance with City requirements.
13. A joint maintenance agreement for any shared utilities or access way shall be prepared and submitted to the City for review and approval and shall be Recorded with the Parcel Map.
14. Prior to recordation of the Parcel Map Improvement Plans showing pathway, driveway, utility connections, grading, drainage improvements and any work in the City right-of-way for lot 1 (100 Harrison) shall be prepared by a Registered Civil Engineer and submitted to the City for review and approval.

Prior to issuance of a building permit:

15. The City Council shall have approved the requested encroachment.
16. A detailed site and project specific erosion and sedimentation control plan shall be submitted as part of the project grading (pier drilling) plans.
17. A traffic control plan shall be submitted for controlling traffic on Harrison Avenue during the construction process.
18. A construction staging plan and construction schedule shall be submitted for review and approval.
19. Improvement Plans showing pathway, driveway, utility connections, grading, drainage improvements and any work in the City right-of-way for lot 2 (90 Harrison) shall be prepared by a Registered Civil Engineer and submitted to the City for review and approval. Improvement Plans shall reflect work shown on the tentative map and contained in the Resolution of Approval and shall include:
  - a) Each parcel shall be independently served by sanitary sewer and water service connections or, where approved by the City Engineer, shall be covered by a joint maintenance agreement.
  - b) All grading work shall be shown on a grading plan to be incorporated into the improvement plans. Grading plan shall include the location and size of all existing trees to be removed, and trees to remain. The plans shall show all measured identified in the Tree Protection Plan as needed, to protect trees during construction and all erosion control and storm water pollution prevention measures to be implemented. The grading plan shall clearly show all existing survey monuments and property corners and shall state that they shall be protected and preserved.
  - c) No lot-to-lot drainage is permitted except where contained in an appropriate easement.
  - d) Water from downspouts, roof leaders and hard surfaces shall be dissipated on-site and shall not be directly connected to a storm drain.
  - e) Pavement removal and repaving will be subject to the review and approval of the City Engineer.

No construction shall be initiated until the improvement plans have been approved by the City, all applicable fees have been paid, an encroachment permit and/or grading permit has been issued, a project schedule has been submitted to the City Engineer and a pre-construction conference has been held with the City Engineer and City Building Official or their designees.

Additional Conditions

20. In the event that any condition imposing a fee, exaction, dedication or other mitigation measure is challenged by the project sponsor(s) in an action filed in a court of law or threatened to be filed therein which action is brought within the time period provided by law, this approval shall be suspended pending dismissal or final resolution of such action. If any condition is invalidated by a court of law, the entire project shall be reviewed by the City and substitute conditions may be imposed.

21. In accordance with Ordinance No. 1160, the applicant shall pay any and all City costs arising out of or concerning the proposed project, including without limitation, permit fees, attorneys' fees, engineering fees, license fees and taxes, whether incurred prior to or subsequent to the date of this approval. Applicant acknowledges and agrees that City's costs shall be reimbursed prior to this approval becoming valid.

22. The applicant shall indemnify the City for any and all costs, including without limitation attorneys' fees, in defending this project or any portion of this project and shall reimburse the City for any costs incurred by the City's defense of the approval of the project.

23. An approval granted by the Planning Commission does not constitute a building permit or authorization to begin any construction. An appropriate permit issued by the Building Division must be obtained prior to constructing, enlarging, moving, converting, or demolishing any building or structure within the City.

## **1. SPECIAL PRESENTATION**

### **Introduction of new Sausalito City Employee Kevin Bryant**

City Manager Dana Whitson introduced the new Assistant to the City Manager, Kevin Bryant. Ms. Whitson noted that Mr. Bryant had formerly been a planner with the Town of Tiburon.

## **2. COMMUNICATIONS**

None

## **3. MINUTES OF PREVIOUS MEETING**

Approval of Minutes from the City Council meeting of October 11, 2005 was moved to the end of the agenda under approval of agenda.

## **4. CONSENT CALENDAR**

(1) Approve request to reimburse costs to the Rotary Club of Sausalito to provide utility service to the MLK Field House Project.

(2) Adopt a resolution of the City Council of the City of Sausalito approving the second amendment to lease agreement by and between the City of Sausalito and Global Wine, Inc.

Mayor Scremin asked if there was public comment on any of the Consent Calendar items or if there were any requests to remove anything from the Consent Calendar. There was no public response.

**Vice Mayor Albert moved, seconded by Councilmember Belser, to approve Consent Calendar item (1).**

**The motion was approved unanimously without a roll call vote.**

**Vice Mayor Albert moved, seconded by Councilmember Belser, to approve Consent Calendar Item (2).**

**The motion was approved unanimously without a roll call vote of 4-0-1, with Mayor Scremin recusing himself as a noticed property owner within 300 feet of the subject.**

## **5. HEARINGS/ORDINANCES**

**A. Appeal of Planning Commission decision to approve a tentative subdivision at 100 Harrison Avenue**

### **Staff report by Associate Planner Ben Noble**

Mr. Noble reported that when this item was heard on October 11, 2005, Council revised the Planning Commission resolution including:

- Modifying condition 2 to require a Design Review permit for any proposed new structure on the 100 Harrison property
- Deleting Condition 3, which would have prohibited additional subdivision of the 100 Harrison parcel
- Deleting Condition 5, which would have required HLB approval of all Design Review permits required for improvements to the property.

This item was continued from the October 18, 2005 City Council meeting.

At the October 11 hearing, questions arose regarding how the California Environmental Quality Act (CEQA) relates to the appellant's request and to the City's ability to preserve the "Nestledown" residence and control future modifications to the structure and site. If the resolution were adopted with the proposed revisions, a discretionary design review permit would be required for any modification to the exterior of the Nestledown residence or the construction of additional structures on site except for small accessory structures such as storage sheds. As any development action requiring a discretionary permit is considered a "project" under CEQA, almost any modification to the exterior of the Nestledown Residence or site would be subject to the same level of environmental review as all other development projects requiring discretionary review.

Regarding demolition, condition 6 does allow for demolition with the approval of a design review permit. This language was intentionally included so as to be consistent with the requirements for properties in the downtown overlay district, listed on the local registry, or designated as an historic landmark. However, condition 2, as originally adopted, prohibits almost all-new construction on the 100 Harrison site. Unless the property owner wishes to create new open space on the parcel, demolishing the Nestledown would be *de facto* prohibited in light of the prohibition of the construction of the new structures on the site. The revised conditions, which would permit new construction with approval of a design review permit, would not either directly or indirectly prohibit demolition of the Nestledown residence if the Planning Commission were to approve such an action.

Regarding concerns over consistency of conditions, it is the staff's understanding that the Council was primarily concerned about the question of allowing for the demolition of the Nestledown residence. If the Council wishes to remove this source of confusion, staff would recommend removing the reference to demolition in condition 6 and adding an additional condition explicitly prohibiting the demolition of the Nestledown residence.

Staff recommends that the City Council uphold the Planning Commission's decision to include conditions, 2, 3, 4, 5, 6, 7, 8, 15, 17, 18, 19b, 19e, 19f and 22 from Planning Commission Resolution No. 2005-23. Staff also recommends that the City Council grant the appellant's request to remove conditions 16, 19b, 19d, 19f from Planning Commission resolution No. 2005-23.

Councilmember Belser said she understands that staff continues to recommend the original conditions.

Mr. Noble said staff continues to recommend keeping the conditions related to preservation of the structure and the site. There are several conditions that are engineering related that are not recommended to stay.

Councilmember Belser said she understands that, but she noted that conditions 2, 3, 5 and 6 are not modified.

Mr. Noble said they continue to recommend keeping conditions 2, 3, and 5 as adapted by the Planning Commission.

City Attorney Mary Wagner added that at the last hearing on this item, the Council briefly discussed Condition 22, and she has copies of that revised language for the Council.

In response to a question from Councilmember Kelly, Mr. Noble explained that Condition 2 as adopted by the Planning Commission essentially says no new structures on the site. Condition 6 as adopted says you can demolish but only with the approval of a design review permit. If you combine the two, it seems hard to imagine a property owner wishing to demolish a structure but not being permitted to build anything new on the site. Therefore, staff is recommending that the conditions remain as adopted by the Planning Commission. If the City Council wishes to make it more explicit that demolition is to be prohibited, staff would recommend striking the reference to demolition in condition 6 and then adding another condition explicitly saying that the Nestledown residence should not be demolished.

Vice Mayor Albert said he understood that the Council formerly directed on condition 2 that instead of it being a blanket prohibition on no additional structures, the Council was just saying no additional structures, including those which might otherwise be obtained with an over the counter permit, but all additional structures would require a design review permit. He asked whether CEQA review would still be triggered with that change.

Mr. Noble explained that the way the condition presently reads is that the construction of additional structures would require a Design Review permit. It doesn't say the modification to the exterior of the existing Nestledown residence would require a design review permit. But if you want everything to require a design review permit, including additional structures ...

Vice Mayor Albert said it was his understanding that that was what they were aiming for. He was not sure he understood the comments in the staff report to the effect that the modified condition would imply that the Nestledown property is not significant enough to preserve, etc. If the Council is saying anything they do to that, whether exterior modification or accessory structure, requires a design review permit, they are expanding the scope of discretionary review. He asked how that would imply that they don't want to preserve it.

Community Development Director Paul Kermoyan said the question asked provides some clarity to staff's belief that these conditions were imposed for a reason, and the

reason is to preserve the structure. To remove that and allow a design review process for any future development and demolition would basically be saying remove the conditions altogether, and any project that comes in would have to go through any ordinary process that they would normally go through. They are relying on their normal process to look at future development of the property rather than relying on the fact that there if there is a future application for a subdivision, and one that the Planning Commission looks at and after obtaining an opinion from HLB, comes to the conclusion that this structure is worthy of preservation, this says, let's impose the condition to preserve it now rather than later. That's why staff believes that if you start peeling away the conditions there could be an implication that in the future, should an application come in, that maybe it's not all that important a structure. Staff is looking to the future. If the Council does decide to remove these conditions, then staff would recommend that the Council somehow put it in the recital that the Council does believe that the structure is worthy of preservation or is important.

Vice Mayor Albert asked if this condition is what allowed the Planning Commission to make the discretionary findings relative to a subdivision; he further asked whether there are such discretionary findings that have to be made.

Ms. Wagner said the findings that gets them over the hump, if you will, is consistency with the General Plan, which then gives the ability to condition the project to ensure that it meets the requirements of the General Plan, which protects historic structures.

Vice Mayor Albert asked if that means, then, that without the application for the subdivision, they wouldn't get to 100 Harrison. If the applicant were to remove that from his application, would 100 Harrison then go off the table for the time being, until he comes forward with an application for that building.

Mr., Noble said if the applicant were to withdraw this application for the subdivision, then these conditions that are connected to the subdivision would disappear. When the project was originally considered by the Planning Commission, staff looked at the possibility of conditioning the frontage improvements, including the parking deck, on the preservation of the structures, but it was determined that the preferred way to implement General Plan policies on historic preservation was to attach those conditions to the lot split rather than the frontage improvements.

Councilmember Albritton asked Mr. Noble if the intention is that Condition 19 should fall away. It's listed twice (referring to page 4 of the staff report). He asked whether Mr. Noble looked at condition 8 and determined whether that is consistent with either the Council or the Commission's direction. He wondered if it was correct that conditions 2 and 6 are not in conflict, as proposed by the Planning Commission. He asked whether Mr. Noble could speak to the statement in the staff report regarding the conflict between prohibition of demolition and implication that the structure is not significant enough to preserve.

Mr. Noble said staff is particularly concerned about how the Council's actions could be interpreted in the future. If the Council says that the findings aren't valid, that there isn't evidence to support the conclusion that this is worthy of preservation, there are no grounds to deny a demolition permit. If the Council were inclined to amend the conditions, staff would strongly recommend that recitals are included to make the intent clear.

Mr. Kermoyan added that when you look at all the conditions combined, the intent is to preserve. Would a property owner demolish a structure only to leave the property vacant? Probably not, so the intent is to preserve. The Commission was focusing on preservation.

Councilmember Belser asked if that would imply that it affected not only the structure but also the site.

Mr. Kermoyan agreed that the Commission was not only focusing on the structure but also the grounds as being an important aspect of the property.

