



MENLO PARK PLANNING COMMISSION MINUTES

Regular Meeting

May 19, 2003

7:00 p.m.

City Council Chambers

801 Laurel Street, Menlo Park, CA 94025

CALL TO ORDER – 7:05 p.m.

ROLL CALL – Bims, Fergusson, Fry (Chair), Halleck (Vice-Chair), Pagee, Sinnott, Soffer

STAFF– Cramer, Johnson, McClure, Murphy

A. PUBLIC COMMENTS

There were none.

B. PUBLIC HEARING

1. **Zoning Ordinance Amendment and Negative Declaration/City of Menlo Park:** Review of a draft Zoning Ordinance amendment modifying the review process and development regulations related to single-family residential development and the associated Negative Declaration prepared for the ordinance amendment. The Commission's action will be in the form of a recommendation to the City Council.

Staff Comment: Planner Cramer presented the staff report, noting that the proposal for consideration is an amendment to the Zoning Ordinance pertaining to single-family residential development. She said that the proposed changes include modifications to the review process and development regulations. In general, the changes include the creation of a new ministerial and discretionary review process, changes to the development regulations and general clean up of the existing ordinance. She noted that changes would affect all single-family residential zoning districts. Staff determined that a Negative Declaration was required for the proposed project and the review period was from May 12, 2003 through June 2, 2003. No comments have been received to date.

(Commissioner Halleck arrived at 7:14 p.m.)

Planner Cramer reviewed the process for adopting an amendment to the Zoning Ordinance. She noted that two Planning Commission meetings had been scheduled: tonight's meeting and a meeting on June 2, 2003 for the review of the proposed changes to the Zoning Ordinance. She indicated that the Commission should conduct a public hearing followed by Commission discussion and the formation of a recommendation to the City Council on a draft Ordinance Amendment and Negative Declaration. She indicated that June 17, 2003 is the date for the City Council meeting to begin its review

of the draft ordinance amendment and the Negative Declaration. The Council's review will include a public hearing, review and consideration of the Planning Commission's recommendations, and discussion of the proposal. Planner Cramer said that the majority of the changes proposed to the Zoning Ordinance came from City Council direction at an April 1, 2003 study meeting.

Planner Cramer described the proposed changes to the Zoning Ordinance. She noted that currently a use permit is required for new or substantial development of a substandard lot. The draft Zoning Ordinance amendment would replace the existing process with a review process that would be primarily ministerial, but includes a discretionary review component. The process would be based on a tiered set of development regulations that include basic regulations and more flexible regulations. The new process would allow projects to be constructed subject only to building department review if the projects meet the basic set of development rules. A building permit could also be directly obtained if a project needs a more flexible set of rules and the approval of the contiguous property owners is obtained. If that approval could not be obtained, the project sponsor could apply for a new permit called the single-family development permit. It is proposed that the single-family development permit would require review by the Planning Commission.

Planner Cramer noted that with the new review process, the current requirement for a use permit for single-family construction on a substandard lot would be eliminated, with the exception that lots with less than 5,000 square feet would continue to be considered substandard and would continue to require use permit approval by the Planning Commission. Planner Cramer indicated that the intent of the change in process would be to create a more equitable and streamlined process for all single-family residential development, as well as establish an objective rule-based process. The proposed review process would apply to all single-family residential zoning districts and the changes would decrease the number of projects subject to discretionary review. Staff had distributed to the Commission a brief summary prepared by staff at the request of Council of other cities' review processes. The summary identifies peninsula cities that have discretionary review processes and those that operate on a rule-based process, similar to what is being proposed in the Zoning Ordinance amendment. The summary indicates that the majority of cities have a discretionary review process for specific types of modifications or new construction. However, Mountain View and Atherton, as well as some zoning districts in San Mateo County have primarily rules-based review processes. Most other cities have some "trigger" for a discretionary review.

Planner Cramer indicated that there are a number of changes to the development regulations for single-family residences. The changes are based on specific direction from the City Council, but also include modifications necessary to maintain consistency and clarity throughout the Zoning Ordinance as well as to add some valuable and useful provisions that were included in the previously rescinded ordinance. She noted that the staff report contained the most detailed description of the proposed changes. She summarized briefly that in "Definitions," there are added definitions of basements and story, a new definition of contiguous neighbor as well as modifications to the definitions of floor area and grade, building height and floor to ceiling height. There are also changes related directly to the new process including changes to the amount of FAL on a second floor, new provisions for horizontal wall lengths, changes to daylight plane, changes to excavation and setbacks, changes to building coverage and establishing a new requirement for the setback of mechanical equipment. At the April 1, 2003 meeting,

the City Council also recommended the inclusion of a Zoning Overlay process to allow individual neighborhoods to establish development regulations that are different from citywide regulations. She noted that the staff report outlines in detail the proposed process for the new Zoning Overlay.

Planner Cramer explained that there is a new provision for use permits for legal non-conforming residences. Currently projects that propose additions or alterations that exceed 50 percent of the replacement cost for the legal non-conforming structure require use permit approval. With the draft ordinance amendment there might be an increase in the number of residential projects made legal and non-conforming. Staff recommends that the Zoning Ordinance be amended to change the trigger for the use permit from 50 percent of the replacement cost in any twelve-month period to 100 percent of the cost. Staff's research on past use permits found that replacement costs for projects averaged approximately 100 percent.

Planner Cramer indicated that staff found that the breadth of the proposed changes to single-family residential zoning regulations allowed staff an opportunity for much needed clean up. She noted that though many of these sections are not related to single-family residential development, the proposed clean up would serve to update the ordinance, bring certain provisions into compliance with State law, and provide more clarity on specific regulations. She noted that the changes are listed on page 15 of the staff report.

Finally, Planner Cramer indicated that at the April 1, 2003 study meeting, the Council recommended a review of the effectiveness of the Zoning Ordinance amendment within 18 months following the adoption of the amendment.

