



MENLO PARK PLANNING COMMISSION MINUTES

Regular Meeting

August 25, 2003

7:00 p.m.

City Council Chambers

801 Laurel Street, Menlo Park, CA 94025

CALL TO ORDER – 7:00 p.m.

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

INTRODUCTION OF STAFF – Cramer, Heineck

A. PUBLIC COMMENTS

There were none.

B. CONSENT

1. Consideration of the draft excerpts of the June 9, 2003 Planning Commission meeting.

Commission Action: M/S Fry/Bims to approve with the following modifications:

- Page 5, Line 3: Add “task force” between “review” and “process”; and
- Page 6, Paragraph 6, Line 2: Change the phrase “no ability to say no and the zoning” to “no ability to say no, so the zoning”.

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

Chair Fry noted that Commissioner Fergusson was absent. She said that Commissioner Fergusson tends to review minutes thoroughly and identify items that need clarification or revision and usually those items are not controversial. Chair Fry asked how Commissioner Fergusson’s comments regarding the draft excerpts and minutes might be included with the modifications made tonight.

Director Heineck said that the sets of minutes would be included with the staff report for the September 9, 2003 City Council meeting and could be presented as either “draft” or “approved” minutes. In response to Chair Fry, Director Heineck indicated that the sets of minutes would need to be ready to be included as attachments to the Council’s report by September 4th. Director Heineck suggested that the minutes might be presented in the Council’s report as “draft.” She said that the Commission would have an opportunity prior to the Council meeting to approve the sets of minutes at the Commission’s September 8, 2003 meeting.

Chair Fry suggested that the Commission review and approve the four sets of minutes and allow Commissioner Fergusson to submit comments to the staff in the next few days. Commissioner Pagee commented that Commissioner Fergusson was not in attendance for the June 9 meeting at which the proposed Zoning Ordinance Amendment was discussed. She suggested that Commissioner Fergusson might make comments with the understanding that the minutes have been reviewed and approved by the Commission. Director Heineck asked whether the suggestion would be for Commissioner Fergusson's comments to stand apart and separate from the minutes. The Commission agreed with the suggestion by consensus.

2. Consideration of the draft minutes of the June 23, 2003 Planning Commission meeting.

Commission Action: M/S Fry/Halleck to approve with the following modifications:

- Page 3, Paragraph 3, Line 10: Delete "a" between "for" and "major";
- Page 3, Paragraph 3, Line 11: Add an "s" to "firm" and the word "mostly" between "firms" and "in southern California";
- Page 3, Paragraph 3, Line 13: Add "neighbor's" between "through a" and "window";
- Page 3, Paragraph 3, Line 14: Add "a wall of" between "eliminated by" and "13 feet";
- Page 5, Paragraph 4, Line 3: Change "form" to "from";
- Page 8, Paragraph 2, Line 2: Add "at least" between "surfaces are" and "60 percent";
- Page 8, Paragraph 5, First and Second Sentences: Rewrite as follows: "The Commission's discussion raised alternative approaches to the regulation of FAL, including a reduction in total FAL on smaller lots related to a tiered approach and an approach that would allow for single-story development in Tier One and two story development in Tier Two, using the existing FAL formula for all lot sizes. Other alternatives included allowing a lower total FAL in Tier One and a higher FAL through Tier Two, and allowing between 35 and 40 percent of FAL on the second floor, either through Tier One or Tier Two."; and
- Page 9, Paragraph 5, Line 4: Add the letter "d" to the word "include".

Motion carried 4-0-2, with Commissioners Pagee and Soffer abstaining, and Commissioner Fergusson not in attendance.

