



**BENICIA PLANNING COMMISSION  
CITY HALL COUNCIL CHAMBERS  
MEETING MINUTES**

**Thursday, December 8, 2011  
7:00 p.m.**

**I. OPENING OF MEETING**

**A. Pledge of Allegiance**

**B. Roll Call of Commissioners**

**Present:** Commissioners Don Dean, Rick Ernst, George Oakes, Rod Sherry, Lee Syracuse and Chair Brad Thomas.

**Absent:** Commissioner Belinda Smith (excused)

**Staff Present:** Kat Wellman, Contract Attorney  
Mark Rhoades, Interim Land Use and Engineering Manager  
Lisa Porras, Senior Planner  
Kathy Trinqué, Administrative Secretary

**C. Reference to Fundamental Rights of Public** - A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.

**II. ADOPTION OF AGENDA**

On motion of Commissioner Syracuse, seconded by Commissioner Ernst, the agenda was adopted by the following vote:

**Ayes:** Commissioners Dean, Ernst, Oakes, Sherry, Syracuse and Chair Thomas

**Noes:** None

**Absent:** Commissioner Smith

**Abstain:** None

**III. OPPORTUNITY FOR PUBLIC COMMENT**

**A. WRITTEN**

None.

**B. PUBLIC COMMENT**

Toni Haughey announced that the Camel Barn Holiday Tree Lot will be open until December 24 or until all the trees are sold. This is a fund raising event for the Camel Barn Museum.

**IV. CONSENT CALENDAR**

**A. Approval of Minutes of September 8, 2011**

On motion of Commissioner Sherry, seconded by Commissioner Ernst, the Consent Calendar was adopted by the following vote:

Ayes: Commissioners Dean, Ernst, Oakes, Sherry, Syracuse and Chair  
Thomas  
Noes: None  
Absent: Commissioner Smith  
Abstain: None

**V. REGULAR AGENDA ITEMS**

**A. AN APPEAL OF THE HPRC'S DENIAL OF A DESIGN REVIEW REQUEST TO REPLACE THREE WOOD WINDOWS WITH VINYL WINDOWS ON THE FRONT FAÇADE OF THE EXISTING SINGLE-FAMILY RESIDENCE LOCATED AT 410 WEST J STREET**

11PLN-00064 Design Review Appeal  
410 West J Street  
APN: 0089-031-090

**PROJECT SUMMARY:**

The applicant requested design review approval to replace three wood windows with new, paintable custom vinyl windows on the existing single-family residence located at 410 West J Street, a contributing structure within the Downtown Historic Overlay District. The HPRC has a longstanding policy of NOT allowing wood windows to be replaced with vinyl. The HPRC approved the replacement of the two windows (one on each side of the house) but they denied the change on the front facade.

Staff recommended that the HPRC approve this request based on a number of factors including that the windows are not the most prominent

façade feature of the residence and that the replacement windows are high quality and nearly identical in dimension to the existing windows and frames.

**Staff Recommendation:**

Consider the appeal of the Historic Preservation Review Commission's (HPRC's) denial of a request by Julian and Claudia Fraser for a minor exterior modification (replacement of wood windows with vinyl) to the front façade of the existing residence located at 410 West J Street. The HPRC approved the request for the side windows, but denied the request for the front windows. Note that staff's recommendation was to approve the whole design review request.

Mark Rhoades, Interim Land Use and Engineering Manager, presented an overview of this item. Mr. Rhoades pointed out that the HPRC decision disagreed with staff's recommendation. Included in this packet are draft minutes of the HPRC meeting to provide the Planning Commission with some idea of the discussion that was held at that meeting. He reviewed the policy of HPRC regarding window replacement. The HPRC did approve the applicant's request to replace the side wood windows with vinyl windows but not the front façade windows located inside the arched porch.

**Questions from Commissioners:**

Commissioner Sherry asked if the 2 side elevation windows that were approved by HPRC to become vinyl were originally wood. He asked if the State Historic guidelines allow that.

Mr. Rhoades responded yes, the side windows were wood and while the State Historic guidelines have strong language concerning wood windows, location is considered as well as how prominent a feature they are on the residence.

Commissioner Dean asked to clarify the number of windows being discussed and their location. Was the existing vinyl window proposed to be changed. Are there a total of 7 windows, 5 of which were wood? What is the City's policy about "replacing in kind"? He read from the Downtown Historic Conservation Plan, pg 61 regarding replacement of vinyl windows with wood. What is HPRC's purview?

Mr. Rhoades responded that this is under HPRC's purview but they do not have the authority to require Design Review in all cases because "in kind replacement" is allowed.

