



**CITY COUNCIL AND COMMUNITY DEVELOPMENT AGENCY
MINUTES**

Tuesday, October 30, 2007

7:00 p.m.

**701 Laurel Street, Menlo Park, CA 94025
Menlo Park City Council Chambers**

5:30 p.m. CLOSED SESSION (First Floor Conference Room – Administration Building)

- 1. Closed session pursuant to Government Code Section §54957.6 to conference with Glen Rojas, City Manager; Audrey Ramberg, Assistant City Manager, Bill McClure, City Attorney; and Glen Kramer, Personnel and Information Services Director regarding Police Officers Association (POA) and Police Management (PMA) contracts that expire June 30, 2008 and December 31, 2008 respectively.**

Action: No reportable action.

7:00 p.m. REGULAR MEETING (Menlo Park City Council Chambers)

ROLL CALL – Fergusson, Cohen, Boyle, Cline, Robinson

Staff present – City Manager Rojas, City Attorney McClure and City Clerk Vonderlinden. Other staff present in the audience.

PLEDGE OF ALLEGIANCE

A. VACANCIES, APPOINTMENTS AND COMMISSION REPORTS

- 1. Recognition of outgoing commissioners. ([attachment](#))**

Action: The Mayor presented certificates of recognition to outgoing commissioners.

- 2. Commission members and Chamber of Commerce reports.**

- Bicycle Commission Quarterly Report. ([attachment](#))**

Bob Steel provided a report on the work being performed by the Bicycle Commission, which includes review of placement of bicycle racks in the Downtown; the Safe Routes to School for Laurel School project; and the Ravenswood 101 Overpass.

Paula Maurano provided a report on the work being performed by the Parks and Recreation Commission. She reported that the commission passed unanimous motions related to the Park Theater, which included asking the Council to reject the proposed deal for the City to assist in financing the Park Theater.

Thomas McDonough presented a report on work being performed by the Library Commission, including the impact of budget cuts on the Library.

- 3. There are three vacancies on the Finance Committee, a newly formed advisory body. The vacancies are for two two-year terms and one three-year term to allow for staggered seats. The deadline for submittal of applications to the City Clerk's Office is Tuesday, November 27, 2007.**

B. PRESENTATIONS AND PROCLAMATIONS

1. Legislative update by Assembly Member Ira Ruskin.

Action: Assembly Member Ruskin provided a legislative update, including an update on the budget process.

C. PUBLIC COMMENT #1

Patrick Gordon stated that he does not support using City resources to purchase the Park Theater because he doesn't believe it fits in with the priorities for the City.

D. CONSENT CALENDAR - None

E. PUBLIC HEARING

1. Consideration of an appeal of the Planning Commission's decision to approve a Use Permit to construct a new two-story, single-family residence on a substandard lot with regard to lot width at 578 Olive Street in the R-1-S (Single-Family Suburban) Zoning District. (This item was continued from the City Council meeting of October 2, 2007) ([Staff Report #07-168](#))

Megan Fisher, Associate Planner, presented the staff report. She reported that the applicant is requesting a use permit to demolish an existing single-story, single-family home to construct a new two-story, single-family residence with a basement on a substandard lot with regard to lot width. She stated that the Planning Commission reviewed this project in November 2006 and continued the matter with direction to the applicant to meet with the neighbors; to redesign the project to address the neighbors concerns; to provide more information on the heritage redwood trees; and to create a landscape plan with no increase in impervious area. After review of the revised project, the Commission on February 5, 2007, continued to matter with direction to the applicant to perform neighborhood outreach; remove the proposed light wells from the required side setbacks; eliminate the proposed rear balcony; provide additional secondary story setbacks on the right side; provide an additional arborist report analyzing impacts on the heritage redwood trees; and provide a revised landscape plan that addressed the neighbors' privacy concerns. Ms. Fisher reported that at the Planning Commission meeting of August 13, 2007 the Planning Commission approved the revised project per conditions as stated in the staff report with the additional condition requiring a revised landscape plan based on consultation with the neighbors to determine the size, type and location of proposed trees.

Ms. Fisher informed the Council that the residents at 560 and 592 Olive Street subsequently filed an appeal, based on their beliefs that the project would threaten the health and stability of the heritage redwood trees and that the project is too massive for the lot. She reported that the applicant and appellants attempted mediation, but that this fell apart. Ms. Fisher stated that staff believes the issues have been adequately addressed by changes to the design and through the conditions of approval and is recommending that the Council deny the appeal and uphold the decision of the Planning Commission to approve a use permit to demolish an existing single-story, single-family residence and construct a new two-story, single-family residence on a substandard lot with regard to lot width with conditions of approval and a modification to Condition 4b as proposed by staff.

