

MINUTES APPROVED AT THE HPC MEETING ON OCTOBER 12, 2021

**Historic Preservation Commission Meeting
Virtual
September 14, 2021
5:30 p.m.**

MINUTES

Roll Call:

Chair McNamara called the meeting to order at 5:40 p.m.

Present: Chair Robin McNamara; Vice Chair Joann Pavlinec; Commissioners Fatema Crane, Jonathan Haeber, Caitlin Hibma, and Michael Hibma

Absent: Gretchen M. Stromberg

Staff: Jonelyn Whales and Alex Lopez-Vargas

Approval of Minutes:

September 8, 2021

ACTION: It was M/S/C (Pavlinec/McNamara) to approve the minutes for September 8, 2021, as drafted; approved by voice vote: 5-0-1-1 Ayes: McNamara, Haeber, C. Hibma, M. Hibma, Pavlinec; Noes: None; Abstain: Crane; Absent: Stromberg.

Meeting Procedures:

Chair McNamara stated that any decision approved may be appealed in writing to the City Clerk within ten (10) days, or by Friday, September 24, 2021, by 5:00 p.m.

Public Forum:

CORDELL HINDLER invited the Commission to the Council of Industries Shoreline Tour on October 8th, 2021 at the Harbor Master's Building. Any interested Commissioners must RSVP by September 17, 2021. He reminded the Commission that the reappointments for the Commission will take place in October of 2021.

Liaison Reports:

There was no liaison present and no reports.

Consent Calendar:

None

Public Hearing:

- | | |
|---------------------|--|
| 1. PLN21-160 | BRICKYARD LANDING CHIMNEY/KILNS STABILIZATION AND PRESERVATION PROJECT |
| Description | PUBLIC HEARING TO CONSIDER A REQUEST FOR A DEMOLITION PERMIT TO DEMOLISH THE TOP PORTION OF THE CHIMNEY AND APPROVE A PROPOSAL TO STABILIZE AND PRESERVE THE HISTORIC BRICKYARD CHIMNEY AND KILN STRUCTURES OF THE BRICKYARD LANDING HOMEOWNER'S ASSOCIATION |

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Location 1223 BRICKYARD COVE LANE
Zoning PA, PLANNED AREA DISTRICT
APN 560-480-011
Applicant MICHAEL CARNALL, BRICKYARD LANDING HOMEOWNER'S ASSOCIATION
Staff Contact JONELYN WHALES Recommendation: CONDITIONAL APPROVAL

Ms. Whales stated that the applicant is seeking approval for a Demolition Permit to remove the top portion of the chimney. There is severe deterioration of the mortar joints, as described by Mark Moore with ZFA Structural Engineer, that the chimney poses an imminent threat of collapse.

The application was before the Commission on September 8, 2021. At that meeting, the Commission added additional conditions to the applications and continued the meeting to allow Staff additional time to gather additional documents. Staff was unable to find the Brickyard Landing project approvals, but the applicant did provide correspondence between the developer and the Planning Director regarding the lawsuit that was filed by the homeowners association (HOA).

In terms of Condition #4, Staff requested that the condition language be changed as well as Condition #9.

Ms. Whales disclosed that Staff has received over 50 written letters regarding the project. She summarized that the majority of the comments expressed that the safety hazard that the chimney presents to the Brickyard Landing community should be removed.

Brett Gladstone, the HOA representative, clarified that the HOA has provided modified language for Condition #9 that will replace Conditions #7. He requested that the Commissioners approve the proposed language.

Mr. Gladstone confirmed that the HOA agreed to remove the appropriate height of the chimney in order to make it stable and then store the bricks on site. He requested that the number of bricks and the appropriate height of the chimney be left to Mr. Moore to decide. If the full funding amount of \$300,000 is not used, the HOA requested that the remaining funds be used for analysis on if the chimney can be rebuilt or used to fund a study for a community project using the bricks. The HOA agreed to provide updates to the Commission throughout the dismantling of the chimney. The HOA agreed to have Page & Turnbull oversee the removal of the bricks and they will be consulted before the bricks are put back or stored. The HOA agreed to obtain a surety bond or other financial assurance to ensure that the Conditions of Approval are met. However, they requested that the removal of the brick begin immediately due to safety concerns and not wait till financial assurance is obtained.

Mike Carnall, former President of the HOA and applicant, restated that the Brickyard Landing HOA will do everything possible to make the chimney and kilns safe. He informed the Commission that the process to address the chimney and kilns began in May of 2020. He summarized the timeline of the project and the process the HOA has taken to address the situation. He concluded that there seemed to be a consensus among the Commissioners at the prior two hearings that the top half of the chimney must be removed. Until the chimney is dismantled to a safe height, the HOA cannot assess the chimney's or the kiln's condition. He urged the Commission to approve the Demolition Permit with the conditions so that the project can move forward.