Ms. Wellman, Contract Attorney, clarified that if the proposed window size changed (enlarged or reduced in size) then the "in kind procedure" could not be utilized.

Commissioner Dean requested clarification on the decision before the Planning Commission. He asked if the Planning Commission could change any requirements.

Mr. Rhoades responded that the decision before the Planning Commission is either to grant the appeal in whole or in part, or deny the appeal.

Ms. Wellman explained that the replacement of the 3 front wood windows with vinyl windows requires a decision. This appeal requires a de novo decision.

Commission Ernst asked how or when the large front vinyl window was replaced.

Mr. Rhoades responded that City records do not show a specific date, but that it was likely replaced before the current requirements were in place.

### **Opened for Public Comment.**

Claudia Fraser, 410 West J Street, property owner and appellant, expressed frustration with the City's process. She desires to replace the old single-pane windows with updated energy efficient vinyl windows. She stated she has a permit for this work and the windows are paid for. The existing front vinyl window was put in years ago. It has cost them \$8,000 for the new windows. They would not have purchased them had then known they would have to go through this process. She stated her desire is that all the windows have a similar look.

Julian Fraser, 410 West J Street, property owner and appellant, stated that the City documents listing his property in the Historic District are incorrect.

His house was built in the late 1940's. He stated that HPRC does not have jurisdiction over his house. His contractor has a permit to install the new vinyl windows. He wants to have all the windows in the house match and expressed his desire to have the windows he purchased installed.

### **Commissioner questions.**

Commissioner Sherry asked if the replacement windows have the same framing or will the molding be removed?

Mr. Fraser responded that the new windows are paintable and will pop into the same size window opening.

Chair Thomas asked if the new windows are in a narrower frame and close in size to the existing wood windows.

Mr. Fraser responded that they will match the other windows in the house.

### **Public Comment.**

Jon Van Landschoot, an HPRC Commissioner, stated he is not representing the HPRC Commission but offered only his opinion as a resident, and was not in favor of the appeal. Mr. Van Landschoot commented that the HPRC minutes have not yet been approved. The Downtown Historic Conservation Plan does apply to this residence and it is therefore under the jurisdiction of the HPRC. The applicant, Mr. Fraser, was not present at the last HPRC meeting so the HPRC did not know that the new windows had been purchased, nor if the applicant knew about the requirement for staff review. Mr. Van Landschoot further described the HPRC process and guidelines. He indicated that if there was a staff mistake, as indicated by Mr. Fraser, the City could have some liability.

Mr. Rhoades responded that there was no mistake made by Building and Planning staff. He explained that the Fraser's contractor came to the office for permits to replace the windows. The contractor told staff that all existing windows on the house were vinyl. There was an extensive conversation held with staff and staff noted in the computer system that the old windows being replaced were the same material as the new ones. When it came to staff's attention that the existing windows were wood and not vinyl, staff left a note at the house asking the Frasers to contact City staff. Their contractor apparently misrepresented the facts.

Mr. Fraser stated that the HPRC rules are subjective and arbitrary. His contractor went to get the permit and then the new windows were purchased.

Toni Haughey, an HPRC Commissioner, spoke against granting the appeal. She stated that the house was built in 1943 and is historic. Regarding the replacement of 3 windows from wood to vinyl, she has a difference of opinion with her fellow Commissioners. Her opinion is that all the vinyl windows should be replaced with wood windows. The HPRC was trying to compromise with the applicant. The HPRC would like to see the applicant keep the 3 original wood windows and repair them. If they cannot be repaired, then they should be replaced "in kind." Ms. Haughey voted against the motion at the HPRC meeting. She further stated that all the front windows should be wood.

Leann Taagepera, an HPRC Commissioner, began speaking and was interrupted by Mr. Frasier.

Leann Taagepera stated that she is not representing the HPRC, and that she is also a historic homeowner in Benicia. She spoke against granting the appeal. Ms. Taagepera summarized her letter and its attachments that had been distributed to the Commission and were available at the side table for members of the public. She stated that the HPRC did approve replacing the existing wood windows (on the front elevation) with wood windows. Wood windows can be made exactly like those that are currently there. This is the first appeal of HPRC since she has been on the Commission. The vinyl windows permitted are not in view from the street so it doesn't harm the historic district by the HPRC on the side elevations.

Mr. Fraser interrupted Ms. Taagepera.

Chair Thomas asked Mr. Fraser to return to his seat.

Commissioner Dean asked if the 3 wood windows were to be replaced with vinyl windows would that be a violation of Secretary of the Interior's historic guidelines and not allowed with a CEQA exemption?

