



MENLO PARK PLANNING COMMISSION MINUTES

Regular Meeting

July 21, 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.), Pagee, Sinnott, Soffer present

INTRODUCTION OF STAFF – Cramer, Heineck, O'Connell

A. PUBLIC COMMENTS

There was none.

B. CONSENT CALENDAR

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

Consideration of the draft excerpts of the May 5, 2003 Planning Commission meeting was moved to the end of the meeting.

B. PUBLIC HEARING

1. Use Permit Revision/Roger Kohler/1700 Bay Laurel Drive: Request for a revision to a use permit approved by the Planning Commission on January 13, 2003 to construct first and second floor additions to an existing single-family residence on a lot that is substandard in regard to lot width and for additions to an existing legal, nonconforming residence to exceed 50% of the replacement cost of the structure within a 12-month period. The revision to the use permit would result in first floor and second floor modifications to the approved plans at the rear of the residence.

Staff Comment: Planner O'Connell said that the request was for a revision to a use permit that was approved by the Planning Commission on January 13, 2003. He noted that the revision was for minor adjustments to the square footage of the first and second stories and the footprint of the rear and the right rear of the building. He said that one of the adjacent neighbors was present.

Public Comment: Roger Kohler, Kohler Associates of Palo Alto, said that the owners were on vacation. He said that before they left they gave the revised plans to the two adjacent neighbors. Mr. Kohler sent a follow up letter to those neighbors. He said that Mr. Berkowitz, the neighbor to the left, had indicated that he had no problems with the revised plans. Mr.

Kohler said that Mr. Burke, the neighbor to the rear, had reviewed the plans. Mr. Kohler noted that Mr. Burke was present. Mr. Kohler said that upon review of the plans previously approved, he and the property owners found that the triangle-shaped addition to the rear was not working for the inside of the building and it also created issues with the windows on the second floor. He said that they squared off the plans and put the major windows on the rear of the triangular lot, which effectively solved window issues for the neighboring properties.

Commissioner Fergusson asked Mr. Kohler to clarify the impacts to the adjacent neighbor from the two square windows, a larger window, and the balcony on the left elevation of the building. Mr. Kohler said that one of the square windows was in the toilet room and the other was in the bathroom and both windows were about 52-inches from the floor. He said that those windows would be shaded and would not impact the adjacent neighbor. He said that the view from the larger window was blocked by a large tree. He said that the neighbor's concern had been with the balcony as originally designed as there would have been a view from the extreme end of the balcony into the neighbor's yard. He said that the balcony had been rounded off and cut back resolving that impact. He noted that the revision came out of the previous review of the plans by the Planning Commission.

Commissioner Soffer said that one of the conditions of approval from the previous Planning Commission meeting was that plans would be resubmitted to the Building Division that showed that nothing was exceeding the height of five-feet in the attic space. He asked if that was accomplished with the revised plans. Mr. Kohler said that to his knowledge there was nothing that exceeded five-feet in height in the attic space. He said that through the plan check process, if something was found that exceeded five-feet in height, it would be resolved.

Mr. David Burke, Menlo Park, said that the proposed addition would look into the pool area of his home. He said that it does not appear from the plans that the addition would negatively impact his property, but he said that would not be really clear until the framing of the addition occurred. He said, however, that he thought the plans should move forward and once the frame was built, he would have a better idea if there was any negative impact on his property.

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

Motion carried, 6-0, with Commissioner Halleck not yet in attendance.

It was noted for the record that Commissioner Halleck arrived at this point in the meeting.

Commission Comment: Commissioner Soffer moved to approve as recommended in the staff report. Commissioner Fergusson said that she would second the motion, but had a friendly amendment. She said that she would like a condition that would require the property owners to maintain landscaping that would provide privacy screening for the Burkes' pool area, but would not overly shade the area. Commissioner Soffer confirmed with the applicant, Mr. Kohler, that the condition was acceptable. Chair Fry asked staff if the conditions listed for this item were the same as the conditions previously approved in January. Planner O'Connell said that these were a new set of conditions that would be applied. Chair Fry suggested checking that the conditions previously approved had been duplicated in the new set of conditions. It was noted that condition "g" from the conditions approved in January was not in the new set and addressed the condition Commissioner

Fergusson made as a friendly amendment. Commissioner Soffer said that Commissioner Fergusson's added condition was satisfactory to him. Commissioner Fergusson asked whether the condition would reflect the requirement she recommended that the screening not shade the pool area. Planner O'Connell said that would be included as part of the condition. Commissioner Fergusson asked if the condition from January regarding window coverings was included in the new set of conditions. Planner O'Connell said that it was condition "i." Commissioner Pagee observed that condition "i" indicated window coverings for the windows of the master bedroom. Planner O'Connell said that the plans should indicate window coverings for the master bathroom, not the bedroom. The correction was noted for the record.

Commission Action: M/S Soffer/Fergusson to approve as recommended in the staff report with conditions "g" and "i" modified.

1. Make a finding that the project is categorically exempt under Class 1 of the current State CEQA Guidelines.
2. Make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be detrimental to property and improvements in the neighborhood or the general welfare of the City.
3. Approve the use permit revision subject to the following conditions:
 - a. Development of the project shall be substantially in conformance with the plans prepared by Kohler Associates, dated received by the Planning Division on April 24, 2003, consisting of 14 plan sheets, and approved by the Planning Commission on July 21, 2003, except as modified by the conditions contained herein.
 - b. Prior to building permit issuance, the applicant shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies' regulations that are directly applicable to the project.
 - c. Prior to building permit issuance, the applicant shall comply with all requirements of the Building Division, Transportation Division, and Engineering Division that are directly applicable to the new construction.
 - d. Prior to issuance of a demolition permit or building permit, the applicant shall submit a plan for construction safety fences around the periphery of the construction area for review and approval of the Building Division. The Building Official may waive this requirement on a case-by-case basis. The fences shall be installed according to the plan prior to commencing construction.
 - e. Prior to building permit issuance, the applicant shall submit a plan for any new utility installations or upgrades for review and approval of the Planning, Engineering and Building Divisions. All utilities shall be placed underground. All utility equipment that is installed outside of a building and that cannot be placed underground shall be properly screened by landscaping. The plan shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes.

- f. Prior to the issuance of a building permit, the applicant shall submit revised plans that clearly indicate that no attic space exceeds five (5) feet in height and that no finished floor to ceiling space exceeds 12 feet in height unless the areas of excessive height are counted at 200% in FAL calculations. The revised plans shall be subject to Building Division staff review and approval.
- g. Prior to the issuance of a building permit, the applicant shall submit a detailed landscape plan. The project arborist shall review the landscape plan to insure that any new plantings will not interfere with the health of the existing heritage trees, due to tree placement or irrigation requirements. The plan shall be subject to Planning staff review and approval. Subsequent to installation, the property owner shall maintain the landscaping in a manner that protects the heritage trees and provides privacy for neighboring properties, but does not shade the neighboring pool located at 360 Brandon Way.
- h. Prior to the issuance of a building permit, the applicant shall submit a revised arborist report that specifies tree protection measures that are to be in place during the construction for the protection of the existing heritage trees. The plan shall be subject to Planning staff review and approval.
- i. Prior to issuance of a building permit, the applicant shall provide a note on the elevation drawings and floor plan corresponding to the two windows on the left side elevation in the master bathroom and the three windows above the tub. The note shall indicate that the windows will have appropriate internal coverings.

Motion carried, 7-0.

- 2. Use Permit/Richard Li/849 & 851 Cambridge Avenue:** Request for a use permit to allow the demolition of two existing residences and the construction of two new, two-story residences located on an R-2 zoned lot that is substandard with regard to lot width and for excavation into the required right side setback for the construction of a sunken patio associated with basements in each of the units. Continued from the Planning Commission meeting of July 15, 2002.