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Chair McNamara inquired if the HOA has separate funds for a litigation case if the residents of Brickyard Landing decide to act. Mr. Gladstone shared that the HOA does have insurance to pay for lawsuits.

Vice Chair Pavlinec stated that none of the Commissioners are in opposition of having the top half of the chimney be removed. In the last meeting on September 8, 2021, the report did not include any follow-up plan as to what will happen to the chimney after it is dismantled and that is why the Commission requested some type of assurance. She concluded that the ideal option is to reconstruct the chimney to its original condition.

Mr. Moore clarified that there is a damaged area 10-feet above grade and that the chimney should be dismantled to half its height to mitigate it from falling in any direction. After the chimney is dismantled halfway down, it will be reassessed to determine the next steps, and those next steps will be shared with the Commission.

Commissioner M. Hibma asked if the red tags can be removed if the top 35-feet of the chimney is removed. Mr. Moore restated that the limits will be reassessed, but the chimney will remain a falling hazard. Mr. Gladstone added that the kilns will remain in danger, even if the chimney is reduced by 35-feet.

Vice Chair Pavlinec acknowledged that many residents have expressed frustration that they cannot access the community pool. She inquired if the HOA can provide residents a pass to the Richmond Plunge. Mr. Carnall indicated that the HOA Board can discuss that as an option.

Chair McNamara understood that the \$300,000 surety bond is not a limit. Mr. Carnall disclosed that the HOA does not know the final expense that the project will be. Mr. Gladstone added that research and providing proposals for grant funding take time. Mr. Moore clarified that the HOA has committed \$300,000 to dismantle the chimney and then they will explore further funding, if need, for the next phase.

Vice Chair Pavlinec asked if the applicant team is aware that the preservation of some of the pieces was mitigation in an Environmental Impact Report in the early '80s. Mr. Gladstone answered that at the time, the City did not make it a Condition of Approval of the permits or put it into the Development Agreement that the structure has to be stabilized. The actions taken in the '80s should not carry to the current HOA. Vice Chair Pavlinec noted that the language does not address stabilization but for preservation. Also, it was adopted as a resolution as a part of the Tentative Map. Commissioner Haeber shared that the Planning Commission adopted Resolution 84-10 and it contained conditions that stated that the project shall retain and preserve some of the existing structures. Mr. Gladstone acknowledged that he was unaware that there was a resolution. He indicated that the City Attorney and he must discuss if a default of a developer carries on to the successors in the interest of the land.

Chair McNamara noted that the documentation from the past has caused concern among the Commission. She restated that she, and many of the Commissioners, are aware and are concerned about the danger that the chimney poses. But moving forward, the Commission is seeking assurance that the structures will not be neglected in the future.

Vice Chair Pavlinec requested that Condition #4 include 'dismantling the top 35-feet of the chimney and return to the Historic Preservation Commission if additional footage is required'. Mr. Carnall indicated that if additional footage has to be removed, it would be inconvenient and costly

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to return to the Commission for approval. He requested that the HOA have the flexibility to remove as many bricks as needed to make the chimney safe.

Vice Chair Pavlinec pointed out that there is no evidence or findings for how the standards are met for the hardship case. Ms. Whales explained that the third finding has been shown through the discussions with the HOA as well as their representatives and the documents indicate that it is impractical to preserve the structure's character-defining features. Mr. Moore stated that the hardship comes from the HOA not knowing what to respond to because the structure cannot be safely assessed.

Public Comment:

DELPHINE PREVOST restated that the residents are committed to maintaining the historical resource. She noted that one of the primary objectives is to allow the chimney to be dismantled as far as it needs to come down in order for the red tags around the recreational area to be removed. She did not see passes to the Richmond Plunge as a viable option due to the facility's limitations.

BOB CORSHEN acknowledged that the discussions have gone around in circles and he urged the Commission to focus on making the chimney safe. He believed that the Commission cannot ask the homeowners to commit to spending \$300,000 and he predicted that the project will be substantially more than \$300,000.

CATHY O'BRIEN encouraged the Commission to allow the chimney to be dismantled to a safe height.

JEFF FINES supported Mr. Gladstone and Mr. Carnall's comments. He agreed that the residents are anxious to have the project move forward. He recommended that the Commission allow the chimney to be dismantled to a safe height and then work from there.

