



MENLO PARK PLANNING COMMISSION MINUTES

Special Meeting

June 9, 2003

7:00 p.m.

City Council Chambers

801 Laurel Street, Menlo Park, CA 94025

CALL TO ORDER – 7:00 p.m.

ROLL CALL – Bims, Fergusson (absent), Fry (Chair), Halleck (Vice-chair) (arrived at 7:15 p.m.; excused at 10:15 p.m.), Pagee, Sinnott, Soffer

INTRODUCTION OF STAFF – Cramer, Heineck, McClure

A. PUBLIC COMMENTS

There were none.

B. CONSENT

- 1. Review of State Department of Alcoholic Beverage Control (ABC) Applications for Person-to-Person Transfer of Ownership for Alcoholic Beverage Licenses for:** 1) Tang Kibou, Siam Garden, 1143 Crane Street, and 2) Las Aventuras, Inc., Una Mas, 683 Santa Cruz Avenue.

Commission Action: M/S Pagee/Sinnott to make a determination, as per Section 23800(e) of the State Business and Professions Code, pertaining to the granting of an application for a transfer of an Alcoholic Beverage Control license to: 1) Tang Kibou, Siam Garden, 1143 Crane Street, and 2) Las Aventuras, Inc., Una Mas, 683 Santa Cruz Avenue, that no evidence has been presented that suggests that there are problems associated with alcohol consumption or sales at or in the general vicinity of the businesses, and that the granting of the applications is appropriate.

Motion carried unanimously 5-0, with Commissioner Halleck not yet in attendance and Commissioner Fergusson absent.

C. PUBLIC HEARING

- 1. Pre-Zoning/Portion of Land Located Adjacent to the westerly edge of Santa Cruz Avenue right-of-way, south of its intersection with Sand Hill Road/City of Menlo Park:** Pre-zoning an approximately one-half acre sliver of land adjacent to the westerly edge of Santa Cruz Avenue right-of-way, south of its intersection with Sand Hill Road to the R-1-S (Single-Family Suburban Residential) Zoning District in preparation for an application to the Local Agency Formation Commission (LAFCO) for annexation from the County of San Mateo to the City of Menlo Park. The request

is in association with the approved Sand Hill Road widening project and would allow for the realigned roadway to be located completely within the city boundaries of the City of Menlo Park.

Staff Comment: Director Heineck stated that on November 12, 2002, the City Council approved an agreement between the City of Menlo Park and Stanford University (Stanford) to reconstruct the Sand Hill Road and Santa Cruz Avenue intersection and related intersection approaches. She noted that the implementation of the reconstruction project also required that Stanford obtain a similar agreement with San Mateo County for the portion of the reconstruction area that occurs within the County's jurisdiction. She said that during the County's review of the draft Agreement, the County identified that the roadway widening along the westerly edge of Santa Cruz Avenue, south of Sand Hill Road, would result in a situation with a shared responsibility for road maintenance and service between the County and Menlo Park. The roadway is currently located fully within Menlo Park's jurisdiction. Thus, the County requested that Menlo Park consider annexation of that portion of land necessary for the roadway widening.

Director Heineck said that staff finds it appropriate for the reconstructed intersection and related roadway improvements to be fully located within a single jurisdiction to provide streamlined and efficient services to the roadway. She noted that it is reasonable for Menlo Park to assume this responsibility in that the current roadway is fully within its jurisdiction and the majority of the reconfigured roadway would also be within its jurisdiction. She said that an application for annexation must be made to the San Mateo County Local Agency Formation Commission (LAFCO) and that both San Mateo County and Stanford support the annexation proposal.

Director Heineck said that the application requires a certified resolution and application form and a resolution that makes a determination of zero property tax exchange between the City and County. She noted that both resolutions require City Council approval. However, LAFCO requires that the subject property for annexation be pre-zoned to a Menlo Park designation. She said that the Commission is primarily reviewing the pre-zoning proposal for consistency with the General Plan land use designation and surrounding zoning. She indicated that the intent was to get the annexation application on LAFCO's July meeting agenda to keep the project on schedule and LAFCO must receive the application by June 16, 2003. She said that the Council would consider this item at the following night's meeting and that the Commission's recommendation would be presented verbally to the Council.

Questions of Staff: Commissioner Soffer asked about the annexation site as indicated on a map and whether it included the golf course. Director Heineck indicated that the annexation would align exactly with the right-of way and the retaining wall. She said that LAFCO does not require engineered drawings for the application; however, the engineered drawings would need to be prepared within a year of LAFCO approval. Chair Fry confirmed with staff that the retaining wall would be within Menlo Park and would be the City's responsibility to maintain. City Attorney McClure noted that when the agreement was drafted, it was assumed that all of the property was Menlo Park.

Chair Fry recognized Mr. Jim Inglis of Stanford Management Company, who noted that the area shown on the map is not on the golf course, but on the other side of the property adjacent to the roadway.

Public Hearing: Ms. Janet Davis, Alpine Road, suggested that the entire lot be annexed to the City of Menlo Park. She said that she would like to see enough land annexed to Menlo Park so that when the road is widened there would be no encroachments on the creek. She said that

Stanford is lying about what they are doing when they indicate that the drawings are only conceptual. She said that Stanford has had people surveying the area for the past year and they intend to cantilever the roadway over the creek which would cause all kinds of environmental problems. She indicated that there needed to be a setback from the creek greater than the 5-feet proposed by Stanford.