Questions of Staff: In response to a question from Chair Fry, Planner Cramer indicated that copies of the staff report were available late in the day on Monday, May 12, 2003 and available on-line the same day. Chair Fry asked how the schedule to hear this item was set and whether two meetings were sufficient, noting previous reviews of proposals to amend the Zoning Ordinance had involved many more meetings and study sessions. City Attorney McClure said that the Council's direction to the subcommittee was that they bring the Zoning Ordinance amendment back to the Council as soon as possible. He indicated that the subject of these regulations or residential review process has been before the Planning Commission a number of times and it was thought that the Planning Commission would not need as long a time to review as previously. Also the Council wanted the public hearing to be in June and not in July or August. If more time were required, the item would not be heard before the City Council until September or October. Chair Fry asked whether the Council was aware that four of the seven Commissioners had not been involved in the previous reviews. City Attorney McClure indicated that he did not recall discussion on that matter. Chair Fry indicated that she thought after the April 1, 2003 study meeting that the item was to come back to a regular City Council meeting for discussion. She asked whether this meeting then was the next public meeting after the study meeting. City Attorney McClure said there had been some thought that the item did not have to come to the Planning Commission; however, based on the recommendations of the subcommittee and what was being proposed, staff's recommendation to the City Council was that the item come to the Planning Commission for review and recommendation before going back to the City Council. In response to Chair Fry's question, City Attorney McClure indicated that he did not know if there were minutes of the April 1, 2003 study session.

Chair Fry asked about a State law that requires cities to put into place something related to secondary dwelling units before July 1, 2003. City Attorney McClure indicated there is a draft ordinance on second dwelling unit that will come to the Commission at a special meeting in June. Chair Fry asked about the priority of the proposal this evening and the secondary dwelling unit ordinance. City Attorney McClure indicated the residential Zoning Ordinance amendment is a Council project and as such has priority. He noted that when the Council rescinded the Zoning Ordinance amendment in December, it indicated a desire to move forward on crafting an amendment and since then appointed a subcommittee to review and proceed. He reiterated that the secondary dwelling unit ordinance would be heard at a special meeting in June.

Commissioner Halleck referred to the Negative Declaration and asked about page 11, "1. Land Use and Planning. Would the proposal: a. Conflict with general plan designation or zoning?" He noted that the finding was "less than significant impact" and asked whether there was no mitigation required. He said when projects come before the Commission, it looks for any mitigation required perhaps due to a neighbor's concern. He said it seems mitigation is possible now, but would not be with the proposed amendment. Regarding "1.c. Be compatible with existing land use in the vicinity," he suggested that if there were less people able to review the process or the development process then the finding might more accurately be "less than significant impact" rather than "no impact." He indicated he had similar concerns throughout the document and asked if he should make a list. City Attorney McClure said that if Commissioner Halleck has any concerns, he certainly should raise questions and comment on those concerns. Commissioner Halleck asked about the CEQA process and expressed his concern that action taken by the Commission would close the public comment period on the Negative Declaration, and whether changes to the proposed Zoning Ordinance amendment might possibly change the CEQA findings. City Attorney McClure said that the Commission should raise questions and recommend to the City Council. The City Council would act on the Negative Declaration at the time that it acts on the Zoning Ordinance amendment, and that might include changes to the Negative Declaration. If modifications were made, then the Negative Declaration might need to be recirculated. In response to Commissioner Halleck's question as to the end of the review period, Planner Cramer indicated the review period ends June 2, 2003. City Attorney McClure indicated that the review period for the Negative Declaration did not have to be closed on June 2, 2003 and could continue until the public hearing before the City Council. Commissioner Soffer confirmed that Commissioner Halleck's concern was that the review period for public comment would be closed before the CEQA document was presented to the governing body for adoption. Commissioner Halleck noted that he had reviewed the Negative Declaration against the proposed changes in the zoning amendment and questioned some of the findings. He indicated that he would continue his review and prepare his comments.

Commission Fergusson indicated that she had some questions for City Building Official Don Johnson. She asked him to summarize the typical permitting process for a standard and substandard lot to clarify the roles of the various permitting agencies. Building Official Johnson explained some of the triggers that require planning review, engineering review, and/or Planning Commission review. In response to a question from Commissioner Fry, he explained how replacement cost is calculated. Additionally, Commissioner Fergusson asked what problem the Zoning Ordinance amendment is trying to solve. Building Official Johnson indicated that he thought it would be to

minimize neighbors' input, reduce discretionary review, and enhance the ability of property owners to develop without discretionary actions and the accompanying burden of greater expense of time and money.

Commissioner Soffer indicated page C-17 of the Negative Declaration regarding notification to contiguous property owners and asked whether the City has up-to-date records on-line regarding property ownership. Planner Murphy indicated that they get the information from the County and are working with data from November 2002, but the City is pursuing a database to allow for monthly updates for its notification process. Commissioner Soffer asked about property rights. City Attorney McClure indicated property owners have certain inherent rights, but all government from city to Federal has a broad range of discretion as well. He also indicated that if one were to ask a hundred people to define what property rights are, there would be a hundred different answers. However, he noted that you have to allow a person economic value and use of property. Commissioner Soffer asked about a 2,800 square foot home, and City Attorney McClure noted that the size of a house is not a property right; the ability to build a two-story home is not a property right. A setback is not a property right unless the code says that. There can be a discretionary review and approval process that prevents someone from building to the maximum. There is no property right to building to the maximum unless there is a non-discretionary process. Commissioner Soffer asked if the Zoning Ordinance amendment does that. City Attorney McClure said no, as the proposed ordinance puts limitations on certain dwellings regarding the height of the second story wall. If a project proposes to exceed established development regulations, the project would be subject to discretionary review and could be denied. He noted that under the current Zoning Ordinance, if one owns a conforming lot and proposes to build to current development regulations, permits are issued without a discretionary review. The only projects subject to discretionary review are those proposed on substandard lots.