3. Consideration of the draft minutes of the July 14, 2003 Planning Commission meeting.

Commission Action: M/S Fry/Halleck to approve with the following modifications:

- Page 1, Bullet 9: Replace the word "intersecting" with "alternating";
- Page 2, Paragraph 5, Line 3: Replace "30" with "300" and add "(It is the State required minimum for use permits.)" after "feet";
- Page 3, Paragraph 2, Lines 1 and 2: Move the words "at another meeting" to between "reviewed" and "for" and replace "preference and qualification" with "prioritization";
- Page 3, Paragraph 4, Line 4: replace "within" with "to", add the letter "s" to the word "setback" and delete the word "area";

- Page 6, Paragraph 3, Line 14: Replace the word “general” with “generous”;
- Page 8, Paragraph 2, Line 5: Replace “setback” with “buildable area”;
- Page 10, Paragraph 3, Line 3: Replace “and” with “because”, delete “the” and replace “they” with “there”;
- Page 11, Paragraph 2, Line 1: Delete “Fry”; and
- Page 13, Paragraph 2, Lines 7 and 8: Replace “One” with “Two” and “Two” with “Three”.

Motion carried unanimously, 6-0, with Commissioner Fergusson not in attendance.

4. Consideration of the draft minutes of the July 28, 2003 Planning Commission meeting.

Commission Action: M/S Fry/Pagee to approve with the following modifications:

- Page 2, Paragraph 3, Line 16: Add “limiting” between “basis for” and “the notice”;
- Page 2, Paragraph 3, Line 17: Add “have” between “development may” and impact”, add the letter “s” to “impact” and add “that affect” between “impacts” and “more than”;
- Page 2, Paragraph 3, Line 26: Replace “500” with “300”;
- Page 3, Paragraph 1, Line 10: Replace “contiguous” with “notified”;
- Page 3, Paragraph 3, Line 5: Replace “that” with “these”;
- Page 3, Paragraph 3, Line 7: Add “types of conditions that could be imposed during the” between “single-family” and “development review”;
- Page 4, Paragraph 1, Line 2: Replace “are” with “may be”;
- Page 8, Paragraph 1, Line 2: Correct the spelling of “change”;
- Page 8, Paragraph 1, Line 10: Delete “determine that”;
- Page 8, Paragraph 1, Line 19: Add “project, description, and” between “Fry said that the” and “Negative Declaration”;
- Page 8, Paragraph 1, Line 22: Replace “see” with “review” and “document” with “project and Negative Declaration”;
- Page 8, Paragraph 2, Line 5: Replace “counted” with “added” and add “using the current definition of what is counted as FAL” after “greater”;
- Page 8, Paragraph 2, Line 11: Add “and the height of one story houses generally is lower than proposed because of the way excess attic space is currently counted.” at the end of the last sentence;
- Page 9, Paragraph 2, Line 2: Replace “it” with “the proposal”;
- Page 9, Paragraph 2, Line 2: Replace “and would be” with “of current development regulations; instead, it appears to be”;
- Page 9, Paragraph 3, Line 9: Add “, and reduced reviews of projects and of excavation for below grade structures in setbacks” between “square footage” and “would have a potentially”;
- Page 9, Paragraph 3, Line 10: Correct spelling of “population”;
- Page 9, Paragraph 5, Line 12: replace “to” with “into”;
- Page 10, Paragraph 1, Line 6: Add “City staff member” before “Pat Stone”;
- Page 10, Paragraph 1, Line 9: Replace “they” with “the Planning Commission” and add the letter “s” to “review”;

- Page 10, Paragraph 1, Line 10: Replace “almost” with “approximately” and add “and 100 percent of excavation into setbacks” between “half of the projects” and “and it was not”;
- Page 10, Paragraph 1, Line 12: Add “because the Planning Commission imposes conditions that mitigate this sort of possibility.” to the end of the last sentence;
- Page 10, Paragraph 3, Line 5: Add “partially” between “managed” and “by the discretionary”;
- Page 10, Paragraph 3, Line 8: Replace “an” with “a”, add “potentially significant” before “impact” and add “unless mitigated” after “impact”;
- Page 10, Paragraph 3, Line 9: Replace “less than” with “as potentially” and “or significant with mitigations.” with “unless mitigation.”;
- Page 11, Paragraph 2, Line 3: Replace “an” with “a” and add “potentially significant” before “impact”; and
- Page 11, Paragraph 2, Line 7: Replace “sprinkles” with “sprinklers”.