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

Motion carried unanimously, 6-0, with Commissioner Fergusson absent.

Commissioner Halleck asked if the widening affects the current cantilever over the creek. City Attorney McClure said that his understanding is that it might lessen the amount of cantilever required by pulling the roadway back to the Buck Estate side. He said that would be an unknown until a final plan is submitted to the City.

Commissioner Halleck asked whether there was someone in the audience that might have more information about the cantilevering. Mr. Jim Inglis, Stanford Management Company, said that the cantilever is within the current design plans, but until the design is final, it is not clear what amount of cantilever would be needed. He said that the map as shown allows for some flexibility in design and that is why the plan is conceptual.

Responding to Commissioner Halleck, City Attorney McClure said that the annexation is on the Buck Estate side which is uphill. He said that the improvements would cut into the hill and move the retaining wall to the west, which would move most of the widened road to the Buck Estate side and would make the corner less of a corner and improve visibility. He said that although the cantilever would not be eliminated there would be less. He said that there may be more retaining wall for the City to maintain but less issues for the City pertaining to the creek.

Chair Fry asked if the cantilevering was part of the project EIR. City Attorney McClure said that the Council approved an addendum to the EIR and that plan shows cantilevering over the creek in the area he just described.

Commissioner Pagee asked how the cantilever impacts the flow of the creek. City Attorney McClure said that the water flow was not expected to change as the retaining wall support would be located back on the hill side, not in the creek area. Commissioner Pagee asked whether there would be construction on the side of the creek. City Attorney McClure said that there would be construction on the creek side but that there would not be any filling into the creek and there would be air space under the cantilever. Commissioner Pagee asked whether there had been any discussion to annex more of the Buck Estate to eliminate any necessity for the cantilever. City Attorney McClure said that Kent Steffens has been working with the project engineers to push the roadway away from creek and his intent is to reduce the amount of cantilever as much as possible. Chair Fry asked if the plan allowed for bicyclist/pedestrian paths. City Attorney McClure said that the bicyclist/pedestrian paths are shown between the creek and road on the golf course side. Chair Fry said with the large chunk of hill being cut away that some of that widening should be used to improve the safety conditions of the bicyclist and pedestrian paths.

Commissioner Sinnott moved and Commissioner Soffer seconded that the Planning Commission make recommendations to the City Council as stated in the staff report.

Chair Fry said that the first recommendation concerned environmental review and that she was uncomfortable making that finding without having seen the environmental review documents. City Attorney McClure indicated that the finding was accurate as the Council had approved specific plans for these improvements which were part of the Agreement and there were no changes in the project that require additional environmental review. Chair Fry suggested that the Commission vote on the first recommendation separately from the second and third recommendations, noting that she supported improving the safety of the intersection.

Commissioner Halleck asked what the overriding considerations were on the project. Director Heineck said that part of the statement of overriding considerations dealt with mitigation issues that were out of the control of the jurisdiction of Palo Alto and because Palo Alto could not guarantee their mitigation, those issues were considered to have significant impact. Commissioner Halleck asked whether Menlo Park was agreeing to those mitigation requirements. City Attorney McClure indicated that the Agreement contained all of the mitigation measures over which Menlo Park had any control or approval. Commissioner Halleck confirmed with staff that the City Council had approved the Agreement on November 12, 2002. Chair Fry asked if those plans included taking part of the hill side. City Attorney McClure said that the design had always included taking part of the hill side and the construction of a retaining wall. He said that Menlo Park engineers suggested to the Stanford engineers that reducing the curve and increasing visibility by pushing the roadway into the hillside would minimize the cantilever.

Commission Action: M/S Sinnott/Soffer to make the following recommendation to the City Council:

1. Adopt a finding that an Environmental Impact Report (EIR) was prepared and certified for the Sand Hill Road Corridor Projects by the City of Palo Alto (lead agency) in 1997, that an addendum to the EIR, including findings, a Mitigation and Monitoring Program and Statement of Overriding Considerations, was prepared and adopted by the Menlo Park City Council on November 12, 2002 for an Agreement between the City of Menlo Park and Stanford University to reconstruct the Sand Hill Road and Santa Cruz Avenue intersection, and that no changes have occurred since November 12, 2002 that would require preparation of a supplemental or subsequent EIR.

Motion carried, 4-0-2. Commissioners Fry and Pagee abstained; Commissioner Fergusson was absent.

Commission Action: M/S Sinnott/Soffer to make the following two recommendations to the City Council to:

2. Adopt a finding that the pre-zoning of approximately one-half acre of land on the westerly side of Santa Cruz Avenue right-of-way, south of its intersection with Sand Hill Road to the R-1-S (single-family suburban) zoning district is within the City's Sphere of Influence and is consistent with the adopted General Plan land use designation of Very Low Density Residential.
3. Introduce and adopt as an urgency ordinance, Ordinance No. _____, pre-zoning an approximately one-half acre sliver of land adjacent to the westerly edge of

Santa Cruz Avenue right-of-way, south of its intersection with Sand Hill Road to R-1-S (single-family suburban) zoning district.

Motion carried unanimously 6-0, with Commissioner Fergusson absent.