MERYL SHAW shared that her home is located next to the chimney. When leaving her home, she has to drive through the fire lane which is located in the hazard zone of the chimney. She informed the Commission that the red-tagged area includes the office which has resulted in the administrators working out of the clubhouse. Now the residents can no longer use the clubhouse. She strongly expressed that the residents in Brickyard Landing are not tenants and that the grounds are well maintained. The residents will not support dismantling the chimney and then leaving it to become an eyesore.

Commissioner M. Hibma suggested changing Condition #4, as written in the Staff report, from 'a licensed historic preservation engineer' to 'engage an architect or engineer who meets the Secretary of Interior Professional Qualification Standards'. Regarding Condition #9, as written in the Staff report, he recommended inserting 'within a year of approval' after the amount of \$300,000.

Vice Chair Pavlinec indicated that the applicants have proposed significant changes to Condition #9. Mr. Gladstone read the proposed modification for Condition #9 which stated that 'the applicant shall obtain a \$300,000 surety bond, or other proof of financial ability, and shall use this money to remove the consultant recommended number of bricks according to the Conditions of Approval. Within 1-year from the date of approval of a permit to remove the bricks, applicant shall obtain a surety bond, or other proof of financial ability, in the amount of \$300,000, less the cost of removal already spent. That \$300,000, less the cost of removal already spent, will be used in amounts

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needed to study the complete restoration of the brick chimney under the Secretary of Interior Guidelines. If the applicant's structural engineers, in their sole discretion, find that it is reasonably infeasible to rebuild or to restore the chimney. Then the applicant shall return to the Historic Preservation Commission with a plan for the Commission's consideration for reuse of the remaining funds and/or additional funds for the chimney bricks in a community project.'

Commissioner Haeber shared that the report from Pullman estimated the work to be completed for the removal of the bricks is \$137,380. He clarified that that amount is due to the HOA's own overlooking of the danger of the structure and is it the HOA's responsibility to pay those fees, not the homeowners.

Chair McNamara restated that the Commission is working with dollar amounts that the applicant has presented. The Commission did not do its own cost analysis of the structure.

Commissioner Haeber inquired why Mr. Gladstone was requesting to replace his modified Condition #9 for Condition #7 that discussed the protection of the kilns. Mr. Gladstone clarified that he did not mean to have the protection of the kilns be removed, but rather the last sentence in Condition #7 that stated 'the chimney shall be reconstructed'.

Commissioner Haeber acknowledged the public's written letters that discuss the removal of the kilns. He noted that the Commission is solely focused on the chimney and that the Commission will be discussing the kilns in the future.

Vice Chair Pavlinec understood that the last sentence in Condition #7 indicates that if the kilns are damaged, that they will be reconstructed. Commissioner Haeber agreed and Mr. Gladstone confirmed that is the intent of the sentence. Mr. Moore indicated that is an over-promise because if there is significant damage to the kilns then they will collapse. Commissioner C. Hibma found the sentence to be problematic because it indicates that the applicant will reconstruct the chimney and the kilns which is a project that has not been discussed. Ms. Whales shared that Staff's intention was if there was further damage to the kilns during the dismantling of the chimney, there would be a discussion with the Commission on how to reconstruct them.

Commissioner M. Hibma stated that the applicant's proposed Condition #9 language references a project that will come later for review. He acknowledged that the Commission wants the bricks saved and that there be an effort and commitment that the chimney will be rebuilt in the future.

Vice Chair Pavlinec agreed with Commissioner M. Hibma. She noted that the Page & Turnbull report did not analyze whether the structure is eligible or not for the National Register. The Commission must keep the California Environmental Quality Act (CEQA) guideline in mind as the project moves forward.

Commissioner Haeber mentioned that the kilns are rare and there are no others like it in the State of California aside from the ones located in Lincoln, California. He noted that demolishing the kilns and the chimney together will impact many people. Mr. Carnall interjected that there has been no suggestion that the kilns would be demolished or to completely tear down the chimney.

The Commission and Staff discussed changing the language for Condition #7. The Commission supported Condition #7 to read as follows: "The applicant shall ensure that the kilns be protected during the chimney construction process. If there is any damage to the kilns, the applicant shall return to the HPC for recommendations'.

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The Commission supported Condition #9 as follows: 'The applicant shall provide to the City of Richmond, Planning Division a surety bond in the amount of \$300,000 within a year of approval to guarantee that the chimney will be reconstructed to the Secretary of Interior Standards, or in a way that meets the threshold to the California Environmental Quality Act (CEQA) for impacts to a historical resource'.