Motion carried unanimously, 6-0, with Commissioner Fergusson not in attendance.

C. REGULAR BUSINESS

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 July 28, 2003.

Chair Fry noted that the Commission has reviewed the proposed Zoning Ordinance amendment and Negative Declaration in their entirety. She suggested that the Commission review the recommendations contained in staff’s summary for changes, clarifications and, where applicable, for a determination of greater consensus than when previously discussed. She noted that opinions may have changed and Commissioners who might have been absent for a meeting may want to record their support or objection for a specific recommendation. She suggested that the Commission could then discuss the broader issues related to the proposed Zoning Ordinance amendment.

Under *Section 1 Deleted Definitions*, Chair Fry, noting the last bullet point under the definition of *solar envelope*, said that the word “existing” should be inserted before “heritage trees”. There was agreement from Commissioners Halleck and Sinnott. In response to Chair Fry, Commissioners Pagee and Soffer also indicated agreement.

Under *Section 1 Deleted Definitions*, Commissioner Bims noted his agreement with the second bullet point under the definition of *solar envelope*.

Under *Section 2 New or Modified Definitions*, Chair Fry suggested that the third bullet point under the definition of *Floor Area* be changed to insert the words “continue to” before “be included”. Commissioner Soffer stated that he supports the bullet point. Commissioner Bims said that he disagrees with changing the definition.

Commissioner Sinnott confirmed with Director Heineck that if a Commissioner’s name was not listed as supporting a bullet point or having been absent for that particular discussion that could

mean either the Commissioner disagreed or did not comment. She indicated that usually she was the only Commissioner not listed as she often disagreed with recommendations made by the other Commissioners. She indicated that she was satisfied with the method of recording support.

Referring back to *Section 2 New or Modified Definitions*, Commissioner Bims indicated that he agreed with the recommendation for the definition of *Daylight Plane* to change all references to “daylight plane” throughout the proposed ordinance to “building envelope.”

Chair Fry referred to *Section 2, New or Modified Definitions, Floor Area* and asked why bullet point six indicated “should be considered for inclusion” rather than “should be included.” Director Heineck said that there had been no consensus on this point and there was no record of which Commissioners supported the point.

Commissioner Pagee said she recalled that Commissioner Sinnott recommended that basements should not be allowed beyond the footprint of the house and that a number of the Commissioners were in agreement. She said one suggestion was to include any area beyond the footprint in the FAL. Chair Fry said that there were two ways this could be handled; either the square footage beyond the footprint could be allowed but counted towards FAL or square footage beyond the footprint was prohibited with the exception that a variance could be requested for going beyond the footprint. Commissioner Sinnott indicated support of a variance being required. Chair Fry said egress then would need to be counted in FAL.

Director Heineck said that there are two regulations involved; one is the setback regulation and the other is the FAL regulation. She said that there is another section that addresses the Commission’s discussion on setbacks for basements, light wells and staircases. She said that the focus here is whether these areas are counted as FAL. Chair Fry said that if square footage beyond the footprint did not require a variance, then she thought it should count as FAL.

Commissioner Pagee said that it is necessary to have egress to a basement and generally a basement is preferable to a second story. She said that it appears that the tendency with the more recent development of basements is for normal egress to be replaced with patios. She suggested that anything beyond the minimum egress requirements be considered as FAL, noting the distinction that the square footage is not for egress but for living space.

Commissioner Sinnott asked for clarification of the proposed definition of *Floor Area*. Director Heineck said that the proposed definition specifies that basements would not be included in FAL and there would be allowances for encroachments up to 5-feet into the front and rear setbacks for egress to include light wells and staircases in Tier One. She indicated that through Tier Two, there would be some allowance for encroachment into the side setback but that the amount of the encroachment has not yet been determined. Commissioner Sinnott said that she supports the definition as written.

Commissioner Bims said that he supported restricting basements to the first floor building footprint and that light wells or stairways for egress should be included in the FAL if greater than the minimum egress requirements and extending beyond the building footprint. Commissioner Pagee agreed with Commissioner Bims. Chair Fry polled the remaining Commissioners who were in consensus.