- 2. Zoning Ordinance Amendment/City of Menlo Park:** Consideration of a Zoning Ordinance Amendment modifying regulations for secondary dwelling units to allow some attached units subject to ministerial approval, some detached units subject to discretionary approval, and modifications to the parking requirements for secondary dwelling units pursuant with State law.

Staff Presentation: Community Development Director Heineck presented the staff report. She said that the need for the draft Zoning Ordinance amendment is based on a new State law that requires that applications for secondary dwelling units be considered on a ministerial rather than a discretionary basis. The intent of the law is to further facilitate the creation of secondary dwelling units as a source of housing in California by streamlining the application process. The law allows cities to retain some control over secondary dwelling units by requiring certain development standards or by limiting the units to certain areas. Menlo Park currently allows attached secondary dwelling units in all single-family zoning districts through a discretionary review process, or a use permit, subject to conformance to a certain set of standards, including lot size, size of unit, parking, occupancy and others. To comply with the new State law, the proposed ordinance would change the review process and allow the construction of attached units through a ministerial process subject to meeting a set of development standards and would allow the construction of detached units through a discretionary review or use permit process. The existing development standards for lot width and depth, parking, and occupancy would also be modified. Regulations regarding lot area, density, future subdivision potential, unit size and tenancy would be retained. Referring to a joint meeting between the Housing Commission and Planning Commission on this subject held last week, Community Development Director Heineck noted that subsequent to that meeting, the Housing Commission prepared its recommendations, which were included in the staff report. She indicated that the Chair of the Housing Commission was present and available for questions. She suggested that the Commission might want to ask questions of staff and then consider the ordinance amendment and its effectiveness in meeting the intent of the law. The Commission might want also to address other limitations on the units. The Commission should formulate its recommendation, which may or may not include the Housing Commission's recommendations, to be brought to the City Council at its meeting of June 24, 2003. She stressed that it is the City's intent to adopt an ordinance amendment by July 1, 2003, which is the effective date of the new State law.

Questions of Staff: Commissioner Soffer said he was wrestling with how to conform this ordinance amendment to other residential zoning issues and potential changes. He asked whether the ordinance amendment, if adopted now, could be revisited in the future. City Attorney McClure confirmed that was correct. Commissioner Soffer asked about the difference between a secondary dwelling unit and a separate living space. Community Development Director Heineck said that the unit must have a kitchen to be considered a secondary dwelling unit. Commissioner Soffer asked what would prevent a property owner from building a second floor space and dubbing it a secondary dwelling unit for the ministerial review. City Attorney McClure said that neither the intent nor the implementation of this ordinance amendment preempts the development regulations within a property's zoning district. If a person could not otherwise add a second floor without going through a use permit process, this ordinance amendment would not exempt the use permit requirement.

Commissioner Bims asked if someone built a home with two kitchens, would they be able to carve out a space and call it a secondary dwelling unit. City Attorney McClure responded that the City does not allow the construction of homes with two kitchens unless it is a main residence and one secondary unit. He noted that under the current law, the City requires a use permit for a secondary living unit. He said the State has passed a law that says there cannot be blanket use permit or discretionary requirements for all second dwelling units.

Commissioner Soffer asked whether the City could require that a secondary dwelling unit have a separate entrance and egress. City Attorney McClure said that a separate entrance has not been an issue with secondary dwelling units. Chair Fry asked about the underlying reason for the designation of 640 square feet for a secondary dwelling unit and whether the Commission could recommend a different size for an attached versus a detached unit. City Attorney McClure said that that square footage could be different for detached and attached units, individual residential zoning districts, and different lot sizes. Chair Fry said the State law seemed to say that they could require either tandem parking or parking in setbacks, but would not have to allow both. City Attorney McClure indicated that it was unclear exactly what the State law meant due to the cumbersome style in which it was written, but he thought both tandem parking and parking in setbacks were required unless particular findings were made. Discussion ensued as to what the section of the law regarding off-street parking means. City Attorney McClure indicated that the Commission might give direction to staff to develop language regarding off-street parking requirements. Referring to the City's Zoning Ordinance, Commissioner Bims read the section on off-street parking which states that the off-street parking requirements in all districts and for all uses shall be as stated in this chapter except in the single-family residential districts subject to Planning Commission approval. He suggested that perhaps the ordinance could be rewritten to change the wording to extend it to all districts. Community Development Director Heineck said the section he was referring to relates to the use of landscaping reserve for parking, which is not allowed in single-family residential zoning districts.

In response to a question from Commissioner Halleck, City Attorney McClure said that municipalities and counties throughout the state are considering the ordinance amendment, and he thinks that it is more likely that a property owner, developer or contractor will challenge the ordinance amendment rather than the State. In response to a question from Commissioner Soffer, Community Development Director Heineck said that Portola Valley enacted an ordinance with the idea that they will come back to revisit it; they prohibited secondary dwelling units in scenic corridors along scenic highways; limited the size of a secondary dwelling unit to 400 square feet; and both detached and attached secondary dwelling units would go through a ministerial review.

