



MENLO PARK PLANNING COMMISSION MINUTES

Special Meeting

July 14, 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, Fry (Chair), Halleck (Vice-chair, arrived at 7:15 p.m., excused at 10:05 p.m.), Pagee, Sinnott (arrived at 7:05 p.m.), Soffer present.

INTRODUCTION OF STAFF – Cramer, Heineck

A. PUBLIC COMMENTS

There were none.

B. CONSENT

1. Consideration of the draft excerpt minutes of the May 5, 2003 Planning Commission meeting.

Chair Fry requested that the following changes be made to the minutes:

- Page 2, Line 41: Change “She said she has friends with small children who live across the street from the Sisons and that yard is enclosed and safe with a three foot fence” to “She said she has friends nearby and knows that young children live diagonally across the street from the Sisons and that the property where young children live is enclosed and safe with a three-foot fence.”
- Page 6, Line 13: Change “they have” to “she had”.
- Page 6, Line 14-15: Add “to what” after “equivalent”.
- Page 6, Line 15: Change “to” to “is”.
- Page 6, Line 15: Change “they regret” to “she regretted”.
- Page 6, Line 15: Change “causes” to “caused”.
- Page 6, Line 16: Add “and she subsequently removed the landscaping” after “hazard”.
- Page 6, Line 16: Change “three” to “four”.
- Page 6, Line 18: Add paragraph “Chair Fry also noted that there is a pattern of alternating two-way stop sign in this neighborhood. She said that she thought the stop sign pattern created more hazards. Her primary concern is that the tall fence and landscaping will create a greater hazard when combined with the stop sign intersection pattern.”

COMMISSION ACTION: M/S Fry/Fergusson to continue review of the minutes to the July 21, 2003 meeting in order to incorporate Chair Fry's changes and any others submitted by Commissioners directly to staff.

Motion carried, 6-0 (Commissioner Halleck not in attendance).

C. REGULAR BUSINESS

- 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.
Continued from the meeting of June 23, 2003.

Chair Fry said that the summary of the Planning Commission's discussion did not indicate the rationale for the discussion points. Director Heineck indicated that the minutes would supplement the summary discussion points. Commissioner Sinnott said that she is the minority voice in this discussion and asked how her opinion would be noted. Director Heineck indicated that it would be through the minutes. She said in some instances the Commission voted and in other instances there was no vote taken and that as a result there were no individual opinions stated in the summary. She suggested the Commission might return to the summary and state the support of the individual Commissioners for the summary points. Commissioner Sinnott suggested that the summary stay as is and that a note be given to the Council to look at both the minutes and the summary. Commissioner Fergusson asked for a brief recess to read the staff report and summary; it had been noted earlier that the staff report and summary had been delivered electronically and there had been some difficulties opening the documents. By consensus, the Commission took a short recess to allow the Commissioners to read over the documents.

Upon resumption of the meeting, Commission Soffer inquired about paragraph 24, *Horizontal Length of Second Floor Side Wall*, and the identification of 20-feet as the suggestion of distance for notification purposes. He recalled that Chair Fry had suggested 300 feet. (it is the State required minimum for use permits.) Commissioner Fergusson said that she had suggested 60-feet to include parcels directly across the public right-of-way from the subject property. Commissioner Pagee indicated that she had suggested the 20-feet to include properties across alleys, such as in the Willows, as alleys tend to be 15-feet wide.

Chair Fry said that the Commission had asked for additional information and wondered when, or if, that information would be provided. Director Heineck said that she and the City Manager are considering how best to respond to the requests given limited staff resources. Chair Fry suggested that after the Commission reviewed the entire draft ordinance through once, that the list of information requested be reviewed and prioritized. Chair Fry said that she was troubled that the summary would be the public record of the discussion and that it did not provide the rationale or the majority and minority position on the items.

Commissioner Pagee said that when they had discussed dividing items into tiers to change the tier system, she had suggested a quicker process for applicants who were constructing one-story buildings. She noted item 23 of the Summary, *Floor Area Limit (FAL)*, and questioned the bullet point *A reduction in total FAL on smaller lots*. She said that a smaller lot only has a 2,400 square foot buildable footprint and that the discussion had not been about reducing FAL. She

said that the discussion was that anyone might build to the proportionate square footage of their lot, but there would be a provision that a one-story building would receive a faster approval process under Tier One. Director Heineck indicated that clarification would be made to the first bullet point under item 23 of the Summary to indicate that this would be only in the case of a one-story house within the Tier One provisions. She said that reference had been made to a reduction of total FAL on smaller lots resulting in a one-story residence subject to Tier One. Chair Fry said that was an alternative that was noted. There was no vote.

Chair Fry suggested that the summary might be reviewed at another meeting for priorities so that the Commission might make a recommendation to the Council rather than present a laundry list.

Chair Fry opened discussion on Section 5 of the draft Zoning Ordinance Amendment, regarding the R-E-S Residential Estate Suburban District. Director Heineck noted that it is a fairly small zoning district located in west Menlo Park primarily between Valparaiso and Santa Cruz Avenues toward El Camino Real, and some parcels in Sharon Heights. Director Heineck clarified for Chair Fry that the language referring to the changes in the ordinance in this section is identical to that in the previous section on R-E Residential Estate District, except that lot length, width and area are slightly smaller for the R-E-S district. Commissioner Fergusson noted that a previous staff report indicated that there are 96 R-E-S lots and approximately 165 R-E lots.