Commissioner Halleck addressed bullet point six under the definition of *Floor Area* noting that sunken patios and similar outside areas should be considered for inclusion in the FAL calculation. Commissioner Soffer suggested that there was an interdependency of this issue with the issues related to intensification of use on the property. He said that if what is added allows for more inhabitants to reside in the building, then the additional space should be included in the FAL.

Chair Fry confirmed with Commissioner Halleck that he wanted bullet point six combined with bullet point five. Director Heineck said that if it was the Commission's intent to include sunken patios and similar outside areas in the calculation of FAL that intention should be specified in the language. Commissioner Sinnott said that a sunken area is not usable as first floor area, that below grade development only moves square footage from the first floor and does not add to it. Commissioner Pagee said that the Commission has reviewed projects that include sunken patios that encroach in the setbacks and are not required for egress. She suggested that these below grade areas be added to the FAL or that they require a variance for approval.

Chair Fry said the Commission has been made aware that the City's storm drainage system is at maximum capacity. She said that below grade structures affect the flow of runoff and since below grade structures may be large, they increase the potential significant impact on the storm drainage system. She said rather than promoting the development of large below grade structures, she would like a variance to be required.

Commissioner Bims said if the basements are limited to the first floor footprint and people are encouraged to limit structures to one-story, the tendency might be for people to increase the size of the first floor, which would allow for an increase in the size of the basement. He said that other below grade developed areas, although not living area still creates impacts and should be included in FAL. Commissioner Pagee observed that rain that hits hard surfaces is not absorbed in the ground directly beneath. She said that the landscaping absorbs water even for a larger one-story house. However, in the case of a sunken patio, that same water would need to be pumped into the storm drainage system and that situation creates an impact. She did not think below grade areas should be counted as double square footage but that it had to be counted in the FAL. She said that a study of the potential impacts of below ground structures should be done.

Chair Fry suggested counting external below grade areas as FAL and to not allow those areas to encroach into the setbacks without a variance. Commissioner Halleck clarified that if the sunken patio or other below grade outside area is not under the footprint of the house, it would be added to the FAL.

Director Heineck suggested that the Commission might want to combine the last two bullet points to say that basements, sunken patios and similar outside areas, including all egress that is beyond the minimum required egress, that extends beyond the footprint of the first floor would count as FAL. The Commission was unanimous in its support for this recommendation.

Regarding *Section 2 new or Modified Definitions, Grade*, Commissioner Bims said that he recalled commenting previously that the definition of grade be examined as it seems to provide a loophole. Director Heineck indicated that his comment had been recorded and addressed in a later section of the summary of the Commission's comments. Upon request, Director Heineck said that grade is defined as the average of the lowest and highest points of the lot that is

covered by the structure. Commissioner Sinnott asked if that included sunken patios and light wells. Director Heineck said that it is the average of the natural or pre-existing grade. Commissioner Bims said that he was comfortable with the definition. Commissioner Soffer asked about grade as it relates to fences. Director Heineck said that the issue of fences is one area in which grade is considered differently. The regulation for fences states that the fence is measured from the lower of the two sides of the property that the fence straddles. Commissioner Soffer said that he recollected that for fences the grade is measured to the street. Director Heineck said that is true for the 35-foot line-of-sight triangle on corner lots. In those cases, the three-foot fence height limit is measured from the grade of the street in order to provide adequate visibility for motorists, pedestrians and bicyclists.

Regarding *Section 2 New or Modified Definitions, Parking, covered*, Commissioner Bims and Soffer added their support to the recommendation.

Regarding *Section 2 New or Modified Definitions, Yard*, Commissioner Bims added his support for the proposed definition.

Under *Section 3 Districts Established – General Regulations*, Commissioner Bims noted that the second paragraph under *Excavating* addresses his suggestion to change the term “existing grade” in this regulation to “existing ground level” to distinguish from the proposed definition of “grade” and establish an excavation limit of one foot in depth at any point on the property.