Chair Fry introduced Chair Steven Bliss of the Housing Commission. Commissioner Soffer asked him about the Housing Commission's recommendation that parking should be restricted only in regard to health, safety, and aesthetics. Chair Bliss indicated that the State law allows exceptions based on health and safety, but they thought aesthetics were important as guidelines. Commissioner Halleck referred to an e-mail from citizen Boyd Paulsen who thought discretionary review should be used for all secondary dwelling units to guarantee results. He asked if the Housing Commission had considered requiring discretionary review. Chair Bliss indicated that discretionary review is required for detached secondary dwelling units. He said that they did not have Mr. Paulsen's input at the time of their meeting and they did not talk about breaking down the discretionary versus ministerial differently from what is written in the

proposed ordinance amendment. Commissioner Bims asked about the recommendation that the minimum yard setback should be reconsidered because it could affect privacy, noting that it is currently a three foot setback for an accessory structure and the recommendation in the proposed ordinance is to require a 10-foot setback. He asked if the Housing Commission was recommending a larger setback. Chair Bliss said in the joint meeting they considered that a secondary dwelling unit could potentially be a second floor and a 10 foot setback might be too narrow. They also considered that a detached secondary dwelling unit of 640 square feet might potentially be a two-story unit. In response to Commissioner Bims, Chair Bliss indicated that putting a one-story limit on secondary dwelling units would make the 10-foot setback acceptable. Commissioner Sinnott commented that the Housing Commission's recommendation about parking seemed a little vague and wondered if they had more input on it. Chair Bliss explained that subsequent to the joint meeting, the Housing Commission decided that since both the Commissions would be making parallel recommendations to the Council that they make their recommendations general enough to prevent conflicting recommendations. Commissioner Pagee asked about the Housing Element and this ordinance amendment being the second part of that. Chair Bliss said that the Housing Commission worked with the Planning Commission about a year prior identifying some priority and sites for the Housing Element. They have not worked in the past year on the Housing Element. Community Development Director Heineck said that this is separate from the Housing Element but linked in that the Housing Element draft is proposing using secondary dwelling units as allocation toward the housing need. She said that there is a housing allocation number of 900-plus units that they are required to address as part of the Housing Element, but that number is unrelated to the State law on secondary dwelling units. To reach that housing allocation number, the City is proposing to include approximately 200 secondary dwelling units in the update of the Housing Element.

Public Hearing: Russ Dember, 1028 Berkeley Avenue, Menlo Park, wants to lament the demise of the R-1 concept by what the State is requiring. He commented on issues brought up by the Commissioners that need consideration, particularly requiring secondary dwelling units to be one-story and parking aesthetics. He noted a situation in his neighborhood that has a secondary dwelling unit and in front of which there may be seven cars parked. He thought the ordinance amendment would put even more pressure on parking and questioned if Menlo Park would continue to have no cars parked in the street in the morning. He thinks that there should be limits on the number of bedrooms in a secondary dwelling unit and thought three bedrooms excessive. He encouraged the Commission to get the ordinance amendment as tight as possible and to have as much discretionary review on secondary dwelling units as possible.

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

Motion carried unanimously, 6-0.

Commission Discussion: Commissioner Halleck said that he was comfortable making a recommendation to the City Council. He said he would like to strike two or more bedrooms to limit occupancy. He said that if there is going to be a second story, there should be discretionary review. Referring to the Housing Commission recommendations that parking be restricted only in regard to health, safety and aesthetics, he suggested removing the word "only." He agrees with the rest of what the Housing Commission recommended. City Attorney McClure said that a second-story on a detached secondary dwelling unit requires a use permit and that would go through the Planning Commission. City Attorney McClure confirmed that Commissioner Halleck would like specific restrictions that secondary dwelling units be a studio

or one-bedroom and that parking not be allowed in the front and side setbacks unless there was discretionary review. He further confirmed that tandem parking would be allowed outside of the setback. Responding to a comment from Commissioner Sinnott, City Attorney McClure said that because the City bans street parking at night that they might have to be more flexible in allowing parking in setbacks.

Commissioner Halleck moved to recommend to the City Council that secondary dwelling units be studios or one-bedrooms and that parking would not be allowed in the front and side setbacks unless there was discretionary review. Commissioner Sinnott seconded.

Commissioner Bims referring to a detached accessory building triggering a use permit asked if the requirement that a secondary dwelling unit be single-story would require a variance. City Attorney McClure said that secondary dwelling units could be restricted to a one-story; and if an applicant wanted two-story they would need a variance and substantial reason for getting a variance.

Commissioner Pagee said that she would suggest prohibiting secondary dwelling units to be one story because of privacy and sunlight issues and which would allow ministerial review. City Attorney McClure indicated that detached units even at one story have a potential significant impact on neighbors and that is why they have written the ordinance to require detached units to have a use permit. Commissioner Pagee discussed the development requirements for accessory buildings, specifically that they are limited to a nine foot wall height and 14-foot height overall. She suggested that a detached secondary dwelling unit be required to meet the dimensions of an accessory building.

Commissioner Halleck moved to add Commissioner Pagee's stipulation about the height of a detached secondary dwelling unit to the Commission's recommendation to the Council. Commissioner Sinnott agreed.

Chair Fry wanted to prohibit basements in setbacks for secondary dwelling units and that secondary dwelling units be scaled to the lot size, noting that 640 square feet is fairly large. City Attorney McClure suggested a scale of 5% of the lot size with a maximum of 640 square feet. A 7,000 square foot lot could accommodate 350 square feet.