#### Presentation by Appellant Mike Blatt

Mr. Blatt stated that he is a Sausalito resident on Bridgeway. He doesn't have a presentation to make; rather, he hired an expert in the field of preservation architecture who can make a presentation. He read the staff report that morning and was confused by it. He supports most of the things the staff has written up, but he is surprised they are recommending something when they were asked to go back and rewrite it. He doesn't think the Council is prepared that night to designate this resource as a historical resource. He has no problem about going back to HLB and the Planning Commission with anything that gets changed to 100 Harrison. His interpretation at the last hearing was that any change to that building would have to go back to the Planning Commission and the HLB. He doesn't want a blanket kind of restriction put on this property deciding it is historical, which would stop any progress of doing anything to that property. The reason something would be historical would be objective. The staff has not come up with objective reasons why this is historical. He is asking that the Council not make the leap into subjective reasoning to make 100 Harrison historic. Anything that happens to that building should go back to the HLB or to the Planning Commission, but to bootstrap on a historical designation because there is a lot split is a stretch.

#### Public Comment

Phillip Blois, Chair of HLB, stated he had written a memo on October 6 that was included in an earlier packet, which he assumes the Council has seen, so he doesn't know if he needs to go through that point by point. The last paragraph states that: "Clearly, substantial portions of the Nestledown house are original to the era that it was occupied by the Cormack family. Also, important elements of the first section of the house are still unaltered. These features securely anchor the structure as it appears to today, true to the era of its original occupants, and it is a highly significant residence in Sausalito. This was determined as such in its memorandum of April 22, 2004."

In general, as these things are argued, you have to look at documentation, records and factual background as it is available, and you also have to simply observe what is built and make some assumptions or arrive at some conclusions based on those observations. For 100 Harrison, it is his feeling that it is fairly clearly documented that what is there today has been there since about 1919 at least, if not earlier, and that's born out on the Sanborne maps and other tax records. In general, they are looking at a structure -- even if it is not original and was added onto since its original construction -- where what is there is still early Sausalito. It's still pre-World War I. In terms of observation, quite a bit of it appears to be of an earlier era than what they are used to in Sausalito. Large parts of it are not only original -- and in this case there is a photograph of what the front of the house looked like originally -- but there are parts of the house that exhibit some of these details. The structure is still linked to the original family that lived there. These beliefs are based on a combination of documentation and using some judgment based on observations.

Vice Mayor Albert asked if Mr. Blois has heard the presentation from the appellant's historical architect.

Mr. Blois said he didn't hear that presentation, but he did read a report from the architect. That report was prepared for the Planning Commission and the HLB did not see it, although he had seen it prior to writing his October 6 memo. In the appellant architect's report, he says the original survey for 100 Harrison was very light in factual documentation, and that's a fair criticism of that. At the same time, there are details that are on the building that are not mentioned in that report that link it to the original construction. So he questions the completion of that report.

Mayor Scremin stated that the presentation from the historical architect hired by the appellant and what the Council has before it are competing professional opinions. He asked whether that had occurred before with the HLB?

Mr. Blois said in his experience that had not happened before. He would question the designation of competing professional opinions. HLB is an appointed board whose members have various degrees of expertise. He reiterated that observation is important in making these assessments.

Councilmember Kelly says it seems like a large part of the argument focuses on how much of the original structure remains and what additions, modifications or renovations do to a historic structure. The question becomes: when does it cross the line --- when it no longer contains the fabric that made it what it was?

Mr. Blois said in his opinion there is much of Nestledown that was there according to the 1919 maps that is present today, probably with some alterations, but the shape, volume and footprint of the house is basically the same. If you are talking about a house built in 1919, you are talking about a historic house. You then look at the parts of the house that have been altered since 1919, and in the case of Nestledown there is a very large amount of it that he considers to be at least true to 1919, and small portions that may date back to

1887. In this case he doesn't think it has crossed the line. There are very few homes in Sausalito that could be considered truly original.

Councilmember Albritton asked Mr. Blois to list those specific elements he has identified as historic.

Mr. Blois said certainly any of the fabric dating back to the original construction date -- the additions to the original home that would have existed in 1919, and that's most of the home.

**Cheryl Bossio**, member of the Planning Commission, warned the Council of the precedent setting nature of this decision. She noted that the Planning Commission voted 5-0 to approve this resolution with these conditions. The staff supports that approval, and HLB has voted unanimously to support it as well. If it needs to go back to the reconstituted HLB, so be it. The applicant has done a lot to this property already. She noted that the Commission's decision was based on the General Plan policies.

**Jonathan Leone** spoke as chairman of the Planning Commission. He agrees with the staff's findings and recommendations. As the City Attorney pointed out, the General Plan provides the findings for making the decision that was made by the Planning Commission. The applicant has not yet formally proposed demolition, but the idea of preservation does go against the idea of demolition, so if you are voting 5-0 for preservation, you probably want to deal with the concept of demolition. That being said, it does not preclude the applicant from coming back with any application, as is the case in the Historic District where demolition is prohibited. There will be an application on the Planning Commission agenda the next evening for a demolition in the Historic District, so a property owner is always free to come back with a plan to demolish even if the City has precluded demolition in an earlier set of findings and even if it is codified in the municipal code. So this doesn't close the door on any development on that site, it just limits it. The property owner is always free to come back with a plan that deals with these conditions that gets him to where he wants to go with the property.

In response to Councilmember Kelly's question, Mr. Leone stated that there has been a case where there was a disagreement between the HLB and the Planning Commission over the historical significance on a Michael Rex project where it was clear that a building had been added onto so many times that it really just disintegrated -- there was no clear voice or style to that building that was worth preserving. This, however, is a different story. The HLB has documented fairly well that there is still a meaningful amount of this building that both predates the earlier additions and certainly predates the World War I additions. If the whole building were built in 1919, they wouldn't be having this discussion. He personally thinks the Council should stand behind the HLB and Planning Commission on this matter. Again, it doesn't close the door on Mr. Blatt's options down the road; it just gives him a different set of criteria to meet. If the Council can't find a majority to uphold these conditions, he still thinks this is not the forum for the determination of the historical significance of the structure. You've already had two bodies before the Council who have deemed it historically significant, but if that were the

path you choose to go, he would not rely on just the opinion of the applicant's historic preservation expert.

Councilmember Albritton said he is less concerned about the historical significance than he is about the due process and how a lot split becomes a determination of historical significance. Some of the conditions here are "no further subdivision and no further additional structures shall be constructed." He asked whether Mr. Leone was suggesting that notwithstanding these conditions, the applicant could come forward with an application for additional structures or subdivision of this property.

Mr. Leone said the applicant could come forward with an application, but that application has to be evaluated based on the General Plan criteria. Mr. Blatt could come back at a later date and say he wants to split the lot or he wants to ...

-- break in recording --

**Michael Rex** spoke: (the beginning of his remarks were not recorded) ... or it was occupied or owned by someone of historical significance, and Mike Hulbert has opined that those findings can't be made. The code doesn't just say that the building should be old or should have charm or character. Where do we rule on those issues? The design review board is the mechanism already in place to make these decisions and to decide how to enforce the General Plan. He's afraid that if they start calling every building that is old and has charm a "historic, significant building", they are going to undermine the credibility of the process, the HLB and the Planning Commission. The Council has to arm the boards and commissions with clear authority to act and take great caution when removing property rights. The City has to do a much better job to investigate how we can have our cake and eat it too; how we can effectively identify what are the truly historic buildings in this town and strengthen that part of the ordinance. Maybe they need more soul searching about what defines character in various neighborhoods. He thought that this application isn't the proper place to do this homework.

Applicant's Architect **Mike Hulbert** said the lack of clarity in this discussion is astounding. There has been complete advocacy for preservation without a basis and he hopes than he proved that with some clarity last time. The question of precedent setting is the point he wants to make. This is a preservation question. You don't want to lose your credibility. That's where the slippery slope is. You want to advocate preservation and do it well. This is about meaning, and the opponents to the project can't elucidate what the meaning of this building is. He stands very strongly behind the National Register criteria that have been established for use. The building speaks for itself. They support the revised resolution that's in front of the Council that evening.

Councilmember Kelly asked if Mr. Hulbert was suggesting that the National Register criteria are the only historic references to be considered.

Mr. Hulbert said he was not. Obviously local jurisdictions have their criteria, but they are by and large based on the National Register criteria. The criteria statements are single

sentences with background documentation behind those single sentences. Of course the City has historical criteria, but it's very subjective.

Councilmember Kelly said historic criteria are subjective by definition, and certainly the National Register is only one way to look at it. Cities can adopt their own categories.

Mr. Hulbert agreed and acknowledged that they do so. It's all relative in meaning and it has to be interpreted at a local level, but they like to have an objective basis to formulate discussion.

**Public Comment closed.**

### **Council Discussion**

Councilmember Albritton said where he is on this is not related to the historical significance of 100 Harrison, which he does find to be charming; he particularly likes the entrances. But he doesn't think that the City should have an innate kind of resolution from this Council where people are trying to define intent; the intent should be reflected in the conditions that are adopted. He does not think they should adopt conditions which are not clear and which are potentially conflicting, and that is his concern with where they are right now. If they are going to find this structure historically significant, they need to make sure there is substantial evidence on the record to that effect and they need to make very clear findings to that effect. The Planning Commission made some good attempts at that and they reference some of the findings made previously by the HLB, but as he understands this process, this is a lot split. However they act, as recommended by the staff, they must make very clear in the recitals what they are or are not doing and that they must make very clear in the conditions what they are or are not doing. He has some suggested changes.

On condition 2, clarifying Vice Mayor Albert's comment, he would add the phrase, "alteration, demolition or construction of any additional structures on the 100 Harrison Avenue parcel" would require design review. He thinks that was the intent.

Councilmember Kelly said he'd like to make some comments before they start fine tuning. First of all, the City picks its boards and commissions very carefully, and they have to pay attention to the boards and commissions and recognize that they speak with as much honesty and truth as they can possibly muster. Everyone, including the Council, however, is a volunteer, and we rely on experts, developers, and staff to provide information. Here there is a situation where there is a 5-0 vote from HLB, 5-0 from the Planning Commission, and a staff recommendation in line with those votes. Whatever the Council does decide to do -- to alter this or not -- the Council has a responsibility to pay a lot of attention to those recommendations.

Having said that, there are things that could be done. They can continue it; it's going to come back again, because the applicant has stated he intends to develop that property and tear that building down. Whether they want to deal with it that evening or not is up for

discussion. Whatever goes into the resolution should make it absolutely certain and clear as has been suggested that the intent is absolutely that it must go through the same, exact process all over again when it comes back. Maybe the next time would be different based on new facts or new information. Secondly, the citizens of Sausalito determine what the historical significance is here. It could be a barn in a field. The Secretary of the Interior's standards and the National Historic standards are frankly at very high levels. This is a town where they didn't build a lot of concrete buildings or brick buildings; it's a residential town, so the character of the residential buildings in Sausalito are going to be different than the buildings in San Francisco or Chicago or New York. Therefore, it's not quite right to say that just the National Register criteria are the only important criteria. What's historic here doesn't have to necessarily fit into what the State or National Registers says.

Councilmember Belser said at the last meeting, she was not in favor at that point of removing condition 3 or changing condition 2. She noted that the City has developed its standards over 100 years. They had their centennial in 1993, so they have been doing something for a long time, and they have assumed that this is the direction that they want to go in, which is stated in the General Plan and other places. The City has also been listening to the HLB and the Planning Commission for some years -- and the members are carefully chosen. Some of the questions arise depending on whether you are looking at it in a micro way and then in a macro way. For the moment, they are looking at the site in more of a macro way. The building -- in fact, the whole site -- has been considered historic and worth preserving -- important to preserve, not just worth preserving. The Council has recommendations from two bodies that the Council relies on. If they are not going to rely on them, then they'd better rethink a whole lot of what's gone on in the City and what we're doing here in appointing them and having them bring the Council opinions. Her thinking is clear at this point that she agrees with the recommendation from the staff, which they have seen now three times.