Chair Fry commented on the first bullet under *Section 4 (R-E District)*, *Section 5 (R-E-S District)*, *Section 6 (R-1-S District)* and *Section 8 (R-1-U District)* that her recollection was that Tier One would allow only single-story development and Tier Two would allow for two-story development with use of guidelines, modified decision criteria and notification. Commissioner Pagee indicated that was her recollection as well. Chair Fry indicated that the statement “It was further suggested that design guidelines addressing neighborhood patterns are needed” should be expanded to include issues of privacy and solar access.

Commissioner Soffer asked if the three bullet points were exclusive to one another. Director Heineck indicated that they were three separate approaches to determining the basis of the tiers. She said that the Commission might try to get consensus on just one approach for their recommendation.

Director Heineck asked for confirmation from the Commission regarding support for the rewording of bullet point one as suggested by Chair Fry. Commissioners Halleck and Pagee agreed.

Commissioner Pagee said that she could not support bullet point two because Tier One does not use design guidelines and the proposed Zoning Ordinance amendment has too many loopholes that allow for bulk and mass.

Commissioner Soffer said that he continues to support bullet point three, but he would like the last sentence of that paragraph deleted to focus on things that the Commission have found problematic. Commissioner Soffer said that Tier One as proposed excludes neighborhood notification and that means that there may all kind of issues regarding single-story development, including excavation into setbacks for light wells and increasing opportunities for impacting

drainage to neighbors that will not be addressed. He said that Tier One does not protect residents and there is a dependency in that there are issues with one-stories.

Commissioner Pagee said that there is no difference between the daylight plane for a one-story and a two-story and indicated that there needed to be a change in daylight plane for a one-story. Commissioners Fry and Halleck agreed.

Director Heineck asked for clarification on the last interdependency noted. Chair Fry said that it is the acceptability of Tier One and the need to change regulations regarding one-stories to eliminate potential impact. She suggested that a one-story should not be allowed a 17-foot 6-inch tall wall without neighborhood notification and review and that excavation into setbacks should be limited. Commissioner Pagee said that with the current proposed Zoning Ordinance amendment, a one-story house with attic spaces over five feet that would not be counted towards FAL, there was the potential of a 12-foot high first floor ceiling and a huge attic space that could be used for living area. She said that she was identifying this potential impact so that a regulation might be written to prevent a future problem. Commissioner Bims said that the Commission had reviewed a single-story project with a 17-foot, 6-inch wall and the Commission had asked for articulation to break up the wall. Chair Fry said that the proposed Zoning Ordinance amendment provides for exceptions where the height of a one-story residence could be 20-feet rather than 17-feet, 6-inches because of not counting attic space.

Chair Fry suggested that the Commission might vote on *Section 4 (R-E District)*, *Section 5 (R-E-S District)*, *Section 6 (R-1-S District)* and *Section 8 (R-1-U District)*, *Minimum Yards*. Regarding sentence two that suggests limiting basement and below grade structures to either the setbacks or building footprint, she indicated that they might have already addressed that under the FAL discussion. Director Heineck said that the Commission has stated its intent to limit basements and below grade structures to the first floor building footprint except for reasons of legally required access to those basements for purposes of calculating FAL and suggested the deletion of the phrases "either the setbacks or" before "the first floor" and "possible" before "exception". She said that the question now is whether the Commission would allow encroachment into setbacks for legally required egress. Commissioner Pagee said that the Fire Marshall had addressed the Commission about access to the rear of properties. She suggested that if people needed egress that they be encouraged to put that in the rear and front setbacks and not block side setbacks to allow for free movement to the rear of the house. Chair Fry asked if this was the part in the proposed regulations that included a blank to be determined later. Director Heineck said that the proposed Zoning Ordinance amendment states that in Tier One, encroachments for light wells and egress (stairways) are permitted five feet into the front and rear setbacks and for an undetermined distance in the side setback. She suggested that the Commission might want to recommend allowing for minimum required egress in the front and rear setbacks through either Tier One or Tier Two, but not allowing for any encroachment into side setbacks, meaning that a variance would be required if someone wanted to encroach into the side setbacks.