In response to a question from Commissioner Soffer, Building Official Johnson indicated that very few plans come from homeowners prepared on their own CAD system, and the Building Department receives an equal percentage of plans prepared by Building Designers and Architects. Referring to page B-7 of the Negative Declaration in the paragraph regarding building coverage, Commissioner Soffer questioned whether a really large house could be built in two phases, by first getting the extra ground cover on the first floor extension and then coming back at a later date with a second story. City Attorney McClure responded that if the structure is at 40 percent on a 7,000 square foot lot that would be about 2,800 square feet, which is the maximum allowable to be built. Commissioner Soffer asked how the 5,000 square foot trigger for a substandard lot was determined; City Attorney McClure indicated it was at the direction of the City Council and believed it was the same in the previously rescinded ordinance. He also thought it had been the direction of the Planning Commission at an earlier date. Planner Cramer recalled that it was also part of the work done by the Council's subcommittee. Commissioner Soffer asked about page B-8 regarding a five-foot setback from any property line for any ground mounted mechanical equipment. He asked what would happen if existing equipment needed to be replaced that is situated in the five-foot setback. Planner Cramer indicated that the equipment, if replaced, would need to meet the new regulation; if there were maintenance or repair, planning would need to review. Commissioner Soffer asked if someone were replacing the air conditioning or heat exchangers outside, whether they would need to relocate the equipment into a setback. Planner Murphy confirmed that if that were the case, the property owners could replace the equipment by relocating it to the prescribed location, unless there are provisions

inserted into the ordinance to allow the replacement of existing equipment in the same location. Commissioner Soffer said such a provision should be considered, as the requirement would be burdensome on existing residences.

Commissioner Pagee noted that while fewer R-1-U lots would be reviewed, it appears that if the lot's dimensions do not meet the minimum requirement, the project would have to go through discretionary review. She indicated that would mean that planning would still have discretionary review of about 40 percent of the lots in Menlo Park. She indicated that she was looking at the description of the development regulations for the R-E, the R-S, and the R-U; she indicated that there are minimum lot standards of area, width and depth and if the lot does not meet those standards, then a project would go through discretionary review. Planner Cramer indicated that was inaccurate and that the minimum lot area and dimensions will remain for all newly created lots. Planner Cramer clarified that in the proposal, substandard would mean lots that are less than 5,000 square feet. Planner Cramer indicated that there would be no discretionary review unless the project falls within the second tier of development.

Commissioner Pagee asked whether the requirements regarding mechanical equipment included conformance with the City's Noise Ordinance. City Attorney McClure indicated that the Noise Ordinance applies to mechanical equipment. She asked what the NC rating on that equipment would be. City Attorney McClure indicated that the decibel level is measured from the adjacent property and that it was 50-55 nighttime and 60-65 daytime. She also asked when someone submits plans for mechanical equipment for a permit, is a NC rating required on the plans. City Attorney McClure indicated that the applicant would need to install equipment subject to the Noise Ordinance, but the rating is not required on the plans. Commissioner Pagee asked about pool equipment located in an accessory structure located three feet from the property line when the requirement for mechanical equipment would be a five-foot setback. City Attorney said that the five-foot setback applies to externally located equipment.

Commissioner Bims asked whether a Zoning Overlay application would overrule other existing zoning regulations. Planner Cramer indicated that a Zoning Overlay could only be used to change development regulations and to specifically exclude proposed changes to process. A Zoning Overlay would be considered through the same process as a Zoning Ordinance amendment. Commissioner Bims asked whether Zoning Overlay applications could potentially overlap properties. City Attorney McClure indicated that theoretically such a situation might occur.

Commissioner Soffer asked how variances would be handled and their effect on the application; he asked if that would open the permit application for the Planning Commission's review or just the portion relating to the variance. City Attorney McClure said that the variance would be the consideration, but noted that other aspects of the development might impact the variance. Commissioner Soffer indicated that the Planning Commission has suggested ways in which variances are not needed. City Attorney McClure indicated that would be grounds for denial of the variance, or conditional approval of a variance. Commissioner Soffer said that there might be more variance denials if there is no flexibility in trying to resolve other issues. City Attorney McClure indicated that there was really no difference in the consideration of variances with what was being proposed and what exists now.

Chair Fry noted that during the past four years at 35 public hearings the Commission has heard concerns about “monster” homes. Tonight she is hearing that there is a different objective to have a more equitable and streamlined rule-based process, but no reference to “monster” houses and intrusive projects. She asked what problem the City Council or subcommittee identified to be solved by proposed Zoning Ordinance Amendment. Planner Cramer indicated that after the previously reviewed and adopted Zoning Ordinance amendment was rescinded, there was discussion about the current review process for applicants to get permits to work on their homes. The discussion identified that the current discretionary review process does not apply to all property owners, which led to the subcommittee to focus on creating an equitable process. The change in the focus of the proposed amendment came out of the direction from City Council to improve the review process and establish a set of objective rules to be applied to all property owners. Although the focus shifted there are provisions of constraint and compromise within the proposed amendment regarding larger homes. Chair Fry asked about other cities and their review. Planner Cramer indicated that many cities adopt regulations and design guidelines to help their Commissions and the public through their review processes and guide them on the specific development they would like to see.

Commissioner Soffer asked if it is equitable to reduce the mailing notification to only the contiguous property owners. Planner Cramer indicated that the equity she was referring to was the elimination of the use permit process for substandard lots. The direction regarding the notification came from the subcommittee.

Responding to Chair Fry’s question, Planner Cramer indicated that the subcommittee had met approximately five times with various staff including the City Attorney and the Community Development Director; meetings were not public and there are no minutes. Chair Fry asked if the subcommittee met with residents who have concerns about “monster” homes or with the residential task force. Planner Cramer indicated that she did not have that information. Chair Fry indicated that it was not clear to her how the subcommittee arrived at certain values and how the subcommittee evaluated potential impact. She wondered if the City Council has specific concerns with the current review process. Planner Cramer indicated that she did not participate in the subcommittee’s discussions.