Commissioner Halleck indicated he was amenable to adding Chair Fry's recommendations to the motion; Commissioner Sinnott questioned the prohibition of a basement for a secondary dwelling unit.

City Attorney McClure said that a secondary dwelling unit could be constructed in a basement; a basement that was part of a secondary dwelling unit would count toward the maximum square footage allowed a secondary dwelling unit. There could be a basement under an attached secondary dwelling unit but which connected to the primary residence. Chair Fry indicated that the ordinance should be clear that a basement in a secondary dwelling unit was included in the amount of the total square footage. Community Development Director Heineck responded that the language regarding secondary dwelling units would state that the square footage includes all habitable square footage on all levels.

In response to a question by Chair Fry about parking, City Attorney McClure indicated that the proposed ordinance amendment would not allow any required parking in the front or side

setback without a use permit. They could have tandem parking outside or in the interior of the setback.

Commissioner Soffer asked if there were any limit to the number of secondary dwelling units on a lot. Community Development Director Heineck responded that only one secondary unit would be allowed on a single-family residential lot.

Commission Action: M/S Halleck/Sinnott to recommend approval of the draft Zoning Ordinance amendment to the City Council with the following changes.

- Secondary dwelling units should be limited to studio or one-bedroom units.
- The required parking provided in the front or side setback shall be subject to a use permit.
- The size of a secondary dwelling unit shall be limited to five percent of the lot size or 640 square feet, whichever is less.
- The size of a secondary dwelling unit shall include all habitable square footage on all levels.
- The height of detached secondary dwelling units shall be limited to a nine foot wall height and a 14 foot overall height.

The motion carried unanimously, 6-0. Commissioner Fergusson was absent.

Commissioner Halleck indicated that he was unhappy with the ordinance amendment because density in Menlo Park would increase with accompanying pressures on parking, safety, fire safety and utility. He did not want to revise his vote as he did not want the matter to default to the State mandate, but he hoped that the City would review the ordinance amendment in the future and improve it. Chair Fry indicated that she shared his thoughts.

The meeting recessed at 8:45 p.m. and resumed at 8:50 p.m.

Chair Fry noted that a member of the public had requested to address the Commission.

Public Comment: Chuck Bernstein, 444 Oak Court, Menlo Park, indicated that the State law on secondary dwelling units had the potential to create great harm in Menlo Park and he encouraged the Commission to be as restrictive as possible. He noted that the City of Palo Alto approved an ordinance limiting ministerial review to units 220 square feet in size. He suggested the Commission consider the same. He requested that setbacks be kept and that the minimum be allowed. He thought that the secondary dwelling units should be restricted from being rent producers and should be to serve a certain impacted part of the population.

3. 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. Continued from the meeting of June 2, 2003.

Director Heineck reported to the Commission that she had provided them a memorandum listing future Monday nights available for meetings to discuss the proposed Zoning Ordinance

Amendment. She suggested that, prior to the conclusion of tonight's meeting, the Commission discuss when they would like to next meet.

Chair Fry suggested that the Commission begin with a review of the current process for both standard and substandard lots and compare the processes with the proposed Zoning Ordinance Amendment, including notification requirements, decision making authority, the public's ability to address concerns, and decision criteria. She suggested that they consider the goals statement and develop criteria for reviewing the proposal and then go through the proposal.

Commissioner Sinnott said that the comparison between the existing ordinance and the proposed ordinance had already been done and the Commissioners have had the material for weeks. She thought that the Commissioners should be ready to comment.

Chair Fry said that there might be members of the public who are not as informed as the Commission. She noted that a resident had recently said to her that she thought all second stories were reviewed and was surprised to find out that they are not all reviewed.

Planner Cramer stated that Chair Fry had asked if she could summarize the step-by-step process for use permits as well as the process for a building permit. She indicated that she had prepared a handout that focused on the use permit process and the Planning Division's review procedures.

She said that there are three situations that can lead to a permit application being filed. The first is that the Building Division may determine that a use permit is needed for the review of plans submitted for a building permit. Second, staff may have met with an applicant prior to reviewing the plans at the service counter and determined that the proposal would require a use permit. Third, the applicant knew that a use permit would be required and applied for one directly. Staff then collects the application with supportive material and fees. The Division records the application, reviews it for completeness, and assigns a planner to the project. Staff then mails a five-day notice to all of the neighbors and property owners within 300-feet of the subject project. Project plans are then circulated for review throughout the other departments including the Building, Engineering, and Transportation Divisions. At that time, the Building Department sends an inspector to do a preliminary site check. Planning Division receives comments from other Divisions and then begins the notification for the upcoming Planning Commission meeting. A notice is placed in the newspaper of a public hearing 26 days prior to the Planning Commission meeting and 25 days prior to the meeting a notice of the public hearing is mailed to the property owners and neighbors within 300 feet of the subject property. Staff completes its report during the timeframe of the noticing and the report is made available the week prior to the Commission meeting. The Commission meeting is held, and there is an appeal period of 15 days following the meeting. During that time, staff mails decision letters to the applicants. If approved, the use permit is valid for one year.