The Mayor opened the public hearing.

Jim Crowley, Lee Crowley, Nancy Cox and Kevin Harris, the appellants, outlined their concerns. They stated that they and their neighbors are not anti-development, but rather support site appropriate development that is in compliance with the zoning requirements and consistent with the surrounding properties. They stated the adjacent houses are single-story houses and that building a two-story house and removal of redwood trees would alter the quality of life and property values of the neighbors. The appellants identified solutions that they believe would protect the heritage trees and offered to pay their arborist to work with the applicant's arborist to come up with one unified arborist report. They stated their desire to have the applicant post a bond to ensure protection of the heritage trees if the project goes forward. They provided the text of a petition signed by over 80 residents regarding the neighbors' concerns for the heritage trees.

Mandana Jamshidnejad, the applicant, showed a model of the proposed home and presented a chart showing all of the changes that were made in response to direction from the Planning Commission and feedback from the neighbors. She stated that they had six neighborhood meetings. She offered, as a condition of approval, that her arborist will take arborist reports from both sides and comply with the stricter recommendations. Ms. Jamshidnejad stated that she followed and complied with the specific direction of the Planning Commission and that the issues being raised by the appellants were already considered and addressed by the Planning Commission. She asked that the Council deny the appeal and approve the use permit.

Al Heibein spoke in support of homeowners in general and pointed to several misstatements in a letter that was sent out by the applicant to the neighbors.

Dan Odishoo said that the applicant wants to build an oversized house on a substandard lot and asked that the Council require the applicant to follow the zoning standards and to deny the use permit.

Alex Miller-Cole, the applicant's designer, expressed his belief that this is a great house, but the design has suffered from all of the design revisions. He said that the applicant is not making money on this project.

Loren Lyall pointed out that both arborist reports recommend fencing around the tree protection zones and questioned whether or not dirt haulers will be able to get onto the lot with all of the fencing.

Dolly Verplank said that even though the applicant has made concessions and changes to the design, it still may not be the best project for the neighborhood.

Eileen McLaughlin reviewed the history of the ownership of the house and questioned whether or not the applicant has established credibility with the community so that they will have faith that she will meet the expected requirements.

Florence Barr reiterated the fact that the neighbors are not anti-development. However, she asked the Council not to allow the project, as proposed, to go forward.

David Babby informed the Council that he prepared an arborist report for the applicant and that part of his review was to study the proposed impacts on existing trees. He said

that his report concluded that the impacts could be mitigated to less than significant levels. He also stated that he believes the auto court could be constructed without adversely affecting the two redwood trees.

Marcia Enns stated that she is in agreement with Dolly Verplank.

Herb Stickel said that people should not assume people will not want to look out of non-viewing windows.

Merlin Schlumberger, a certified arborist, expressed concern for the well being of the heritage trees and offered suggestions for designing the auto court.

Robert Hasslen said that the applicant has become a victim of the use permit process, having submitted three designs, revised at the direction of the Planning Commission. He asked that the Council deny the appeal and approve the use permit.

Joan Inglis said she is concerned with the proposed courtyard paving and whether or not it will absorb adequate water.

John Inglis said he agreed with comments made by Dan Odishoo.

Elias Blawie urged the Council to consider the comments and concerns of the neighbors that live nearest to the proposed project more so than neighbors that live further away from the project. He expressed concern that the building of basements destroy City streets during construction and that findings to approve this project can not be made under the current zoning ordinance.

Earl Shelton stated his belief that the residential zoning ordinance is outdated and does not address the legitimate concerns of neighborhoods. He asked that the Council agree with the neighbors, accept the appeal, and deny the use permit.

Catherine McMillan pointed out that this is a common situation where an applicant feels that she has played by the rules, but has not addressed the substantive issue of scale, and is then pitted against homeowners in the neighborhood, who stand to lose their quality of life. She recommended that there be rules that are more predictable and less permissive and stated that the zoning ordinance is not meeting the needs of the community.

David Teichmann pointed out detriment does exist. He suggested the Council require the parties to have a two-way dialogue to come up with a solution that addresses the concerns of the neighborhood and allows the applicant to develop her property.