Chair Fry said that item 4 for both R-E and R-E-S should contain the comment from the staff report summary that "Members of the Commission suggested limiting basements and below ground structures to the building footprint, with the possible exception that provisions for legally required access to those spaces be allowed to the setbacks." Commissioner Soffer asked what the Commission's discussion had been on *Floor Area Limit (FAL)*. Director Heineck said that item 23 of the summary was the discussion on that item from the last meeting. Commissioner Pagee suggested that the comment to not extend the basement into the setback would continue in these sections. She said that Commissioner Fergusson had suggested counting square footage for entrance or egress to the basement for below grade structures if it extended beyond the first floor footprint. Chair Fry confirmed with the Commission that their comments on the R-E district, either for or against, would also apply to this section.

Commissioner Pagee requested a visual that would illustrate what would happen to the water table based on evaluating maximum build-out of basements throughout the City. Her request was noted to be included on the list of information requested by the Commission. Commissioner Fergusson said that a geologist had spoken to them about the water table at the June 2, 2003 meeting. She suggested he might be a resource for this work.

Responding to Commissioner Fergusson, Director Heineck described that the R-E zoning district has the largest minimum lot size and is the least dense of the zoning districts; she noted that the R-E-S zoning district has somewhat smaller lots. The minimum lot size for the R-E district is 20,000 square feet and for the R-E-S district is 15,000 square feet. The minimum lot size for the R-1-S district is 10,000 square feet, and for the R-1-U district is 7,000 square feet. The primary difference is in lot area, width and depth, and in setbacks that correspondingly decrease as lot size, width and depth are decreased. She said that the R-1-U district tends to be on flatter land and includes the Willows, Suburban Park, Lorelei Manor, Belle Haven, and west Menlo Park neighborhoods. She said that Sharon Heights tends to be primarily the R-1-S zoning district with some of the R-E-S district. There are smaller areas of the R-E and R-E-S district in west Menlo Park.

Chair Fry asked for comments on Section 6, the R-1-S Single-Family Residential Suburban Zoning District. Commissioner Fergusson commented that the R-1-S district is denser and has more potential for privacy impacts. Chair Fry asked how that affected the previous comments made under the discussion of R-E and R-E-S. Commissioner Fergusson said it did not change the general thought, but because of the smaller setbacks in R-1-S, consideration of the building envelope, exterior below grade structures, noise impact, and placement of windows became more important. Commissioner Sinnott indicated that she opposed adding different restrictions to smaller lots as she did not want to see punitive restrictions imposed on the property owners of the smaller lots. She said that those property owners should be able to remodel their homes to create homes that support their family's needs, and she questioned restrictions that might not allow for a family to add a bedroom for one of the children.

Commissioner Fergusson said for the record she believes that all owners of a 5,000 to 7,000 square foot lot have the right to build a 2,800 square foot house. Chair Fry stated that she did not believe that anyone had suggested the maximum FAL be restricted, but the discussion had been to ascertain at what point additional review was needed. She said that many of the comments so far support additional review because increases in density create the potential for greater negative impact. Commissioner Pagee said that she had made some quick calculations to demonstrate that a 2,300 square foot house would support four bedrooms. There would be three bedrooms at 14 by 12 feet and the master bedroom at 13 by 16 feet, a family room of 12 by 14 feet, a kitchen of 10 by 12 feet, an eating area of 14 by 12 feet, a living room of 14 by 16 feet, a bathroom of 8 by 6 feet for the children, a master bathroom of 12 by 10 feet, a two-car garage 21 by 21 feet with miscellaneous corridors of 68 by 4 feet, the total of which equals 2,298 square feet. Closing the discussion on the R-1-S district, Chair Fry noted that the bigger issue is that currently many of the projects on these lots are not reviewed, and that the proposed ordinance would not change that. She summarized that the comments made by the Commission on the R-E and R-E-S districts should apply to the R-1-S district as well.

Chair Fry opened discussion on Section 7, R-1-S Single-Family Residential Suburban, Felton Gables. Director Heineck said that the proposed change in this section is intended to make clearer the existing regulations related to the Felton Gables district rather than make any changes to the regulations of the district. The current daylight plane regulations for the district are located in the chapter on daylight planes rather than in the chapter that describes the district. The proposal would move the daylight plane requirements from the daylight plane chapter to the Felton Gables chapter so that all regulations related to the district are in the same location in the ordinance. Chair Fry confirmed that the regulation for daylight plane for Felton Gables was more restrictive than the proposed ordinance. Director Heineck indicated that the FAL is more restrictive as well. Chair Fry confirmed with Director Heineck that the changes in the definition of FAL in the proposed ordinance would be applicable to Felton Gables. Chair Fry said that in general it is the greater heights that tend to cause neighbors' concerns and did not see this daylight plane as restrictive enough. Commissioner Pagee said that she had visited the Felton Gables area and noticed several homes with the 34-degree angle and more restrictive daylight plane and was impressed with how many of the homes were able to have the 12-on-12 and 8-on-8 roofs even with the restricted daylight plane. Commissioner Fergusson noted that the discussion identified a dependency between height and building envelope.