Commissioner Sinnott recused herself as her husband has been a project architect on the subject project.

Staff Comment: Planner O'Connell reported that the request is for use permits to allow the demolition of two existing residences and the construction of two new, two-story residences, and for excavation into the required right side setback for the construction of a sunken patio. He said that the Commission reviewed the project at its July 15, 2002 meeting and directed the applicant to consider several modifications to the proposal. He noted that the staff report evaluates the revised plans by discussing each of the items the applicant was directed to address, and making recommendations. He directed the Commission's attention to an e-mail received from Lisa Shumway expressing her concerns with the project and requesting that her submittal packet from last year's meeting be resubmitted for consideration. He said that a letter from Kenneth McDonald of 824 Harvard Avenue was received today objecting to the proposal.

Questions of Staff: Commissioner Soffer asked about the Housing Element update and if there were plans for rezoning in the area of the subject project, particularly a change for Harvard Avenue from R-1 to R-2. Director Heineck said that no zoning change is anticipated for Harvard Avenue. She said there had been general discussion about increasing density for a portion of central west Menlo Park. Commissioner Soffer asked what streets. Director Heineck indicated streets adjacent to the downtown.

Chair Fry observed that there is an existing speed bump in the street exactly where the driveway is proposed, and inquired whether the speed bump would stay or if the driveway needed to be relocated. Planner O'Connell said that if the applicant keeps the driveway as proposed, the applicant would need to pay to relocate the speed bump. Chair Fry asked if that included the speed bump sign as well; Planner O'Connell said it would.

Commissioner Pagee asked about the requirement for a backup distance for the parking that is parallel to the street. Planner O'Connell said that there is a goal of 23-feet but it may be mitigated by the width of the parking bay and also landscaping along the paved area. Commissioner Pagee asked if there was a requirement for a turnaround at the end of a long driveway, or whether a car can be backed up the entire distance. Planner O'Connell said there is no requirement for a turnaround. Commissioner Pagee said there was a turn in the driveway and a car would need to be maneuvered around the house to get out into the street and wondered if that caused a problem. Planner O'Connell said that there have been projects like this approved in the past and the Engineering Division has approved the plans. Commissioner Pagee confirmed with staff that the front property line is the public right-of-way. She asked if there was a requirement for providing visibility and would that be a private or public responsibility. Planner O'Connell said there is no visibility requirement for private driveways, but generally the property owner maintains the public right-of-way property.

Commissioner Soffer asked about several conditions and whether the plans reflect the conditions or whether the conditions would occur in the future. Planner O'Connell said that the recommended conditions are at the end of the staff report and are not reflected on the project plans. Commissioner Soffer asked if these items were from the original meeting or were added conditions. Planner O'Connell said that staff evaluated the revised plans based on what the Commission recommended. He said in instances where staff thought the applicant might have gone further to meet what the Commission requested, it added those as new conditions. Chair Fry said that it appeared that not all of the conditions listed in the text were listed at the end. She said that she did not see (g) on page five on the last list. Planner O'Connell said that was left out in error and indicated that condition (g) on page five would be condition (j) of the findings.

Commissioner Fergusson referred to the second paragraph on page six and asked whether "grade" meant the current grade or finished grade. Planner O'Connell indicated that it was the finished grade. Commissioner Fergusson asked what the difference between the current grade and finished grade would be. Planner O'Connell said that the difference would be minimal, but that a grading plan has not been submitted.

Chair Fry noted that the City's Fire Marshall spoke at a recent meeting about the preferred width of access along the sides of structures. She confirmed with staff that width is five feet. Chair Fry asked whether the pumping and drainage systems for the below ground structures were considered under the building permit process. Planner O'Connell indicated that the Engineering Division reviews those requirements and the applicant would be required to

have a pump that drained to the street. Chair Fry asked if there would be a pump for each house and one for the sunken patio. Director Heineck said that the Engineering Division's written conditions state that the storm drainage plan would drain to the street, but the exact plans are not designed.

Commissioner Fergusson confirmed with staff that the property is not within the City's flood zone.

Public Comment: Mr. Sam Sinnott spoke, noting that he was one of the architects that worked on the project and was representing the owners tonight. He said that since the project was continued over a year ago, the applicant, Mr. Li, has redesigned the project in response to the eleven points recommended by the Commission and itemized by staff. He said staff now considers that nine of the recommendations have been essentially satisfied, but with some additional comments. Mr. Sinnott said that Mr. Li would not incorporate the recommendations to increase the rear setback to 25 feet and eliminate the 18 inch light well encroachment into the side setback into the design and hopes that the Commission would not require those conditions.

Mr. Sinnott said that the subject project is identical in height, mass, coverage, and setback to 32 buildings on 16 individual R-2 properties located within Cambridge Avenue and the neighboring blocks of Harvard and Partridge Avenues. He said that the projects are beautiful, integral parts of their neighborhoods, and do not dwarf the single-family residences in those neighborhoods. He said that within a few blocks of this neighborhood, there are residential buildings, fifty years old, that represent Menlo Park's historical past, that are more than four times as dense as this proposal. Commissioner Soffer asked if Mr. Sinnott had the addresses for those historical structures. Mr. Sinnott said that he did not, but that a quick drive in the area of the R-3 zone of Middle Avenue and University Avenue that has many apartment buildings shows there is greater density in the neighborhood than what is being proposed with this project.

Mr. Sinnott said that a neighbor and her friend have tried to convince the Commission that the project is too dense and out of character with the neighborhood. He said that he thought the neighbors have a problem with the Zoning Ordinance and not the project as there are so many similar projects built in the area. He said that a drive down Harvard, Cambridge, and College Avenues proves that the assertions in the neighbors' letters are really not true. He said that the project is below all of the limits of the R-2 zone, and questioned why the Li's were not being judged by the same standards as the rest of the neighborhood. He said that Ms. Shumway, the rear neighbor, is so fearful and angry, that she mischaracterized the Li's as "outsiders who maximize resale value at our expense," and refused to meet with the Li's about any of the recommendations made by the Commission or staff. He said the facts that the Li's have owned the property more than twice as long as she has lived there, and the existing foliage would block her view of the project has not deterred her from enlisting neighbors and friends in a campaign of distortion.

Mr. Sinnott indicated that the plans and staff report indicate that the Li's have taken a year to make design changes to improve the project for everyone. He questioned the Commission's recommendation (item one) to increase the rear setback to 25 feet to be more compatible with the setbacks of the adjacent side properties, noting that the neighbors' setbacks are closer to 20 feet than the 25 feet being requested. He said adding five feet to the rear setback accomplished no increase in privacy for the adjacent neighbor, and only decreased the length of the sunken patio by five feet. This would decrease the sitting area of

the patio from 10 feet, six inches to eight feet which he indicated was not sufficient to allow for a table and chairs. He noted that the mitigation for privacy for which the increase in setback was intended was actually accomplished by the existing large oak tree and the relocation of the high window to block the view. He said that the neighbor has made it very clear that whether the setback is 20 feet or 25 feet, she does not approve of the project.

Mr. Sinnott said that item two also impacts the sunken patio. He said that the Li's want the patio to be 10 feet, six inches by 12 feet to allow for furniture and circulation as well as to include some turnabout for the rear unit. He said that if the patio area is reduced by 18 inches, the area becomes 10 feet, six inches by 10 feet, six inches and loses function. He said that if the 18 inches is taken from the driveway the paved back of spaces is reduced to 15 feet, six inches which would require backing up out of the secondary parking spaces. He said there has been a precedent for an 18 inch encroachment into a side setback and he questioned what difference it would make to the neighbor if the sunken patio encroached into the side setback.

Mr. Sinnott said that item seven suggested that the second story of the rear unit should be more centrally placed over the floor to eliminate the appearance of bulk and mass. He said that it would be impossible to move the second floor without it pushing into the side yard where the shadows fall over the garage. He directed attention to page B-7 that indicates shadowing. He said that the short length of the rear wall of the second story elevation is interrupted by roof plane which reduces the appearance of bulk.