Chuck Kinney said that the staff has rightly amended the Planning Commission's recommendations to add protections for the heritage redwood trees. He also recommended that an alternative location for the auto court or an alternative surface material be considered so as not to adversely impact these trees.

Greg Klingstorn, attorney for the applicant, informed the Council that his presence at mediation sessions became an issue for the other side, so he agreed to take a backseat role. He said the next he heard was that negotiations were a "no go". He also

expressed his belief that the Planning Commission did its job on this project and that the applicant has met all the requirements directed by the Commission.

Carol Grace agreed with others in that the zoning ordinance and heritage tree ordinances don't appear to be working and as a result there is a lot of division in the community and a lot of conflict. She expressed concern for the trees and construction of the basement and also expressed concern that the applicant has misrepresented herself and this project.

Barrie Coate, an arborist hired by the neighbors, informed the Council that he has prepared an analysis of the trees on the property. He expressed concern for the trees, especially tree number ten. He recommended the auto court be relocated and the area be irrigated and plants and mulch be put in this area.

Nasrin Hashemi questioned if there are trees that are in danger, why this wasn't disclosed to potential buyers. She stated that the applicant has made all the changes directed by the Planning Commission and therefore should be issued the use permit.

The Mayor closed the public hearing.

Mayor Fergusson reviewed the different courses of action for the Council to consider and asked for legal clarification.

The City Attorney clarified that in addition to the staff recommendation, the Council could also approve a modified use permit. He stated that if the Council denies the use permit, the applicant could not reapply for a substantially similar project for a period of one year. The City Attorney stated that if the Council denies the project without prejudice the applicant would be able to reapply with a substantially similar project during the one year period. He also stated that if the two sides agree to some compromise, they could agree to waive the 75 day action period. However, if the applicant does not agree to the waiver of time and the Council takes no action within the action period, the Planning Commission approval will be final.

Members of the Council questioned staff regarding issues related to the parking spaces, the garage, the auto court, the basement, and the heritage trees.

Vice Mayor Cohen pointed out that this project was approved by the Planning Commission on a three to one vote, with three members absent, and he questioned what the result would have been if all members were present or if the parties had gone to mediation. He indicated that his decision will be guided by sections 16.02.050, 16.82.010, and 16.82.030 of the zoning ordinance which include the effect upon the public health, safety and general welfare of the neighborhood; the proper integration into the community of uses that may be suitable only in specific locations; protection of adjacent properties in the public interest; and due regard to the nature and condition of all adjacent uses and structures and impact of the application.

Councilmember Cline stated that this project substantiates the failure of the use permit process. He said that failure to mediate was a disaster for both sides and as a result the Council is being forced to decide the fate of the applicant and neighbors. He cautioned that oversight on this project, especially for the safety of the heritage trees, is crucial. He agreed with the suggestion the applicant put up a bond. He said that the size and scale

of the house is one that can not be solved, as it is a bigger issue that the Council needs to look at in the context of revising the zoning ordinance.

Councilmember Boyle stated that the Council needs to review and consider revisions to the zoning and heritage tree ordinances and the use permit process, and that he supports making this a Council priority. He pointed out that this project is at or below the zoning requirements in every way with the exception that the lot is ten feet narrower than code. Councilmember Boyle suggested that the focus be placed on potential detriments as a result of the narrow lot such as privacy and light, both of which have been mitigated. He also stated his belief that the evidence presented indicates that there is a way to construct this project that does not harm the trees. He expressed support for the applicant to post a bond and felt the Council should focus on ensuring there are enough restrictions placed on construction of this project to ensure that it is built in compliance with the conditions of approval and for protection of the heritage trees.

Councilmember Robinson said that significant improvements have been made to this project as a result of direction by the Planning Commission. He stated that he had hoped mediation had worked and that this project had not come before the Council to decide. He felt that that the number one issue is the heritage trees and said that he does not have confidence in the applicant to protect the trees. He also suggested that if the project is approved the Council consider scaling back the basement from trees nine and ten, reducing the size of the auto court and parking spaces, and that substantial requirements be put on the applicant, including a bond.

Mayor Fergusson stated that she wants to make sure there are substantial requirements included in approval of this project.

Members of the Council discussed their legal options and support for various motions.

