



MENLO PARK PLANNING COMMISSION MINUTES

Regular Meeting

June 2, 2003

7:00 p.m.

City Council Chambers

801 Laurel Street, Menlo Park, CA 94025

CALL TO ORDER – 7:04 p.m.

ROLL CALL – Bims (arrived at 7:08 p.m.), Fergusson, Fry (Chair), Halleck (Vice-chair), Pagee, Sinnott, Soffer

INTRODUCTION OF STAFF – Cramer, Heineck, McClure, Murphy

A. PUBLIC COMMENTS

Chuck Bernstein, 444 Oak Court, Menlo Park, indicated that he is a 30-year resident and commented that State legislation AB 1866 is a terrible intrusion on the sovereignty of local communities and is relevant to the Commission's consideration of the Zoning Ordinance amendment. He fears that AB 1866 would essentially allow the construction of duplexes on every lot in Menlo Park and the proposed elimination of the use permit for construction on substandard lots by Menlo Park meant that those duplexes would be allowed without any discretionary review. He was upset that AB 1866 was sponsored by the California Association of Realtors and suggested that at the upcoming joint meeting of the Planning and Housing Commission they make a finding that the City has met its entire obligation to provide affordable housing under the Housing Element.

(Commissioner Bims arrived.)

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.

In response to Chair Fry, Community Development Director Heineck confirmed that the Commission would hold a joint meeting with the Housing Commission on June 4, 2003 to consider the City's proposed ordinance regarding secondary dwelling units and would hold a public hearing regarding the same on Monday, June 9, 2003.

In response to Commissioner Soffer, Planner Cramer indicated that the minutes for the May 19, 2003 meeting would be prepared in the next week or so and forwarded with the packet to the City Council.

Chair Fry made a few recommendations regarding the process of the meeting. Noting that her research had led to a conversation with the local Fire Marshall, she had invited him to address the Commission regarding fire safety issues pertinent to the proposed amendment. She also had invited Council Members Winkler and Kinney, the authors of the proposed amendment, to participate. Following those presentations, she suggested that the Commission then review the information provided by staff. It was suggested that public comment follow the staff report. The Commission expressed their approval of the Chair's proposed process of the meeting.

Fire Marshall Geoff Aus, Menlo Park Fire Protection District (MPFPD), said that he had spoken with Chair Fry regarding requirements for access and water supply in planning developments and single-family residence construction. He had provided her a copy of the 2001 Fire Code, which is the minimum code for the State. He explained some of the access problems emergency workers face, such as too narrow roads and driveways. He noted that new development requires a 20-foot wide driveway, but many existing homes were built with 16-foot wide driveways. He said that the building of secondary dwelling units and other add-ons might create accessibility problems, or hinder the egress of the occupants to a public right of way during an emergency. Noting the popularity of basements in Atherton and Menlo Park, he said that he routinely asks developers to consider how the occupants would exit the structure and how the emergency workers would gain access to the structure. He emphasized the importance of fire sprinklers, vegetation management, the provision of viable access and egress, and water supply. He noted that Menlo Park has an aging water supply infrastructure.

Commissioner Soffer asked what square footage requires fire sprinkler systems. Fire Marshall Aus indicated that it was to have been required for 5,000 square feet, but after comments from the communities within the Fire Protection District, it may be required for 2,500 square feet. Commissioner Soffer asked the Fire Marshall to address the acceptable widths of side setbacks. Fire Marshall Aus indicated that the minimum width necessary for the access of a gurney and two attendants is 36-inches, but four feet is desirable. Commissioner Halleck asked whether the Fire Marshall sees a lot of sub-code properties in Menlo Park. Fire Marshall Aus said the City while it has a number of older homes also has a population who are very conscientious about vegetation management. Responding to Commissioner Halleck, the Fire Marshall indicated that his major fire safety concern for new development is the City's water supply, and for additions, basements, second stories, and secondary dwelling units it is access and egress. Commissioner Bims asked whether there were rules of thumb regarding access and egress for basements, those that are completely below ground and those partially above and below ground. Fire Marshall Aus said that the Building Code provides the legal requirement for the distance to an exit based on the residence's square footage and the height and width of the exit to a legal stairway that must meet grade and provide egress to a public way. Commissioner Bims asked how emergency workers gain access to "gated" communities. Fire Marshall Aus indicated that there are requirements for the width of gates, automatic or otherwise, and a Knox box is required for which emergency workers have a key to access the system to open the gates. Responding to Commissioner Pagee, Fire Marshall Aus said that they get plan submittals to review for all new construction. In response to Chair Fry, he indicated that site visits are only made with the review of plans required to be reviewed.