Mayor Scremin said he does think that the decision the Council makes that night will establish precedent for the City. It is going to be reviewed and interpreted in many different ways, by the public, by the builders, by the developers. He appreciates the comments of Michael Rex and agrees that this does come down to looking at property rights versus the historical significance of a structure and the meaning in town to maintaining historically significant structures. That is the charge given to HLB and the Planning Commission, and the City needs to trust their judgment. However, their judgment has to also be backed up with factual information that is something more than opinion. While he in no way wanted to take away from his admiration of the Planning Commission and HLB, his concern is that when he reviews the material those boards were given to review and the historical information they were given initially and subsequently was fairly minimal in terms of specific information as to what would meet the standards -- and again they are community standards -- of historical significance. He is uneasy right now making a determination based upon what was presented in writing in terms of reports. They do have a project before them that they have the option of getting a second opinion in terms of how historical the features of this particular building are. The Council needs to have something very factual that will be held up as this is reviewed. All

the Councilmembers campaigned in terms of being steadfast for preservation, and that continues to be the intent of not only the General Plan but the City Council. He wants to make sure that when they do it they do it a way that it will be lasting and that will be upheld.

Councilmember Kelly pointed out that there may be more information, who knows, but in the conversations he has had with staff and others it is his understanding that the City has pretty much exhausted what is available at the moment in the reference rooms that are available. The data has been searched. It could potentially be advantageous to have another voice, another architectural preservation voice, that we could agree is objective, to weigh in with another opinion. If that were the case, he would propose a continuance because this will eventually come to this Council if they send it back. The Council should deal with it now rather than duck and run. He would propose an architectural preservation firm such as Page and Turnbull from San Francisco, who is well respected, or someone who is independent and has not done business with the applicant or any of the architects in town.

Councilmember Albritton asked if this is a capital "P" project under CEQA. A project under CEQA is something that requires discretionary review and CEQA requires historical analysis. His process problem with this is that this is a lot split; it is not a project. One of his suggestions is that the resolution include a recital that says, "Council's intent is neither to directly or by implication make any determination regarding the historical significance of 100 Harrison or whether 100 Harrison is a landmark site, which such determination should be made at the time of any proposed project for that property." He likes the building, it may very well be historically significant – but this is a lot split and he's not sure this is the time and the place in terms of the Council's precedent – you have to ask yourself at what point would the lot split have been denied. In other words, where are they looking at the lot split?

Councilmember Kelly said he could address that. This project came before the Planning Commission as a single project, an 18,000 square foot lot with an existing house, and the proposal was to build another house on the same lot, and that bypassed CEQA, or what happens is the house itself being built on the lot is exempt from CEQA.

City Attorney Mary Wagner said the difference would be if it impacted a historical resource -- if the construction of a new house caused it to be a capital "P" project.

Councilmember Kelly said that issue never got addressed in the first application because the Planning Commission denied it 5-0, in one hearing, out of the gate. Then it came to the Council and was approved without design review, basically, nor did it get a CEQA review.

Ms. Wagner said if he is talking about the project at 96 Harrison and the impact of that structure on 100 Harrison, she would have to go back and ask staff to help her on what the environmental findings were for that project, but her assumption is that there was no impact found.

Councilmember Kelly said it never got heard. It came up on appeal and the appeal was heard and there was no design review. So what he doesn't want to have happen is that they keep having this situation where very aggressive, determined and smart people come up with ways to circumvent what is the Council's responsibility to the community to look at this project and make sure that everything is being done to make sure it is the right way to do it. When he was a Planning Commissioner, he asked the applicant the question, "Is it your intention to split this lot," and he believes the applicant said he didn't know. And he wants to make sure that the Council doesn't do that again. Councilmember Albritton's argument is a good one, as to whether there was a CEQA done at the time, that's a good question, but the responsibility is going to come back to the Council and they shouldn't put this back on the Planning Commission again; they should continue it if they want to think about ways to get the information they need.

Ms. Wagner said with respect to the application of CEQA to the project at 100 Harrison, it was reviewed and it was determined that it was exempt under the exemption provision of CEQA for lot splits. That does not mean the City doesn't have the ability to impose conditions on the project to make it be consistent with the General Plan. They were looked at as two issues with respect to this project.

Vice Mayor Albert noted that one of the speakers, including Jonathan Leone, said he didn't think this was the place for a determination of historical significance and he agrees with that. They ultimately might have to make that determination if an appeal comes to the Council.

Councilmember Kelly said he thinks Mr. Leone said, "I don't agree, I would like you to pass the resolution exactly as the Planning Commission proposed."

Vice Mayor Albert continued his comments. He agrees with the comments made by Councilmembers Kelly and Belser that the Council needs to give deference to the people they appoint to the Planning Commission and the HLB, particularly when you have two 5-0 votes and then you have the staff recommendation agreeing with those votes. However, he has the same due process concerns that Councilmember Albritton raised. The Council got a very strong and interesting presentation from a historic architect giving his argument why he didn't think this building was historically significant but neither HLB or the Planning Commission ever heard that presentation, partly because of the way this historical significance determination came in as part of an application for a lot split, rather than as part of a capital "P" project. If it had been a specific project to do something with 100 Harrison, then HLB and the Planning Commission would have sat in a joint meeting and they would have heard that presentation from the historical architect. He thinks that Councilmember Kelly is right that this is probably coming back to the Council but he'd like the Planning Commission and the HLB to get the benefit of hearing everything the Council has heard and maybe more. There may be a basis to hire yet another expert, an independent expert to review this and render an opinion. But he is uncomfortable with the process by which this got to the Council. He agrees that there are two very significant counterbalancing considerations. Yes, the General Plan tells us to

preserve our historic resources, and this building, especially with its street frontage, has remarkable charm, but it is a very significant burden to impose on any property owner to say this building cannot change, it must stay the way it is forever. He is uncomfortable with how this got before the Council. He'd like to see HLB and the Planning Commission at least hear everything the Council has heard, and maybe more. He agrees with the language Councilmember Albritton suggested be inserted into the potential resolution. He doesn't like the way this was phrased by staff, which was the Council either has to uphold a determination that this is historically significant and can never be changed, or whatever the Council does implies there is no historical significance. There's got to be some middle ground there.

Councilmember Kelly said he would support a motion to send this back to the Planning Commission and have it reviewed again on the basis of new information and/or hire a third party historical preservation expert. He is still of the mind that the City and its citizens can determine what is historical in this town.

Mayor Scremin said he would agree with that motion. That's what they need, is a baseline, to establish how they go forward with these types of decisions.

Councilmember Belser said her concern is once you get into hiring experts, you have dueling experts. She doesn't oppose this but she agrees with what Councilmember Kelly said, the town has made decisions historically over a long period of time on what they want preserved. If they now decide that these decisions are so important that we need an expert, then the City is actually dismantling some processes, and perhaps some decisions, that have been made previously.

Councilmember Kelly said the danger is it has been represented that they have one expert and they have a bunch of lay people. He pointed out that on the HLB are two architects and one person who has a degree from Cornell in preservation architecture. So there is some expertise there.

Mayor Scremin said that's on the existing HLB.

Councilmember Kelly said in his experience, when he is involved with a project with historic preservation, he must present a strong case with independent opinions to the planning departments in the City he is working in. In this case, if they are going to make a sensible determination, they need to hear from an independent third party.

Councilmember Belser asked if the motion was to send it back to both bodies.

Councilmember Kelly said yes, because the newly constituted HLB may not have heard all the data.

Councilmember Albritton remarked again that the problem is this is a lot split; it's not a project. The Council doesn't have any information on what is going to be done there. This came to the Council originally as a denial of the project at 96 Harrison. The Council

sent it back to the Planning Commission for design review of a carport, which was to solve the problem of the garage on 100 Harrison being on 96 Harrison.

Councilmember Kelly corrected Councilmember Albritton, saying when the Council overturned the Planning Commission, they put a condition in the approval saying that it had to come back for review relative to the garage. So it wasn't sent back to the Planning Commission at that time.

Councilmember Albritton said at that time Councilmember Keller suggested that it might be a good idea for the applicant to get a lot split.

Councilmember Kelly said the Planning Commission suggested that also.

Councilmember Albritton said then the applicant went back to the Planning Commission for design review of the carport and to apply for a lot split.

Councilmember Kelly said he thinks it is very important they get this right.

Mr. Noble explained the chronology. If memory serves correctly, the condition read that prior to the issuance of a building permit on the 96 Harrison project, the applicant shall return to the Planning Commission for the approval of a design review permit for a parking deck located partially in the right of way in front of the 100 Harrison project. The Planning Commission determined that the parking deck would be detrimental to the historical significance of the Nestledown residence and therefore requested that the applicant remove that from the application, which the applicant did. Therefore, there was no design review permit necessary for the parking deck and staff determined that the conditions of approval for 96 Harrison had been met and the building permit was issued for that project.

Councilmember Albritton said at the same time the applicant applied for a lot split, presumably because the Planning Commission or Councilmember Keller had suggested it. That lot split has now come up to the Council.

Councilmember Kelly clarified that. The Planning Commission asked specifically for a lot split. There was a big discussion about that because they were very concerned about what kind of development would go on the remaining portions of the property. There is 18,000 square feet of lot there.

Councilmember Albritton asked how is that benefited by a lot split.

Councilmember Kelly said first of all it's really hard to sell a house on a lot that's not split with another house on it. You probably can't get title insurance on it.

Councilmember Albritton said that's not why the Planning Commission recommended this

Councilmember Kelly said he brought that issue up. The Commission recommended it because they wanted to see what the development was going to be for the rest of the lot. There was a lot of discussion about the historical nature of the lot, there had been gardens there at one point in time, which were quite lovely apparently, and the Commission recognized that there was a historic structure here which at that time had not been surveyed or looked at. That was the 100 Harrison lot. The Commission was told at the time by the City Attorney that they didn't have the right to impose a lot split as a condition of approval. The project was denied and it came to the Council. Then Councilmember Keller asking for the lot split after the fact is fine, but it took a long time for that to come back, so it wasn't part of the original proposal.

Councilmember Albritton asked what, if the motion is to refer this back to the Commission and HLB, it is being referred back for, exactly.

Councilmember Kelly said he's trying to find some way in here that the Council can work out what are the inconsistencies in how we feel about the project. If more information is necessary, an objective expert can give more information to counter what has been said by the applicant's expert. He doesn't know that what the applicant's expert has said is correct. Were he being told this information as an individual, he would check it out, because it's coming from the applicant. And in the case of HLB, only one or two or maybe no members of the current HLB heard the original case, although Mr. Blois has gotten heavily involved in it recently. So that's the reason, Frankly, he believes that at the end of the day they are going to know exactly what they know now, but he is willing to put it back through the process and see if some of the minds and hearts of the people that the Council has appointed to these boards view it differently after they've heard the total testimony.

Councilmember Albritton asked if what he understands the Council expects to get back, if they get back anything, is that they expect the Planning Commission to look at the lot split and approve or disapprove the lot split with or without new conditions which may or may not have significant new information regarding historical significance of 100 Harrison.

Councilmember Kelly said if he can say it a little more simply, they want to establish the historical antecedents of 100 Harrison in such a way that they either confirm or deny the assertions of the appellant.

Councilmember Albritton said he thinks that all should be decided on a project basis and the Council should give very clear direction that they are making absolutely no determination about the historical significance that evening. They are approving the conditions as the Council attempted to modify them last time, and when the applicant comes through with a project for that site, all of this analysis would take place at that time, all of the expert testimony would take place at that time, and then if that gets appealed, the Council looks at it then. But this circular thing - he's afraid it's going to come back with the same questions: Is he going to tear the thing down or not? Is he proposing to tear the thing down or not? What's going to replace it and what's it going to

look like? The Council doesn't have any of that information in front of it now. That's why he has a problem putting it back through this process, because what he's heard that evening, notwithstanding the conditions, whatever they may be, even if they put these conditions in, the applicant can still come back with a proposal and they would be going through this for a third or fourth time.

Councilmember Belser said that's true, that's what she meant by macro to micro. The micro is the project. They don't know what that is now.

Councilmember Albritton said exactly. So his inclination would be to not send it back to the Planning Commission under the current statute.