Mr. Sinnott said the ceiling heights mentioned in item eight would not exceed 12 feet. He said that the section on page B-8 of the plans shows normal plate heights of eight feet on the upper floor and a standard roof structure with a six and twelve slope. He said that the ceiling height on the second floor would be no more than 10 feet and with an attic no higher than two feet, six inches.

Mr. Sinnott said that the roof ridge, item nine, is lower than most of the neighboring projects. He said that the roof ridge is not a factor in mass and bulk when there is a sloping roof.

He said that they are asking approval, including eliminating the staff recommended conditions that would have required the increased rear setback and elimination of the right side setback encroachment for the sunken patio, or a denial. He asked that there be no continuation, which would punish the applicants. He said that the Li's are living in a rented house with two small children and would like to proceed with the construction of their home. He said that Mr. Li would like to address the Commission on the process he has gone through to revise the design and address the neighbors' concerns.

Richard Li indicated that he and his wife have owned the subject property since 1986. He said that he has accomplished much with the project design over the past year and he felt that the delay allowed for project improvement. He said that he had hired Mr. Sinnott to refine the exterior elevations of the house. He noted that originally the front garage had a shed roof and the rear garage had a gabled roof, both of which are now hip roofs. He said that this lessens the mass and improves the appearance.

Mr. Li said that he has tried to communicate with his neighbors and has made several pleadings to sit down and discuss the project. Unfortunately, he believes that he may be caught in a philosophical battle taking place in the City which is beyond the scope of his project.

Chair Fry said that the model does not seem to match the plans. Mr. Li said he created the model the previous year to determine what he wanted in appearance. He said that the significant changes from this model to the changes made by Mr. Sinnott include making the patio a straight rectangular shape rather than having the L-shaped egress shown in the model as well as changes to the roof. He said that his computer program for the model had a very limited selection of materials and textures. He said that the model is helpful with massing and showing how big the houses are in comparison to the lot and patio. He indicated another set of boards which shows other houses in the neighborhood, including both two-story and one-story projects.

Chair Fry asked what was consistent between the model and the revised plans. Mr. Li said that the footprint, height and setbacks are the same. He said that the roof shapes and the appearance of the sunken patio have been improved and the sunken patio is smaller than that of the model. He said that the egress to the patio has been moved from the side to the center of the patio. Mr. Li said that there is an insert to the agenda packet that lists the changes from the July 2002 plan submission.

Chair Fry said that here appears to be a firebox, but no chimney. Mr. Li said that there is a firebox and that he wanted a direct vent type of fireplace that burns a natural gas, which eliminates smoke and ash. Chair Fry said that Mr. Li had offered in correspondence to eliminate the rear yard deck and have high sills for all of the rear-facing windows of residence number two. She asked why those features were not in the plans. Mr. Li said that in the rear elevation of the rear house, there are three windows with high sills, and one window at the extreme corner of the room that is not. He said that window would conceivably look out on their patio below and would allow for he and his wife to monitor the safety of their children's activities in the patio. Mr. Li said that the letter to his neighbor that Chair Fry was referring to was simply his offer of the concessions he would make if she were willing to meet with him and negotiate the removal of her opposition to the project plans. He said that after receiving no response and negative response to his other architect and the mediator, he decided to design his house as appropriate for him and his family.

Chair Fry said that Mr. Li indicated he has owned the property since 1986 and asked whether he has lived there and gotten to know the neighbors. Mr. Li said that he lived in the front house in 2000 and moved to the rear house in 2001.

Commissioner Fergusson asked if the roofing was shingles. Mr. Li said that the intention was that the front house would be a New England type clapboard and the rear house would have cedar shingles.

Commissioner Soffer asked Mr. Li to point out examples of two-story houses in both the front and back of lots in the 700, 800 or 900 block of Cambridge Avenue. Mr. Li said that he did not know of a two-story, two-unit project on Cambridge Avenue, but that those projects are quite common on College and Partridge Avenues. Mr. Sinnott interjected that there are two, two-story projects at 730 and 740 Cambridge Avenue. Commissioner Soffer asked Mr. Li to confirm Mr. Sinnott's statement that Mr. Li would not accept the conditions in increase the rear setback and eliminate the encroachment in the side setback. Mr. Li said that was correct.

Chair Fry asked Mr. Li if he felt that he needed the patio to encroach in the side setback for the patio's full length. Mr. Li said that the encroachment is to allow ample space for a

planter and still maintain a certain amount of egress around any patio equipment that would be installed. He said that the patio needed to be functional and pleasant. He said that when he designed the patio it was important to him that there was not a feeling of sitting in a pit so he softened the edges of the patio on three sides, noted that the planter would block a sheer wall. Chair Fry said that the Fire Marshall told the Commission recently that the width along the side of house should be five feet to allow for emergency access. Chair Fry said that the patio's encroachment into the side setback is a safety issue. She asked if Mr. Li would be willing to allow the five feet setback. Mr. Li indicated that was an issue that he had not heard before, and he said that the Commission has approved many projects with encroachments into setbacks, including light wells that encroached much more into side setbacks than what is being proposed by his project. He said that he wanted to submit the project design in its current form.

Commissioner Bims said that the City had recommended mediation at one time and wondered what the resolution of that mediation was. Mr. Li said there had been no resolution. He said that he registered with the City and was assigned Diane Bregler, a mediator. He said that she made a great effort by phone and e-mail to persuade his neighbor to sit down and talk with him and negotiate these matters, but the neighbor's response was that there was nothing that the mediator might offer her to cause her to do that.

Chair Fry said that Mr. Li had shared his website showing the plans with the Commission and wondered why he had not shared that information with his neighbors. Mr. Li said that the website was a fairly new development and thought that posting incomplete information was pointless. He said that he worked on the design for a year. After Mr. Sinnott completed the exterior design changes, which he thought was the most important thing for most people, he felt that it was then appropriate to put together the website. He said that he did not make an effort to notify the neighbor as historically the neighbor has never wanted to talk with him. He said that their only exchange dates to May of 2002 when she called him requesting that he do something about the large oak tree, which was apparently destroying her hedge because of its shade. He said that she asked him about his plans to build at that time. He told her that he planned to build, and if she wanted to meet it would need to wait until he returned from holiday. He said that any subsequent attempt at communication with her has been unsuccessful.

Chair Fry said she recollected that there had been about 30 neighbors concerned with the design. Mr. Li said that it was very apparent to him that the one particular neighbor was acting as the representative for the larger group. In dealings with his first architect, the neighbor referred to "us" and the "we" in the sense that she represented that particular group. He said there has not been any independent attempt to speak or communicate with him about the project. He said he felt that there was only one person he could speak with, and there had only been one person who felt strongly enough to circulate a petition. He said some of the signers of the petition reside at a considerable distance from the project and simply seem to imply a certain inchoate fear at change in the neighborhood.

Commissioner Soffer asked for the distance between the edge of the second house and the house on the lot behind it. Mr. Li indicated that it is 24-feet.

Commissioner Halleck thanked Mr. Li for his hard work. He asked why it took a year for Mr. Li to bring his proposal back to the Commission. Mr. Li said that the project was not his full time job and that his full time job is being a Dad. He said right after the use permit a year

ago, he poured an enormous amount of energy and time over a short period of time into the redesign. He said that he accomplished much of the interior redesign and lot design during this time. He said that at the beginning of 2003, he continued to ruminate about his plans and what he had done, and decided that he needed to hire a professional architect as he could not improve the exterior elevations himself.