Planner Cramer said that the general process of the Building Division starts with submittal of a building permit application and fees. A determination is then made to either review the project in-house or send it to outside plan check services. This determination is based on the type and complexity of the project. The plan check turnaround for residential projects can vary from four to eight weeks depending again on the size and complexity of the project. Additional time is then required for response to plan check comments.

In response to a question from Commissioner Soffer, Planner Cramer said that steps in the review process can run concurrently, but is in part dependent on the time available for staff review. Upon receipt of the application, planning staff sends out plans to the other Divisions. If there were a backlog for items on Commission agendas, the process may not be able to run concurrently. Commissioner Soffer asked whether the other Divisions have a backlog as well. Director Heineck said that they do, but when planning staff routes the plans to other Divisions, the Divisions are given a specific date by which comments are needed to meet the noticing and meeting deadline requirements.

In response to a question from Commissioner Sinnott, Director Heineck indicated that the Building Division does get backlogged and that this is caused in part because of the need to use outside plan check services. She said that if more review was done in-house, project review could be completed more quickly. Commissioner Sinnott asked if it was a matter of weeks or months between someone getting a building permit versus someone getting a use permit. Director Heineck said that it varies and that it is usually a matter of weeks, but could be months. She said that it is dependent on the Planning Commission's schedule and noted that last year the wait for a Planning Commission meeting was six months compared to the current two month wait. The time needed for plan check depends on the completeness of plans and responsiveness of the applicant to plan check comments.

Commissioner Pagee said that currently plans that go through a use permit process are reviewed by the Building, Engineering and Transportation Divisions and wondered if plans that would go directly through the Building Division are reviewed by the other Divisions as well. Director Heineck said that would occur on a limited basis and it would depend on the type of building permit. If it is tied to a use permit, it always gets circulated to all of the Divisions to ensure that all of the conditions connected to the use permit are implemented properly. She said that the Department is working to change the process to require that all projects go through all Divisions. Commissioner Pagee said that might take longer for those plans that now just go through the Building Department. Director Heineck said that the majority of projects now are checked by all of the Divisions. In addition, the Department is working on other processing changes, including conducting plan checking in-house and having planning staff conduct the zoning review of all projects, in order to expedite and improve service. Commissioner Pagee asked whether those organizational changes might be made independent of the proposed Zoning Ordinance Amendment. Director Heineck answered affirmatively.

Commissioner Bims asked about the two notifications required for a use permit. Director Heineck responded that the noticing procedures are established by City policy. Commissioner Bims asked if the calculations done on zoning requirements are manual. Director Heineck indicated affirmatively. Director Heineck expanded on the notification process by explaining that the five-day notice is intended to alert neighbors that an application has been filed and to provide them with a copy of the plans for early review. It provides neighbors a chance to talk with staff early enough in the review process that the applicant can still consider changes necessary to address concerns. She said that the 25-day notice is to specifically provide information on the meeting date, time and place. She said that in some instances when we are able to quickly schedule a project, it is possible to combine both notices.

Chair Fry asked if City Attorney McClure would explain the rationale for the use permit process and why it was required for projects on nonconforming lots. City Attorney McClure said the idea was to retain maximum flexibility to review and approve any development application on nonconforming lots. He said that the City has historically required discretionary review and

approval on many more categories of projects than most cities do, both commercial and residential. There was discussion a number of years ago about reducing the discretionary review process by reclassifying lots since there are so many 5,000 square foot lots. The thought was to make them standard lots. He said that the proposal never went forward with the Commissions or Council. Commissioner Soffer asked about the 7,000 square foot minimum for R-1-U. City Attorney McClure said he thought that went back to the original subdivision ordinance or zoning ordinance. He said most or all of the 5,000 square foot lots were created before they were annexed into Menlo Park or before the zoning ordinance was adopted in 1953.

Chair Fry asked whether the allowance of a 2,800 square foot structure for 5,000 to 7,000 square foot lots was the reasoning the use permit review process was applied as that amount of square footage was disproportionately greater than other lots. Director Heineck indicated that was not the intent at the time. She said the FAL requirement was adopted in late 1988 and was developed by a resident-based task force of professionals and architects who looked at designing both FAL and daylight plane regulations. The FAL and daylight plane regulations went through a lengthy public hearing process and through the Planning Commission and City Council. She said she believed that the 2,800 square foot limit was based on a desire for fairness for smaller lots. She said when the FAL and daylight plane were adopted in 1988, there was no discussion of whether there should be discretionary review as part of those regulations.

City Attorney McClure noted that the original task force's recommendation was for more limited floor area on all of the lots and through the public process and the Commission and Council it was expanded. He said similarly to this time around, the original impetus was to restrict development of second story homes, reduce square footage on all lots, and address "monster" houses. When the recommendation reached the City Council, it ended up with somewhat disproportionately larger square footage on smaller lots as that was the desire of the property owners of the smaller lots.