Mr. Kermoyan said there is a motion and a second on which the Council is engaged in discussion. It appears that there are a couple of Councilmembers that believe that maybe the record isn't as strong as it should be and staff understands that. Councilmember Kelly is suggesting the item go back to HLB and Planning Commission. Mr. Kermoyan would agree with Councilmember Albritton that we need to know why we are going back. He and Mr. Noble and the City Attorney have discussed the possibility of hiring an independent third party, not an applicant/developer consultant, and then have the Planning Commission reconsider and have the HLB reconsider and then that should strengthen the City's position in terms of dotting every I and crossing every t. The discomfort that Councilmember Albritton has about the subdivision is completely understood, but Mr. Kermoyan's experience in working on many subdivisions, where a developer would subdivide and then come in later with a project, is that it is not uncommon to set all the conditions related to maximum height, style of architecture, etc., all to set the stage for future development. The Commission did the same thing here. They were setting the stage to guide future development of the Nestledown site. If you were to continue this for the purpose of hiring an independent third party, who would report back to the Planning Commission and HLB, those boards would forward their recommendations to the Council, so it does end back here.

Vice Mayor Albert asked if Mr. Kermoyan is recommending that they move on and approve the subdivision now and wait until a project comes forward to determine historical significance or would he recommend they send this back to Planning and HLB now to determine historical significance in connection with the subdivision application?

Mr. Kermoyan said based where the Council is in its deliberations, his recommendation would be to send it back to the Planning Commission and HLB with the purpose of hiring an independent third party to review this.

Councilmember Kelly said let's say that we send it back and the independent third party reviews the document, looks at the data, looks at the building and comes to the conclusion that the applicant's architect is absolutely right. The issue is solved. So this is the moment of truth that they are facing, whether they do it now or whether they duck. Why don't we just get it over with? It's an issue that's going to stay before the Council. This is a great way to do it.

Councilmember Belser noted it would be silent on the subdivision for the moment.

Councilmember Albritton pointed out there is a difference between the Subdivision Map Act and a lot split.

Councilmember Kelly said Mr. Kermoyan is just using that as an example. The Council has the right to send it back to the Planning Commission if it wants, and he thinks it should.

Councilmember Albritton said just procedurally—and once again he walked through the house, he enjoyed looking at it – he's not speaking to its historical significance. He would rather see it reviewed in the context of a project. And he is concerned that just a blind decision of whether this particular structure is historically significant or not may not lead to the conclusion that the City wants with respect to how the property would or would not be developed.

Councilmember Kelly said what they are doing is what they could do legally anyway. They could go through the town, inventory all of the structures in town, categorize them and then pass an ordinance calling them category 1,2, 3 or 4 buildings and put restrictions on those to a certain level and then invite people to come in and redevelop them, and they would. And then they would decide at that time what's happening. What the Council is doing here is just taking that approach to one property instead of the whole town, and maybe what they ought to do is get a citywide plan and categorize these buildings. It would start with HLB and the Council would review it. But the Council has to deal with what is in front of it now. The applicant wants a determination and the Council has to do it.

Ms. Wagner followed up on Councilmember Albritton's point for clarification. She heard the applicant indicate that he is willing to have condition 2 as it has been altered in the suggested resolution apply to any modification of the structure, whether it's demolition, construction, or addition. So those modifications would go back to the Planning Commission and HLB for review and if you so chose, an independent third party consultant could address that in the context of this project. So it's not in the vacuum of where we are today, but in the context of the specific, suggested alterations to the structure. She would also point out that with respect to the condition on the subdivision, that no further subdivision would be allowed, she would concur with some of the comments being made by Councilmember Albritton that at that point, you are looking at potentially a capital "P" project for CEQA purposes, and you would have to go through a process to determine – because it would mean if you are splitting the lot, you are altering the structure and you would go through the CEQA process for historical determination on that project as well. Whether that means you have a mitigated negative declaration or some kind of heightened review would be determined at that point. She also pointed out that under the cost recovery ordinance, the cost of third party consultants necessary for a project are paid for by the applicant.

Councilmember Kelly said he still thinks that the Council should go with the boards, go with the commissions and let them do their work and the Council should pass it back and have this process completed and then the Council make its decisions.

Mayor Scremin said they want to make sure that everyone has all the information before them.

Councilmember Albritton said his vote against the motion would not mean that he disregards the opinion of the Commission and HLB; he just doesn't think this is the right venue for making this determination. His substitute motion would be to clarify the conditions as they did last time to make it clear they are not making a determination as to the historical significance.

Councilmember Kelly asked if they can vote on his motion before Councilmember Albritton makes his substitute motion.

Councilmember Albritton said he is not making a motion.

Vice Mayor Albert asked for the motion to be repeated.

Councilmember Kelly said the motion is to continue this item and pass it back to the Planning Commission and HLB to defer the review in order to engage a third-party historic architect to recommend to the planning department and further for the planning commission and HLB to review the information given to the City by the applicant's architect.

Councilmember Belser asked he is also suggesting that they would hear formally from the applicant's historic architect.

Councilmember Kelly said yes.

Mayor Scremin said yes, everything goes back to them.

Mayor Scremin noted there is a motion and a second and called for a vote.

**The motion was approved by a 4-1 vote with Councilmember Albritton dissenting.**

**C. Appeal to the City Council of the Planning Commission's adoption of Resolution No. 2005-038 approving Variance and Design Review Application No. VA/DR 04-061 at 413 Pine Street**

**Staff Report by Contract Planner Heather Hines**

Ms. Hines reported that this is an appeal of the Planning Commission resolution of approval adopted on September 7, 2005. The Planning Commission approval would

itself, so that would be the end of that application. In fact the Council will be the body that ultimately decides with recommendation.

## **6. PUBLIC HEARINGS**

### **A. Appeal of Planning Commission decision to approve a tentative subdivision at 100 Harrison Street - Raymond Blatt, appellant**

Mayor Scremin noted that he received a call from Buddy de Bruyn, and then after that met with Mike Blatt and Ray Blatt to walk the property.

Councilmember Albritton said he also met with Mr. Blatt and toured the property.

Councilmember Belser said she toured the property and talked with Bill Keller.

Councilmember Kelly said he toured the property with Mr. Blatt.

Vice Mayor Albert said he intended to tour the property by himself but he ran into Mike Kelly and Mike Blatt.

#### **Staff Report by Associate Planner Ben Noble**

Mr. Noble reported that this an appeal of the Planning Commission's approval of an application for a lot split and encroachment permit at 100 Harrison. It is an appeal of existing conditions that have to do with preservation of the existing structure at 100 Harrison Avenue, known as the "Nestledown" residence, as well as limiting further development and subdivision of that parcel. It is also an appeal of certain engineering related requirements during the building plan check process.

He stated that 96 Harrison and 100 Harrison are separate projects but are related. 96 Harrison, which involves the construction of a new single family home on the lot shared with the Nestledown residence, was originally denied by the Planning Commission on March 10, 2004. 100 Harrison applies to the project that is being appealed at this meeting. The denied project at 96 Harrison was appealed and approved by the City Council in June 2004 conditioned on the applicant obtaining new design review approval for a new parking deck and frontage improvements. The parking deck had not been previously reviewed by the Planning Commission, so the Council sent that portion back to the Planning Commission for review. The applicant submitted that portion as part of the application for the 100 Harrison project, which was an application for a lot split, as well as the frontage improvements that included the parking deck. He emphasized that returning with the parking deck encroachment application was a condition of the approval by the Council of the 96 Harrison project, but the lot split was not a requirement. It was discussed, and it was the opinion of certain Councilmembers that the lot split would be preferable but it was not a condition of approval. When the Planning Commission considered the 100 Harrison application, the Commission approved the lot split but did not approve the parking deck because it would negatively impact the historical significance of the Nestledown residence. The Commission attached several conditions including the to preserve the Nestledown residence, to limit further subdivision of the new lot and to limit future development on the site. So the appellant is appealing those conditions and that is what is before the Council that evening.

Mr. Noble stated that the conditions of approval in brief included:

- No additional structure shall be permitted on the 100 Harrison parcel.
- No further subdivision of the 100 Harrison parcel is permitted.
- Design review shall be required for any addition, demolition or modification of the Nestledown residence.
- Design review approval shall be required from the Historic Landmarks Board and the Planning Commission.
- Design review findings along with special attention to historical elements of the property shall be required for exterior modification to the Nestledown residence.
- Modifications necessary for safety reasons are permitted.
- The Nestledown residence must be kept in good repair.

Mr. Noble noted that the 100 Harrison project received three separate properly noticed public hearings during its review by the Planning Commission. He also noted that additions, demolitions, and modifications to the Nestledown residence are permitted. They are not being prohibited in anyway, but any changes are subject to Planning Commission and Historic Landmarks Board (HLB) approval and review of the design review permit.

Vice Mayor Albert asked if he heard correctly that demolition was in that list.

Mr. Noble explained that the zoning ordinance requires a design review permit for the demolition of any structure over 50 years old. These conditions do not specifically prohibit the demolition of the building. They could submit an application for demolition.

Councilmember Albritton asked to whom that demolition permit application would go absent these conditions.

Mr. Noble said it would require a design review permit, and it would be reviewed by HLB because the structure is more than 50 years old and is included as a noteworthy structure, with or without this condition. The appellant has complained that the applicant and HLB were not given the opportunity to have an informed and expert debate on the issue. Mr. Noble noted that HLB reviewed the residence on several occasions.

The appellant has also complained that the City planning staff and Planning Commission with the aid of the City Attorney sought to opportunistically take control of the property. Mr. Noble noted that it is staff's function and obligation to advise the Planning Commission on the constraints of local and state law.

The Planning Commission expressed particular concern not only with the Nestledown residence but also with how the structure relates to the site, which HLB had previously addressed as a factor leading to its historical significance and that relates to the specific conditions limiting further development and subdivision of the parcel. The idea was that to protect and preserve what is significant about the Nestledown residence, it is not only necessary to control modifications to the structure, but to limit additional development on the site because doing so would compromise how the structure relates to its site and therefore compromise its historical integrity.

The appellant is also appealing specific engineering related conditions and, as outlined in the staff report, staff agrees that conditions 16, 19(b), 19(d) and 19(e) and 19(f) should be removed. The reason they were in the staff report, somewhat erroneously, was because the project scope had changed in a final rendition of the project so that the parking deck had been removed. Those conditions would have been appropriate if the parking deck had been included, but because the parking deck is going to be removed and because there's going to be no significant grading, for example, a grading plan isn't necessary. Staff recommended that the City Council grant the appellant's request to remove those named conditions.

City Attorney Mary Wagner added that the applicant had requested that condition 22 be removed. She had provided the Council some alternative language to consider in modifying that condition. The City was well within its rights to require an application for a subdivision to be conditioned upon an indemnification of the City; the language she had provided more accurately reflects the language of the subdivision map act that authorizes that.

### **Questions of Staff**

Vice Mayor Albert stated that the Planning Commission was making a determination that this building was historically significant and should not be changed. The staff report almost sounded as if the Planning Commission was taking perhaps an interim step, saying, "We think this may be historically significant; we don't want it to be incrementally changed with the types of things people can do without a permit or with an over-the-counter permit, so we're going to put some restrictions on here so anything that happens with this building in the future will require Planning Commission scrutiny, but we aren't deciding today that it can't be changed, can't be demolished." He asked which of those two characterizations better encapsulates what the Commission was trying to do.

Mr. Noble said the former was accurate. A good analogy is the historic overlay district, the level of scrutiny that properties in the overlay district receive. If you make any exterior modifications to a structure within the overlay district, you need HLB and potentially Planning Commission approval. The conditions of approval for this project took a similar approach.

Vice Mayor Albert wanted clarification as to whether they have made a determination that this is historically significant and shouldn't be changed. He asked whether Mr. Noble meant to say the former or the latter.

Mr. Noble said perhaps the two choices weren't clear. The Planning Commission recognized that it would be ill-advised to prohibit any future modifications to the Nestledown residence; restoration work could occur and they would like to leave that open as a possibility.

Vice Mayor Albert said the mention of demolition in the staff report perked up his ears because he thought the idea was that this thing could not be scrapped and something new built and the staff report seemed to suggest that that possibility might be open.

Mr. Noble said that possibility is open, and it's also open for structures that have been designated as historic landmarks. It is also a possibility for structures that are in the downtown overlay district. It is also a possibility that's open for structures that are on the local register, if there were any structures on that register. There's no level of historic designation within the City that would outright prohibit its demolition.

Councilmember Belser asked if that means that nothing is what you would say 100 percent protected, but it is protected by process. In other words, it would go through HLB and it would go through Planning before anything could happen, but it isn't outright defined as ironclad.

Mr. Noble said that was his understanding. He noted the Planning Commission Chair might have further comments.