Commissioner Halleck said that during the last hearing Mr. Li had indicated that he was within his property rights to build what was designed. The concern was the 30 neighbors who objected to his proposed design. At that time, the Commission's hope was that their concerns might be mitigated through discussion and meeting. Commissioner Halleck said that items one and two were to reduce the two-story uninterrupted building walls and that they had discussed getting the mass closer together and adjusting the setbacks. He asked if these were things that Mr. Li was not prepared to do now. Mr. Li said that he looked at the second story of the rear house and his attempts to rotate that upper story would have required that a bedroom be placed over the garage, which had negative implications. He said that the second story is not a box because it is articulated with roof lines, windows and other features. He said that if he had received cooperation from the neighbors for the project, he would have conceded to rotate the second story as painful as that design choice would have been.

Commissioner Halleck addressed item four regarding the elimination of encroachments into the setbacks and Mr. Li's concern that reducing the size of the patio would make it feel like a box or a hole in the ground. Mr. Li said that was correct. He noted that it would have been almost impossible to include the elevated planter without the modest encroachment. Commissioner Halleck said that the patio is four feet, six inches from the property line and noted that one of the suggestions tonight was to reduce the patio by six inches to allow for egress safety. Mr. Li said that there is stairway access to the sunken patio. Both patios have steps that go up to a central landing and the central landing has a series of steps that go to the divided parking. Commissioner Halleck asked whether the design might be shifted just six inches to allow for a five foot egress. Mr. Li said since his neighbor has indicated a battle with him both before the City Council and in court, he believes that he should design the project as it suits the needs of his family.

Chair Fry said that when Mr. Sinnott went through the plans for the patio, she heard a dimension of 12 feet, but the plans show the sunken patio is 17 feet by 29 feet and asked whether that dimension included both patios. Mr. Li said that was correct and he indicated that there is a vertical trellis dividing the two patios. He said that this is an amenity that might be shared if the neighbors were friendly. He said in this instance the houses were intended for his immediate and extended families only.

Commissioner Halleck said that there seemed to be planting indicated under the drip line of the oak tree and wondered if there were also irrigation changes under the tree that might cause stress to the tree. He said that the conditions indicate that an arborist would review the heritage tree, but he would like to see staff review for any potential negative impacts from irrigation to the roots of the oak tree. Mr. Li said that he hired Chris Todd of Garden Landscapes and he asked her if it was possible to design landscaping that did not require irrigation. She had indicated that it was possible but irrigation would be needed the first two years as the plants settled. Mr. Li said that it would be very difficult to grow anything under the oak tree because of the shading and there was no plan to put any plants there. Commissioner Halleck encourage Mr. Li to seek the advice of a licensed professional about

the potential impacts on the oak tree from construction, its proximity to the proposed residence and other impacts to its root environment.

Millie Dutra, said that her home at 836 Harvard Avenue is in the R-1 district and is just one property removed from backing up to Mr. Li's property. She said that none of the properties on Cambridge Avenue in that particular block have two-stories. She said that a duplex backs up to her property and both units have three bedrooms and two baths and a double garage that they share. She said her complaint with the project is that there are speed bumps on Cambridge Avenue that people avoid by using Harvard Avenue. She thinks that that proposed two units with four bedrooms each would add to the traffic on Harvard Avenue as that would house a lot of people who would have cars. She said that she would be much happier if the rear unit were one-story. She feared that this would set a precedent for all of the other R-2 lots that back to the R-1 lots. She asked that the Commission consider the neighbors in the area.

Commissioner Soffer asked Ms. Dutra to show where her house is located on a drawing. She indicated that it is located east of the property that is directly behind the Li's property.

Catherine McMillan, 680 San Mateo Drive, said she is not a neighbor, but is the friend referenced by Mr. Sinnott. She said that Ms. Shumway, whose property abuts Mr. Li's along the rear property line, stands to lose the most from this project. She questioned the items that Mr. Li is refusing to change as these are the ones that would most impact Ms. Shumway's property. She noted that she had written a letter in which she indicated her opposition to this project. She said that in the revised design the footprint, height, and setbacks are the same. She said that the removal of the chimneys were great for the side neighbors, but made no difference to Ms. Shumway. She said Mr. Li wants large homes with sunken patios on a very small lot. She said that Ms. Shumway's family would bear, more than any other family, the impact of this life style choice. She appealed to the Commission to be the public's voice and protect the neighbors and neighborhood. She suggested that, at the minimum, the applicant be required to lower the pitch of the roof, lower the second floor ceiling height, and shrink the patio down to maintain the existing side setback. She said that R-2 zone is supposed to be a low density zone. She challenged the idea that building two houses with eight bedrooms on 8,100 square feet is appropriate in low-density zoning. She suggested there was nothing to prevent the future renting of eight bedrooms to college student, or for preventing the next door neighbors from overbuilding. She said that the area's population could be doubled with all of the associated environmental impacts. She said that, as proposed, the rear house would be located five feet closer to the Shumway's; it would be closer to the oak tree and the roots would be affected. She said that the oak tree is the only mitigation for the intrusion of privacy from a two-story house. She said the houses should be kept within the current setback. She suggested that the deck would intrude on privacy as well. She commented that at a recent Commission meeting about the proposed Zoning Ordinance Amendment, Chair Fry had wondered aloud whether the community would have the stomach to do the right thing. She asked the Commission to have the stomach to do the right thing and deny the project.

Lisa Shumway, 848 Harvard Avenue, said she lives directly behind Mr. Li's proposed project. She said that she wished she was a distortionist and had the control over her neighbors that had been implied. She said that the intransigence that Mr. Li and his architect had demonstrated tonight should give the Commission an idea of how hard it has been to negotiate with someone who has no will to negotiate. She addressed the idea of drainage being pumped to the street and asked if anyone had driven down Cambridge

Avenue after a heavy rainstorm. She said that there is a number of pockets in which water collects. She asked to verify that the Commission had received correspondence from the neighbors at 860, 824, 836, 855 and herself at 848 Harvard Avenue. She said that she had inadvertently given the wrong e-mail to staff as well as the neighbors which may have impacted their responses.

Ms. Shumway said that she does not agree with staff's recommendations. She said that the project is detrimental to the health, safety, comfort and general welfare of the persons residing in the neighborhood and detrimental to property in the neighborhood. She said that it is not R-2 density as there has been no factoring in of current and potential residents, current and potential vehicles, and their current potential impact. She said that a total of four bedrooms, two bathrooms, two laundry rooms and two storage areas have not been factored into the total square footage to make the current and potential inhabitants, their vehicles, their refuse, and their needs invisible. She said there are 22 single-unit and 15 two-unit lots on Cambridge Avenue between El Camino Real and University Avenue. She said between University Avenue and Cornell Avenue, where the proposed project is located, there are eight single-unit and 10 two-unit lots. She said if Mr. Li's project is approved, the other two-unit lots would overbuild; and there would be high-density clustering in a R-2 low-density zone. She said that if she and her family had known that R-2 low-density really meant high-density clustering, they would never have purchased the home on Harvard Avenue. She said staff has failed to consider the impact of high-density clustering on the neighborhood. She said that there are no two-unit, two story lots presently on Cambridge Avenue and that the applicant's naming of 830 and 840 Cambridge Avenue as two-story, two-unit lots was inaccurate. She said that she was uncomfortable with Mrs. Sinnott being on the Commission and her possible influence. She said that she has begun the potentially long process to challenge the project and will defend the position that Mr. Li's proposed project is not low-density and that the City has not done adequate, due diligence to determine that the project will not negatively impact neighboring properties.

Commissioner Soffer asked why Ms. Shumway did not consider 730 and 740 Cambridge Avenue to be an example of two-unit, two-story lots. Ms. Shumway said that there are no two-story, back-to-back units on Cambridge Avenue. She said one lot has a two-story in the rear and a one-story in the front and the other has a two-story in front and a one-story in back. She said that in the information she submitted the previous year were photographs of every residence in the neighborhood.