Chair Fry opened discussion on Section 8, R-1-U, Single-Family Residential Urban Zoning District. Commissioner Fergusson said she wanted to understand the impact of removing the substandard lot trigger for use permit review. She indicated that she had requested, and received from the City, the zoning map in a digital format to overlay the parcels and she

intended to classify which parcels within the various zoning districts are substandard. She noted that homes in the R-1-U district currently have the most protection from the negative impacts of new development. Commissioner Sinnott said the neighbors' protection had to be considered against the burden of added expense and time for the property owners of those substandard R-1-U parcels required to go through the use permit process. She recalled a comment made by Building Official Don Johnson at a previous meeting that the current ordinance burdens property owners who can afford it least. She saw the tier system as the effort to ease that burden and bring some fairness to the process. Commissioner Pagee said that was a good point; she suggested however that those who could lose the most are the neighbors who could not afford to move when a project caused them to lose their daylight. She said that the use permit allows for review and the opportunity to mitigate concerns. She said that Tier One review eliminates all protections and the adjacent neighbors would have no recourse. Chair Fry suggested that the review process might be discussed later.

Director Heineck said that the individual zoning district sections establish the Tier One and Tier Two review for all single-family zoned properties. She said that if the Commission wanted to discuss changes to the proposed Tier One and Tier Two review triggers, this would be the time to discuss those changes. She said that there is a later section on the single-family development permit and that the Commission may wish to discuss changes to the tiers when they discuss the proposed new permit. Director Heineck also clarified for the public record that the information provided to Commissioner Fergusson is draft information and contains some inaccuracies that staff is working to correct.

Commissioner Fergusson said that sections of the R-1-U district are rapidly gentrifying with added pressure for development. She commented on situations where wealthy, younger couples move into that district planning to build a larger home next door to property owners who may have lived there 30 or 40 years. She said this creates a socio-economic discrepancy and exacerbates the issues that Commissioner Pagee mentioned.

Commissioner Sinnott said that she had previously suggested creating a notification form for neighbors to sign off on a project. Director Heineck said that this is how Tier Two is intended to work as Tier Two allows an applicant to use a certain set of development regulations if the neighbors' approval is obtained. Approval might be submitted by letter or by a form staff could create. Commissioner Soffer confirmed that would be in lieu of the City notifying the neighbors.

Chair Fry suggested that they focus on the trigger(s) for the tiers rather than the process. She recalled that the Commission's consensus had been that second story homes trigger Tier Two and single story homes are Tier One. In response to Chair Fry, Director Heineck indicated that the second bullet of item 23 of the Summary showed that the Commission had discussed that trigger as an alternative and would that it would be shown in all of the zoning districts if that was something the Commission wanted to support. Responding to Commissioner Pagee, Director Heineck said that daylight plane and height in this ordinance would be measured from the flood elevation and might be that much higher than an adjacent home. Commissioner Pagee said that if there is going to be a daylight plane or building envelope regulation, it would be important how it was measured as there might be a lot of taller structures in the east Menlo Park flood plain. Commissioner Fergusson asked whether there had been any controversial projects in the R-E and R-E-S districts particularly because of the addition of a second story. Director Heineck noted the project on May Brown. She said that the Commission sees fewer applications from those districts as there are fewer properties in those zoning districts. Sometimes controversial items in the R-E and R-E-S districts have come before the Commission particularly if the applicant was trying to do something different from what has been the pattern in the

neighborhood. Commissioner Fergusson wondered whether the trigger needed to be first versus second story in these zones that have bigger lots. She asked about allowing a small second story or a small amount of FAL on those kinds of lots without triggering review. Commissioner Pagee said that the issues of a second story were privacy and solar access and on a larger lot there is probably not a problem with solar access, but privacy might be a problem and if the project fell within Tier One, there would be no way to address that issue. Chair Fry commented on the May Brown project stating that the setbacks were not that great considering how tall the building could be. She indicated that protecting privacy is an important issue. Commissioner Fergusson said that there is a dependency between the trigger being first versus second story and that the proposal does not address privacy. She suggested that language in the proposal or guidelines about privacy might allow for more flexibility particularly for the larger lots. Commissioner Pagee talked about a project on a 13,000 square foot, irregularly shaped lot on Bay Laurel. She said that the house was constructed well below the daylight plane but the view from the back windows alarmed the neighbors as they could not visualize where the windows might be. She suggested the use of story poles, which would have pre-construction costs but the applicants might not have to go through the expense of use permit review. Commissioner Sinnott commented on another property on Bay Laurel where the neighbor owned a two story with a second story window that looked down on the applicants' property. However, the applicant because of the neighbor's opposition was not allowed windows on the side of their second story facing the neighbor's home. She thought that was unfair and serves to discourage people from improving their properties. She believes that the suggested tier process is fairer as people can choose to push in the second story, build below the daylight plane and move windows further from their neighbor. For the record, she said that she believes that the tier system described in the proposal is very fair to everyone without penalizing anyone in the R-1-U zoning district and it should be given a try.