Chair Fry introduced Council Members Winkler and Kinney, the authors of the Zoning Ordinance amendment. She asked them to define what problems they were trying to solve through the Zoning Ordinance amendment. Council Member Kinney noted that four of the

Commissioners were new to the discussions leading to this Zoning Ordinance amendment. He said that in 1996 when he became a Council Member, he noticed that there was not an architectural or design review board. Later as Mayor, he held a "Meet the Mayor" meeting and suggested design guidelines. The Planning Commission thought it was a good idea as well, but the Council was not amenable at that time to developing those guidelines. In 1999, Council Member Mary Jo Borak instituted a process for earlier notification of neighborhoods in response to the construction of larger homes that were changing the quality of neighborhoods and causing public concern. Since then the Council has heard concerns from residents of the Suburban Park area of Menlo Park who struggle with meeting the minimum building design requirements because the lots are small. A task force representing 16 neighborhoods was formed by the Council. The task force polarized into four groups, each of which presented a separate zoning change proposal for Council consideration.

Council Member Kinney said that the problem all along has been the construction and addition of second stories that impact neighbors' privacy and change the character of a one-story neighborhood. Sam Sinnott, Don Lowery and he formed a committee to develop a design tool bag. An ordinance tied into the tool bag checklist and conditions was passed in 2002. Some residents did not like the ordinance because there was too much discretionary review and uncertainty. When a new Council was elected in November 2002, the ordinance was rescinded 3-2. As a subcommittee, Council Member Winkler and he met to develop the proposed amendment. He noted that builders, developers and property owners want certainty with their building plans. In the proposed Zoning Ordinance amendment, the daylight plane is simplified and staff would handle most of the applications. He indicated that Council Member Winkler and he did not always agree and he considers the Zoning Ordinance amendment as a work in progress, and they are looking for the Commission's input. He expressed his concern that neighborhood compatibility only appears to be taken care of through Tier 2 complaints from neighbors; new or added second stories have no design context other than the FAL percentage in Tier 1; and while issues of privacy may be addressed in Tier 2 with complaints from contiguous neighbors, in his experience people do not always speak up. He said that some consider the 300-foot radius requirement for notification too much and others consider notification of just the contiguous neighbors not sufficient; he said that City Attorney McClure had indicated the extent of neighborhood notification could be whatever was decided since it would not be a use permit. Council Member Kinney thinks the design guidelines or tool bag from the previous rescinded ordinance would probably be pulled along but would not have any clout. He indicated that if the Commission believes that good design and compatibility with neighborhood could be codified to please make those recommendations. He thinks the challenge is to marry a certainty of process with the broader neighborhood context.

Council Member Winkler invited the Commission to think about how to achieve some goals in a codified ordinance. She indicated that the purpose of the Zoning Ordinance amendment was to prevent out-of-scale housing through the restricted daylight plane in Tier 1 and the horizontal side wall on the second story; to bring equity, noting that the owners of the 5,000 to 7,000 square foot lots are least able to meet the requirements; and to encourage people to feel good about remodeling their homes and make the process user friendly.

In response to a question from Commissioner Fergusson, Council Member Winkler said that the age of the building is how she defines aging housing stock and there are examples of aging housing stock in the Suburban Park, Willows and Belle Haven areas and that many of those homes are on small lots. Commissioner Fergusson asked beyond the age of the homes was

there evidence that the homes are unfit. Council Member Winkler indicated that friends and volunteers that she works with have indicated that there are issues, for example outdated electrical systems. Council Member Kinney interjected that older homes also tend to have foundation problems; foundations in houses built before the 1950s were not bolted to the wooden frame. In response to a question from Commissioner Fergusson, Council Member Kinney indicated that such homes could be retrofitted. Commissioner Soffer asked whether the owners of the 5,000 to 7,000 square foot lots were really that less economically able to improve their properties and used as an example a property owner doing a "spec" development on one of those lots. Council Member Winkler indicated that she thought in some cases the property owners could afford to do such projects. Commissioner Soffer asked if there were other equities that needed to be achieved; Council Member Winkler said that everyone could be afforded certainty. Commissioner Soffer said that if the issue was a second story there might be some threshold that affected everyone such as an 85-95% FAL. Council Member Winkler said she would like the Commission in their study session to make recommendations. Council Member Kinney indicated that he did not like the 86-95% FAL as it would mean that just about all second stories would need discretionary review because people would want the maximum.

Commissioner Halleck indicated that he was pleased that the Council and Commission were coordinating efforts on the proposed Zoning Ordinance amendment. He thanked Chair Fry for inviting the Fire Marshall and Council Members to the meeting tonight. He said that he was concerned that the public comment period on the Negative Declaration was closed and yet the proposed Zoning Ordinance amendment was a work in progress. He addressed the question of equity and wondered if there could be pro rated fees for applications. He questioned whether the proposed Zoning Ordinance amendment would prevent out-of-scale housing and indicated that he was concerned with studying the proposed Zoning Ordinance amendment when the public comment period for the Negative Declaration was closed. He suggested that for people who could not afford the extra money and time because of a lengthier discretionary review that perhaps their fees could be pro rated. Commissioner Soffer said that in one instance a property owner in the Belle Haven neighborhood had presented some plans that were inadequate and the Commission and staff talked about staff drafting some "stock" plans. He said that staff later indicated that Community Development funds could not be used to do that. City Attorney McClure stated that the building permit process is equitable in that fees are based on the cost of construction.