Chair Fry confirmed with staff that today neighbors within 300-feet can address concerns about a project. City Attorney McClure said that applies for persons even beyond the 300-feet as there is a public hearing notice published. Chair Fry said that when decisions are made, they are made against the findings spelled out in the use permit. She said that she wanted to go through that because there is such a difference in the approach of the proposed Zoning Ordinance Amendment. Chair Fry said that most cities use guidelines and many use other kinds of criteria as well. Director Heineck said in response to Chair Fry that the majority of cities that staff has contacted have some form of design guidelines. City Attorney McClure said that many times design guidelines are not mandatory and an applicant can choose to follow or ignore them, and they are not denied because they choose to not follow them. He said some cities use a discretionary review process separate from a use permit process; some use a use permit process and some have no discretionary review process but they may have design guidelines that are not mandatory. He said the question has to be asked of the cities whether they have design guidelines and whether they are mandatory or the basis for a discretionary review process or not. Chair Fry said that it was her impression contacting cities and looking at their websites that most cities do use guidelines in their discretionary review process. City Attorney McClure said that many cities do not have a discretionary review process even though they have guidelines. In response to Chair Fry, staff noted Woodside and Mountain View and possibly some cities in Santa Clara that have guidelines.

Commissioner Bims asked if applicants for use permits have typically contacted neighbors regarding the project, and if not, do they follow up on staff's suggestion to do so. Director

Heineck said that she finds that the majority of applicants have not contacted their neighbors when they first come to speak with planning staff. She said that staff strongly encourages that they do so, telling applicants that information on their contacts with neighbors will be included in the staff report and that the Planning Commission expects that they have contacted the neighbors. She said that the majority of applicants do contact their neighbors.

Confirming Chair Fry's observation, Director Heineck said that for a Tier One project, an applicant would file a building permit application. She said that the zoning review part would be conducted and if it met all of the standard development regulations, then the remaining building and engineering parts of the plan check would be completed. If all requirements were met, a building permit would be issued. Chair Fry asked if there was any change in the City process other than the organizational change that had been described. Director Heineck said there was not and that the organizational change would support the process if the proposed Zoning Ordinance Amendment was adopted, but that it helps staff whether the ordinance is adopted or not. In response to Chair Fry, Director Heineck confirmed that there is no notification for the building permit process.

Chair Fry asked for discussion of what problems the proposed Zoning Ordinance Amendment is trying to solve. She said that if the goals of the proposal were examined, some of the problems could be inferred. She said she infers that the existing process discourages residents who want to update their homes because of the cost and an unfriendly process; that out-of-scale housing occurs under the current process and is undesirable because of visual impacts as well as noise impacts from mechanical equipment close to the property line, and the designation of nonconforming lots (5,000 to 7,000 square feet) is inherently bad because it requires those with the least resources to go through the use permit process. Council Member Winkler confirmed with Chair Fry that those are the main problems to be addressed by the proposed Zoning Ordinance Amendment. She said that people were looking for certainty in the process. Chair Fry said that indicates there is uncertainty in the design process now. Chair Fry said that Council Members Kinney and Winkler made some comments last week that second story mass has a negative impact on next door neighbors and current notification and involvement of neighbors is undesirable because it becomes a "popularity contest."

Chair Fry said that based on some of the Planning Commission reviews and some of the appeals made of Planning Commission decisions to approve projects, the Commission might want to consider issues that the current rules do not address, such as protection of privacy and sunlight and the control of bulk and mass of homes that create negative impacts on the aesthetics and character of neighborhoods. She said that current rules do not necessarily protect neighborhood character, setback patterns, scale or siting. She said at 410 Pope Street there was great concern with detached versus attached garages and neighborhood compatibility; thus current rules do not enforce or support compatibility. Commissioner Fry also noted that today some neighbors next to standard lots do not have an opportunity to voice concerns or appeal decisions. She said that there are problems today that were frequently raised during the residential task force review process and other discussions in the past regarding possible changes to ordinances.

Commissioner Sinnott commented that one thing that seems to be overlooked is that the Zoning Ordinance Amendment proposes to reduce the daylight plane for the building permit, which affects privacy and sunlight. Chair Fry said that the Commission would later be evaluating how well the proposed changes address the noted problems. Commissioner Soffer said that another problem is the notification of people who cannot respond such as the sick and elderly. He said

the Planning Commission sometimes has to speak for those who cannot attend. Commissioner Pagee said she believed staff had said that the information obtained from the County for property might be six months old, which might mean that some property owners were not getting notification.

Chair Fry said that if the Commission were to apply criteria to the review of the proposal, some of the criteria might be whether and how well the proposal addresses the problems the Commission experiences or sees, whether the proposal introduces new problems or unintended consequences, whether the proposal is as stringent as the current regulations, whether the proposal addresses today's negative impacts on neighbors, neighborhoods and the community, whether the proposal protects solar access, sunlight, air, and privacy, whether the proposal protects against noise impacts, whether the proposal encourages neighborhood-compatible development, and whether the proposal addresses the General Plan provisions for a planned community, building to human scale and protecting open space.

Commissioner Bims said that he thought those points should be taken into consideration in evaluating the proposed Zoning Ordinance Amendment. He indicated that he would like to do his own evaluation based on those criteria, formulate his own response and then have discussion with the other members. He suggested that if the Commissioners all did that it might expedite the process. Commissioner Pagee thought that was a good idea.

Chair Fry opened discussion on the process of the tiers. Commissioner Sinnott said that she really liked the tiered review because of the lower daylight plane and other changes geared toward good design, as well as allowing some flexibility on elements that do not impact others such as the five foot attic rule. She said the changes in the ordinance were well thought out. She said that they should want to reward people who meet the new daylight plane as they will have to bring their roofs down, but with the allowed dormers and encroachments on both sides, there can be windows which makes a more interesting house. She said that if they want the higher daylight plane then they have to get the neighbors' approval and if not then the applicant needs to come see the Commission. She said that she thinks the proposal is great.