**Public Comment Closed.**

Chair Thomas expressed his desire to proceed with providing his comments on this item. He stated that he studied the Secretary of the Interior Historic guidelines, and looked at the property prior to the meeting. His opinion is that the replacement windows are consistent with Secretary of the Interior's standards based on the following:

1. The Secretary of the Interior's guideline is not a black/white document. If the issue is visibility from the street, the side windows (that were approved by HPRC to be replaced with vinyl windows) are equally visible. The front prominent window is vinyl. The 3 recessed windows are visible but only slightly more visible than those on the side of the house.
2. He reviewed the documents and the house is considered historic, but the windows were not mentioned. One can't tell from the street if the existing windows are wood except for one decorative piece on the trim. The windows are not significant.
3. The new vinyl windows will look more like the wood windows than vinyl. Most citizens would not be able to tell the difference.
4. These 3 windows are not an important feature of the house. If the test is visibility from the street, one really cannot see the recessed front windows; they are just as difficult to see from the street and the side windows.

Commissioner Sherry stated that he agrees with Chair Thomas. He also visited the site and agrees with the HPRC about holding to a visual standard, but could argue that the materials may not appear to be that different.

Commissioner Dean stated that he spoke with Jon Van Landschoot and Toni Haughey before the Planning Commission meeting about this project. He was on the original HPRC and spent a number of meetings working on a window policy. Regarding the visual issue, the spirit is about keeping original materials to maintain original integrity of the structure. There is a balance of liveability while maintaining the historic integrity of the residence. At the time he served on the HPRC, the policy was that all wood windows must be replaced with wood, not just those visible from the street. His opinion is the wood window policy should be maintained. He supports the HPRC decision and would like to see the Planning Commission uphold it.

Commissioner Ernst asked about a difference of statements between staff and the applicant about what happened at the permit counter. He agrees with upholding the HPRC decision to require wood windows.

Mr. Rhoades restated and emphasized that City staff did not make a mistake regarding issuing the building permit because at the time of issuance the contractor stated all the existing windows were vinyl. It states on the building permit that the applicant is replacing vinyl with "in kind" (vinyl) windows. The only reason the permit was issued and approved was based on the contractor's statement that all existing windows were vinyl.

Commissioner Oakes stated that he supports staff's decision. The conversation at the HPRC is holistic and the reality is that materials change over time. These windows have an insignificant impact to the historic quality of this residence.

Chair Thomas commented that 75% of the windows on this residence are now vinyl and 25% wood.

Commissioner Syracuse asked if the Planning Commission could request that the City Council offer the applicant an offset for their financial loss.

Commissioner Ernst commented that maybe the contractor should reimburse the applicant for the extra cost since the contractor misrepresented the facts to the City.

On a motion made by Commissioner Ernst and seconded by Commissioner Dean that the Planning Commission uphold the HPRC's decision denying a request by Julian and Claudia Fraser for replacement of 3 front wood windows with vinyl, failed by the following (tied) vote:

Ayes: Commissioners Dean, Ernst and Syracuse  
Noes: Commissioners Oakes, Sherry and Chair Thomas  
Absent: Commissioner Smith  
Abstain: None

The motion failed for lack of a majority.

The Commissioners and City Attorney discussed the above action.

On a motion made by Commissioner Sherry and seconded by Commissioner Oakes, that the Planning Commission continue discussion of this item and vacate the previous vote, and adopted by the following vote:

Ayes: Commissioners Dean, Ernst, Oakes, Sherry and Chair Thomas  
Noes: None

Absent: Commissioner Smith  
Abstain: None

Commissioners continued their discussion -- key points include: the HPRC goals and how a change of materials affects historic integrity, and vinyl windows will look very similar (Sherry); if all were wood windows, then wood windows should be required. In this case 75% of the windows are vinyl, including the most prominent front window, therefore it is not significant in this case compared to the burden on the resident (Thomas).

Commissioner Oakes began a motion to adopt staff's recommendation.

Commissioner Ernst asked for clarification of staff's recommendation.

Mr. Rhoades and Ms. Wellman explained what a "yes" or "no" decision on staff's recommendation would mean.

Commissioners discussed and considered if this decision would set a precedent that may apply to other projects.

Ms. Wellman commented that the Commission is able to determine what's appropriate on a case by case basis.