Commissioner Soffer asked staff what the intent of the R-2 zone was when that zone was created. Director Heineck said that R-2 is an apartment district, and there are three apartment or multiple-family districts, including R-2, R-3 and some variations of R-3, and R-4. She said that of those districts, R-2 is the least dense and so is defined as a low-density apartment district. R-3 is a medium-density apartment district, and R-4 is a high-density apartment district. Commissioner Soffer asked whether R-2 zoning was intended for apartments or single-family dwelling units. Director Heineck said that its title is "apartment" and allows for multiple single family development at a ratio of one unit per every 3,500 square feet of land area. Commissioner Soffer said that the ratio on this lot would allow for two and one-third units. Director Heineck said that in the case of fractional units the calculation is rounded down. Commissioner Soffer asked how many bedrooms would be in that amount of units. Director Heineck said that there is no distinction by the number of bedrooms. She said that the two applicable regulations are density or units per square footage and FAL, and there is no restriction on bedrooms. Commissioner Soffer revisited

his original question asking what had been the intent or the vision for the zone when it was created, and asked whether it was apartments. Director Heineck said "yes."

Commissioner Pagee asked whether the two lots at 730 and 740 Cambridge Avenue back up to an R-1 zone. Ms. Shumway said that they are on the other side of the street and back up to Partridge Avenue, which is R-2. She said Harvard Avenue is the one block between University and Cornell that is R-1, and that Harvard between Cornell and El Camino Real is R-2.

Commissioner Bims asked for Ms. Shumway's perspective on the mediation. Ms. Shumway said that she never received any direct communication from Mr. Li. She received one or two phone calls from Mr. Li's architect. She said that the architect wanted to talk about minutiae and was not interested in talking about scale. She said that scale was the issue of the 30-plus people in the neighborhood who signed a petition. She said that she told him that if he wanted to discuss "scale" she would be happy to meet with him; there was no follow up. She said that she got a call from the mediator and she explained to the mediator her concern about the futility of mediation as Mr. Li was not prepared to discuss "scale," and also because of the difference in the extreme views.

Commissioner Soffer asked Ms. Shumway what she would like to see happen. She said that the neighborhood would like the property improved as the existing development is disastrous. She said that the neighbors on Harvard Avenue would prefer to keep their evening air, light and privacy and not face a big wall. She said that she would prefer a two-story unit in the front and a one-story unit in the back which would safeguard the heritage tree as well. Commissioner Soffer said that the R-2 allows for apartments. Ms. Shumway said that there are currently renters around them. Commissioner Soffer asked if two-story apartment buildings would impact her differently. Ms. Shumway said that whether it was apartments or two-story homes, the potential for more people was there.

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

Motion carried, 6-0, with Commissioner Sinnott recused.

Chair Fry asked historically whether the R-2 structures were typically one structure or two structures. Director Heineck said that there is combination, although there a number of older duplexes that were built as a single building. She said that there is nothing in the R-2 regulations that would require the structures to be attached or detached. Chair Fry said that her remembrance was that the older structures tended to be attached and the newer units tended to be detached.

Commissioner Fergusson commented that the project was a lovely design and in another part of the City would be very suitable. She noted that the lot is narrow and the effect of the applicant's desire to have shared living space has pushed the bulk and the mass of the structures to the edges of the property. She said that a fundamental planning principle such as "smart growth" says that when there are two different adjoining usages that those usages must be blended. She did not think that this design accomplished that. She also said that the heritage tree would possibly be impacted by the construction and certainly would be impacted by a two-story building. She said that Mr. Li has the right to develop 3,200 square feet but does not think the design is appropriate for the neighborhood. She said that she would be inclined to reject the proposal.

Commissioner Halleck thanked the Li's for the tremendous amount of work they had put into the project. He said that he is always impressed when someone communicates with their neighbors and addresses the concerns of the neighborhood. He said that he is swayed by the July 2002 letter that was submitted with the 30 signatures. He said consistent with their discussions in July 2002, he recommended that the uninterrupted second story walls be stepped back more because of the impact and scale of the project. He does not disagree that the project is a type that may be allowed and is within the applicant's right to do so. He noted that the buildings are beautiful, but that the massing is too great on the outer sides. He likes the architecture and the texture. He reiterated that the buildings needed to be moved closer together. Regarding the encroachment into the side setbacks, he said that the patios could lose a little space and still be usable. He also indicated a concern for the impacts on the oak tree from the construction, the proximity of the rear structure to it, and the proposed planting. He urged the applicant to get a licensed professional to help make decisions that would protect the tree. He said that he would approve the project if there was massing that was closer together as he recommended by motion a year ago and if there were no encroachments in the setbacks. He said that when the proposal moved forward to the City Council he hoped that the neighbors would attend the hearing and address their concerns with the Council.

Commissioner Bims said an arborist in a report dated February 2002 said that although the house would be 18 inches from the tree that there would be minimal impact on the root environment. He said that the proposed development fits within the R-2 regulations and presents a case study for their current review of the proposed Zoning Ordinance Amendment. He said that he thinks that a property owner should know upfront what can or cannot be done through an administrative process. He said that his concern with recommendation number two is that the proposed use would be detrimental to the health and safety as there is an encroachment into the side setback. He said he would vote for approval if that condition for no encroachment into the side setback was included.

Commissioner Pagee said that she appreciated the efforts put into the changes in elevations and said that the project was much improved. She said that in the Commission's discussion on secondary dwelling units on R-1 lots, they had specifically recommended that those units be no higher than 14 feet to address problems with privacy and solar access. She questioned allowing impacts to the privacy and solar access for the rear neighbors because the project is on a R-2 lot. She said that there is no attempt being made to protect privacy and solar access. She said that if the structure was moved forward on the lot and rooms were somehow flipped to allow the patio to be toward the back, she would be more favorable. She indicated that Mr. Li gets a lot from the project and the neighbors seem to lose a lot. As there is no working relationship between the groups, she would not be able to approve the project unless there was some mitigation.

Commissioner Soffer said that when the Commission continues a project for design or neighbor resolution, it is the Commission's hope that those problems, which the Commission cannot solve, would be resolved when the project returns to the Commission. He said that the project is headed for the City Council, no matter what action the Commission takes tonight. He said that it would be good for the Council to learn of these issues and the dynamics of the give and take. He said that the designs of the two proposed units are nice and would work well in another context or area of the City. He said the problems he sees are philosophical which is the Council's consideration. He wished there had been more give and take and flexibility so the project might go forward, but he had not heard that tonight.

Chair Fry said that when the Commission goes through the use permit process, they are asked to make certain findings as listed in number two of the section of the staff report on findings that the proposed project is not detrimental to the general health, welfare, safety, morals and the general comfort of the persons residing or working in the neighborhood, and that the proposed use would not be detrimental to properties or development in the neighborhood and the general welfare of the City. She said that is a minimal standard. She said that the Commission finds it very difficult when neighbors do not agree. She said that it is the Commission's hope that when an item is continued that those issues would be resolved. She said that when 30 neighbors express their concern with a project, the Commission has to hear them. What she heard was that the neighbors on Harvard and Cambridge Avenues have seen this kind of development on Partridge Avenue and they do not want it in their neighborhood. She said that the neighbors were hoping that they would be able to work with the applicant on the project. She said that tonight the applicant had indicated that he does not want the Commission to try to mitigate issues. She said that the Commission is in the awkward position of needing either to approve a project with which there are concerns or deny it. She suggested that there are ways to change the project to push the residences away from the neighbors rather than toward the neighbors. She also was uncomfortable with not maintaining the safety access width on the sides. She said that she is also uncomfortable with approving the project as proposed and yet she is reluctant to deny the project. She said that the proposed residences are attractive and fit better with the neighborhood's character in that aspect.