Chair Fry said that the staff report for this evening’s meeting indicated that Council had given staff direction to proceed. City Attorney McClure indicated that staff took the recommendations it heard and drafted a Zoning Ordinance amendment. Staff checked in with the Council as to the proposed ordinance and process and it has been staff’s recommendation that the ordinance come before the Planning Commission first for review and comment and then to forward to the Council with the Commission’s recommendation. Chair Fry questioned whether the process was being fast tracked and whether there had been sufficient public involvement. City Attorney McClure said the general sense of what people want and what the Council was hearing at its meetings is that the Zoning Ordinance amendment has been considered for the past four years, the pros and cons have been heard and people want to move forward. He noted that the ordinance had taken an enormous amount of staff’s time. He added that the General Plan update has been delayed because of the amount of time staff has had to give to this item.

Chair Fry asked why a new development permit was chosen rather than a use permit that conforms to State regulations; for instance notification of property owners within a 300-foot radius is required rather than just the adjacent neighbors. City Attorney McClure indicated that the direction came from the subcommittee and their approach is that the issues in the two tiers have to do with adjacent properties, not the larger area. The permit process attempts to determine who is impacted for example by the two story wall and it's the adjacent property owners. If the adjacent property owners are willing to sign off against the permit then there is no discretionary review. Chair Fry said that neighborhoods would not be allowed to have a stake in projects; City Attorney McClure indicated that the larger neighborhood could establish development regulations for themselves. Chair Fry noted that neighborhoods might only change the rules, not the process. City Attorney McClure said that was what was being proposed but the Planning Commission has the ability to comment and make recommendations it feels are appropriate. Chair Fry asked about the number of non-conforming lots. She recalled from the residential task force that about four percent of the properties in Menlo Park are 5,000 square foot or less; 36 percent of the lots are 5-7,000 square feet, and about 40 percent are considered substandard plus those odd-shaped parcels. Planner Cramer confirmed that about four percent of the lots are less than 5,000 square foot. Chair Fry noted that odd-shaped lots are not tagged in the proposed ordinance. She asked where the majority of the less than 7,000 square foot properties are. City Attorney McClure indicated they are in the areas of Belle Haven, Willows, Flood Triangle, Allied Arts and Suburban Park. She questioned that those property owners are currently notified about projects but would not be with the proposed changes. City Attorney indicated that many projects in that area do not come before the Planning Commission because people adjust their projects to avoid discretionary review.

Commissioner Pagee commented that the Zoning Amendment specifically excluded solar access and questioned why it was not better defined, rather than excluded. Planner Cramer indicated that the subcommittee proposed a change to the daylight plane section to make it more restrictive and noted that it has not been possible to implement the current solar access requirements. Commissioner Pagee said that a second floor at 17-feet 6-inches can project a 34-foot shadow at certain times of the day, and the use of daylight plane is a misnomer and the term "building envelope" should be used in its stead. She questioned why privacy is not addressed in the proposed ordinance as concerns regarding privacy are often heard by the Planning Commission. She also asked if contiguous properties are only those that meet at right angles and corner-to-corner or just property line without corners. City Attorney McClure indicated that he did not know the answer. Commissioner Pagee said that she would like to see "contiguous properties" better defined. She also would like to see a better definition of basement, and noted that many of the homes in Sharon Heights are on sloping lots. She asked if all of the area under the house is considered basement and when does a basement become a floor. Planner Cramer indicated that the definition of basement does not change from the current ordinance; just that basement has a separate definition and is further defined. Basement is defined as a space in a building that is partly or wholly below grade and where the vertical distance from grade to a finished floor directly above such space is less than or equal to 30 inches. City Attorney McClure indicated that on a sloping lot if a portion of the area adjacent to the lowest habitable part of the building exceeded 30 inches from grade to the finished floor above, it would not qualify as a basement. Commissioner Pagee asked how that would pertain to recent houses built on flat lots where an entire wall is exposed, and three walls are below ground – is it a floor or a basement by this definition. City Attorney indicated that it is

measured on the grade, noting that grade and excavation are not the same thing. Commissioner Pagee said that the excavated area could be 20 feet away and be a new grade. She indicated that she would like holes closed up to limit interpretation.

Commissioner Pagee asked about the requirement for 25 percent of a lot being a permeable surface; that could mean that the entire front yard might legally be paved. She suggested that there be a required amount of permeable surface in the front yard, not just for the whole lot. City Attorney McClure replied that there are regulations that limit parking in front in that a car can only park in a driveway serving a garage. Commissioner Pagee asked about putting a permeable surface in the front to prevent parking there. City Attorney McClure indicated that a permeable surface would not prevent cars from being parked overnight on lawns, and that parking is a code enforcement issue. Commissioner Pagee asked why the daylight plane was being used rather than a setback for the second story as used by other cities. Planner Cramer indicated there was discussion at the study meeting as to a required second floor setback and what the cost implications of applying this regulation to existing structures would be. The Council directed staff to exclude a required second floor setback. Commissioner Pagee asked about allowable intrusions, noting that there may be a bay window intrusion as long as there is no foundation. She suggested that it is possible to cantilever the floor without a foundation. Planner Cramer indicated that such a bay window is currently allowed. Commissioner Pagee said that a second floor at 17.5-feet would protrude the daylight plane. Planner Cramer indicated that only gables and dormers can intrude and does not refer to the floor. She said that a bay window could encroach into a setback on a sidewall. Commissioner Pagee asked about the daylight line. Planner Cramer said that she would get a better answer for the Commissioner.