In response to a question from Council Member Kinney, City Attorney McClure said that the public review and comment period is closed on the Negative Declaration, but that comments could continue to be received. If changes were made to the proposed Zoning Ordinance amendment, the Negative Declaration may need to be revised and recirculated. In response to comments and questions by Commissioner Halleck, City Attorney McClure indicated that in the Zoning Ordinance process, the requirement is that the proposed ordinance be submitted to the Planning Commission for review, comment and recommendation. The Planning Commission is being asked to review the proposed Zoning Ordinance amendment and Negative Declaration and make specific recommendations to the Council. He said that the Commission might recommend denial or find that the Negative Declaration does not adequately address potentially significant impacts and mitigation. He mentioned that the City Council's agenda for the meeting on the next night has an item to consider providing the Commission additional time to review. Commissioner Halleck indicated that knowing a decision did not have to be made tonight made him feel better about the process.

Regarding equity, Commissioner Pagee said that residents in the Suburban Park, Allied Arts and Willows area have participated in enjoyable design reviews through which neighbors were able to have input into questions of solar access and privacy for their lots. However, she said residents on standard lots have not had the opportunity to provide input on projects that impact their lots and did not see that the proposed Zoning Ordinance amendment addressed that equity issue. Council Member Winkler said that the equity and certainty that are given standard lots would be extended to those whose lots are 7,000 square feet or smaller. She asked if staff would comment on solar access.

Community Development Director Heineck said that one of the reasons for the proposed deletion of the solar access requirements is that in practice the daylight plane is more restrictive than the solar access requirements currently in the Zoning Ordinance. Solar access requirements were superseded when the daylight plane was adopted in 1988. Solar access requirements for landscaping are being deleted as it conflicts with the City's heritage tree ordinance. Both of these proposed deletions are part of the "clean up" referred to by staff. Commissioner Pagee asked if there is no right to sun? Community Development Director Heineck indicated that solar access provisions exist and someone can request that it be studied to define the solar envelope and apply it to that property. She said that when they measured the daylight plane they found it served as a better protection for solar access than the solar access provisions. Commissioner Pagee said that a 19-foot five-inch daylight plane would cast a shadow double its height at certain times of the year, and that a 39-foot shadow on a 50-foot lot was significant. Community Development Director Heineck indicated that the daylight plane provisions as they exist now might not give the solar protection wanted but that it is a better protection than the existing solar access requirements. She indicated that if the Commission does not think the proposed daylight plane regulation offers enough protection, they could recommend changing it or creating an altogether different regulation.

Commissioner Pagee said that the privacy issue raised by the construction of second stories does not appear to be addressed in proposed Zoning Ordinance amendment. There are no requirements for window orientation and window-to-window sight lines, and indicated that it would be better if those elements were regulated rather than left to discretion. Community Development Director Heineck said that those considerations generally are not regulated but are part of design guidelines as those particular building elements are hard to objectify for inclusion, as it is difficult to establish a measurable standard. To have that in an ordinance, measurements would have to be made of the applying property and the neighboring property, and there are limits to the ability to do that.

Commissioner Pagee indicated that Tier 1 gives it all away and there is no design guidelines attached. She feels that the neighborhoods get nothing with Tier 1, as proposed. She indicated that defined guidelines would speed up the review process.

Commissioner Sinnott asked if they would be voting on each element of the ordinance. City Attorney McClure indicated the Commission, after the public hearing, was free to review the ordinance as they saw fit. He indicated that many of the items in the ordinance were included in the previously rescinded ordinance.

Council Member Winkler responded to some of Commissioner Pagee's comments. She said owners of a lot over 7,000 square feet can currently build to the maximum FAL and that the

proposed Zoning Ordinance amendment would restrict that with new daylight planes and side wall limitations.

Responding to Commissioner Bims, City Attorney McClure indicated that the Zoning District overlay would provide a process by which neighbors in each zoning district might develop either stricter or more lenient requirements. There is currently an overlay in the Felton Gables area that is more restrictive than existing regulations. Commissioner Bims wondered if more of these were expected. City Attorney McClure indicated there is evidence that neighborhoods would look at Zoning Ordinance overlays as a possible way to address how they would like their neighborhoods to look. Commissioner Bims asked if what these individual neighborhoods were seeking could be incorporated into the ordinance so that they would not need to do an overlay. City Attorney McClure indicated that the Council thought it was too complex to try to create an ordinance that combined general rules and the desired specific rules for neighborhoods. He said that the Commission might want to recommend differently. Commissioner Bims asked about the single-family development permit and State requirements for use permits. City Attorney said that the single-family residential development permit is a creation of the City of Menlo Park and does not need to meet any State requirement, and that the permit could be as non-discretionary or discretionary as wanted.