Councilmember Kelly said he was not aware of a City ordinance that covers historic properties and the demolition thereof and categories of buildings that you can change or not change, as for example San Francisco has. Structures on the state historic register cannot be demolished without state approval. He asked for confirmation that this residence is just marked as a potentially significant building.

Mr. Noble said it's on the noteworthy structures list, so it is identified as a structure that would be eligible for inclusion as a landmark designation or for the local register.

Councilmember Kelly asked if that means it would almost automatically be put through the CEQA process.

Mr. Noble said definitely, there's no question about that. It's a significant historical resource.

Councilmember Kelly said let's assume that it was already subdivided, as we speak, and there were two separate lots sitting there. The applicant comes in with a plan to demolish the building and build something new. He asked whether he was correct in his understanding that the first thing that is going to happen is that it would raise the CEQA flag, and because it's a significant building, it would be referred to HLB.

Mr. Noble said it would be referred to HLB not only because of CEQA, but because a demolition permit is required for a structure more than 50 years old.

Councilmember Kelly said it will then get the CEQA test, along with HLB and Planning Commission scrutiny. Regardless of whether there was a condition on the lot or a deed restriction or anything else, it would still get that same review.

Councilmember Albritton said HLB actually gets to say thumbs up or thumbs down. Without this condition, it is a recommendation from HLB.

Mr. Noble said there are two differences. Difference number 1 is that the HLB would act on it, with thumbs up or thumbs down. Difference number 2 is that the way the ordinance currently reads, or the way it has been interpreted, is that only projects involving a discretionary permit are referred to the HLB. Part of that is because only projects receiving a discretionary permit are subject to CEQA. If the project did not require a discretionary permit, without these conditions of approval, it could bypass the HLB entirely, and it could bypass the CEQA process entirely as well. Demolition would be a different story, because that requires a design review permit, which is a discretionary permit.

Councilmember Kelly said any change to the structure requiring a permit is going to cause it to go to review.

Councilmember Belser asked if it is a different level of approval from HLB.

Councilmember Kelly said his understanding about HLB's ability to approve versus recommend or refer with recommendations, is based on the Historic District. He asked if this property is in a Historic District.

Mr. Noble said it is not, but it is contiguous with the Historic District.

Councilmember Albritton said these conditions have the effect of putting it in the Historic District. It doesn't specifically do that, but the approval process is equivalent to that of the Historic District.

Councilmember Kelly asked where it is codified that HLB has the approval in the Historic District but not outside it.

Ms. Wagner said the Municipal Code specifically says that, "The HLB shall hear permit applications for construction, alteration, demolition and remedial work on landmarks sites in the historic district," among other things.

Councilmember Kelly asked if the City can extend that to include the adjacent district.

Ms Wagner said what the City is doing in this process is they have been presented with a subdivision application to split these lots, and the City imposed conditions that are consistent with the General Plan. You have to be able to make a determination that the project is consistent with the General Plan and that the Planning Commission determined that in order to enforce the policies of the General Plan. They needed to provide specific protections for this piece of property, and that's how these conditions were derived.

Councilmember Kelly asked whether specifically that would change the status of HLB from a recommending body to an approving body.

Ms. Wagner asked Mr. Noble to reiterate the process.

Mr. Noble said without these conditions, if there were a demolition, the HLB would simply make a recommendation. With these conditions, HLB would act on the project. So it would change their status.

Councilmember Kelly said he was all for giving the HLB lots of power, but he wanted to make clear what their authority is here because the way he saw it, they would have to have codified authority to be able to have an approval process outside what's already in the code.

Ms. Wagner said the Council would be giving them the approval right here.

Councilmember Belser asked if it was correct that these conditions do that.

Councilmember Albritton said Councilmember Kelly's question is whether the City can do that.

Councilmember Kelly confirmed that was his question. He asked whether the City can do that without amending the code, to give them that power. Can they just say arbitrarily that they can do that on this property, and what about the next property that's adjacent to the Historic District?

Councilmember Belser noted this is on the list of noteworthy structures.

Councilmember Albritton asked if the City could impose a condition that any demolition of this structure would require the unanimous vote of the City Council. That's sort of what Councilmember Kelly was asking. He asked to what extent they have the authority to modify the process.

Councilmember Kelly said that was exactly what he was asking.

Ms. Wagner suggested that the Council have HLB be the recommending body to the Planning Commission. The Planning Commission does have the ability to make design review determinations under the existing code.

Councilmember Albritton asked whether, if the City Council refers a matter back to the Planning Commission for design review on a parking structure, absent the lot split, the Commission would have de novo review or would they just have review of that design review as requested by Council. He asked if it is just the lot split that created the de novo review.

Ms. Wagner asked whether he meant the Planning Commission's review.

Councilmember Albritton said the Council sent it back for design review on a two-car parking pad, and the City Engineer's recommendations for a public walkway. That's what the Council

sent it back for. And it was de novo reviewed; the parking pad disappeared, the conditions appeared. He asked if that was because of the way it was applied for. If he had not applied for the lot split, he wondered if it would have just been limited to the parking pad review.

Ms. Wagner said the applicant coupled it with this lot split.

Councilmember Albritton asked if it is correct that it was R-3 zoning with both houses on one lot. He asked whether, with a lot split approved, it is R-3 zoning on both lots. He wanted to understand the zoning on the lots now. If each lot is now R-3, each lot could have three units on it. He asked whether that depended on square footage.

Councilmember Kelly said one lot is about 11,000 square feet, and the other one is approximately 7,000 or 8,000 feet.

Mr. Noble said it is required to have 1,500 square feet of floor area per dwelling unit.

Councilmember Kelly pointed out that the developer was indicating 8 dwelling units.

#### **Presentation by Applicant/Appellant Mike Blatt**

Mr. Blatt stated that Mr. Noble did a good job updating the Council on the history. He referred to page 141 of the staff report, which indicates that the idea of asking for a lot split was that of the Council, not the applicant. The applicant did what the Planning Commission wanted him to do. They also asked for some minor revisions to the pedestrian walkway. The HLB agreed with the applicant. They had no problem with the parking structure, with the demolition of the garage, with the walkway or the lot split. However, the Planning Commission didn't want him to put the two-car parking pad in, but they did want him to protect what they called Nestledown, which he pointed out is not even a historic name, but rather one put on in the 1960s. The staff report says the Planning Commission didn't want the parking structure because of historic concerns. The truth of the matter was there was a lot of discussion about parking on public property and the possibility of getting rent for letting the applicant park on City property. That's what started this whole thing. For the planning staff and HLB to say that this house is anything more than an older, 50-year home, he didn't think they have spent a lot of time in the house. This house is not like 141 Bulkley, which is a unique Queen Anne house that he spent a lot of money to preserve. He hired a historical preservation expert who normally works for people who are trying to get tax credits for historic properties. He asked for a non-biased report. The expert is present and can testify.

The parking pad is not a deal breaker. If the Planning Commission doesn't want two cars off the street, that was fine. They turned him down on what the City Council wanted him to do. He was not appealing the parking pad. He was appealing the condition that was put on the lot split of preserving 100 Harrison as a significant historical building, and now he hears today that staff is saying he could go in for a demolition permit. He asked whether they could imagine him going back to the Planning Commission and asking for a demo permit. As evidenced by the Council's question, the resolution is obviously confusing to everyone. He was asking the Council to look at the resolution, authorize the lot split, and to not put any conditions on the lot split to preserve the

house as a historical significant structure. Next, his expert will give a report on why this is not a historically significant property.

**Mark Hulbert** of Mark Hulbert Preservation Architecture spoke on behalf of the applicant. Mr. Hulbert has 20 years of preservation experience, and he also worked for three years as an architect with the Michael Rex firm in Sausalito. He presented a series of slides demonstrating his review of the property and his opinion relative to its historic significance. Mr. Hulbert noted that it is perplexing as a preservation professional to be dialoging about an unprotected resource that isn't being changed.

Mr. Hulbert noted that:

- The Historic Resources Inventory form for 100 Harrison is void of any meaningful information.
- The note that the structure is significant because it is included in Sausalito's list of noteworthy structures, which is really just a binder of photos and comments. Some of the structures listed there are important, but they have significant documentation and specific comments as to date and form. 100 Harrison is identified in the binder as the McCormack House, which is incorrect; it was the Cormack House. The only other comment is that it was built for attorney Cormack and is basically the original structure. That's all the information listed.

He noted the record as submitted by HLB in the staff report is inaccurate (showing slides relative to comparisons to the Sanborn house.) Two categories are completely not pertinent in this case. References to historical events and archaeological significance do not apply. Part of the reasoning for the historical significance is the category regarding historic people. The description of McCormack does not meet the standard of demonstrable importance in a historical context. The citations in the staff report, which can be found by "goggling" McCormack, are of no import.

The structure also does not qualify under the category of historical significance of distinctive style, method, and type of architecture. Mr. Hulbert showed slides demonstrating the lack of architectural distinction of the subject residence as compared to an example of a Queen Anne residence as well as earlier photos of 100 Harrison, formerly 152 Harrison, demonstrating the extensive modifications that have occurred over the years. The elements are of the 1960s with the exception of some diminished characteristics. This house is characteristically mid-20<sup>th</sup> century; it does not belong on the noteworthy structures list. This is a global issue of preservation. The whole property has to be meaningful and the whole property has to resonate with the meaning that is being assigned.

Councilmember Albritton said he is familiar, at least in San Francisco, with historic designation of parts of buildings that are in fact historic. He asked whether there are parts of this building that Mr. Hulbert would consider qualifying as historically significant.

Mr. Hulbert said there are not, because it's not a subject of parts, it's a subject of the whole. Nobody here is saying they are supposed to preserve fragments. Either it is or it is not.

Councilmember Albritton said so his answer was that there are no historic segments of this house.

Mr. Hulbert said there are older portions of this house but there's a whole other category of evaluation once you go through the criteria that have to do with integrity, and he didn't go there because there aren't any criteria to meet. This house doesn't have integrity, so it is not a resource.

### **Further Comments by Mike Blatt**

Mr. Blatt strongly urged the Council to look at page 117 when Councilmember Kelly was on the Planning Commission, at which time he strongly recommended that they leave big parcels in the City that are zoned R-3 so the City would have the capability of maybe doing something in development. This is one of the last R-3 parcels, as they are told by the Planning Commission, and so to keep this one house, which is around 3,000 square feet, on an 11,000 square foot lot with no opportunity to subdivide the lot, and now he hears maybe you can demolish it – but he did hear one of the parts of the resolution was not to subdivide the property so you end up with an 11,000 square foot lot with this home on it and it's not historical and the expert has proved that it is not historical by citing a lot of objective criteria, not the subjective, non-expert opinions that has been used previously. This is not a house that should be saved for Sausalito.

Councilmember Albritton said this is a condition of the lot split and it doesn't affect 96 Harrison.

Mr. Blatt said he thought he was obligated to apply for the lot split because of the Council's direction. The Council is in a position of de novo review. He asked whether Mr. Blatt was in a position where he would rather the Council just deny the lot split altogether and this whole thing would go away.

Mr. Blatt said he didn't appeal the lot split. He didn't appeal the parking structure either. He's just appealing the designation that the Planning Commission is using based on erroneous information.

Councilmember Albritton asked whether he wants the lot split, to which Mr. Blatt confirmed that he does.

### **Public Comment**

**David Schiester**, resident on Santa Rosa Avenue, stated he is a near neighbor to the site. He has sat all night thinking mostly about encroached parking, which seems not to be the issue. But he'll make his point anyway, which is that "what is good for the goose is good for the gander." He has two pieces of property in the immediate neighborhood, both desperately in need of encroached parking. If one gets it, he should, too; if nobody gets it, he'll have to live with it. As far as the noteworthy list, he's often wondered about that because he owns Casa Verde. The idea of somebody walking around town and saying "this is noteworthy" has always bothered him. There is a total lack of due process there.