Chair Fry indicated that they would consider process later and asked for further comments on the triggers for additional review. Commissioner Fergusson said that her preference is the second bullet point under item 23 of the Summary: *Restricting Tier One to single-story residences and providing for two story residences in Tier Two*. Commissioner Soffer said that he was not able to support that delineation as he has seen projects that were one story, but in which the garage is relocated for example, or other changes were made that create the potential for negative impact on the neighbors. Commissioner Soffer said that it all depends upon the notification of neighbors of a proposed project.

Commissioner Pagee said that the Commission has discussed design guidelines and she felt that with Tier One and a single story requirement there should be design guidelines that discuss neighborhood patterns. Commissioner Halleck indicated that he agreed with the second bullet regarding single story for Tier One and two stories being the trigger for Tier Two. Commissioner Bims said that he preferred the fourth bullet point: *Allowing between 35 and 40 percent FAL on the second floor, either through Tier One or Tier Two*. Chair Fry noted that the proposal is radically different from the current review process in particular in areas of the R-1-U district in which nearly everything is reviewed. She stated that her preference was to be more conservative now and, as things evolve, if it became clear that there were no problems with certain project characteristics, those development regulations could be folded into Tier One or the "no review" option. She thought it was critical that they listen to what other cities have done and take heed of their example to address issues of privacy and character with guidelines and a process that applies guidelines. She said Menlo Park has no guidelines and yet has some of the most generous rules and that the proposal would not change that. She said that the only way the negative impact of overly large and out-of-character projects can be minimized is through a review process. She said that the fairest way would be to provide guidelines for all

applicants that describe what is expected to avoid problems with privacy and neighborhood character. She said for Tier One, she is more in favor of restricting it to a single story maximum with the neighborhood character addressed. Regarding the fourth bullet point, she said that staff had prepared an analysis of second story projects the Commission had considered that illustrated that the second floor FAL was typically between 35 and 40 percent of the total FAL for the property. She said that she did not think the proposed second floor FAL limitations would accomplish anything. She said that a building envelope for Tier One that is substantially different than what is being proposed could help with issues such as solar access. She indicated that the second bullet point comes closest to what was needed but there needs to be a mechanism dealing with neighborhood patterns.

Commissioner Fergusson said that the daylight plane as proposed would not have triggered a review of any of the second stories that the Commission has found controversial during her time on the Commission. She re-examined all of the projects that she has reviewed as a Commissioner, and did not find a single project that did not fit with the daylight plane as being proposed. Thus, she did not see that the proposal would give residents the protection they wanted. Regarding the fourth bullet point, she did not want to categorically limit second floors to 35 and 45 percent FAL, as she thinks a 50 percent FAL should be allowed if reviewed. Commissioner Soffer indicated he agreed with Commissioner Fergusson's comment about the fourth bullet point. Commissioner Pagee said with the daylight plane that is being proposed and the proposal to eliminate counting the square footage of attics over five feet as FAL are a concern. She noted that a mansard-roofed, two-story house if it had a daylight plane of 17-feet 6-inches at the side of the house going in at a 45-degree angle for a 20-foot height roof could be considered a one-story house. She indicated that if Tier One was limited to single story then she suggested that the daylight plane be used to bring down the height of the sidewall. Chair Fry agreed with Commissioner Pagee's comment.

Commissioner Sinnott said that she agrees with the fourth bullet point. She said regarding giving neighbors the opportunity to comment on a project was fine if the comments were objective, but she found that the comments were often emotional. She indicated that the Commissioners on the Planning Commission when she had served in the past were quite different in their handling of applicants. She said that in some ways it is the luck of the draw for the applicants as to who will be judging their project. She said that she finds that very unfair and wants the new proposed process to move forward as it is, and be more objective.

Commissioner Soffer commented that rather than there being a change in the Commission, what he saw was change precipitated by economics and the fact that the proposed projects in the last two or three years are substantially different from what was done five to six years ago. Chair Fry echoed his comment saying that over the past few years there has been an evolution away from remodeling homes to demolishing homes. She agreed with Commissioner Sinnott that there had been too much subjectivity and that varied depending on who shows up for the meetings. She reiterated that what is needed are design guidelines and decision criteria that incorporate the community's values that could be ascertained through the public process. She said that having design guidelines and decision criteria would make the process predictable for the applicants and the decision makers.

Director Heineck reiterated for clarification that Commissioners Fergusson, Fry and Pagee supported the second bullet point to limit Tier One to single story homes with a further clarification from Commissioners Fry and Pagee that it would be highly appropriate to incorporate the use of design guidelines into the review process. Commissioner Halleck indicated that he was in that group also. Chair Fry said that the record should reflect that she

would want a more restrictive daylight plane for single stories. Director Heineck said that Commissioners Bims and Sinnott supported the fourth bullet point that would allow for second floors within Tier One as well as within Tier Two. She said that Commissioner Soffer seemed to not support any of the bullet points but would prefer a discretionary review for all applicants. Commissioner Fergusson noted that she also said she would support some second story within the zoning districts with the larger lots as long as there were provisions for privacy. Director Heineck said that Commissioner Fergusson made a comment that she would support a second floor up to 50% of the FAL in a Tier Two process. She asked if that was appropriate for the larger lots in the R-E and R-E-S districts. Commissioner Fergusson said that her comment applied across the board. Commissioner Soffer clarified that he did not agree with Tier One and administrative review, but with the current process. However, he noted that many residential projects are not currently reviewed and that he would prefer to establish a mechanism that captures more of the projects. He does not see the proposed process doing that or capturing the problem projects that have come before the Commission over the last few years.