On a motion made by Commissioner Sherry and seconded by Commissioner Oakes, the Planning Commission hereby grants the appeal and approves the appellants' request to replace the 3 front wood windows with vinyl windows to the building at 410 West J Street, adopted by the following vote:

Ayes: Commissioners Ernst, Oakes, Sherry, Syracuse and Chair Thomas.  
Noes: Commissioner Dean  
Absent: Commissioner Smith  
Abstain: None

**B. USE PERMIT FOR AN INDOOR ARCHERY RANGE AT 3001 BAYSHORE ROAD, UNIT #9**

3001 Bayshore Road, Unit #9  
APN: 0080-340-020  
11PLN-67 Use Permit for Commercial Recreation and Entertainment

**PROJECT SUMMARY:**

In accordance with the Benicia Municipal Code Section 17.32.020, the applicant requests approval of a Use Permit for the establishment of an indoor archery range at 3001 Bayshore Road of approximately 4,500 square feet. The archery range will have regular business hours of Monday through Friday 12:00pm – 9:00pm and Saturday 9:00am – 5:00pm.

**Staff's Recommendation:**

Approve a Use Permit for an indoor archery range (Commercial Recreation and Entertainment) located at 3001 Bayshore Road, Unit #9, based on the findings, and subject to the conditions listed in the attached resolution and as discussed during the public hearing.

Commissioner Ernst recused himself due to a conflict of interest.

Mr. Rhoades reviewed the application and proposed project. The new proposed indoor archery range would be located in an existing multi-tenant building in the industrial park. The space is in the back of the building and allows for 24 participants. Staff prepared an informal parking survey to assist with evaluating whether this additional use would create a parking problem at this location.

**Questions from Commissioners.**

Commissioner Sherry asked for a more detailed explanation of the parking survey used for this project.

Mr. Rhoades responded that the City parking requirements for this type of use are not specified in the code and that a Use Permit process addresses the use on a case by case basis. There are lots of spaces available during their business hours. The purpose of the survey was to make sure there would be no conflict with the current industrial use. After review, staff has determined that there should be plenty of parking spaces available for this business.

**Opened for Public Comment.**

Carl Massey, applicant, revealed his background, and discussed the proposed business and use. He taught archery for eleven years and wants to provide a place for children and youth to learn and practice this sport. No other archery is located in town. Their busiest hours are from 6 to 9 pm and Saturday mornings.

Commissioner Dean asked how the lanes are organized, if there are partitions and will rental equipment be available.

Mr. Massy answered that there will be a partition wall and all activities are organized for safety. Yes, rental equipment will be available.

Commissioner Sherry asked if there would be any retail space; he also expressed concern about safety – such as, could an arrow pierce the roof; and is there an emergency response procedure.

Mr. Massey responded that yes they may repair and sell bows, arrows and other equipment. Arrows would not pierce through the metal roof – they have blunt tips. He will provide first aid kits and instructors are CPR/first aid certified. He will have insurance and he has never seen an accident in his experience.

**Other public comment.**

A resident spoke in favor of the applicant. She is an archery coach and has taught at Benicia Middle School. She supports this business applicant. This sport is very safe for youth and children.

**Public Comment closed.**

Commissioner Dean spoke in favor of this applicant. It is an opportunity to fill more space in the industrial park.

On motion of Commissioner Syracuse and seconded by Commissioner Sherry, the Planning Commission approved a Use Permit for an indoor archery range at 3001 Bayshore Road, adopted by the following vote:

Ayes: Commissioners Dean, Oakes, Sherry, Syracuse and Chair Thomas  
Noes: None  
Absent: Commissioner Smith  
Abstain: Commissioner Ernst

**C. GENERAL PLAN CONFORMANCE ASSOCIATED WITH VACATION OF PORTION OF ACCESS EASEMENT ADJACENT TO 532 CAMBRIDGE DRIVE**

**PROJECT SUMMARY:**

To allow the property owner of 532 Cambridge Drive to purchase a pie-shaped portion of an existing easement along his east property line. The portion is approximately 40' wide at the north edge of the subject property, tapering easterly to 20' at the south property boundary. The change still allows for a wide access to the open space area that is

approximately 38 feet wide along Cambridge Drive, and remains 25' wide at the open space boundary. Consistent with the Benicia Municipal Code, staff recommends Commission approval of a General Plan Conformance to vacate the approximately 2,340 square feet of existing access easement adjacent to 532 Cambridge Drive. The proposed request is that the Planning Commission determines that the vacation of a portion of an existing open space access easement on the east edge of the property at 532 Cambridge Drive is consistent with the General Plan. A 25+ foot wide strip would be retained for public access.

**Staff's Recommendation:**

Approve a General Plan Conformance to vacate an access easement along the east side of the property at 532 Cambridge Drive consistent with the goals, objectives and policies of the General Plan and based on the findings set forth in the attached resolution.