Chair Fry asked why the subcommittee chose to create a new permit rather than continue with the use permit, noting the less stringent notification requirements of the latter. As Commissioners, they have to recuse themselves when considering lots within 500-feet of their properties. Council Member Kinney indicated that he wanted to keep 300-foot requirement, but the intent was to simplify. He suggested that the Commission make a recommendation. In response to questions from Chair Fry, Council Member Winkler said that she has been following the process that began with the residential task force and talking to as many people as she can. The subcommittee met five times with City Attorney and Community Development Director Heineck and held one study session with the City Council. She indicated that realtors did not design the ordinance and that the meeting on April 1, 2003 with the realtors had been scheduled in January 2003 and Mayor Jellins had shared information from his study session packet at the meeting.

Chair Fry asked about the Zoning District overlay and the requirement for two-thirds approval and not voting was considered a "no" vote. Planner Cramer indicated that the two-thirds approval rather than the 60% approval previously required came out of direction from the April 1, 2003 study session. Council Member Kinney said that a conversation with City Manager Boesch regarding the equitableness of a vote on an overlay led the decision to regard no vote as a "no" vote. Chair Fry asked about the intent of the overlay and whether it would allow neighborhoods to create regulations that protect privacy. City Attorney McClure indicated that neighborhoods would not be able to request changes to the process, but will be able to request changes to development regulations, such as window placement. Neighborhoods may adopt guidelines that are mandatory or recommended. City Attorney McClure indicated that a number of the design guidelines from the previously rescinded ordinance would not be applicable with the proposed ordinance, as discretionary process does not occur unless Tier 2 is triggered. Chair Fry said that as the tiers are structured, if applicants want more generous rules then they can go to the Planning Commission and questioned the sufficiency of notification of contiguous neighbors. City Attorney McClure indicated that under this ordinance if a neighborhood was not in favor of a proposed project they could apply for an overlay. He added that if there is contiguous neighbor approval of a Tier 2 project, then staff is able to approve the project.

Commissioner Bims asked if “monster” homes generally occur in certain districts. City Attorney McClure said that the issue is raised citywide. Commissioner Pagee said that the Zoning Ordinance amendment does not seem to address neighborhood compatibility and asked whether the General Plan needed to be brought into accordance with the ordinance or vice versa. City Attorney McClure indicated that the General Plan is similar to the Constitution and the Zoning Ordinance would be the law that implements the broader policies and goals in the General Plan. Commissioner Pagee considered the minimum of notifying contiguous neighbors and not reviewing architecture to be incompatible with the General Plan’s goal to preserve the character of a neighborhood. City Attorney McClure indicated that the proposed Zoning Ordinance amendment was consistent with the General Plan. Commissioner Pagee asked about the use permit requirement for a finding about the general welfare of a neighborhood. City Attorney McClure indicated that the single-family residential permit does not require a general welfare finding and only applies to contiguous properties.

Public Hearing: Kenneth Lajoie, 275 Oakhurst Place, Menlo Park, indicated that he is a 33-year resident and a retired geologist from USGS. He was concerned that the proposed Zoning Ordinance amendment does not take into consideration the impact of greater development and large houses on the overtaxed storm system. He thought the regional impact of development should be considered. He said that his Suburban Park neighborhood is being impacted by monster homes. He was concerned that ground water runoff and water table issues should be addressed noting basements will add to the problems. In response to Chair Fry, Mr. Lajoie said that injecting geotechnical considerations into the planning process is difficult and that people reject the additional restrictions, but restrictions are necessary in certain instances.

Catherine McMillan, 680 San Mateo Drive, Menlo Park, agreed with Commissioner Pagee that Tier 1 of the proposed Zoning Ordinance amendment is a problem and gives too much away. She thinks that Tier 1 has to include regulations that consider and mitigate undeniable impacts to neighbors. She thinks that leveling the playing field should mean giving neighbors a voice. She indicated that the restrictions placed by other communities on building is making Menlo Park the last hope for developers to do whatever they want. She said that if regulations are more restrictive that drives property values up. She questioned the fairness of allowing non-respondents to a vote for an overlay to impact those who care enough to vote. She said that the proposed Zoning Ordinance amendment is a radical departure from anything proposed before and she urged the Commission to consider it carefully.

Cynthia Dusel-Bacon, 139 Princeton Road, Menlo Park, indicated that she is a Research Geologist at USGS. She views resources as finite and expressed her concern that the Negative Declaration prepared for the proposed Zoning Ordinance amendment does not adequately address potential significant impacts. Indicating that runoff caused by the impermeable surfaces created by basements had been addressed by a previous speaker, she said that the basement space could be cantilevered into the setbacks, which prevents the planting of trees for privacy and shade. Lacking trees for shade means property owners have to compensate with air conditioning. She said that energy belongs to everyone not just to the contiguous neighbors. Additionally, she highlighted that basements necessarily require artificial light and that questions regarding impacts on energy, light and water resources by development should be raised and considered.