Commissioner Pagee said that she also likes tiers but suggested that the first tier must present no possibility of impacts. She suggested Tier One be required to be a single story structure. She said that the single story house probably would not impact daylight, active or passive solar, or privacy. She suggested differentiating between Tier Two and Tier Three possibly by some other process such as square footage of the second story.

Commissioner Soffer said that he was not as enthusiastic about the tier system and was hard put to consider any Tier One approval based on the projects the Commission has seen and the problems and complaints they have heard by impacted neighbors. He thought the proposal was very much going in the wrong direction by eliminating notification and review.

Commissioner Sinnott suggested that on the application form it could be asked if the applicant has discussed the project with the neighbors so notification is not completely eliminated. She said they should give it a try and review it in 18 months.

Commissioner Soffer said that the tiers would fail to capture the problems that occurred in the past. He said that it was easy to get tiers that allowed projects to go through easily, but it was more problematic to get tiers that capture problems unless the intent of the proposal was not to capture issues that have been problematic in the past.

Commissioner Halleck said that the scale of housing is important to him and his neighbors and that equity of process is important as well as getting the project through and feeling good about it. He said the neighbors of projects on certain sized lots need to be notified. He said discretionary review is critical when everyone does not come to an agreement and it affects property equity. Giving people a forum to express themselves was crucial to solving disparate considerations through mediation. He said notification is critical. He said that he is comfortable with lowering the daylight plane. He wants equity in the process to allow substandard lots to have a certain square footage, noting Section 10 in the proposed ordinance. He said that the notion of the tiers is not as important to him as the notification of the neighborhood. He said that Commissioner Pagee had a great idea in that certain things that fit size and scale might go through quickly. He said Tier One is single story; Tier Two is two story with discretionary review and notification.

Commissioner Bims said that the tiers provide a structure to the process and the structure could be designed to make the process work. He agreed with the process for each tier – Tier One being ministerial review; Tier Two requiring neighbors' approval and Tier Three requiring a use permit. He said the real issue is what fits into what tier.

Chair Fry said that the tiered system has a lot of merit, noting that she felt badly about some projects on substandard lots that came before the Commission. At the same time, she is concerned about a number of projects that never come before the Commission on standard lots that are problematic to the neighborhood. She said that projects in Tier One with ministerial review had to be projects that it was quite certain would not have a negative impact on a neighbor or neighborhood. She said that she bristled when it was suggested to just go forward with the proposal and then review in 18 months. She said that she would really hate to live next to a house that was an experiment and find out that the experiment did not work. She said that she was not sure if the process should be two or three tiers.

Commissioner Soffer said that the ability to say no has allowed for better projects. Commissioner Bims said that he agrees that in Tier One there is no ability to say no, so the zoning regulations must set the boundary. He said that in Tier Two the neighbors could say no, and in Tier Three, the Commission could say no. Chair Fry said that she does not think just allowing an adjacent neighbor to respond to a project was adequate as defined for Tier Two as it ignores the larger impacts on the neighborhoods. Commissioner Pagee said that she worked on a project in Carmel and story poles were required. She suggested that story poles might be used in Tier Two as it helps show the relationship of building features to the environment.

Commissioner Sinnott said that looking at the process from the applicant's shoes, she sometimes sees the current process as punitive. She said it is so painful to work with an architect and try to create a beautiful home, then have a neighbor complain and end up before the Commission to have your design ripped apart.

Commissioner Pagee said that as hard as that process is on an applicant, that sometimes their design is not ready and when the design comes before the Commission the design can be modified to eliminate impacts on the neighbors. She said that she is seeing people moving away because of the two-story wall.

Commissioner Bims said that the notion of a tiered process should not be looked at as for or against an applicant. He said that he favors the three tiers and that there should be clarity of regulations that define the tiers.

Director Heineck said that Council Member Winkler would like to address the Commission. Council Member Winkler stated that the changes in the proposal would restrict visual impacts. She said that the current ordinance has very liberal regulations that allow individuals to build without any review at all. She noted that the proposal would add predictability to the review process.

Brief discussion ensued regarding R-1-U lots and how regulations, standards and guidelines might be developed to minimize the need for discretionary review. Director Heineck said that there is a distinct difference between guidelines and regulations. Rules have to be objective and measurable.

Responding to a question from Commissioner Soffer, Director Heineck said that a use permit is required if someone is doing work on a legal nonconforming structure that exceeds 50 percent of the replacement cost of that structure. She said that ruling is unrelated to a substandard or standard lot. Commissioner Soffer said that the terms substandard or standard do not do justice to the fact that these lots have the potential to create more impacts for neighbors. Regarding predictability and certainty, he said every project and lot he has seen is different.

COMMISSION ACTION: The discussion was continued to a special meeting to be held June 23, 2003.

D. COMMISSION BUSINESS

There was none.

ADJOURNMENT

The meeting adjourned at 10:30 p.m.

Staff Liaison: Justin Murphy, Principal Planner

Prepared by: Brenda Bennett, Recording Secretary

Approved by Planning Commission on September 22, 2003