Mr. Rhoades presented a brief overview of the item. The adjacent resident wishes to purchase at fair market value the access easement adjacent to his property. It's a triangular shape parcel and leaves 25 feet for open space access. It is zoned residential, not open space.

**Commissioner Questions.**

Commissioner Ernst asked if the City sells this easement, will there be 25' access for fire trucks. This parcel is wider at the street and narrower at the back.

Commissioner Sherry commented that it is not an open space easement but a parcel deeded to the City. He noted that staff should take the topography into account, which makes the open space access narrower. Will the property owner fence this in? The existing pole with sign (shown in the staff report) may need to be relocated. The City may want to install a post and chain to allow foot and bicycle access to the remaining access easement but prevent vehicles from using it. He asked if that could be added as a condition.

Mr. Rhoades responded that we can forward those comments to the City Council and check with Public Works staff on the cost to relocate the sign.

Commissioner Syracuse asked if this additional square footage would provide enough room to build another house.

Mr. Rhoades responded that no, it falls short of that size.

Commissioner Ernst referred to Commissioner Smith's written comment that 25' may not be enough room for fire access. Has the Fire Dept been asked to comment.

Mr. Rhoades responded that he will forward those concerns to City Council.

Commissioner Sherry commented that the access at the back of the access parcel is closer to 20' because of the slope.

Commissioner Dean asked about General Plan consistency, and whether there are any policies on the sale of public property. Is there a public benefit by the sale?

Mr. Rhoades responded that the action before the Planning Commission is to determine General Plan consistency. The parcel will be sold at fair market value and an appraisal is being conducted. There is no loss of open space to the public, which is a City policy.

**Public Comment Opened.**

Robin Stewart, owner of 532 Cambridge Drive and applicant, stated that this request was made 3 years ago. She and her husband have been in touch with Fire Department staff and they have no concerns about the easement purchase. There are other access points the Fire Staff can use and 20' is ample width. The parcel will look no different than it does now other than they it will be fenced.

No questions from Commissioners.

**Public Comment closed.**

On motion made by Commission Ernst and seconded by Commissioner Syracuse, the Planning Commission hereby finds the vacation of a portion

of open space access easement in conformance with the goal, policies and programs of the General Plan, and directs staff to forward Planning Commission's recommendations to City Council concerning adding a post and chain across the open space access and moving the existing sign, and adopted by the following vote:

Ayes: Commissioners Dean, Ernst, Oakes, Sherry, Syracuse and Chair Thomas  
Noes: None  
Absent: Commissioner Smith  
Abstain: None

## **VI. COMMUNICATION FROM STAFF**

Mr. Rhoades informed the Commission of the 2012 Meeting Calendar memorandum distributed to Commissioners at the beginning of the meeting. The next regular meeting of the Planning Commission is January 12, 2012. The rest of the 2012 meeting calendar will be agendaized at the next meeting for Commission approval.

Mr. Rhoades informed the Commission that the New Harbor Church (on Blake Ct) project is moving forward. The applicant has agreed to present their site plan and staff's diagram plans to the HPRC and Planning Commission at a joint workshop. Mr. Rhoades asked if Commissioners would prefer a date of 1/12 (before the regular meeting) or on 1/26 (the HPRC regular meeting).

The Commissioners decided on the January 12 meeting date.

Mr. Rhoades informed the Commission that regarding the 410 West J Street project, a new procedure has been added to the building permit application process. The new procedure will require the applicant to sign a statement specifying the materials of existing features and specifications for new features in order to determine if the modification is "in-kind" or requires Design Review approval. Staff will inspect the property before the permit is finalized.

## **VII. COMMUNICATION FROM COMMISSIONERS**

Commissioner Dean commented on surplus property sales and Planning Commission determining General Plan conformance. He stated that it feels like the Commission is "bending some lines" to make the points needed. The Commission is looking at one narrow issue and the General Plan conformance is

one sub-set of that, which is frustrating. Isn't the real issue "is the property sale a good idea or not?"

Ms. Wellman read from Gov. Code Section 65402 which requires the Planning Commission to find that the sale of public property is in conformance and consistent with the City's General Plan. There are a number of actions that require the Planning Commission to make these findings before the City Council can act.

Commissioner Dean asked for any recommendations or what is the mechanism for a Commissioner.

Ms. Wellman advised the Commission to pass along comments with your findings, but it does not weigh in on the vote.

## **VII. ADJOURNMENT**

Meeting was adjourned at 9:45 pm.