Regarding the R-1-U district, Chair Fry said because setbacks tend to be narrower and the proposal does not mention what the side setbacks might be in Tier Two, she thought there should be something to prevent setbacks from becoming any narrower than five feet based on safety considerations. Commissioner Fergusson said she agreed that basements and below grade structures must be within the buildable area to qualify for Tier One. Chair Fry said that since the side setbacks in R-1-U are narrower, being between 5 and 7 feet, that the below grade setbacks should not be narrower than five feet. Director Heineck said that the comment is consistent with Commissioner Fergusson's comment on not allowing below grade structures to extend beyond the required setbacks for the above grade structures. Chair Fry said that the setback protections are needed for tree roots, ingress/egress and emergency access.

Commissioner Pagee noted that in the proposal there is no notification to neighbors or use permit requirement for excavation in the setback, except the 10-day notification required by the Building Code. She said the neighbors might be away on vacation, excavation could occur, and damage might happen. She asked how the neighbor was protected. Director Heineck said the Building Code establishes specific provisions for protection of neighboring property. Commissioner Pagee said that she has a problem with the lack of notification particularly in the Sharon Heights area where there is a lot of shale rock and problems that have occurred with foundations from excavation. She said that if a general rule was being set she would prefer greater notification and that a study be required before excavation is done. She said that the neighbors should be made aware of excavation to secure their property along walls that might be impacted by excavation. Director Heineck said that if that was the consensus of the Commission, they might reconsider their position on item 20 of the summary, which indicates the retention of the use permit provision if reduced setbacks are allowed for below ground structures. She asked if the provision for a use permit for excavation in the R-1-U district should be required for excavation. Commissioner Pagee suggested that current notification requirements be kept for excavation for all of the zoning districts. Chair Fry asked if that included light wells but not foundations. Director Heineck clarified that the existing provision states that a use permit is required for any excavation that occurs within the setbacks, but exempts excavation for foundations for the building or accessory buildings allowed to be in those areas. It also exempts excavation for purposes of normal landscaping, such as planting a tree. She noted that excavation is anything greater than one foot in depth. Referring to the last sentence of the excavation section of the draft Zoning Ordinance Amendment 16.08.100, Commissioner Bims asked if the word "grade" used there referred to natural grade or the average grade. Director Heineck indicated that staff would clarify that language as it was written prior to the changes in definition of grade. She said generally that when the word grade

is used in the draft ordinance amendment that it is defined as the average of the existing grade on the site. Chair Fry said that she did not think a use permit was necessary for a light well. Commissioner Fergusson indicated that would be required if the light well was in the setback. Chair Fry indicated that she thought that would be necessary if it were a patio in a setback. Commissioner Fergusson said that the current use permit notifies people within 300 feet if there is excavation proposed and asked if the Commission recommends that stay in place. She said that there is too much risk involved in excavation and people should have the right to have a public hearing. Commissioner Soffer said that if someone is proposing to excavate or build close to his fence that might cause drainage and viscosity of soils on his property, he would want to know about it. Commissioner Halleck said that as long as the excavation was not in the setback there would not be additional notification but if it were within the setback there should be notification or Tier Two.

Director Heineck asked to clarify item 20 of the summary on excavation indicating that she heard comments from Commissioners Pagee, Fergusson, and Soffer supporting retention of the current use permit requirements for any excavation greater than one foot in depth within a required setback. She requested that the Commission might make take a vote on keeping excavation requirements as they currently exist. The Commission was unanimous in its consensus of retaining the provision.

Chair Fry asked whether there were any other items under the R-1-U district section. Commissioner Bims said that the June 2, 2003 staff report mentioned that 60 percent of the lots in the R-1-U zoning district are considered substandard in regard to area and that the figure does not include lots that are substandard due to width or depth. He suggested changing the standard to 5,000 square feet. Director Heineck said that minimum lot area and dimensions are necessary for the development of new subdivisions and that this is important for areas that have large lots with the potential to subdivide through flag or panhandle lot configurations. Currently a 12,000 square foot lot could not be further subdivided, but if the minimum lot area is reduced the lot could be subdivided into two lots. Commissioner Bims asked if there might be an additional regulation that says every dwelling unit has to sit on a certain area such as 7,000 or 5,000 square feet. Director Heineck said that might apply to new lots but that would require a complicated tracking system of new lot development. Chair Fry said that substandard lots trigger a use permit process but that was being changed with the proposed amendment. Commissioner Fergusson said that currently if your lot is next to a substandard lot, the use permit process serves to protect you from impacts such as privacy but the new proposal would eliminate that as proposed.

Chair Fry opened discussion on Section 9, *R-2 Low Density Apartment District*. Director Heineck indicated that there were no changes in the regulations themselves, but changes to formatting to make the chapter consistent with the other zoning district chapters. Chair Fry asked if the new definitions regarding FAL apply to the R-2 Low Density Apartment district. Director Heineck indicated it would, but that the FAL requirements would not change. Chair Fry stated that potentially R-2 zoned structures might be larger because of the new definition of FAL. Responding to Commissioner Pagee, Director Heineck said that a house on an R-2 zoned property of 7,000 square feet is allowed a total of 40 percent of that area. Chair Fry said that the R-2 district has a minimum percentage for landscaping so that if there is a definition of landscaping that should be double-checked.