In response to a question regarding landscaping and permeable surfaces by Chair Fry, Planner Murphy indicated that there are no requirements for permeable surfaces on multi-family parcels. Commissioner Bims asked about statement 16.08.35 on page seven of the Comparison Chart of Proposed Ordinance Amendments to the Current Zoning Ordinance and wording that maximum levels of development are subject to discretionary review. City Attorney McClure indicated that the intent of the wording is that discretionary review process is just that and there is no right or entitlement to build to the maximum if subject to discretionary review. He said that they would look at making the wording clearer.

Public Comment: David Speer, 526 Laurel Avenue, Menlo Park, asked if the State mandate regarding secondary dwelling units if passed would increase the maximum allowed buildable area. City Attorney McClure indicated "no." Mr. Speer confirmed with the City Attorney that on a 5,000 square foot lot, maximum build out including the primary and secondary dwelling unit could not exceed 2,800 square feet. Mr. Speer indicated that he has been involved for the past four years with the discussions on a Zoning Ordinance amendment and felt that the process for the proposed ordinance did not allow sufficient time for review, noting the finite number of public meetings scheduled. Although he has not yet completed his review and indicating that he would forward his written comments to the Commission, he addressed aspects of the proposed ordinance. He said that the single-family development permit appears to be the same as the use permit, except it obviated State law requirements about notification and he characterized it as a "weaselly" way to remove the more stringent State notification requirement and the time frame of the notice. He questioned limiting notification to the contiguous property owners, noting that neighbors offer negative comment privately

about building projects but do not necessarily speak publicly of their concerns. He indicated that the discretionary review process is needed and that the City should be protecting the public rather than requiring the public to protect themselves, i.e., the Zoning District overlay. He questioned who would protect the residences on the issues of privacy and character. He suggested that the General Plan be reviewed, noting that while some of it might be outdated, it is not outdated in what it says about retaining the character of Menlo Park.

Charlie Bourne, 1619 Santa Cruz Avenue, Menlo Park, stated that the recommendation of adoption of the ordinance was very premature and the process flawed. He said that this is not good government as there had been no real opportunity for an informed electorate citizenry to formulate and ask comprehensive questions. He indicated that the ordinance was only available seven days prior to tonight's meeting and there were not any copies of the Negative Declaration available for the public tonight. He indicated that there had been no evaluation conducted by an outside party of the ordinance. He questioned the lack of newspaper reports on the matter and a lack of description by staff as to why the ordinance is needed. He indicated that the process seemed contrary to the Council's election promise of "lots of input" from the public.

Toni Stein, 800 Magnolia Avenue, Menlo Park, said her initial request is that the City provide public workshops and outreach as to the new changes in the ordinance. She indicated that the project description should be modified in the Negative Declaration and the document redistributed as the project description fails to provide the information required of an environmental document. She said the proposed ordinance is about "eliminations" and "deletions" not added restrictions and limitations. She noted the document references "eliminate use permit for conforming structures," "eliminate two mailed notices to all property owners within 300-feet," eliminate the current requirement for a use permit for single-family construction on a substandard lots," eliminate the single story limit from 17 feet, limit and delete the current regulations for solar envelope and solar access because they are ineffective, confusing and difficult to implement." She indicated that she had not listed all of the "eliminations" and "deletions." Referring to the Vintage Oaks area, residents have indicated a desire to expand but cannot and suggested that the ordinance could better address these residents' concerns. She referred to "the articulation of a horizontal wall" and articulation is not described. She asked the Commission to examine the inclusion of tandem parking in the proposal, noting that tandem parking has always been an exception, never the rule. She asked about the environmental impact regarding minerals and energy. She said if all houses were built to a 20-foot height for one story, there would be an environmental impact created by the increase costs for materials and energy. She concluded that four days was insufficient time to review all of the documentation and she requested that the public's ability to discuss the proposal not be closed tonight.

Catherine McMillan, 680 San Mateo Drive, Menlo Park, expressed her sense of irony that residents' concerns about "out-of-scale" housing are being addressed in the proposed ordinance by regulations that will allow more "out-of-scale" housing and are a developer's dream come true. She said that it is the individual property owners who will pay the price. The ordinance excludes all attic space from FAL calculations; doubles allowable intrusions, and underground excavation is unregulated. The ordinance provides no incentive for single story structures, which involve no privacy, or daylight issues for their neighbors. She indicated that not only does the proposal fail to consider the impacts of such adverse issues adequately, it also eliminates checks and balances

since the proposed regulations are much more lenient allowing more structures to be built to the first tier and no neighbors would be notified. She concluded that the proposed ordinance denies property owners any way of knowing what impacts a neighbor's project may have on their property. She indicated that she was thoroughly dissatisfied with how the ordinance was written.

Elias Blawie, 665 San Mateo Drive, Menlo Park, expressed his agreement with all of the other speakers. He indicated that the proposed ordinance is pro-developer and pro-realtor and he believes it to be a post-election "pay-off." He said that the proposal is not about reforming the Zoning Ordinance to remedy immediate pressing issues concerning intrusive, privacy-denying overbuilt houses that permanently and negatively impact neighbors and neighborhoods. He said that the proposal purports to address the issues, but substantively will have no impact. The proposed regulations release the majority of properties with non-conforming lots and non-conforming structures without adequate safeguards. He referred to a 6,000 square foot home built at 635 San Mateo Drive about which the neighbors were never able to comment but with which they will have to live. The proposed ordinance he indicated further would result in greater development at the expense of privacy and property values, the loss of the safeguard of process through neighborhood notification and participation, and would allow for maximum buildout. He said for the record that he found the Negative Declaration to be completely off the mark and that the proposed changes really need to be examined for environmental impact. He questioned the wisdom of 35-40 percent FAL, articulated walls 40-feet in length, and the daylight plane and no requirement for second story setback. He noted that there are no limits on windows, lighting, or any of the obvious things that impact privacy. He said there are no checks and balances protecting his property and that neighbors directly across the street would not be allowed input. He counted five questions of staff this evening that could not be answered. He indicated that more time for review was required and suggested that the basic purposes section of the General Plan be reviewed. He questioned the safety of allowing maximum buildout of attic space and 5,600 square foot basement. He concluded that the changes have huge impacts relative to the EIR. He asked that they vote the ordinance down or significantly re-work it.