Dick Poe, 620 Santa Cruz Avenue, Menlo Park, noted that he agrees with some of the environmental comments raised. However, he does not think that there are monster home in Menlo Park. As a real estate agent, he has clients who come to him that want to buy a home in Menlo Park and are very disappointed in the available aging homes built in the 1950s. He expressed his support for a process that would make it cheaper and easier to upgrade one's home. He indicated that he is also a contractor and delineated how homes built in the 1950s do not have the safety features and structural integrity found in newer homes, such as safety glass, double paned windows, proper electrical, energy efficient appliances, air conditioning and heating, and good drainage systems. He indicated that a list of the substandard qualities of a 1950s home would be several pages long. In response to a question from Chair Fry, he said that it is much more costly to remodel the older homes and less costly to demolish and rebuild.

Boyd C. Paulson, Jr., 308 Sherwood Way, Menlo Park, indicated that he had provided his written comments to the Commission. He disagreed with Mr. Poe's characterization of Menlo Park's aging housing stock and indicated that over the years he has addressed all of the issues Mr. Poe raised and he did so without significantly expanding or changing the character of the home and the neighborhood. He praised the Commission, Council and staff for their patience. He said that he believes the proposed Zoning Ordinance amendment was developed in good conscience. He noted that in the 30 years he has lived in Menlo Park he has seen great change and an incredible increase in property values. He is concerned that the proposed Zoning Ordinance amendment does not contain any regulations to prevent large two story "Atherton" homes on 8,000 square feet from being built next to traditional one story homes. He looked at the numbers in the ordinance and saw that the typical house in his Linfield neighborhood could be doubled in height and floor area and never trigger discretionary review. He encouraged the Commission, Council and staff to deliberate and not give up people's ability to know what is going on in their neighborhood. He did not think neighbors should have the right to veto and that the 300-foot standard for notification was too broad, but there should be enough notification that concerned people could have input to the process. Doing that he also suggested that the participants trust the planning staff, the Commission and the Council. Finally, he believes a level of discretionary review is important and should be greater than what the proposed Zoning Ordinance amendment offers.

Erica Bailey, 655 Oak Knoll Lane, Menlo Park, indicated that she does not oppose two story homes. She has written a letter that addresses her concerns with the proposed Zoning Ordinance amendment to the Commission. She highlighted two of those concerns that could have the greatest potential negative impact. She noted that the feature to speed up the building permit means that a property owner could build just about anything as long as it complies with the numbers. She calculated on a 12,000 square foot lot that she could build an 8,500 square foot basement and meet the 25% for permeable surface. She confirmed with Planning staff that none of the basement would count towards its FAL. She said covering a property with that much concrete would affect the runoff and would have some impact on the environment. Noting that most peninsula cities have some design review and design guidelines which Menlo Park lacks, she suggested that the Commission consider some design guidelines, not overly restrictive, but reasonable standards that address height and bulk and reduce the size of below grade structure. She asked why it was so important to speed up the process to risk losing the characteristics that make Menlo Park special.

Ed Brink, 1240 Hobart Street, Menlo Park, commented that he lives in a pre-1950s home and that it has a 200-amp main, double paned windows in most of the rooms, 3-wire AC throughout,

excellent insulation, does not need air conditioners, and has GFIs in all of the bathrooms. He noted that he lives in the Hillview Manor area and addressed the overlay process. He said that if 10 percent of the property owners do not live in the homes, they would be difficult to reach and thus thinks the two-thirds required should be reduced to 60%. Fifteen days is unrealistic for time to get in touch with everyone, whether two-thirds or 60% and suggested that a longer period of time was needed. Also he asked if there is an application for an overlay that other applications should be held off until the overlay application process is complete.

Steve Peckler, a resident of Menlo Park, lives in an Eichler home. He listed the many improvements they have made to the home in refutation of Mr. Poe's earlier comments about the deficiencies of 1950s homes. He expressed his concern that demolition for development would greatly reduce the diversity of the population and Menlo Park's neighborhoods. He does not think a 10-day notification period is sufficient; residents are not generally experts and need time to study; just contiguous property owners would not be sufficient particularly in the construction of two story homes; regarding overlay, he thought requiring that those who do not vote be counted as a no vote was wrong; those who live in the community should receive consideration; and that potential impacts should be reviewed carefully.