Chair Fry opened discussion on Section 10 on substandard lots. She noted that it redefines substandard lots for all single-family zoning districts as lots with less than 5,000 square feet of area. Commissioner Fergusson said that removing the more expanded substandard lot

definition removes the protection for 80 or 90 percent of the properties in R-1-U, which is the densest area with the greatest potential for privacy impacts. She said that privacy is a constitutional right and the change proposed removes that right. Commissioner Halleck said that he agreed and asked if they should change 6.58.010 or address any comments they have for Tier One and Tier Two. Commissioner Soffer said that the question might be whether the current system and criteria works in this regard. Commissioner Halleck said that they have heard that it is unfair that property owners with standard lots do not have to go through the current use permit process. Commissioner Soffer said that the point is what gives equity, parity and fairness. Commissioner Halleck asked whether the Commissioners were comfortable with the single-story residence for Tier One and were they comfortable with the criteria for Tier Two. He indicated that he agreed with Commissioner Sinnott that they should look at the tiered system and try to make it work. Commissioner Fergusson said that she felt the big picture needed to be addressed if they were to get the details right and she thought it was important to understand what the main impacts of the proposal are. She said inherent in the current Zoning Ordinance was the assumption that the narrow lots have the greatest potential for impact.

Commissioner Bims said that at least one-third of the parcels in Menlo Park are substandard with the majority of them being in the R-U-1 District and that indicated that one-third of the property owners would not go through administrative review but would need neighbor approval and use permit process. He said that he thought the driving force for a Zoning Ordinance Amendment would be to provide clarity to homeowners at Tier One to know precisely what they can and cannot do to pass through Tier One. He thought that if the substandard definition were dropped, that 5,000 square foot lots would need clear criteria on what would and would not be acceptable so that they would not need to come through a review process for building certain types of houses, which would streamline the process. Commissioner Soffer said the issue is that arbitrarily setting that number does not make that happen. Commissioner Bims said that it would not be a perfect system, but that residents knowing what is allowable at Tier One would be beneficial. He said perhaps designing a larger home would trigger discretionary review and could be a guiding principle that would apply to all sized lots.

Commissioner Sinnott said that she agrees with Commissioner Bims and agrees with the proposal. Chair Fry said that she agrees that it does not make sense to have review triggered by the size of a lot because that approach does not address impacts. She said that there are probably projects that have horrible impacts on neighbors that are not being reviewed and projects being reviewed for which review does not make sense. She indicated that the proposal does not provide the clarity of rules that are needed, but that clarity is possible. Commissioner Soffer asked if the substandard definition were eliminated as a trigger for discretionary review, what is in the proposed Zoning Ordinance Amendment to protect neighbors from impacts. Chair Fry indicated there was not anything as of yet. Commissioner Halleck said that design guidelines had been suggested or a one-story restriction for Tier One as well as neighborhood notification. He thought that the Commission should focus on developing solutions to the issues. Commissioner Fergusson said that removing the trigger of substandard lots was a dependency that meant there would need to be provisions for privacy, a more restrictive daylight plane, possibly a reduction in the FAL, and a protection for sunlight access. She suggested decreasing the allowable FAL for all lots and noted that Atherton is conservative in the amount of FAL it allows. She said in Menlo Park people buy the 5,000 square foot lots planning someday to build a large 2,800 square foot home. Commissioner Pagee said that other cities allow only 2,250 square feet on a 5,000 square foot lot. Chair Fry said that philosophically it is important to review projects based on the potential negative impacts on the neighborhood and neighbors and not have that review strictly triggered by square footage. She said that she does not see a meaningful way to do that in the proposal, but she would support such a provision if it

were crafted. Commissioner Soffer said that the problem with the proposal is that it eliminates informing the public and a public forum. Commissioner Pagee said that it is only fair to the homeowner/developer building and not to the neighbors. She said they are hearing objections from property owners next to whom two-story homes are being built on standard lots; there is no review and there is no protection of privacy.

Upon request, Director Heineck summarized that Commissioners Bims, Halleck and Sinnott stated support for the elimination of substandard lots (above 5,000 square feet in area) as the use permit trigger. Commissioners Fergusson and Fry would consider supporting the elimination only if there were further restrictions on FAL and daylight plane and the addition of regulations to protect privacy and solar access. Commissioner Fergusson commented that support for elimination of substandard lots as the trigger for review is directly linked to the types of development allowed under the tiers.