Commissioner Soffer noted that in the past when there were important public hearings they used a transcriptionist. He hoped that the recorder would capture the richness of the comments being made. He encouraged the public who had spoken to review the minutes for accuracy. Chair Fry encouraged the speakers to provide their comments in writing to the Commission as well.

Russ Dember, 1028 Berkeley Avenue, Menlo Park, indicated that he lives in the Flood Triangle, noting that it is R-1-U and the neighborhood homes average 1,200 to 1,300 square feet. He said that this proposal strips his ability to participate in changes to his immediate surroundings. He indicated that a Planning Commissioner described property rights, as the right to have the characteristics of a neighborhood that originally attracted a resident remain the same. He indicated that there is an inherent flaw in eliminating discretionary reviews of half the houses in that there are not definitive guidelines. He believes the process needs one or the other. He questioned tighter zoning through obtaining a zoning overlay. He did not think the residents of the Flood Triangle would be able to take on the Silicon Valley Association of Realtors and their public relations firm. He questioned neighborhoods' abilities to get a two-thirds vote. He noted that in the existing ordinance, about 50 percent of projects get discretionary review and in the

rescinded ordinance, 100 percent of projects could get discretionary review if propelled by an obstructionist, and in the proposed ordinance 0 percent of projects may have discretionary review. He said the wild swing is disconcerting. He questioned the notification of only contiguous neighbors for Tier 2 and indicated that he agreed with Mr. Speer that some elderly residents do not feel protected enough to stand up for themselves against developers and noted an example of this occurring in his neighborhood. He asked about absentee landlords and whether the property owners would receive the notification. He talked about second story and proposed that unless the height of the second story was 0-feet, Tier 2 would be triggered, and contiguous would mean the neighbors across the street as well. He said he liked the "Good Idea Book" and thought there should also be a "Bad Idea Book." He encouraged the development of design guidelines.

Chuck Bernstein, 444 Oak Court, Menlo Park, indicated that he was impressed with the knowledge exhibited by the Planning Commission and felt it was being sorely misused by whomever had brought the proposed ordinance before them. He noted that he was on the original Residential Task Force to stop "monster" homes and intrusiveness and he sees that the proposed ordinance would encourage "monster" homes and intrusiveness. He questioned the intent of the ordinance; indicating that it creates "open season" on the livability of Menlo Park. He sees in the ordinance the influence of realtors, developers and their coterie that are pushing this open-ended laissez-faire approach to zoning. He said the same group has gotten a bill passed by the State that would allow every single-family residence in Menlo Park to become a duplex. He noted that the Silicon Valley Board of Realtors has no right to interfere in the zoning of Menlo Park and yet they have spoken to the Council; he said that realtors and developers were the major contributors in the last Council election. He said that the ordinance had been previewed to the Menlo Park Board of Realtors. He indicated that he would like the Commission to strongly reject approval of the ordinance by the Council.

Commissioner Soffer asked about the ordinance being previewed to the local realtors. City Attorney McClure indicated that he did not know if or when that occurred. Commissioner Pagee indicated that she attended a breakfast meeting on April 1, 2003 at the Coldwell Banker's office on El Camino and Mickie Winkler and Nicholas Jellins presented a double-side page outlining the specifics of the proposed ordinance. Chair Fry indicated that the City Council met that evening.

Hersh Shefrin, 1095 Atkinson Lane, Menlo Park, noted that he was speaking to them as a resident and economist. He said that usually he chooses to not be involved in local politics. He commended the Commission for their astute questions and he noted in particular Commissioner Fergusson's question of Building Official Don Johnson as to the purpose of the proposed ordinance. He thought Mr. Johnson's answer was very honest and had to do with improving the efficiency of the overall process and reducing the amount of neighborhood involvement in that process. He said that most communities strive in public policy setting to strike a balance between how you handle the private interests of a property owner and the interests of their neighbors. He thinks the ordinance supports the rights of property owners at the expense of their neighbors. He felt that the speed at which the process was moving and the lack of information was unseemly and it was that unseemliness which motivated him to attend and address the Commission tonight. He expressed empathy with staff members having to deal with the matter, the public and political sentiment over the past years and having to focus attention away from other important matters. However, he said that there is an absence

of clear political discourse on how to deal with the issues. He emphasized the issue of visual privacy that lies at the heart of many Menlo Park residents with single-story homes. He indicated that two-story homes are not the problem but rather it is the lack of solutions to prevent their intrusiveness on neighbors.

Commissioner Soffer asked Mr. Shefrin how he had heard of tonight's meeting. Mr. Shefrin indicated that he had received a flyer and noted a connection between vague issues mentioned during the last Council election and the issues noted in the flyer.