Commissioner Soffer asked if the five-foot access was a condition of the permit would Mr. Li want approval of the project. Mr. Li said that if the Fire Department requires five feet, he would certainly give up six inches, but he did not think that would sway the Commission's or the neighbors' thinking. He said he has listened to the concerns with density and noted that for R-2, the density of two units is allowable. He said that if the City were willing to rezone the lot to R-1, he would happily build a large single-unit. Commissioner Soffer asked if doing one house was an option. Director Heineck said that there is a recent court case indicating that the City may not be able to require the rebuilding of two units, so that the building of a single-family residence may be an option.

Commissioner Soffer said that a couple of years ago, the Commission looked at a similar project on Harvard Avenue where they were building two, two-story units, and as he recalled there had been similar neighborhood concerns, and after much grappling, he thought the Commission had approved the project. Planner O'Connell indicated that was 724 Harvard Avenue; the Commission approved it and it was appealed to the City Council. The City Council upheld the approval with some minor design changes to the second story of the rear house to mitigate impacts to the adjacent property. Planner O'Connell said that there also were changes to the basement and the elimination of bedrooms and closets that would have defined rooms as bedrooms.

Commissioner Pagee said that if Mr. Li preferred to have a single-unit there would be adequate square footage for an accessory living unit. Director Heineck said that accessory living units are only allowed in single-family residential zoning districts and do not apply to R-2 lots. Commissioner Pagee said that both a larger and smaller unit would be allowed on R-2 lots. Director Heineck confirmed that was true. Commissioner Pagee asked what the minimum lot size was for a condominium subdivision. Director Heineck said that a condominium subdivision does not actually subdivide the lot but instead creates units and common spaces within a single parcel of land. This can be compared to a townhouse subdivision in which the land itself is subdivided. A subdivision would require a minimum lot

size of 7,000 square feet plus appropriate lot width and depth. In response to Commissioner Pagee, Director Heineck said there was no minimum distance required between units in the R-2 zone.

Commission Action: M/S Halleck/Fergusson to deny the request subject to the following findings and actions:

1. Make a finding that the project is categorically exempt under Class 3 of the current State CEQA Guidelines.
2. Make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed development, including extensive excavation that encroaches into the required right side setback and limits access for emergency services and the close proximity of the rear residence to the rear property line and heritage oak tree, will be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will be detrimental to property and improvements in the neighborhood or the general welfare of the City.
3. Deny the use permit.

Motion carried, 5-1, with Commissioner Bims opposed and Commissioner Sinnott recused.

Chair Fry highlighted a couple of policy issues that she would like the Council to address. She said that one is when zoning districts of different density abut. She said that the other issue is the intensification of density. She said that part of the neighbors' concerns is how much square footage is allowed in the basements. She suggested that the proposed design with the sunken patio has the effect of a three-story home. She noted that the existing 2,345 square feet for both buildings more than doubles to 4,991 square feet on an 8,100 square foot lot. She said that the policy on density tends to look at the number of units rather than the absolute size and the intensification that enters into a neighborhood.

3. **Use Permit/Josie Gomez/940 Cotton Street:** Request for a use permit to demolish an existing single-story residence and construct a new two-story residence on a lot that is substandard in regard to lot width.

Staff Comment: Planner O'Connell reported that the request was for a use permit to demolish an existing single-story home and construct a new residence of 6,252 square feet of floor area. He noted that there had been no additional comments from neighbors since the preparation of the staff report.

Questions of Staff: Chair Fry asked staff to compare the setbacks and dimensions of a cabana to a secondary dwelling unit. Director Heineck said that for a detached secondary dwelling unit the side setbacks are required to be the same as for the main residence. She said that for a property in RE zoning, there would be a cumulative side setback of 30 feet with a minimum of 10 feet on any one side. She said that the rear setback would be 10 feet. Director Heineck said that the allowed wall height was nine feet with an overall 14-foot height allowed. Planner O'Connell said that an accessory building would have a three-foot side and rear setback and the same height restrictions. Chair Fry said that even though the proposed cabana was not a dwelling unit, it would still fit the requirements for a dwelling unit.

Public Comment: Mr. Arturo Cazares, the property owner, said that he and his wife have lived in Menlo Park for some time and with the addition of a son to their family, they decided to buy this property and to build a home that they planned to live in forever. He said that they have contacted all of the neighbors and there were no issues. He said that there was a small problem with the rear neighbors regarding a tree that he thought would be resolved soon.

Mr. James Harvey, Menlo Park, said that he lived to the left of the subject property. He said that in the spring the applicant had submitted an application for a tree removal permit for four heritage trees. He noted that the staff report now indicated that three heritage trees would be removed. He requested that the Planning Commission reinstate the removal of the fourth heritage tree. He asked the Commission to refer to Appendix C-10 and trees numbered 13 and 14. He said that in the site plan the same trees are numbered 11 and 12. He said that particularly he would like tree number 13 to be removed. He said that at ground level the trunk of that tree is touching the property line fence and would displace the fence eventually. He said that trees 13 and 14 are the same type of oak trees and are only separated by 29-inches at ground level. He said that tree number 13 is growing at an angle and 75 percent of its canopy is over his property. He said that the removal of tree number 13 would allow for the normal growth of tree number 14. He showed the Commission photographs of the trees. Mr. Harvey referred the Commission to page C-6 as it indicated that the arborist agreed with him regarding the removal of tree number 13 because it protrudes over the fence and the neighbor's pool area. He requested that the Commission grant the removal of heritage tree number 13 and that the site plan be modified to show the removal of that tree.

Commissioner Fergusson asked what the Commission's authority was. Director Heineck said that heritage tree removal permits are done administratively. She said that the neighbor to the rear had concerns with the removal of tree number 13. Mr. Harvey said that the tree in question was in view from his property, but not from the rear neighbor's property.

Mr. Cazares said that they were comfortable with the removal of tree number 13. He said that they were trying to get resolution with the rear neighbor regarding three other trees and that he was not aware of any issues that the rear neighbor would have with the removal of tree number 13.

Director Heineck said that staff has no issue with the removal of tree number 13, but that the approved Heritage Tree Removal Permit did not include tree number 13. She said that the applicant would have to amend the application to include that tree. She said that the Commission might give staff direction in the matter.

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

Motion carried, 7-0.

Commission Action: M/S Halleck/Pagee to approve as recommended in the staff report with the addition of condition "h."

1. Make a finding that the project is categorically exempt under Class 3 of the current State CEQA Guidelines.
2. Make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will not be detrimental to the health,

safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be detrimental to property and improvements in the neighborhood or the general welfare of the City.

3. Approve the use permit subject to the following conditions:

- a. Development of the project shall be substantially in conformance with the plans prepared by Stewart Associates, dated April 17, 2003, consisting of nine plan sheets, and approved by the Planning Commission on July 21, 2003, except as modified by the conditions contained herein.
- b. Prior to building permit issuance, the applicants shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies' regulations that are directly applicable to the project.
- c. Prior to building permit issuance, the applicants shall comply with all requirements of the Building Division, Transportation Division, and Engineering Division that are directly applicable to the new construction.
- d. Prior to issuance of a demolition permit or building permit, the applicants shall submit a plan for construction safety fences around the periphery of the construction area for review and approval of the Building Division. The Building Official may waive this requirement on a case-by-case basis. The fences shall be installed according to the plan prior to commencing construction.
- e. Prior to building permit issuance, the applicants shall submit a plan for any new utility installations or upgrades for review and approval of the Planning, Engineering and Building Divisions. All utilities shall be placed underground. All utility equipment that is installed outside of a building and that cannot be placed underground shall be properly screened by landscaping. The plan shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes.
- f. Prior to the issuance of a building permit, the applicants shall submit revised plans that result in a reduction of floor area to not exceed 6,205 square feet. The revised plans shall be subject to Building Division staff review and approval.
- g. Prior to the issuance of a building permit, the applicants shall submit a final landscape plan, with the input of the property owner to the rear, that provides privacy screening for views from the second floor windows. The plan shall be subject to City Arborist and Planning staff review and approval.
- h. The project plans shall be revised prior to building permit issuance to show the removal of the 18.5 inch Coast Live Oak, identified as Tree #13 in the arborist report prepared by Mayne Tree Expert Company, Inc., dated April 21, 2003, and identified as Tree #11 on the site plan prepared by Stewart Associates, dated April 17, 2003. The Planning Commission further recommended approval of the application for removal of four heritage trees on the property.