Russ Dember, 1028 Berkeley Avenue, Menlo Park, presented slides demonstrating the impact of two story walls. He said that the Negative Declaration underestimates the aesthetic impact of second stories. He showed a slide of a particularly unattractive second story home. He indicated that another impact of bad architecture not covered by the Negative Declaration is the environmental impact he identifies as the emotional impact caused by a badly designed home built next to one's property. He said that the costs paid for the articulation of a second story and provision of a three foot setback were nothing compared to the loss a neighbor could experience in property value by the construction of a badly designed second floor next door. He showed a slide of a well- designed second story home. He believes it is equitable that small lots should have discretionary review to protect property values. He said that he would like a Tier 1 that required an articulated wall for the second story and if a straight wall is proposed that the project goes to Tier 2. He believes the requirements for the overlay are too stringent and outcome should be based on actual votes made.

Peter Whidden, 150 Baywood Avenue, Menlo Park, indicated that he was encouraged by the deliberation with which the Commission was considering the proposed Zoning Ordinance amendment. He said that in his neighborhood there are a couple of homes that had been built without great oversight, noting that the properties have secondary dwelling units or rentals, which means more cars. The homes in his neighborhood are pre-1930s and some have been refurbished in an admirable way. His lot is 5,400 square feet and his home, garage and lot are substandard and he cannot imagine a larger home being built next to him. He said that he appreciates the 300-foot notification area and twice it has served well in that a good project went through quickly and a bad project was denied. He referred to Section 6.9.b applying to his lot, that a second story could be 28 feet. He was concerned that such a project would never trigger discretionary review. He expressed his hope that the Council would approve receiving additional input from the public.

David Speer, Menlo Park, indicated that he had provided written comments to the Commission. He said that AB1866 could have major effects on residential lots and it needed to be taken under consideration. He expressed his appreciation for the affordability of the aging housing stock; he recommended limitations be placed on basements and cited problems with them

being rented and bringing in more cars, and causing landscape, permeability and character issues. Regarding certainty for the builders and developers, he asked that certainty be given to those who chose to live here for the particular quality of a neighborhood and those who have lived here a long time. He thinks there need to be design guidelines. He said that review would be equitable if it were for all projects. The ordinance as written does not prevent out of scale building. He referenced a comment that the current permit process is the "uncertainty" process and noted that during the last ordinance review, it was found that 100% of the projects that came before the Commission were approved. He encouraged that discretionary review be kept to protect both small and large lots.

Don Brawner, 200 Waverley Avenue, Menlo Park, said the Commission should ask who is the primary beneficiary of the proposed ordinance? Is it the current homeowners, neighbors? Or is it the architects, builders and investors who demolish and rebuild despite impact on neighbors on the infrastructure. He asked why there is no quantifying of the impact on sewer, storm, wastewater treatment capacity and water supply. He asked who is ignoring the environmental impacts and what is their justification. He asked what was wrong with the other ordinance that was developed through 35 meetings and compromise. He thinks that the proposed Zoning Ordinance amendment should be distributed citywide.

Commission Action: M/S Soffer/Pagee to close the public hearing.

Motion carried unanimously.

Discussion ensued as to the process of review and potential meetings to discuss the proposed Zoning Ordinance amendment.

The meeting recessed at 10:05 p.m. and resumed at 10:15 p.m.

Chair Fry said that the Commission needed to discuss how much time was needed for review, what their output would be, what problems they intend to solve, and examine the elements of the tier approach. She asked staff to report.

Planner Cramer suggested that staff be available for questions rather than report on the material already provided to the Commissioners.

Commissioner Pagee asked about the daylight plane issue with bay windows and if staff had reviewed that as requested at the May 19 meeting. Planner Cramer said that bay windows are an allowable intrusion and considered an architectural feature. In response to Commissioner Pagee, Planner Cramer indicated that there had not been discussion on changing daylight plane to building envelope, but discussion and a decision about that could occur in the future.

Chair Fry said that the staff report on page 7, second paragraph, last line, states that "In addition, the Engineering Division has determined that excavations and basements have no greater impact to the storm drainage system than surface development." She said that she had met with Engineering staff to understand drainage and permeability and she understood from that discussion that basements larger than the footprint might impact the storm drain system, as water that went into those structures would have to be pumped to storm system. Community Development Director Heineck responded that subsequent to Chair Fry's discussion with Engineering staff, they confirmed with Planning staff that a basement itself does not create any

more runoff than if development occurred at the surface. She referred to Chair Fry's concern that a basement by the proposed ordinance might be built larger than the footprint of the house and noted that under the current regulations there is nothing to prevent a property owner from covering 100% of their property in concrete. Chair Fry responded that currently the Planning Commission reviews 50% of project applications and 100% of the excavations in setbacks. She indicated that the Commission imposes conditions, which would not be allowed under the proposed ordinance. Community Development Director Heineck said that was true but there are no requirements for the review of landscaping plans and a property owner who has constructed a basement would be able in a couple of years to install landscaping that creates significant amounts of impermeable surface which presumably would impact runoff.