Terry Kent, 64 Callie Lane, Menlo Park, said that he is a realtor and is active in his Realtors Association. He indicated that realtors attended many of the previous meetings regarding the Zoning Ordinance amendment and did not think aspersions should be made about realtors. He indicated that realtors are looking for a smoother process for people to improve older properties if they want to with less hassles and not so much expense. He is concerned with the zoning overlay concept; in planning the concept of zoning overlay originally applied to where zoning is in place and there is land or a redevelopment area that a private party could redevelop a significant project. In this context, using the example of the Lorelei Manor, residents could come in and get something but that it would be expensive. A person could spend a lot of money to keep what they already own. Commissioner Soffer asked about the overlay and noted that someone had expressed that is burdensome to the neighborhood. He asked if neighborhoods should opt in or out. Mr. Kent said that if people are already happy with what they have, they should not have to do anything. Commissioner Soffer said that if people are happy with the processes and zoning as now, should we keep them? Mr. Kent indicated assent. He noted that most of the people speaking tonight live on large lots 20,000 square foot or larger. He said that it is the 5,000 to 7,000 square foot property owners who represent 35 percent of the ownership in Menlo Park and they should be helped to improve their properties. Commissioner Soffer said that much of the rationale regarding substandard lots has to do with lack of width and wondered whether this ordinance might create problems with those narrow lots if building to two stories. Mr. Kent indicated that could be a problem. Chair Fry noted that four of the nine speakers tonight own small lots. Chair Fry said that there is evidence that a majority of peninsula cities have design guidelines and discretionary review process and asked why it is so much more difficult in Menlo Park to do remodels. Mr. Kent did not think the realtors had defined that problem, but that the association would support what benefits the community. Commissioner Pagee asked if disclosure would be required to a buyer that the character of the neighborhood might change. Mr. Kent indicated to the negative; adding that when a family wants to buy a property and indicates that they wish to expand, if that expansion is restricted, the realtor must disclose. Commissioner Pagee asked whether realtors would be able to sell properties if they explain to the buyers that they are not protected from changes to the character of their neighborhoods. She asked about individuals from Woodside or Atherton who desire to downgrade and live in smaller homes and look to buy in Menlo Park. Would the realtors advise these buyers that the neighborhood in which they propose to buy might change? She said consideration is made of the property rights of the buyer and developer, and the home owner who wants to build on, but suggested that there are other property rights that should be considered and do not seem to be part of the proposed ordinance.

Erica Bailey, 655 Oak Knoll Lane, Menlo Park, noted that she has lived over 30 years in Menlo Park and would review the proposed ordinance more thoroughly before the next Planning Commission's consideration of it. However, she noticed that the ordinance

seems to be lacking in attention to “monster” home and the preservation of neighborhood quality. She encouraged the Commission to put the ordinance on a slower track and that the community be given greater opportunity to comment.

Commission Action: M/S Soffer/Pagee to keep the public comment open through the next Commission meeting.

Motion carried unanimously.

The meeting recessed at 9:50 p.m. and reopened at 10:05 p.m.

Commission Comments: Chair Fry opened the comment period. Commissioner Fergusson indicated that identifying the issues would save time and she needed more facts and information. She needed more breakdown regarding the four zoning districts. For each district, she wants to know how many substandard and standard lots there are under the current zoning ordinance; how many non-conforming structures on both standard and substandard lots. Planner Murphy suggested that the Commission might want to discuss the priority of information staff is to research, noting that some of the information being requested by Commissioner Fergusson might require a considerable amount of time in research. Planner Murphy said that it is extremely easy to determine substandard and standard based on lot size, but it is much more complicated when determining lot width and depth using a formula. In response to a question from Commissioner Sinnott, Commissioner Fergusson said that it is the notion that substandard lots and lots with non-conforming structures have more of a potential to impact neighboring lots and she would like to know the number of those lots and their distribution through the zoning districts. City Attorney McClure said that the majority of substandard lots are R-1-U; and it might be that the majority of R-1-U is substandard in one way or another. The majority of R-1-S and R-1-E lots are standard. Planner Murphy noted that there are approximately 6,459 residential lots in Menlo Park. Commissioner Halleck asked if the information known regarding the zoning districts and standard and substandard lots could be e-mailed; Planner Murphy indicated that it would be.

Commissioner Fergusson thought the problems with the ordinance should be defined based on public input and the Commission should revisit the ordinance based on that information. Commissioner Sinnott indicated that the ordinance reflects the efforts made to even out the playing field; she noted that previous efforts to add greater restrictions to the Zoning Ordinance brought out the public who were upset that they would lose their ability to add on to their homes. She complimented staff and Council Members Kinney and Winkler for bringing the ordinance together. She thought the reduction from 19.5-feet to 17.5-feet of the daylight plane would lessen the impact of the second floor. She also thought it was unfair to pick on the owners of the R-1-U's and that the people who are least able to build on have to do more than other property owners and expend more time and expense. Commissioner Soffer said that the prior rescinded ordinance required that all second story additions be reviewed; he indicated that he thought that was very fair. Commissioner Sinnott said that people do whatever they can to avoid coming before the Planning Commission and she questioned the neighbor on Bay Laurel Drive whose home has a second story and because of that property owner's objections to the adjacent neighbor adding a second story, the neighbor trying to add on had to come before the Planning Commission three times and had to build a second story that has no windows. Commissioner Pagee indicated that she likes the three-tier process,

but that the first tier should be no impacts; the second tier opens gates to the review of the affected residents and if resolution is not obtained then review moves to the third tier, or the Planning Commission. She said that she believes that neighbors should have input and the Planning Commission has found that neighbors like to meet and that it builds communities when neighborhoods have consensus about building projects.

Discussion ensued as to whether the meeting should continue past 11:30 p.m. There was no motion to continue past 11:30 p.m.

Commissioner Pagee read Section 160202 "Purpose" of the current Zoning Ordinance and suggested that the elements addressed there guide the consideration of the proposed Zoning Ordinance amendment. Commissioner Fergusson asked that staff provide information regarding AB 1866 (secondary dwelling units) by the next meeting. She read the goal and first three policies of the General Plan and asked to see more information on how the proposed ordinance change relates to the General Plan.

Commissioner Bims indicated that he understands the need for a tiered process to make government process more efficient. However, he was concerned that they were being asked to consider a document that they had not authored. Without knowing the intent of the changes, he thought it was too cumbersome to look at each point of the amendment. He thought perhaps it could be determined what the Planning Commission has acted upon and the result, and that the information might be codified to prevent the review of the same things over and over and to keep review for what is unique and different.

Commissioner Halleck said that Commissioner Bims' comment resonated with him, as he also would like to reduce red tape. He indicated that he would have liked a brief study session between the Commission and the subcommittee as he felt that he needed more information on what the proposed amendment is proposing. He noted that he has questions on the CEQA for the proposed ordinance and on minimizing interaction with neighbors. He would prefer that the Commission and Council work together to resolve the Zoning Ordinance amendment. He indicated that he was willing to work hard to make it work.