**Vicki Nichols** identified herself as a member of the Sausalito Historical Society Board and also a member of the HLB. She did the site visit with Philip Blois, who is the chairman of HLB. Also, as a member of the Historical Society, she has also helped the applicant with the Historical Society files. With regard to Nestledown, we're talking about architecture, not about the name. And they are talking about the exterior of the house. The HLB memo talks about the Sanborn maps and the footprint, and that is important because they did a thorough walk around of the site. Ms. Nichols said she doesn't have photos available, but from memory she pointed out elements of the house that are still there that are historical. This trim is unique to the trim all around the house (pointing to slides). The original bones of the house have not been touched, so she would strongly disagree that it has been totally altered. It has been added on to. In terms of the documentation, Jack Tracy was the founder of the Historical Society, and he did do the forms. Obviously, it's 30 years down the road. It is a typo in the binder to call it McCormack instead of Cormack. Three members of HLB attended a conference recently on how to get things onto the noteworthy and historic lists. Regardless of the opinion of the physical form of the file, it is what the City has, and it does identify this as an important structure. The noteworthy process can be a self-nominating process. There's never been anything formally done where someone went around and identified historical structures. The HLB is considering that as one of their charges because of issues like this.

Personally, regarding the lot split, one of the things she learned in the workshop was historical context when you are not talking about the exact structure but the area. There are extensive gardens around this area. If you do this lot split, you are separating the garden area away from the dwelling. When you walk around now, you see that the gardens have fallen into disrepair, but as late as 1980 the Woman's Club considered those gardens historical enough to include that site as one of their areas of preservation. By doing the lot split, you would remove the context of the area.

**Alice Merrill** stated that as a child she walked down Excelsior Lane many, many times, and she loved that house because it was so secretive behind that wonderful gate and that little mailbox. That's a lot of years, her personal memory. It's been there; it's part of Sausalito. If it's zoned R-3, it's going to be a lot of really dense apartment buildings.

**Jonathan Leone** spoke on behalf of the Planning Commission. He started with the applicant's appeal letter, which was what the Council should be reviewing. It basically cited three points: the findings are arbitrary and capricious; the nexus between the lot split and these conditions does not exist; and it is inconsistent with the intent of the City Council's ruling on 96 Harrison.

He first addressed the last contention. It is pretty clear that the City Council sent it back for design review, which allows the Planning Commission and HLB discretionary review of architectural design features of selected projects, and the findings that have to be made include that the project is consistent with the General Plan. The Council saw all the citations in the staff report that explain why this is not consistent with the General Plan.

Councilmember Albritton noted that it is clear from the motion that the design review is for just the parking structure.

Mr. Leone explained that the lot split and the encroachment permit were part of the whole application. He'll leave the question of nexus to the City Attorney's opinion in the staff report. It is a very disingenuous for the applicant to make the argument that he wants to build multi-family housing on this lot, considering he appealed 96 Harrison partially because there was discussion about building multi-family housing on that lot, and the applicant didn't want to be held to that. That's next door. As to whether this is arbitrary and capricious, the Planning Commission has followed the HLB ordinance and criteria as its principles in reviewing historic properties. The ordinance provides for the protection and enhancement and use of structures, sites, and areas and that provides for the consideration of an entire site, not just a structure. The design criteria and guidelines for the Historic District --- he interjected that you have to cobble things together in Sausalito, everything is not spelled out clearly --- include this design criteria letter dated 1/21/03, 1.4(c) says "scale and the siting of the scale is also determined by building mass, height and proportion as it relates to circulation, open space and neighboring structures." Again, this gives the Planning Commission purview to designate a site as part of the whole thing, not just the structure.

Mr. Leone stated that it was important to step back and look at the General Plan goals. Part of the overall goals for the entire city, of which there are 10, is Number 6 which says, "preserve the historical character of Sausalito and its architectural and cultural diversity." That's pretty clear. General Plan policy 4.2, goal no. 7, is "to respect and maintain the exterior integrity of historic structures and sites." From those authorities, he would argue the Commission has the authority to review the historical quality of sites and structures. "Exterior," he has never seen the Commission review the interior of any historic structure.

Mr. Leone continued to say that, in reading the applicant's letters, especially the April letter from Preservation Architects, which the Commission had the purview to review, the opinion is based on the contention that basically all the members of HLB who reviewed this project over the years, both as a function of this project and for its inclusion on the list of noteworthy structures did a poor job and did what the expert called a "windshield survey." Well, if you ask why that didn't sway anybody on the Commission, it is because the expert is basically saying nobody knows what they are talking about except him." He would say that Susan Frank and Jack Tracy had a pretty good idea of what they were talking about as far as historic structures. What the expert did say in his letter is that "his observations do not pretend to make the case that the original residence is non-extant, as portions of the original home are visible." So the Commission took that as saying there are portions of the house that are worth preserving. What the applicant and his expert have agreed to is that the structure dates from 1877. The expert's previous comments and his testimony that night are in conflict as to whether Mr. Cormack lived there. He says there's no clear evidence.

Mr. Leone stated they should first step back from that. He asked whether anyone has ever gone and looked in the files for a lot of the older homes in Sausalito. They are basically non-existent. There is very little in terms of permits, information of when they were built, plans, what really exists. So the idea that you have to provide a plethora of documentation and evidence that something was done at a certain time ties the hands of any historic preservation in Sausalito, because the gist of that is based on the Sanborn maps and the tax records of 1911. Another thing

the architect agreed to was that the alterations were probably done in the 1950s, which again triggers the 50-year criteria of historic review in Sausalito. So again, it's a capricious argument. Whether the structure as a whole – which seems to be the intent of his argument – deserves preservation is a subjective criteria.

The Planning Commission accepted the HLB's findings, stated in two separate letters from two very different compositions of the HLB, as well as the surveys that were done in 1990 and 1995 of noteworthy structures. That being said, the Planning Commission determined and agreed with the HLB findings that this was a historic structure. The Planning Commission has had instances where it has disagreed with the HLB's findings and let applicants demolish structures. We have to step back and ask whether the idea is that if you have the money and can come up with a good argument, the result is to throw out everything that the Commissions and boards that the City appoints have determined. He thought the answer would be "no." There is an objective record that provides enough evidence to clearly state that this is something worth preserving. As a layperson, if you walk around that house, you think this is actually a beautiful house in a very nice setting.

The applicant's clear intent is to subdivide that property further. But the reality is the way this structure relates to its site is already going to be incredibly diminished by having 96 Harrison, a very modern looking house, going up immediately next door. But if you allow this existing house to sit on the minimum size lot that it actually could sit on given its size, it would lose any relationship to its surroundings. It would become an old house on a very small lot, for its size. There are criteria in the General Plan, in the zoning ordinance, in the HLB guiding principles that give the City both the authority and the ability to preserve this. There is also evidence in the record to bear out the correctness of that position.

If the Council accepts this appeal, it opens a big can of worms. The Council should be aware of that. He agreed with staff's findings except for the condition that concerns fixing the street after construction is finished, i.e., 22(e); his understanding was that the applicant still has not resubmitted a plan for doing that public walkway behind the hedge. If they are going to do work that close to the street, you might want to have the City Engineer have the right to review if there was any impact to the pavement instead of removing that condition. Mr. Leone noted that the Planning Commission vote was unanimous. He asked for questions.

Councilmember Kelly asked if there is more work to be done historically, whether there is more historical information somewhere.

Mr. Leone said he couldn't answer that definitively for this specific project. He knows that Philip Blois and Vicki Nichols did a lot of research. This is as exhaustive a report as HLB usually does.

Councilmember Kelly said what happened on 40 was a rush job and there wasn't enough information early on, and then more developed.

Mr. Leone said the difference is – and he should probably ask Ms. Nichols this question – but 40 came back as a compromise at the Planning Commission level to do more research. They said

they'd a third party historical architect, and that third party expert said there are some pieces that you should preserve and if you find those, keep them. And the HLB said that was great. You know what happened to that building? It was all torn down. None of it was saved because they just came in one day and tore it down. So those conditions were violated.

Councilmember Kelly said that brings up the whole other area of enforcement.

Mr. Leone said you couldn't enforce it if somebody just goes in and does it without telling you. Then it became a case of them saying, "You didn't tell me during the project planning meeting that I couldn't tear it down." However, it was in the conditions of approval.

Councilmember Albritton said he understood that this building gets historical review whether the Council approves these conditions or not, so his question was more about due process. He asked whether the Commission has imposed these kinds of conditions before in a lot split where the Commission expanded the role of HLB with respect to a particular structure.

Mr. Leone said yes, the City Attorney had a good point earlier about making it similar to other project reviews. He didn't know if they discussed that particular wording about it had to be approved at the Planning Commission level and at the HLB level. He thinks it is more consistent to stick with – because it's outside the Historic District – his memory is that anything that is in the Historic District or on the local register has to get HLB approval and the Planning Commission approval, not the noteworthy structures. So if you want to make it an HLB recommendation and Planning Commission approval to be consistent, that's fine. As far as the lot split, he didn't recall – most of the lot splits that they've reviewed around town recently have been Mike Blatt's, and most of those structures have been tear-downs and have not been structures that were reviewed by the HLB and deemed not historically significant.

Councilmember Albritton asked whether, if they modify the conditions so that HLB is advisory, there would be a difference between having the conditions and not having the conditions.

Mr. Leone said just to clarify, if they read the conditions that are on page 3 of item 6(A) of the staff report, that doesn't preclude the applicant from coming back with any proposal. It just says they have to go through design review by the Planning Commission and the HLB. And they would have to do that anyway; it just clarifies it and puts it in the public record for this specific residence. It's a "belt and suspender thing" that the Commission has done in the past so it's not lost in the shuffle down the road.

Ms. Wagner said in response to Councilmember Albritton's specific question, what the conditions add is for a situation where the property was going to be modified in such a way that it would not require a discretionary review --- Mr. Noble came up with some examples, such as additions to the property --- that they have adequate lot size for what might not require discretionary review under the existing ordinance. However, under these conditions proposed, that type of addition or alteration would come through both the HLB and the Planning Commission.

Mr. Leone said the point Vice Mayor Albert made earlier is that these were an interim solution because there was some discussion of Secretary of Interior criteria, but frankly they have only applied that to one project that he can remember, and that was on the National Register of Historic Places, which has to meet the Secretary of Interior criteria. Actually Mr. Blatt has been very adept in working with the HLB over the last four or five years on his projects to reach consensus on a lot of projects before it got to the Planning Commission in terms of architectural styles and that kind of thing. Santa Rosa is a good example. This is an interim step. It doesn't impose any requirements, any review criteria that it wouldn't be subject to already, it just clarifies the process.

Councilmember Albritton asked about Conditions 2 and 3.

Mr. Leone said that's what he was saying earlier. That falls within the Planning Commission's purview to review the site and its relationship to a structure.

Councilmember Albritton noted No. 2 says "no further subdivision."

Vice Mayor Albert said if No. 2 were modified to say "design review shall be required before any additional ..." then you are just saying everything rises to a discretionary permit because we think this may be historical. But No. 3 would be redundant, that's not design review anyway; it's Planning Commission review for a subdivision. It sounds like the Commission is already deciding that that should never happen, period. And that's what is getting the applicant obviously excited. He initially took it to indicate that the Planning Commission decided it is historical, it can never be demolished, and it can never be subdivided. And then the presentation from staff seemed to waver from that a little to say the applicants can still present applications, and if that is the case maybe 3 would come out – and this is awful late to be trying to parse this – but 3 would come out and No. 2 would be modified to say "design review shall be required before ..." The applicant may not be happy with that, but it wouldn't be nearly as onerous as he was interpreting it. Now, they just would be saying, "You can't do any minor changes to this without coming back to us. You can't do anything over the counter; you can't do anything for which even a permit may normally not be required. We want to have review before you modify this building in anyway."

Mr. Leone said again, just to clarify, there is nothing in this language that prevents the applicant from bringing an application in to demolish the structure, it just requires design review, which any building in Sausalito requires design review for demolition. Condition 7 doesn't deny him the right to do it if it is deemed to be falling down or whatever, so the demolition is not the issue now. Condition 3 is a function of – it all starts with whether you deem it historically significant or not. And if it is historically significant, the Commission has the ability to consider a structure's relationship to its site and consider the entire site as historically significant as a criterion of its setting.

Mr. Leone said he would suggest, given that it's 1 a.m., if the Council is wavering on not following the staff's recommendation, he would propose that: (a) they continue the item; and (b) send it back to the Planning Commission with some specific instructions, which is what the City Council has done by and large previously with appeals, and give the Commission an opportunity

to try to rework these conditions. But he thought these conditions stand up under the General Plan and zoning ordinance and the HLB instructions in the Municipal Code.