Actions: Moved, seconded and failed (Fergusson/Cline; Ayes – Fergusson, Cline; Noes – Boyle, Cohen, Robinson) a main motion to deny the appeal and uphold the decision of the Planning Commission to approve the use permit subject to the following modifications to the conditions of approval, which then form the basis for modifying the findings to approve that Council has eliminated or mitigated some of what were the negative impacts of the project as approved by the Planning Commission. The utility trenching to the extent feasible will be on the left side of the house furthest away from the redwood trees but to the extent it can't be located in that direction could be moved toward the center of the lot so long as it stays outside of the tree protection zone as described in the final arborist report. A bond would be required to ensure the health and safety of all of the redwood trees, including tree numbers two, four, five, nine, ten and thirteen with the amount of the bond to be equal to 100% of the fair market value of trees nine and ten. The bond is to be put up before commencement of construction, and the bond will be in place until five years after the final building permit sign off. The garage would be modified to have the garage door entrance parallel to Olive, a front loading garage, with the driveway from the garage door out to the street. It would provide for a back up area to the Harris Cox side of the property provided the back up area would remain outside of the tree protection zone for trees nine and ten. The auto court would be eliminated and replaced with landscaping consistent with the arborist report and approved by staff. All trucks hauling dirt to and from the property could not be operated during hours that school children are present with the trucking plan to be reviewed and approved by the Transportation Manager. Condition 4E will be modified to include both

side neighbors and the HVAC equipment will be located in a place so as to provide the least disturbance to neighbors as approved by staff. Condition 4B would provide that a final arborist report would be prepared by David Babby and he will be the project arborist throughout the construction of the project.

Moved, seconded and failed (Robinson/Cohen; Ayes – Cohen, Robinson; Noes – Boyle, Cline, and Fergusson) a substitute motion to uphold the appeal and deny the application without prejudice.

Moved, seconded and carried (Boyle/Cline; Ayes – Boyle, Cline, Fergusson; Noes – Cohen and Robinson) a main motion to deny the appeal and to uphold the decision of the Planning Commission and approve the use permit subject to modifications and conditions included in the motion brought by Mayor Fergusson with the revision that the bond in the amount of fair market value of trees nine and ten would be posted prior to issuance of the building permit to ensure the health and safety of the six redwood trees, two, four, five, nine, ten and thirteen. The bond would be released following building permit inspection provided the applicant has complied with all of the terms and conditions of the arborist report and recommendation and there have been no violations of any of the tree protection requirements, otherwise the bond would remain in effect until five years following the final building permit sign off to ensure the health and safety of the trees.

2. Introduction of an Ordinance adopting the 2007 California Building Code, 2007 California Mechanical Code, 2007 California Plumbing Code, 2007 California Electric Code, and local amendments to those codes. ([Staff Report #07-180](#))

Ron LaFrance, Building Official, presented the staff report. He stated that Menlo Park last adopted the California Building Standards Code and local amendments in 2003 with the adoption of the 1997 Uniform Building Code, 2000 Uniform Mechanical Code, 2000 Uniform Plumbing Code, 2002 National Electric Code, and the 1997 Uniform Housing Code. He said that since that time the State has adopted new codes comprising the California Building Standards Code which go into effect January 1, 2008. He informed the Council that staff is recommending adoption of an Ordinance adopting the 2007 California Building Code, California Mechanical Code, California Plumbing Code, California Electric Code, and local amendments to those codes.

Mayor Fergusson opened the public hearing. There being no one wishing to speak, the Mayor closed the public hearing.

Action: Moved, seconded (Cohen/Cline) and carried unanimously to introduce an Ordinance amending Title 12 (Buildings and Construction) of the Menlo Park Municipal Code to adopt an updated California Building Code, California Mechanical Code, California Plumbing Code, California Electric Code, and local amendments.

F. REGULAR BUSINESS

1. Consideration of state and federal legislative items, including decisions to support or oppose any such legislation, and items listed under Written Communication or Information Item.

Mayor Fergusson announced that Vice Mayor Cohen and she co-authored a letter urging the federal government allow California the tailpipe exemption so that the State could move forward on implementing AB32.

G. WRITTEN COMMUNICATION - None

H. INFORMATION ITEMS

1. **Review of the City's Investment Portfolio as of September 30, 2007.** ([Staff Report #07-174](#))

Action: Report received and filed.

I. COUNCIL MEMBER REPORTS

Councilmember Boyle announced that responses to the RFP for the consultant for El Camino Real Downtown Visioning process has been posted to the City's website.

J. PUBLIC COMMENT #2 - None

K. ADJOURNMENT

The meeting adjourned at 1:32 a.m.

Margaret S. Roberts, MMC – City Clerk for
Sherry Kelly, Interim City Clerk