Commissioner Halleck said that in Santa Clara County the State's requirements regarding drainage has changed significantly and within that next year they will be hit with significant restrictions. He understands that has not happened yet in San Mateo County but they are examining whether to make the changes before their permit expires. He asked whether the City of Menlo Park was pushing through the proposed ordinance to preempt what happens with the State. City Attorney McClure said that the City could not preempt what the State requires of municipalities within San Mateo County as part of the NPDES permit. He indicated that any changes wrought by the State in the future would need to be incorporated into the ordinance.

Chair Fry asked if there was a motion to allow the meeting to extend beyond 11:30 p.m. There was none.

Commissioner Bims, referring to a table on substandard lots based on lot area in the staff report and noting that the R-1-U district constitutes 88% of the substandard lots, asked if the minimum lot size was 5,000 square feet rather than 7,000 square feet how would that impact substandard lots. Community Development Director said that based on lot size changing the area standard from 7,000 square feet to 5,000 square feet would make most of the lots standard.

Commissioner Fergusson said that she thought the report by staff was well prepared and responsive to the questions raised by Commissioners at the May 19, 2003 meeting.

City Attorney referred back to Commissioner Bims' question regarding changing the standard for minimum lot area. He noted that the minimum dimensions for the R-1-U area are 65 feet by 100 feet, and most of those lots do not meet those dimensions. Reducing the dimensions so that the lots would not be substandard raised the possibility that more subdivisions of lots could occur.

Discussion transpired regarding the process and framing of the Commission's review of the proposed Zoning Ordinance amendment. Comments and questions raised included defining the Commission's output; estimating the amount of time needed to review and recommend; whether to respond specifically or generally; would it be possible for the Commission to create a document that all of them agree on to move to the City Council. Chair Fry suggested responding to specific issues, but making a general recommendation to the Council. Commissioner Sinnott suggested that a specific review be made of the proposed Zoning Ordinance amendment and items that are acceptable be noted and then focus on the areas of issue such as notification, basements, second story walls, permeability and overlay districts. Commissioner Bims suggested that items in the proposed Zoning Ordinance amendment that are State mandates be identified and cleared out of the discussion and then they could move on

to the more complex issues. Commissioner Soffer said he has fundamental concerns with what is being proposed namely the addition of increased ministerial review and the elimination of discretionary review. For him, the process is the issue. He suggested looking at how the tiers are structured. Commissioner Fergusson suggested that they review and vote on everything, and then consider the larger fundamental issues. Commissioner Soffer referring back to the process for the rescinded ordinance said that they had done what Commissioner Fergusson is suggesting. What occurred was that "yes" votes were made with assumptions that those votes shared dependency with other items. He thinks it is misleading to go through item by item, as the accumulative effect was misleading. Chair Fry suggested identifying problems and then creating criteria to evaluate. She thought they should definitely evaluate the concept of a tiered approach. She thought their output should be comments, concerns and unspecific proposals. She thought to make specific recommendations would require more time. Commissioner Fergusson said that her impression was that the Council wanted their specific recommendations. Chair Fry said that specifics when not part of a cohesive whole have different potential impacts. She noted that what they recommended to the Council the last time the Commission worked on a Zoning Ordinance amendment completely morphed into something else after Council consideration. Commissioner Fergusson suggested going through the specifics and while doing so identify interdependencies. Commissioner Halleck suggested that the Commissioners do that individually and come back prepared for the next meeting. Chair Fry indicated her support of that idea and suggested that each of the Commissioners might bring back a one-page summary of their observations on the proposed amendment. Commissioner Soffer indicated that he liked Commissioners Halleck and Chair Fry's suggestion.

Commissioner Pagee said that the intent of the proposed amendment was to give certainty to the process, prevent out-of-scale houses, and prevent inequity. She does not think the proposed amendment does that. She thinks that residents like the current review process. She questioned whether those residents have had an opportunity to go to the Council and present their arguments. She noted that over the past year the Commission has considered second stories that do not hit the daylight plane but were rejected by the neighbors for privacy reasons. Regarding defining excavations and rulings on basements on how they impact the city, she said the ordinance should take care of a problem that is beginning to happen rather than take care of something that has never yet happened. She indicated that they have seen the problems at the Commission level but wondered if the Council knows the problems. She indicated that it was their duty to convey their knowledge of those problems to the Council. Regarding tandem parking, she questioned its inclusion in the proposed Zoning Ordinance amendment, as it has not been an issue. She has heard about the loss of trees because extending the lots into the setback below grade impacts the tree roots. She thinks basements should fit directly under the above ground structure and be better defined in the proposed ordinance. Also she said egress needed to be better defined.