Councilmember Kelly said No. 2 says that “no additional structures shall be constructed on the parcel,” and then it is further restricted by No. 3, which says, “no further subdivision.” That pretty much locks it in for all time. So the question is whether the Council approves these conditions, whether the City is making a decision that evening that there is no further review at that point. The applicant’s right; it would take a large machine to get this to change. So the question is what is it that the City intends.

Vice Mayor Albert says that’s not what the Planning Commission intended.

Councilmember Albritton stated that basically it is saying this property can never apply to be subdivided.

Mr. Leone said his understanding was that Ms. Wagner reviewed these conditions. Ms. Wagner confirmed that she had reviewed them.

Councilmember Belser asked if Ms. Wagner had a reply to the question just asked.

Ms. Wagner asked if she meant whether the Council could impose condition number 3. Councilmember Belser confirmed and asked whether they can legally do that.

Councilmember Kelly said de facto this would seal the fate of this property for a long time. One question would be whether that is everybody’s intent. A second question is whether the City can do that de facto.

Ms. Wagner said she would concur with Councilmember Albritton that any further application for subdivision would have to go through the subdivision process, so to the extent that the Council is inclined to remove that condition as being a little overbroad, there is protection still within the City’s own processes to ensure there’s a hearing, etc. If they delete number 3, there is a process, as Councilmember Albritton suggested, that has to be followed that includes the findings, etc., that had to be made for this subdivision. It would not be as though the removal of that condition means de facto that this lot will be split again. Even if the applicant were to bring an application for a lot split in the future, without that condition, there would still be a public process that would be gone through; there would be the same things that had to be done. You have to go to the Planning Commission, etc., to do that.

Mayor Scremin asked whether they would still have safeguards. Ms. Wagener confirmed that they would.

Councilmember Kelly said if he could wave his magic wand and make things happen, this would be a great lot for R-3 zoning. That house just happens to sit on most of what he would prefer to have the R-3 housing sit on. He acknowledged that there is historical character to that house in certain areas, because he can see it even though it’s been added on to and so forth. And he loves

historic preservation; he comes from that school. But he also sees trade-offs at times with these sorts of things.

Councilmember Albritton noted when the Commission approved this in 2003, former City Engineer Gordon Sweeney's requirement was to move the garage closer to 100 Harrison. The Council didn't make up moving that carport; that came from Gordon Sweeney's requirement.

Mr. Leone said he voted against the 96 Harrison approval because it created this problem, that the other house's garage was on the potential property of a new house. There was no proposal to deal with it in the 96 Harrison situation because he knew it was going to be a sticky issue.

Councilmember Kelly said if they read the minutes of 96 Harrison, they'll find the issues brought up were what kind of future lot splits would be made on this property; how would the precedents of this thing be – all that stuff. Unfortunately he thought what happened there – and he was part of that – is that the Commission hastily dismissed this in favor of a new plan because they had just come from an 11-hearing plan on the three other houses, and so it got to the City Council without sufficient design review. But that's all water under the bridge.

Mr. Leone said he didn't think Mr. Blatt was appealing the parking pad. It's the preservation and lot split conditions that he was appealing.

Councilmember Belser asked Mr. Leone if the conditions that are named here were indicative that the intent of the Planning Commission was to not permit any additional structures or any further subdivision. Whether that can be done legally or without having these conditions in there is the issue. She asked again whether that was the Planning Commission's intent.

Mr. Leone said Councilmember Belser made two points: the first was what Ms. Wagner was talking about, whether there are processes or safeguards already in place. It would be the exact same discussion; the Council is just going to have the exact same discussion two months from now when he comes back to subdivide or whatever the discussion is. The intent of the Planning Commission in his understanding and memory was yes, that the idea was to maintain the remainder of 100 Harrison after 96 Harrison is subdivided, because this is a lot split and he is splitting this larger lot into two and maybe three lots. So the idea was to maintain this house on a larger lot. To address the question as to whether that is a "sin" in Sausalito, he didn't think so. If you go down the street to 168 Harrison, Tanglewood, that's a big house on a big lot, and they are doing a great job of fixing it back up again finally. But if you walk around that house you see that that house really sits well on that size lot. You can make the argument very well and the City does have the authority to do that, to say this old house was on a big lot, you just divided it, but it still needs to sit on a good sized lot.

Mr. Blatt clarified that on page 116 in the staff report, line 29, "Commissioner Kelly said he saw one of the memos with reference to the land having been a lush Victorian garden. Does the bottom part of the site fit into that? Was it part of the garden?" At line 32, Mr. Hodgson said: "He could only speculate because there was no documentation, photographic or otherwise, that indicates that was developed as gardens in any period. There is one clear photograph from 1911 that documents the northern façade of the house and some of the fencing on Harrison and the

entranceways and some of the more beautiful trellises and roses. You get the perception that there was a very high order of decorative garden layout, but there is no documentation of what was on the eastern side." So for Mr. Leone to say that this is a site and you have to take in the whole site as a historic type thing, the expert has said the building is not historic, Mr. Hodgson has said in a public hearing that there is no photographic documentation of the gardens being historic, so everything they are talking about that is against what he wants to do is pretty subjective. The two questions asked by the Council are right on point. If the City grants him the appeal, he still has to go back to design review, planning and historical, for anything he wants to do to that site. But if they don't grant his appeal, and this stands, the City is saying that the 11,000 square foot, R-3 lot can never be subdivided and the structure cannot be touched, unless he goes back to the same Planning Commission that said it's historic. So is the Council going to say that he has to go back to that same group that he went back to because the Council asked him to go back, for a parking structure, a demo of a garage, and urged him to do a lot split. Now he has to go back to that same Commission with this resolution that says no lot split, and don't change the structure. And they are quivering on demo.

### **Council Discussion**

**Vice Mayor Albert said he would propose a motion.** It was too late in the evening to make a final decision. **He would propose that staff bring this back with a draft resolution partly granting the appeal and partly denying the appeal, but for further consideration by the Council at an earlier hour. But he would suggest that the draft resolution modify Condition 2 to provide that design review would be required before any of these things took place --- not foreclosing that they happen, but clearly setting forth that any such work would require design review. The appeal will be granted as to Condition 3, which will be deleted. Condition No. 5 would be deleted, as they would have HLB simply follow its normal procedure of reviewing and issuing a recommendation to the Planning Commission. And he would support that they follow staff's recommendation on the other challenged conditions where they suggested granting some and denying others.**

Councilmember Albritton said he would second it for discussion purposes. Just so he understands, 2 is subject to design review; 3 is gone; 4 stays as it is; 5 is gone; 6 -

Councilmember Kelly said just take 5 and take out the word "approval".

Councilmember Albritton said then you have to add it back in for the Planning Commission. "Design review shall be subject to review by the HLB and approval by the Planning Commission." He would stick with where they were. Vice Mayor Albert's point is that that's the procedure anyway.

Ms. Wagner asked whether they were recommending that Condition No. 5 be deleted.

Councilmember Albritton said 6 says the same ...

Vice Mayor Albert said they may want to look at it more closely at a reasonable hour, but for now let's leave them.

Councilmember Belser said she wanted to speak to that. She really did favor leaving Condition No.3 in. She liked the redundancy of saying without design review. She realized it was already in there, but she didn't mind the redundancy.

Ms. Wagner noted that Condition No. 3 is the subdivision.

Councilmember Belser said yes, that was exactly what she was talking about.

Mr. Kermoyan said it was late, and rather than trying to define what the conditions should be, he asked them to focus on the big picture. He asked whether Council wanted to allow the opportunity for the appellant to have further subdivision. He asked whether they were asking staff to return with guidance in terms of what that means to wipe out the condition.

Vice Mayor Albert confirmed that his motion meant that they should delete the condition. That simply meant that the Council isn't making any decision on that. If the appellant wants to submit an application, it should be reviewed de novo by the Planning Commission, and it should be a big picture review. If they come up with an affordable housing proposal for that lot, where they are going to slam a lot of units in there and solve the City's affordable housing problem, then they should look at the big picture of the whole thing. If they are providing a community benefit, maybe that would outweigh the historic value of this property. Who knows? It was late at night, and he couldn't conjure up every hypothetical. But he advocated that they return it to a blank slate on that issue. That was all he was saying; he was not saying he wants to see it subdivided.

Councilmember Albritton noted this would prevent condominiumizing the house.

Vice Mayor Albert asked keeping it in?

Councilmember Belser said yes. Her feeling about this was that if the City goes at it in this way and sort of leaves it loose or at least unstated, in a way they are challenging the authority and the integrity of the HLB and the noteworthy structures, and all of it. If the Council wants to do that, that's fine. But the Council should really realize what that might mean. That's how she interpreted it.

Councilmember Kelly noted that Mr. Leone made a suggestion they may also want to consider, which was that the Council give the Planning Commission the opportunity to reconsider and see if they would be willing to make some of these changes the Council is talking about. However, he kind of agreed with Councilmember Belser – there's a 5-0 vote here by the Planning Commission, and there's more process to be done here before a decision is made.

Councilmember Albritton said he didn't think they are disregarding the HLB or their position. He just thought they were clarifying what can be legally done and the process that has to be done.

Mayor Scremin said that was his sense also.

Councilmember Albritton said HLB will have a role in anything that happens to this house, and it is expanded to some extent.

Councilmember Belser thought that would not be upheld. She asked the Councilmembers to think about it.

Vice Mayor Albert said that was his sense, and that was the intention of his motion, but he was concerned by the question from staff that somehow if they remove some of these – he didn't want anything to be read into it, he wanted to return it to a blank slate where if somebody files an application, it is reviewed as a matter of course by all the standards, HLB does its job, Planning Commission does its job. But given that the appellant didn't have an application to do anything to 100 Harrison before the Planning Commission, for the Planning Commission to say nothing can be done to 100 Harrison seems to preclude consideration of any project no matter how potentially merit-worthy. With Condition No. 2, the Council would be tying this property down further. There are things you can do to a house with no permit or over the counter. And the Council would be saying, "Don't do a thing to that house without coming in for design review," which is what the Planning Commission said in addition to these other things.

Mayor Scremin said part of his concern was that if the Council doesn't take it on themselves without understanding all the testimony that night, it would make it much more difficult to send it back to the Planning Commission. He felt comfortable with the motion that's been made and seconded to give it back to the Community Development Department, and then bring it back to the Council to see if that meets the Council's expectation. He asked Mr. Kermoyan whether he felt he had clear direction.

Mr. Kermoyan said he did.

Mayor Scremin called for a vote on the motion.

**The motion was approved unanimously without a roll call vote.**

*There was a consensus to continue the remaining agenda items to the October 18, 2005 City Council meeting.*

### **ADJOURNMENT**

The Council adjourned at 1:30 a.m. The next regular scheduled Council meeting is October 18, 2005.