Motion carried, 7-0.

- 4. Use Permit/Craig Lewis/710 Lemon Street:** Request for a use permit to demolish an existing single-story residence and construct a new single-story residence on a lot that is substandard in regard to lot width.

Staff Comment: Planner Cramer said that the applicant is proposing to demolish an existing single-story, single-family residence and construct a new single-story single-family residence. She noted that the lot is substandard, thus the proposal requires use permit approval by the Planning Commission. She said that staff has received no comment on the project.

Public Comment: Mr. Craig Lewis, the applicant and property owner, said that the project meets all of the design criteria and would be a low impact, single-story residence with no basement. Chair Fry asked about the "For Sale" sign at the property. He said that they were debating whether to sell the property if they got a good offer as it had not been certain when they would be able to build. He said that he believed if the Commission approved the request tonight that they would be able to move ahead with construction and then sell the property.

Chair Fry asked about the raised roof and what looked like a bar above the entryway door. Mr. Lewis said that it was an interpretation by a draft person of Mr. Lewis' design and that probably that bar and beam would be removed and there would be wood siding there.

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

Motion carried, 7-0.

Commissioner Soffer moved, and Commissioner Halleck seconded, to approve as recommended in the staff report. Chair Fry said that she would like to offer the applicant the flexibility to be able to modify the area over the entryway to better match the bay window area. Commissioners Soffer and Halleck accepted Chair Fry's addition to the motion.

Commission Action: M/S Soffer/Halleck to approve as recommended in the staff report with the added condition "i."

1. Make a finding that the project is categorically exempt under Class 3 of the current State CEQA Guidelines.
2. Make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will not be detrimental to the health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the City.
3. Approve the use permit subject to the following conditions:
 - a. Development of the project shall be substantially in conformance with the plans prepared by Valley Vista Group, consisting of nine plan sheets dated June 2, 2003, and approved by the Planning Commission on July 21, 2003, except as modified by the conditions contained herein.
 - b. Prior to building permit issuance, the applicant shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility company's regulations that are directly applicable to the project.

- c. Prior to building permit issuance, the applicant shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the new construction.
- d. If required by State or Federal regulations, or by the Building Division, construction safety fences shall be installed around the periphery of the construction area. A plan for safety fences necessary during the construction shall be submitted to and approved by the Building Division staff prior to issuance of a building permit.
- e. A utility plan, showing the exact location of all meters that are being installed outside the building and provisions being made to screen such equipment from view, shall be submitted to and approved by the Planning and Building Division staff prior to issuance of a building permit.
- f. Heritage trees in the vicinity of the construction project shall be protected pursuant to the Heritage Tree Ordinance. Prior to building permit issuance the applicant shall submit a tree protection plan for all applicable heritage trees for review and approval to the Planning Division. The plan should include the recommendations identified in the Arborist Report.
- g. Prior to building permit issuance, the applicant shall submit plans that confirm all floor area where the distance between the finished floor and the roof directly above it measures 17 feet or more is counted at 200 percent. The plans shall be subject to review and approval by the Planning Division.
- h. Prior to building permit issuance, the applicant shall revise the south elevation drawing to demonstrate the daylight plane is measured from the side setbacks, up a distance of 19 feet, six inches, and inward toward the center of the property at a 45-degree angle.
- i. Prior to building permit issuance, the applicant shall have the discretion to modify the entryway above the front door to be more architecturally consistent with the bay window on the front elevation of the residence. If modifications are made, the revised plans shall be subject to review and approval by the Planning Division.

The motion carried, 7-0.

- 5. Variance/Stewart Associates/170 Felton Drive:** Request for a variance to rebuild an accessory structure seven feet, eight inches from the main dwelling unit where 10 feet is otherwise required.

Staff Comment: Planner Cramer said that the applicant is proposing to reconstruct an existing detached two-car garage in the same location and add a workshop. She noted that a portion of the proposed structure would be constructed with a setback of seven feet, eight inches between it and the dwelling where the Zoning Ordinance requires a minimum distance of 10 feet between accessory structures and a dwelling building. She said that the encroachment required approval of a variance. She said that the property owners' stated reasons for requesting a variance were that the lot is narrow, and the configuration of the existing residence and heritage trees were constraints that required the project to encroach in the setback. Planner Cramer said that staff concurred with the applicant's proposal.

Public Hearing: Mr. Norman Scott, the property owner, said that he had tried to get the existing garage repaired, but the floor is collapsing and is uneven and there is extensive termite damage. He said that his contractor advised him to rebuild.

Commissioner Fergusson asked about the height of the existing structure. Mr. Scott said that it was a flat roof and under 14 feet. He said that the proposed peak feature on the structure would match the garage on the adjacent property and would be the same height, width and shape. He said that it would also match the pitch and style of all of the other buildings on the property. Commissioner Fergusson asked if the added height would impact the neighbor to the rear. Mr. Scott said that the residence to the rear was located about 70 feet from his property and there were two rows of trees that also block the view of his property.

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

Motion carried, 7-0.

Commission Action: M/S Fry/Sinnott to approve as recommended in the staff report.

1. Make a finding that the project is categorically exempt under Class 3 of the current State CEQA Guidelines.
2. Make the following findings as per Section 16.82.340 of the Zoning Ordinance pertaining to the granting of variances:
 - a. The configuration and location of the existing residence and the location of the existing 24-inch magnolia tree create a constraint to rebuilding the accessory structure on this property without the approval of the requested variances.
 - b. The proposed variances are necessary for the preservation and enjoyment of substantial property rights possessed by other conforming property in the same vicinity, and the variances would not constitute a special privilege of the recipient not enjoyed by neighbors.
 - c. Except for the requested variances, the addition will conform to all other requirements of the Zoning Ordinance. Granting of the variances will not be materially detrimental to the public health, safety, or welfare, and will not impair an adequate supply of light and air to adjacent property since the addition would remain one story in height.
 - d. The conditions upon which the requested variances are based would not be applicable, generally, to other property within the same zoning classification since the variances are based on characteristics unique to this property.
3. Approve the variances subject to the following conditions:
 - a. Development of the project shall be substantially in conformance with the plans prepared Stewart Associates, consisting of two plan sheets stamped received by Planning on May 13, 2003, and approved by the Planning Commission on July 21, 2003, except as modified by the conditions contained herein.

- b. Prior to building permit issuance, the applicant shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility company's regulations that are directly applicable to the project.
- c. Prior to building permit issuance, the applicant shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the new construction.
- d. Prior to issuance of a demolition permit or building permit, the applicant shall submit a plan for construction safety fences around the periphery of the construction area for review and approval of the Building Division. The Building Official may waive this requirement on a case-by-case basis. The fences shall be installed according to the plan prior to commencing construction.
- e. Prior to building permit issuance, the applicant shall submit a plan for any new utility installations or upgrades for review and approval of the Planning, Engineering and Building Divisions. All utilities shall be placed underground. All utility equipment that is installed outside of a building and that cannot be placed underground shall be properly screened by landscaping. The plan shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes.
- f. Prior to building permit issuance the applicant shall submit a tree protection plan for 24-inch cedar, 24-inch magnolia, and 50-inch eucalyptus trees on the property for review and approval by the City Arborist.

Motion carried, 7-0.

6. Use Permit/Andy Gambardella/1165 Merrill Street: Request for a use permit to allow for the sale of alcoholic beverages associated with a restaurant.