Commissioner Crane suggested an additional Condition of Approval that read, 'The structure shall be documented to meet the requirements of the Historic American Building Survey as soon as possible and prior to any demolition work.' She noted that her suggestion comes from the recommendations made in the Page & Turnbull report. Commissioner C. Hibma mentioned that there was discussion and agreement to have a 3D scan done of the structure prior to demolition. Commissioner Crane clarified that any documentation of existing conditions would be satisfactory. Sarah Brummett, Page & Turnbull, confirmed that the 3D scan has been completed.

Vice Chair Pavlinec liked Commissioner Crane's suggestion to add another condition because it provided written confirmation that the Commission made that recommendation. Chair McNamara suggested that there be Condition #10 that reflected that the Commission recommended a 3D scan be done of the structure prior to the beginning of the project.

Vice Chair Pavlinec asked who holds the 3D scan. Ms. Brummett confirmed that Page & Turnbull has received the scan and that it can be shared with any repositories that want a copy. The entire site, chimneys, and kilns were scanned.

Commissioner Haeber asked if the scan is a color point cloud and Ms. Brummett confirmed that is it. He encouraged Page & Turnbull to upload the scan so that the public can access it.

Mr. Gladstone noted that Condition #9 still requires the applicant to rebuild the chimney and requested that the language be rewritten. Chair McNamara mentioned that she is not sure who determines what is feasible for reconstruction outside of a structural engineer.

Commissioner Haeber mentioned that the lawsuit that was filed in the '80s was predicated on the fact that the HOA felt that the original developer gave the structures in poor condition. He inquired if the HOA received a financial settlement from that lawsuit. Mr. Gladstone indicated that is confidential attorney-client communication. Ms. Whales inquired if there is a public settlement agreement and Mr. Gladstone stated he cannot answer that question.

Commissioner Crane clarified that Condition #9 suggests that the applicant enter into a bond to guarantee that the chimney will be rebuilt. That entitlement is not an entitlement to rebuild the chimney. She disagreed that Condition #9 is inconsistent with CEQA. Ms. Whales agreed. Commissioner M. Hibma reminded the Commissioners that the applicant does have the right to appeal the Commission's ruling to City Council.

Commissioner Crane suggested that Condition #9 read as follows: 'The applicant shall provide to the City of Richmond, Planning Division a surety bond in the amount of \$300,000 in order that the chimney might be reconstructed a year after approval to the Secretary of Interior Standards, or in a way that meets the threshold to the California Environmental Quality Act (CEQA) for impacts to a historical resource'.

Commissioner Haeber mentioned that the \$137,380 should not be included in the \$300,000 amount. Commissioner M. Hibma disagreed and shared that the \$137,380 is to fix the error the HOA made in not doing routine maintenance to the structure.

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ACTION: It was M/S/C (C. Hibma/McNamara) to adopt the Staff recommendation with the language that is presented with the exceptions of Condition #7 that shall read as follows, 'the applicant shall ensure that the kilns be protected during the chimney construction process and if there's any damage they shall return to the HPC for further guidance; Number 9 shall read, the applicant shall provide to the City of Richmond, Planning Division a surety bond in the amount of \$300,000 within 1-year that the chimney may be reconstructed to the Secretary of Interior Standards, or in a way that meets the threshold to the California Environmental Quality Act (CEQA) for impacts to a historical resource; and Condition #4 shall read 'the applicant shall hire a licensed engineer or architect who is qualified under the Secretary of Interior Standards for Professional Qualifications to oversee the deconstruction of the chimney; which carried by voice vote: 5-1-1 Ayes: McNamara, Haeber, C. Hibma, M. Hibma, Pavlinec; Noes: Crane; Absent: Stromberg.

Vice Chair Pavlinec requested a report from the City Attorney Office that clarifies Resolution 84-10, what it requires, how it is attached to the Tentative Map, what are the implications of that, what is the Final Environmental CEQA for the project, and the lawsuit. Ms. Whales confirmed that a City attorney will be present at the next hearing for the project.

Commission Business:

A. Commission member reports, requests, or announcements – Commissioner Haeber reported that the City has received a grant of \$25,000 to do a City-wide historic tour. He encouraged the Commissioners and the public to be involved in the process. Mr. Moore announced that he would like to help with the project.

Vice Chair Pavlinec suggested that a study session be scheduled with the City Attorney Office regarding the unanswered questions for the Brickyard Cove project for the October or November 2021 meeting.

Commissioner Crane inquired what 'termed out' means for a Commissioner. Ms. Whales explained that Commissioners can be reappointed by City Council.

Adjournment - The Commission adjourned at 7:32 p.m. to October 12, 2021.