Commissioner Soffer indicated that he thought that for the most part the current system that has been operating under works and that it is a system of checks and balances. He said that Commissioner Bims had good comments about dispensing with things that uniformly get approved; importantly, they need to look at what was not approved and whether the proposed ordinance amendment captures those. He expressed concern about administrative review and thinks that it is a disservice to the public to eliminate the type of review the Commission performs. He noted that the Commissioners are residents and bring an attention to the values of the community and questioned if ministerial process would suffice.

Chair Fry said that all of the Commissioners are volunteers. Her goal as a volunteer is not to put people through a hassle-ridden process. The discretionary review that occurs is primarily based on the character of the lot rather than the character of the project, which rationale she questions. She sees projects built that cause impact to the neighbors for which the neighbors are deprived of any input. She also pointed to the lack of restraints built into the regulations regarding "monster homes" and expressed the need for clear design guidelines for the Commission and the applicants. She indicated that there needs to be a balance of the rights of property owners and their neighbors,

and a balance between what is codified and what is caught through process. She was concerned that the proposed ordinance amendment does very little in making things tighter but basically eliminates a lot of the process that could catch problems. She said that concept of tiers could work but there need to be changes. She noted that the proposed amendment includes changes that increase allowable lot coverage and FAL, and suggested that it would be helpful to see an analysis of whether those increases impact drainage and whether basements impact permeability. She expressed her concern that the Commission would not have enough review time to be able to make a recommendation to the City Council by the next meeting.

Commissioner Pagee asked if staff could review use permits for the last three years to see what was easily approved, were continued or denied. In response to questions from Commissioner Soffer, Planner Murphy said that there are 237 residential lots less than 5,000 square feet or less and represent 4 percent of all residential lots in Menlo Park, and the approximately 50 percent of substandard lots are required to go through discretionary review under the current process. Commissioner Fry asked how many lots in Menlo Park are irregularly shaped. Planner Murphy asked that the Commission discuss prioritization of requests of information from staff; he noted that the notice of public hearing listed the Planning Commission meetings of May 19 and June 2, and the City Council meeting of June 17. The Commission could consider requesting more time from the City Council, the implication of which would mean that the item would not be brought before the City Council until September.

Commissioner Sinnott suggested that the Commission might want to go through a page-by-page review of the proposed ordinance and get consensus on the individual items. Commissioner Soffer indicated that one problem with that type of review, which the Commission has done previously, is that the end analysis may not capture the whole picture. Commissioner Sinnott thought that it was important to get people's comments on the specifics. Chair Fry said that if they only look at each individual recommendation it might impact their analysis of the Negative Declaration. Commissioner Sinnott indicated that she thought the Council would listen to specific comments. Chair Fry said that she recommended that they convey to Council that they would need more time. Commissioner Soffer said he saw two approaches; one, present comments to the Council and move it on; or two, address what's wrong and retool the ordinance. Chair Fry asked whether they should just comment or try to rework the ordinance. Commissioner Fergusson indicated that she is going to contact Council members and find out what the intent of the ordinance is. Commissioner Pagee said that there is the intention to be considered and the implication of what changes could mean. She said that they could spend time changing the ordinance and create other problems. She thinks they should look at the document, identify what is there, verify why they want to do it, and present it back to the Council. Commissioner Fergusson said they should look at what the consequences of the ordinance are and include those findings with the Commission's recommendation. Chair Fry indicated that they might want to request a joint study session. Her sense was that they needed to go through the document and it would take more than one meeting.

The Commission's consensus was that they need to get additional time for review and that it would take beyond the Council meeting of June 17 to accomplish.

Planner Murphy confirmed the priority questions of the Commission and summarized three things: information about lots, information about recent Commission use permit

decisions, and questions about the relationship to the General Plan and the Zoning Ordinance Amendments' purpose, goals and policies. He indicated that they would not be able to accomplish all three by the next meeting. Chair Fry suggested that the highest priority was getting information about lots. Chair Fry asked if there would be information available that looked at impacts caused by permeability and ground coverage. Commissioner Fergusson asked if within the four zoning districts staff could estimate how many non-conforming structures there are. Planner Murphy indicated that they could come up with an estimate.

Chair Fry asked if the Commission wanted her to address the Council regarding the need for a time extension. City Attorney McClure said that it would be appropriate to request to speak under the Council Members/Commissions Reports portion of the agenda.

C. COMMISSION BUSINESS

Commissioner Fergusson indicated that the May 5th Commission Planning Actions indicated that the Commission granted a five-year extension to Scott Bohannon but it was actually a two-year extension as opposed to the standard one-year extension. Planner Murphy indicated that the official minutes would accurately state the findings.

Chair Fry reported that at the Commission's request she contacted all of the other City Commission Chairs and they indicated their willingness to work jointly with one another. Commissioner Sinnott suggested that the various Commissions would be able to consider the draft Zoning Ordinance amendment at their July meetings. Commissioner Pagee thought that consideration of the interpretation for setback for basements and the implication of excessive excavation by other Commissions would be helpful. She suggested that it might be helpful to flag items than rather ask the other Commissions to look at the whole document. Chair Fry asked the Commissioners to flag the issues and bring to the next meeting.

Planner Murphy confirmed a quorum for the June 9, 2003 meeting.

There was discussion regarding how to convey a report prepared by Commissioners Bims and Fergusson regarding the Developer Selection meeting for Hamilton Avenue housing and park. A copy will be forwarded to the Council and Commissioner Fergusson will present under public comment at the next evening's Council meeting.

ADJOURNMENT

The meeting adjourned at 11:20 p.m.

Staff Liaison: Justin Murphy, Principal Planner

Prepared by: Brenda Bennett, Recording Secretary

Approved by Planning Commission on June 23, 2003.