Staff Comment: Planner Cramer said that the applicant is proposing interior renovations to an existing tenant space located at 1165 Merrill Street in order to open Gambardella's, an Italian restaurant. She said that the restaurant use is a permitted use in the C-4 El Camino Real zoning district. She said that the applicant is requesting approval of a use permit to allow alcohol sales in conjunction with the new restaurant and that the Planning Commission make a determination that the sale of alcohol at the restaurant is a public convenience or necessity, in accordance with the requirements of the State Department of Alcoholic Beverage Control. Planner Cramer said that the restaurant had previously been located in the area and relocated to Burlingame prior to the construction of Menlo Square.

Questions of Staff: In response to questions from Commissioners Soffer and Pagee, it was noted that there had been no problems with the liquor license previously held by Gambardella's. As to the question of what happened to that liquor license, Mr. Andy Gambardella, applicant, said that when he relocated the restaurant he had to relinquish the license.

Public Comment: Mr. Gambardella said that he was available to answer any questions that the Commission might have.

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

Motion carried, 7-0.

Commission Action: M/S Pagee/Soffer to approve as recommended in the staff report.

1. Adopt a finding that the project is categorically exempt under Class 3 of the current State CEQA Guidelines and the City of Menlo Park Environmental Review and Implementing Procedures.
2. Make a determination, as per Section 23958.4 of the State Business and Professions Code, that the granting of an on-sale retail license by the State Department of Alcoholic Beverage Control would provide a public convenience related to the operation of a full-service restaurant.
3. Make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be detrimental to property and improvements in the neighborhood or the general welfare of the City.
4. Approve the use permit subject to the following conditions:
 - a. Development of the project shall be substantially in conformance with the plans prepared by Architecture and Light, dated May 21, 2003 consisting of tone floor plan and approved by the Planning Commission on July 21, 2003, except as modified by the conditions contained herein.
 - b. Prior to building permit issuance, the applicant shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the new construction.
 - c. All new signage is subject to review and approval by the Planning Division prior to sign installation.

Motion carried, 7-0.

C. REGULAR BUSINESS

1. **Sign Review/Kanti Patel/1704 El Camino Real:** Request for sign approval for a sign at the Red Cottage Inn containing the color red.

Staff Comment: Director Heineck said that the item had been brought back to the Commission as the applicant had not been present at the previous Commission meeting.

Public Comment: Mr. Patel, the property owner, said that at the previous Commission meeting he thought that the sign approval the Commission acted on was his request and he left the meeting. He apologized. He said that he was taking over the management of the property as his father wanted to retire. He hired a designer to update the sign and logo. His designer had advised him that he did not need a permit. Mr. Patel said that he understood the Commission wanted a border of gold on the sign. He said his designer advised against it as his site is surrounded by businesses and he needed a simple contrasting sign to be seen by people traveling by in cars.

Chair Fry said that the Commission's concern was the large expanse of red and the idea of the border was to temper that large expanse. Mr. Patel said that he was looking to demolish and reconstruct in the future and at that time he would reexamine the signage. At this time he wanted a sign that would attract business but that would not be overly expensive. Chair Fry asked about increasing the base height. Mr. Patel said that he would check into it, but that he was sure it would be expensive. Commissioner Fergusson asked how much it cost to replace the two faces of the sign. Mr. Patel said that it was \$3,000. Commissioner Bims said that the color red was associated with the name of the business and wondered if there was red in the building design. Mr. Patel said that there are redwoods on the property and that the look they have gone for includes features that portray a natural setting. He noted that the doors are painted red as well. Commissioner Pagee suggested a simple wooden framing around the sign. Mr. Patel said that he would look into that. Commissioner Fergusson suggested that options would be for the Commission to approve the sign for a certain length of time or to have Mr. Patel come back with some alternatives. Mr. Patel asked if the design should be changed or whether the faceplates might be changed. Commissioner Sinnott said that the sign was not that offensive and with the sign being there already, she did not think it was necessary for the applicant to do additional work.

Commissioner Sinnott moved, and Commissioner Halleck seconded, to approve as recommended in the staff report. Commissioner Pagee suggested that there be a condition to require that the sign be changed upon demolition and reconstruction of the business.

Chair Fry recognized Mr. Kevin Lanagan, Chairman of the Board of the Menlo Park Chamber of Commerce. He said that the Chamber urged the Commission to approve the sign permit. He said that the applicant has had the business for 35 years and provides ten percent of its daily revenue to the City and that with the current economic climate, it was important to the applicant that no further expense be incurred. He questioned the need for the Commission to approve sign colors and staff to review colors for suitability. He urged the Commission to approve.

Chair Fry said that the Commission had made some helpful suggestions regarding the sign and hoped that if in the future there were changes made to the site that the sign would be improved. Commissioner Fergusson noted that the AAA sign was poor quality and suggested an amendment to the motion to require that it be moved. Commissioner Bims said that given the economic situation, the applicant should not be required to change the sign. Commissioner Pagee said that she was willing to have the sign left at street level, but hoped that if there was future development, the sign would be improved. Commissioner Fergusson said that the system did not work when it was not followed, which put the Commission in a difficult situation. She said that she would abstain from the vote.

Commission Action: M/S Sinnott/Halleck to approve as recommended in the staff report.

1. Make a finding that the project is categorically exempt under Class 3 of the current State CEQA Guidelines.
2. Make a finding that the monument sign is appropriate and compatible with the businesses and signage on El Camino Real, and is consistent with the Design Guidelines for Signs.

3. Approve the monument sign subject to the following conditions:
 - a. Development of the project shall be substantially in conformance with the plans prepared by San Jose Plastics and Neon, consisting of one plan sheet received by the Planning Division on May 14, 2003, and approved by the Planning Commission on July 17, 2003.
 - b. Within 30 days of the Planning Commission approval of this item, the applicant shall submit a complete application for any required building permits for the pole sign. This building permit application shall be submitted for the review and approval of the Building Division.

The motion carried, 6-0-1, with Commissioner Fergusson abstaining.

Chair Fry suggested that the Chamber communicate to its members that there is a sign ordinance. Commissioner Soffer said that the ordinance was developed with the Chamber's input. Mr. Lanagan said that they would put something in their newsletter. Commissioner Fergusson suggested that they hold a workshop on sign design.

D. CONSENT CALENDAR

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

(Consideration of this item had been moved from the beginning of the meeting to the end of the meeting.)

Commissioner Fergusson said that she had e-mailed to staff a suggested change for the draft excerpts of the May 5, 2003 Planning Commission meeting. She suggested that on page six of the draft excerpts that the seventh full paragraph be replaced with the following: "Commissioner Fergusson inquired about the height of the fence relative to natural grade and existing curb. (Note that the record is ambiguous regarding the outcome of the discussion.)"

Commission Action: M/S Fry/Halleck to approve with the modification as recommended by Commissioner Fergusson.

Motion carried, 7-0

E. COMMISSION BUSINESS

Commissioner Halleck said that he would be on vacation from July 30 through August 9, 2003. Commissioner Fergusson said that she would be on a working vacation from July 22 through August 26, 2003, but had arranged with staff to participate in meetings.

The Commission agreed to continue its discussion of the draft ordinance amendment on the regulations for single-family residential development to a special meeting of July 28, 2003. Chair Fry said that it would be helpful to meet jointly with the Council in September regarding the draft ordinance amendment. Director Heineck suggested that the Commission communicate that desire to the Council.

There was discussion to include further consideration of the draft ordinance amendment at the August 18, 2003 Study Session.

Staff distributed a draft summary of the Planning Commission's recommendations to date on the draft ordinance amendment for review by the Commissioners prior to the July 28, 2003 special meeting.

Director Heineck said that the next evening the Council would be considering the appeal for 204 Princeton Road.

ADJOURNMENT

The meeting adjourned at 10:35 p.m.

Staff Liaison: Justin Murphy, Principal Planner

Prepared by: Brenda Bennett, Recording Secretary

Approved by Planning Commission on March 22, 2004.