Chair Fry opened discussion on Section 11 regarding encroachments and balconies. Chair Fry said that she did not think there should be any encroachments into the side setbacks in Tier One. Commissioner Halleck agreed. Commissioner Sinnott asked about eaves in the side setback in Tier One. Chair Fry agreed with the permitted intrusions of eaves. Commissioner Sinnott questioned not allowing fireplaces and bay windows. Commissioners Fry and Soffer indicated that would provide the clarity of what Tier One allowed. Director Heineck clarified that the Commission is recommending that all districts within Tier One not allow any encroachments other than eaves. Commissioner Sinnott said that eaves, cornices and the other architectural features break up mass and bulk and add interest to a home, and if someone was forced to go through a use permit process to add something more interesting they would avoid it altogether. Chair Fry said that it is not that she wants people to go through a use permit process to do some of these things, but that the Commission has seen massive fireplaces and bay windows that impact people's privacy. She thinks that Tier Two would be more appropriate for those considerations. Commissioner Sinnott indicated that she did not see eaves and cornices impacting privacy. Chair Fry said that it was frustrating that there was no data on eave dimensions but she supported eaves being included in Tier One. Commissioner Fergusson said that she thought it was a misnomer to characterize Tier Two as punitive. Commissioner Sinnott said that people do not like to pay the extra money for an architect and take the time to go through the process. She said that they want to encourage good architectural features like cornices and she hoped that such features would not trigger an expensive time delay. Commissioner Soffer said that the thought was to keep cornices, etc. out of the setback and that the features can be built on a smaller house. Commissioner Sinnott did not think people would take a couple of feet off of a bedroom to have a cornice. Commissioner Soffer said that the Commission acts to arbitrate and find solutions for projects that serve the applicant and the neighbors. Commissioner Fergusson said that she would like the tier system to be used so that Tier One projects have no potential for impacts and Tier Two is triggered if there is a potential for impacts. She suggested that there be no encroachments in Tier One and all of the encroachments in Tier Two. Commissioners Halleck and Pagee agreed. Chair Fry said that roof eaves should be allowed in Tier One. She agreed with Commissioner Fergusson that if someone wants to include something more intrusive on the project, the project goes to Tier Two and they have to talk to their neighbors. Commissioners Fry, Halleck, Pagee and Fergusson agreed that permitted intrusions of architectural features be subject to the tiered approach, allowing for eave encroachments in Tier One and other encroachments such as cornices, canopies, fireplaces and bay windows in Tier Two. Chair Fry said that she thinks that a second story bay window needs more review. Commissioner Sinnott supported acceptance of the draft ordinance amendment as proposed and Commissioner Bims supported a complete prohibition of any intrusions.

Chair Fry opened discussion on Section 12 regarding deleting Section 16.62.02 *Dwelling Groups* from Title 16. Director Heineck said that staff suggested it be deleted as it is an archaic term. In response to Commissioner Soffer, Director Heineck indicated that there would be no impact on a project such as the Classics community and the R-3 district would continue to have a 20-foot minimum setback between buildings. In response to Commissioner Fergusson, Director Heineck said that structures previously considered as dwelling groups are now zoned R-2 or R-3.

Chair Fry opened discussion on Section 13 regarding the deletion of Section 16.64.110 *Solar Access* relating to fences, walls, trees and hedges. Chair Fry said that this section is not written well but it is an important concept and a better-written regulation was desirable. Director Heineck said that this regulation is not currently applied since it conflicts with the Heritage Tree Ordinance. Commissioner Halleck suggested that there be a provision for solar access and review required for evergreen trees. Commissioner Pagee said that the originators of this regulation wanted to encourage better energy usage. She said that they are eliminating active and passive solar energy by eliminating solar access. Within the proposal, there is an allowance for solar panels to be constructed that would penetrate the daylight plane and cause shadowing of the neighbors' solar panels. She said that the regulation needs to be rewritten and she believes everybody has the right to solar access. Commissioner Fergusson suggested retaining a definition of solar access in the proposed ordinance and rewriting the existing verbiage to include an acknowledgement of everyone's right to solar and an exception for heritage trees. Commissioner Sinnott said that such a regulation is a "can of worms" for Menlo Park, the "Tree City," and agrees with eliminating the section as proposed. Chair Fry suggested that the Planning Commission and Environmental Quality Commission could work together to develop a proposal that would accommodate the protection of the trees and solar access.

Chair Fry opened discussion on Section 14 regarding the deletion of Chapter 16.65 *Solar Access*. She said the regulation is very poorly written and there is a need to define solar access and make provisions for it that are measurable and objective. She said there are industry standards that can be applied. Commissioner Soffer asked what protections there are for property owners who have solar panels for water heaters and the solar access becomes blocked. Chair Fry said that if this regulation is eliminated, there is no protection. Commissioner Halleck said that potential impacts to solar access should be reviewed. Chair Fry suggested that this regulation be handled similarly as suggested for Section 13. Commissioner Fergusson suggested that solar studies be considered as a requirement in Tier Two applications.