Commissioner Sinnott said staff has done a great job pulling the material together. She descried the use of the term "monster" house saying that it was insulting and reflected people's subjectivity; she compared it to calling someone's home a "shack." She thinks the ordinance as proposed does meet the three concerns: it prevents out-of scale housing; and brings equity and certainty to the permit process. She said that by lowering the daylight plane to 17.5 feet would prevent the problem of second story walls. She proposed that residents do not want to come to the Planning Commission because of the delay and added expense and they would bring that second story wall in to prevent having to come to the Commission. She said it is not equitable that half of the residents' projects must come before the Planning Commission and the rest

skate through without review. She indicated that she is very supportive of the proposed Zoning Ordinance amendment.

Commissioner Soffer said that the current process began four years ago because there was not sufficient notification of neighborhoods and homes were built out-of-scale with the neighborhoods and people objected. He does not see that this proposed ordinance captures the type of projects that caused problems over the past four years. As a Planning Commissioner, property owner and neighbor, he thinks it is wrong for notification to be removed. He indicated that he objects to staff reviewing Menlo Park's development issues in that numerous members of staff are not residents and they should not have that ability.

Commissioner Halleck said that the process should not be limited and that there should be neighborhood notification regarding lot coverage, sunlight, privacy, and permeability. He indicated that he does not support the proposed Zoning Ordinance amendment and expressed his hope that they can preserve Menlo Park.

Commissioner Fergusson said that the proposed Zoning Ordinance amendment does not give attention to privacy and that issue needs discretion. She said that a home might have a small second floor that is intrusive to the neighbors. Noting odd-shaped lots, she said that she expected there would be unanticipated privacy impacts that would not be caught with the ministerial review. She said that rules-based review is appropriate for regular lots and small FAR; R-1-U property owners might need more space for growing families but that a high FAR requires discretionary review. She questioned setting the value of the trigger from 50% to 100%

Commissioner Bims addressed certainty, out-scale-housing and equity. He views certainty as taking decisions that the Planning Commission makes routinely and codifying them. He suggested that requiring applicants to get neighborhood approval before the Commission would consider the project would streamline the process. He said that if there was a way for the ordinance to substantially reduce the number of substandard lots in R-1-U and mitigate subdivision that would be fantastic. He viewed overlay districts as a reaction and after the fact and thought it might be better to be more restrictive from the beginning and get the push back from the neighborhoods as to what they want. He suggested that perhaps the neighborhoods could meet now and design their own overlay district. Regarding basements, there should be a FAR and noted that he did not see anything restricting the depth of a basement. He thought it better to err on the side of putting the certainty in the ordinance. Regarding daylight plane, he would like to see the 17.5-foot limit applied to what are considered existing monster homes and whether it would do what it is intended to do. Regarding tier strategy, he thinks Tier 1 should be applicants whose projects are entirely codified and that would capture those projects that need attention. He indicated that he has concerns with only contiguous neighbor approval.

Chair Fry said that the issues raised regarding certainty, out-of-scale, and equity are good but miss some of the common problems that the Commission sees in projects such as compatibility, privacy, and access to sunlight. She said that there are issues of equity raised by citizens that the proposed Zoning Ordinance amendment does not address. She disagrees that the problems are all on R-1-U lots. If those lots are moved to a Tier 1 that is only rule based, then there have to be definitions and she agreed with Commissioner Bims to begin with more conservative rules than less conservative. If the Commission finds over time that it is consistently approving types of projects then those projects might be relegated to a Tier 1. She

has concerns ranging from the loss of the use permit process and its expanded notification period of three weeks to the notification of 300-feet. She thinks it would be valuable to retain those requirements. She said that removal of current discretionary review for 50% of residential projects and 100% of excavations in setbacks means that the Commission would lose the ability to impose conditions that mitigate negative impacts. The discretionary review proposed by this Zoning Ordinance amendment focuses only on significant impacts on the contiguous neighbors which ignores the impact on the neighborhood and community.

Discussion ensued about how to accommodate additional discussion of the proposed Zoning Ordinance amendment and whether special meetings should be scheduled. Commissioner Soffer said that special meetings are difficult to schedule. Commissioner Bims asked how much more detail they need to provide the Council; and whether a summary of the comments to date would suffice. Commissioner Sinnott agreed with him and thought if there were more specifics to examine that could be done at the Council level. Chair Fry said that they needed still to review the Negative Declaration and that might take a meeting. Commissioner Fergusson said that the Commission still needed to go through the ordinance item by item.

Discussion occurred about the Council and Commission's schedule of meetings during the summer and how to accommodate this study with already scheduled agenda items. Community Development Director indicated that there was possibly time on the June 9 agenda to continue the discussion. Chair Fry suggested adding two study sessions during June and July. Community Development Director indicated that staff would poll the Commissioners regarding availability for a June 23, June 30 and July 28 study meeting.

ADJOURNMENT

The meeting adjourned at 11:35 p.m.

Staff Liaison: Justin Murphy, Principal Planner

Prepared by: Brenda Bennett, Recording Secretary

Approved by Planning Commission on June 23, 2003.