Respectfully submitted,  
Tricia Cambron, Minutes Clerk

Approved: November 1, 2005

**RESOLUTION NO. 4857**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAUSALITO  
PARTIALLY GRANTING THE APPEAL OF CONDITIONS OF APPROVAL  
FROM PLANNING COMMISSION RESOLUTION NO. 2005-23 APPROVING  
TENTATIVE MAP AND RECOMMENDING APPROVAL OF ENCROACHMENT  
AGREEMENT APPLICATION TM/EP 04-045 FOR A SUBDIVISION AND  
FRONTAGE IMPROVEMENTS AT 100 HARRISON AVENUE (APN 065-124-14)**

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**WHEREAS**, on June 8, 2004 an application was filed by applicant, Ken Taub, on behalf of property owner Harrison Ventures LLC, requesting Planning Commission approval of a Tentative Map and Encroachment Agreement for a subdivision, parking deck and frontage improvements at 100 Harrison Avenue (APN 065-124-14); and

**WHEREAS**, the Planning Commission conducted duly noticed public meetings on March 9, 2005, May 25, 2005 and June 8, 2005 in the manner prescribed by local ordinance, at which time all interested persons were given an opportunity to be heard; and

**WHEREAS**, on June 8, 2005, the Planning Commission adopted PC Resolution 2005-23, a Resolution of the Sausalito Planning Commission Approving Tentative Map and Recommending Approval of Encroachment Agreement Application TM/EP 04-045 for a Subdivision, and Frontage Improvements at 100 Harrison Avenue ("PC Resolution 2005-23"), thereby granting the proposed tentative map with certain conditions; and

**WHEREAS**, on March 22, 2004, Raymond Blatt, representing the applicant Harrison Ventures LLC, filed an appeal of PC Resolution 2005-23, specifically the imposition of conditions of approval 2, 3, 4, 5, 6, 7, 8, 15, 17, 18, 19b, 19d, 19e, 19f and 22; and

**WHEREAS**, the City Council conducted duly noticed public hearings regarding the appeal of PC Resolution 2005-23 on October 11, 2005, November 1 2005, September 5, 2006 and September 19, 2006, in the manner prescribed by local ordinance, at which time all interested persons were given an opportunity to be heard; and

**WHEREAS**, the City Council has considered all of the evidence in the record including the findings of the Historic Landmarks Board, historic preservation consulting firm Carey & Co., and historic preservation consultant Mark Hubert, all three of which concluded that the 100 Harrison property, including both the Nestledown residence and the site, is not historically significant and is not eligible for listing on the California Register of Historical Resources; and

**WHEREAS**, the City Council notes that the Historic Landmarks Board, in a memorandum dated June 14, 2006, found the rock pergola gated entrance and the stone wall, path and steps located in the Harrison Ave public right-of-way to be historically significant; and

Attachment 4  
(3 pages)

**WHEREAS**, the City Council also considered the Planning Commission's recommendation made on July 5, 2006 that the historic preservation conditions attached to Resolution No. 2005-23 remain as approved and that the subject property is a locally significant historic resource for the City of Sausalito; and

**WHEREAS**, the City Council has received and considered oral and written testimony on the subject application and obtained evidence from site visits; and

**WHEREAS**, the City Council has reviewed and considered the information contained in the October 11, 2005, November 1, 2005 and September 5, 2006 City Council staff reports, including the Carey & Co. evaluation of the 100 Harrison property, the HLB memorandum dated June 14, 2006 and the minutes to the July 5, 2006 Planning Commission hearing; and

**WHEREAS**, the City Council has determined that the evidence in the record does not support a finding that the 100 Harrison residence and site retain a sufficient level of historic significance to justify the inclusion of historic preservation Conditions 2-8 in Resolution No. 2005-23 approving a lot split and frontage improvements at the subject property; and

**WHEREAS**, the City Council finds that the evidence in the record does support the inclusion of conditions related to the preservation of the rock pergola gated entrance and the stone wall, path and steps located in the Harrison Ave public right-of-way based upon their historical significance; and

**WHEREAS**, the City Council has also determined that conditions 16, 19b, 19d, 19e, 19f from Planning Commission Resolution No. 2005-23 are unnecessary for the approved project at 100 Harrison which does not include the construction of a parking deck or an other significant new physical improvements and that conditions imposed in connection with the approved project at 96 Harrison are in place which address construction impacts at that site ; and

**WHEREAS**, the City Council has determined that Conditions 2,3, 4, 5, 6, 7, 8, 16 19b, 19d, 19e, and 19f shall be deleted from Planning Commission Resolution 2005-23 and that a new condition shall be imposed related to the preservation of the rock pergola gated entrance and the stone wall path and steps located in the Harrison Avenue public right of way; and

**WHEREAS**, based upon the advice of the City Attorney the City Council has determined that Condition No. 22 shall be modified to bring this condition into compliance with California Government Code Section 66499.37.

**NOW, THEREFORE, THE CITY COUNCIL DOES HEREBY RESOLVES AS FOLLOWS:**

1. The Appeal of Planning Commission Resolution 2005-23 is upheld in part. Planning Commission Resolution 2005-23 is hereby modified to read as follows:

- a. Conditions 2, 3, 4, 5, 6, 7, 8, 16 19b, 19d, 19e, 19f are hereby deleted; and

b. Condition 22 shall be replaced in its entirety with the following:

“The applicant shall defend, indemnify and hold harmless the City, its elected and appointed officials, agents, officers, and employees from any claim, action or proceeding against the City or its elected and/or appointed officials, agents, officers and/or employees to attack, set aside, void or annul, the City’s approval of the subdivision, which action is brought within the time period provided for in California Government Code Section 66499.37. The City shall promptly notify the applicant of any claim, action, or proceeding and the City shall cooperate fully in the defense.”

c. All other conditions from Planning Commission Resolution 2005-23 shall remain in full force and effect.

2. The following condition is added to the approval of the tentative map and encroachment agreement at 100 Harrison (application TM/EP 04-045):

“Design review shall be required for any proposal by a party other than the City or a public utility provider to make an addition to, demolish a portion of or otherwise modify the rock pergola gated entrance and the stone wall, path and steps located in the Harrison Ave public right-of-way; prior to such design review the proposed modifications shall be submitted to the HLB for its review and recommendation to the Planning Commission. The terms of this condition shall be included in the recorded Encroachment Agreement or such other recorded documentation as is approved by the City Attorney. Because the improvements are located in the public right of way the City must reserve its right to require removal or modification of the improvements as is necessary for the City’s use of the right of way and as may be required in connection with other necessary public utilities.”

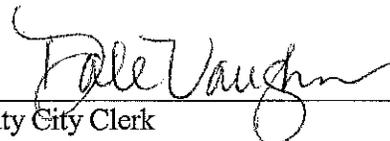
**PASSED AND ADOPTED** at the regular meeting of the City Council of the City of Sausalito on the 19<sup>th</sup> day of September, 2006, by the following vote:

AYES: Councilmember: Albritton, Belser, Scremin, Vice Mayor Kelly  
NOES: Councilmember: None  
ABSENT: Councilmember: Mayor Albert  
ABSTAIN: Councilmember: None



Vice Mayor of the City of Sausalito

ATTEST:

  
Deputy City Clerk

BLANK

PLANNING COMMISSION HEARING  
May 25, 2005  
APPLICATION NO. TM/EP 04-045  
100 Harrison Avenue

ATTACHMENT C: CONDITIONS OF APPROVAL

1. The approval is limited to the proposed plans titled "Tentative Map for 96 100 Harrison Ave." stamped received by the City of Sausalito on February 14, 2005, and the project plans titled "Lot Split and Frontage Plan of 96 and 100 Harrison", dated November 24, 2004 and stamped received February 14, 2005.

Conditions of Approval for the Minor Subdivision: Preservation of the Nestledown Structure and Site

- ~~2. No additional structures, with the exception of small accessory structures, shall be constructed on the 100 Harrison Avenue parcel occupied by the Nestledown residence. Only one-story detached accessory structures used as tool and storage sheds, play houses and similar uses, provided the total roof area does not exceed 120 square feet, may be constructed on the property. All accessory structures shall be designed to be architecturally consistent with the structure and landscape.~~
- ~~3. No further subdivision of the 100 Harrison Avenue parcel shall be permitted.~~
- ~~4. Design Review shall be required for any proposal to make an addition to, demolish a portion of, or otherwise modify the Nestledown residence at 100 Harrison Avenue. Design Review shall be conducted in accordance with Chapter 10.54 (Design Review Procedures).~~
- ~~5. Design Review shall be subject to review and approval by the Historic Landmarks Board and the Planning Commission. A joint meeting shall be held to conduct the Design Review.~~
- ~~6. To approve proposed new construction, alteration, or demolition, Design Review Findings specified in the Municipal Code Section 10.54 must be made. The Planning Commission and Historic Landmarks Board shall also consider the extent to which the proposed work is compatible with the architectural and historical features of the structure. Special attention shall be given to alterations to noteworthy exterior design elements, roof structures, and the home's unique configuration of building mass and volume.~~
- ~~7. None of the conditions of this resolution shall prevent any measures of construction, alteration, or demolition necessary to correct the unsafe or dangerous condition of any portion of the 100 Harrison property, where such condition has been declared unsafe~~

~~or dangerous by the building inspector or the fire chief, and where the proposed measures have been declared necessary by such official to correct the condition; provided, however, that only such work as is absolutely necessary to correct the unsafe or dangerous condition and is done with due regard for the preservation of the appearance of the property.~~

- ~~8. The owner, lessee, or other person in actual charge or possession of the 100 Harrison property shall keep in good repair all of the exterior portions of the Nestledown Residence, as well as all interior portions whose maintenance is necessary to prevent deterioration and decay of any exterior portion.~~

### Parcel Map

9. After approval of the Tentative Map the applicant shall submit a Parcel Map as defined in the State Subdivision Map Act and prepared by a Licensed Surveyor or qualified Civil Engineer for review and approval to the City Engineer's Office. The Parcel Map shall conform to the approved tentative map and the requirements of the State Subdivision Map Act and the City Subdivision Ordinance. The Parcel Map shall show all parcels, rights-of-way and easements dedications, the assessor's parcel number, total area of land being subdivided (in acres) and total number of lots being created. Upon recording of the Parcel Map at the County, the Subdivision shall be valid.
10. Prior to recordation of the Parcel Map the applicant shall secure all necessary easements for utilities, drainage and access needed to serve any of the parcels of the subdivision.
11. Prior to recordation of the Parcel Map each parcel must place all existing overhead utility service lines to the buildings underground and any utility lines that cross another property shall be within easements shown on the map.
12. Prior to recordation of the Parcel Map the existing sewer laterals shall be video taped and any necessary repairs shall be made in accordance with City requirements.
13. A joint maintenance agreement for any shared utilities or access way shall be prepared and submitted to the City for review and approval and shall be Recorded with the Parcel Map.
14. Prior to recordation of the Parcel Map Improvement Plans showing pathway, driveway, utility connections, grading, drainage improvements and any work in the City right-of-way for lot 1 (100 Harrison) shall be prepared by a Registered Civil Engineer and submitted to the City for review and approval.

Prior to issuance of a building permit:

15. The City Council shall have approved the requested encroachment.
- ~~16. A detailed site and project specific erosion and sedimentation control plan shall be submitted as part of the project grading (pier drilling) plans.~~
17. A traffic control plan shall be submitted for controlling traffic on Harrison Avenue during the construction process.
18. A construction staging plan and construction schedule shall be submitted for review and approval.
19. Improvement Plans showing pathway, driveway, utility connections, grading, drainage improvements and any work in the City right-of-way for lot 2 (90 Harrison) shall be prepared by a Registered Civil Engineer and submitted to the City for review and approval. Improvement Plans shall reflect work shown on the tentative map and contained in the Resolution of Approval and shall include:
  - a) Each parcel shall be independently served by sanitary sewer and water service connections or, where approved by the City Engineer, shall be covered by a joint maintenance agreement.
  - ~~b) All grading work shall be shown on a grading plan to be incorporated into the improvement plans. Grading plan shall include the location and size of all existing trees to be removed, and trees to remain. The plans shall show all measured identified in the Tree Protection Plan as needed, to protect trees during construction and all erosion control and storm water pollution prevention measures to be implemented. The grading plan shall clearly show all existing survey monuments and property corners and shall state that they shall be protected and preserved.~~
  - c) No lot-to-lot drainage is permitted except where contained in an appropriate easement.
  - ~~d) Water from downspouts, roof leaders and hard surfaces shall be dissipated on-site and shall not be directly connected to a storm drain.~~
  - ~~e) Pavement removal and repaving will be subject to the review and approval of the City Engineer.~~

~~f) No construction shall be initiated until the improvement plans have been approved by the City, all applicable fees have been paid, an encroachment permit and/or grading permit has been issued, a project schedule has been submitted to the City Engineer and a pre-construction conference has been held with the City Engineer and City Building Official or their designees.~~

#### Additional Conditions

20. In the event that any condition imposing a fee, exaction, dedication or other mitigation measure is challenged by the project sponsor(s) in an action filed in a court of law or threatened to be filed therein which action is brought within the time period provided by law, this approval shall be suspended pending dismissal or final resolution of such action. If any condition is invalidated by a court of law, the entire project shall be reviewed by the City and substitute conditions may be imposed.

21. In accordance with Ordinance No. 1160, the applicant shall pay any and all City costs arising out of or concerning the proposed project, including without limitation, permit fees, attorneys' fees, engineering fees, license fees and taxes, whether incurred prior to or subsequent to the date of this approval. Applicant acknowledges and agrees that City's costs shall be reimbursed prior to this approval becoming valid.

22. The applicant shall indemnify the City for any and all costs, including without limitation attorneys' fees, in defending this project or any portion of this project and shall reimburse the City for any costs incurred by the City's defense of the approval of the project.

23. An approval granted by the Planning Commission does not constitute a building permit or authorization to begin any construction. An appropriate permit issued by the Building Division must be obtained prior to constructing, enlarging, moving, converting, or demolishing any building or structure within the City.