Chair Fry opened discussion on Section 15 regarding the amendment of daylight planes. Chair Fry said that the regulation indicates that the purpose of daylight planes is to provide protection of solar access, which she said should indicate daylight. Commissioner Sinnott noted that she agrees with the term daylight plane and has no issue with the proposed amendment. Chair Fry agreed with Commissioner Fergusson's earlier observation that the 17-feet, six-inches required was insufficient to take care of the protection of solar access for the projects that the Commission has reviewed. Commissioner Pagee said that if there was going to be a daylight plane or building envelope it should be the same throughout the City. Chair Fry suggested that the Council be provided an analysis that showed the proposed daylight plane in relationship to projects that the Commission has reviewed for which there was a tremendous amount of controversy from the neighbors. Commissioner Pagee suggested 1210 and 1700 Bay Laurel, 1012 College Avenue, 8 Reyna Court, and 1185 Woodland Avenue as all were within a greater daylight plane and did not prevent negative impacts to the neighbors. She said that what was

needed was not a daylight plane but a building envelope to contain mass and bulk. Commissioner Halleck agreed with calling the provision a building envelope as it has nothing to do with solar access or daylight. Commissioner Sinnott said that she recalled the 1210 Bay Laurel project and thought that the subsequent redesigns were not as good as the original design. She questioned how much weight should be given to neighbors' complaints. She said many people are silent and that one person complaining does not mean there is necessarily a problem. In response to a question from Commissioner Fergusson, Director Heineck indicated that there had been analysis on daylight plane done for Felton Gables. Commissioner Sinnott said that for the record she supports the proposed regulation. Chair Fry said for the record that she would like the assurance that this would not allow two-story tall walls to be built under Tier One but she had reservations believing that this proposal would not prevent that. Commissioner Pagee said that the only way they could be sure that people would move in their second story is to make it part of the ordinance under Tier Two. Commissioner Fergusson likes the tiered approach to daylight plane and would not want the ordinance to prevent creativity and flexibility in the design of second stories.

Chair Fry opened discussion on the section regarding allowed intrusions into the daylight plane. Commissioner Pagee said that the regulations should limit intrusions of bay windows to those which are 18 inches above the floor level and do not provide living space. Chair Fry said that the term dormer should be defined in a manner that indicates that it should serve to effectively lower rooflines. Commissioner Sinnott said that she agrees with the section as proposed. Discussion ensued regarding the measurement of the daylight plane in the flood zone. Chair Fry suggested that Tier Two should be allowed the same daylight plane as used currently in Felton Gables and Tier Three would allow the proposed daylight plane at a height of 17.5 feet. Chair Fry noted that intrusions would now be allowed on two sides and she said that intrusions should be limited to one side.

Commissioner Fergusson moved that the meeting continue past 11:30 p.m. if needed. The motion died for lack of a second.

Chair Fry opened discussion on Section 16. Director Heineck said that the only change in this section is to the provisions for mechanical equipment, establishing a new setback of five feet for such equipment. Commissioner Sinnott said that the draft ordinance amendment is appropriate. Commissioner Pagee suggested that there should be a provision to provide protection from the noise of mechanical equipment, such as a 10-foot setback for the equipment with the ability to move the equipment closer to the property line with documentation of lower noise levels. After a brief discussion, Chair Fry agreed with Commissioner Pagee's suggestion and Commissioner Fergusson's suggestion to do that with a tiered approach. Responding to Commissioner Bims' suggestion to review the General Plan Noise Element, Director Heineck said that the ordinance had been revised more recently than the General Plan Element and that one of the Council's goals is a comprehensive review of the General Plan. Chair Fry suggested that there should be a requirement for a minimum five-foot setback for accessory buildings that house a living purpose.

Chair Fry opened discussion on Section 17 regarding off-street parking. Director Heineck indicated that there are two changes to the section and the Commission had already come to a consensus to delete the reference to tandem parking. The other change is the three-foot setback for garages. The Commission found the remainder of the draft language acceptable.

Chair Fry opened discussion on Section 18 regarding the determination of nonconforming uses and structures. Director Heineck said that the only substantial change is in 16.80.030 (a)

related to the percentage of replacement costs for new work on a nonconforming structure. Commissioner Fergusson noted a dependency between whether Tier One and Tier Two would allow one story versus two story homes and the allowed percentage of replacement costs that should be considered. Commissioner Sinnott said that she wanted to support the 100 percent of replacement cost proposal and the draft ordinance amendment as written. Chair Fry indicated that the limit of new work at 100 percent of the replacement cost of the structure would be acceptable if the work does not include significant changes to the exterior of the building. Discussion ensued regarding potential impacts from the way the regulation is worded. Based on the discussion, Director Heineck suggested that the limit of new work at 100 percent of the structure would be acceptable if the work does not include any additional second floor square footage. Commissioner Pagee said her concern would be with changes in windows.

The consensus was that the change in Section 19 regarding family-nonconforming was a required change because of State law.

It was the Commission's consensus to return to Section 20 at a future meeting.

Director Heineck said that the proposed change to Section 21 deleting the language stating that use permits are issued to the resident and not the property is required in order to be in compliance with State law. The Commission agreed unanimously.

Director Heineck said that in Section 22, regarding public hearings, a change was made to increase the notification requirement from 5 days to 10 days to be in compliance with State law. Director Heineck said that the 10 days was a requirement for commercial properties and that City's policy has greater noticing requirements for residential properties and that would not change.

It was the Commission's consensus to return to Sections 23 and 24 at a future meeting.

Following discussion, the Planning Commission continued its discussion to an unspecified future meeting date.

D. COMMISSION BUSINESS

The Commission expressed an interest in including additional factual information related to the processing of applications in staff reports. Staff indicated that such information could be included once the permit tracking system upgrades are completed and that the discussion should be agendaized for a future meeting.

Chair Fry indicated that she would like future consideration of the distribution of the agenda materials and the minutes.

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 August 25, 2003.