Commissioner Sinnott asked if that meant there could be no window on the side of the basement without getting a variance. Director Heineck said that a window could be located on the side if the structure was setback a greater distance from the setback so that the window did not extend into the setback. Commissioner Sinnott said that she did not agree with that. Commissioner Bims said that setbacks are there for a reason and he would want the proposed Zoning Ordinance amendment to maintain required setbacks. Commissioner Soffer said that he

likes setbacks. Chair Fry said that she agrees setbacks are needed. She indicated that she would support a minimum amount of egress in a side setback as long as there were not other intrusions and a clearance of four feet was maintained for safety access. Commissioner Pagee said that she agrees with Commissioner Bims that there be no encroachments into the setbacks.

Director Heineck clarified that one position expressed by the Commission is to allow for an encroachment of up to five feet in the front and rear setbacks for light wells and egress but that no encroachment would be allowed in side setbacks. She said it appeared that Commissioners Bims, Halleck and Pagee support that position. She further noted that Chair Fry supported allowing minimum required egress in the side setback as long as four feet of clearance is maintained to the property line and there is no other encroachment. Director Heineck confirmed with Commissioner Sinnott that she disagreed with the first statement and agreed with the statement made by Chair Fry. Chair Fry said that Commissioner Sinnott might not agree with a recommendation that there be no encroachments allowed under Tier One and only allowed in Tier Two with neighborhood notification. Commissioner Sinnott indicated that she disagreed.

Chair Fry said that she would prefer that the encroachment be kept at the minimum required for egress. Director Heineck confirmed with Commissioners Bims, Halleck, Pagee and Soffer that they agreed. Director Heineck confirmed that the minimum required egress was appropriate in Tier One in the front and rear setback, but that no encroachment would be allowed in the side setbacks.

Chair Fry said that the Commission did not seem to have agreement on the recommendation for *Section 4 (R-E District)*, *Section 5 (R-E-S District)*, *Section 6 (R-1-S District)* and *Section 8 (R-1-U District)*, *Permeable Surfaces*. Chair Fry requested that the phrase "of 25 percent" be added after "permeable surface" and that the phrase "because the current average for residential properties in the city is 60 percent" be added after "is not adequate". She said that she disagreed with 25 percent as the minimum requirement because the current average of permeable surfaces is 60 percent. Commissioner Sinnott said that 25 percent is adequate and noted that people do not tend to pave over their yards and she thinks it is a non-issue. Chair Fry said that Palo Alto has a requirement of 60 percent permeable surface in the front yard for purposes of aesthetics. She said that she believes it would create certainty by stipulating what is required. She suggested that they take the lead from other cities such as Palo Alto or research what works well in other places. She said that this is an area where the City could give guidance to the applicant early in the process and which would benefit the community.

Commissioner Bims said that he is in favor of the 25 percent minimum. Commissioner Pagee said that using Palo Alto's required 60 percent in the front yard on a 100 by 100 foot lot with a 20 foot front setback, she calculated there would be 12 percent of the total square footage in the front and 12 percent in the back. Commissioner Pagee indicated that she agreed with the 25 percent. Commissioner Halleck said that he likes how permeable surfaces are proposed, but stressed that it raises questions for him of water management and would need to be looked at in more detail. Commissioner Soffer agreed. Chair Fry said that she would agree with the statement that includes a range of 25 to 80 percent.

Regarding *Section 4 (R-E District)*, *Section 5 (R-E-S District)*, *Section 6 (R-1-S District)* and *Section 8 (R-1-U District)*, *Floor Area Limit*, Commissioner Pagee said that in a tiered approach, being able to do a quick calculation using the formula would be guidance for someone doing a

one-story house, but that she did not want to penalize or have a decrease in square footage just to encourage a one-story house. Chair Fry said that there are really only two topics addressed in this section, but that they have been confused in the summary. She said that the first two bullets address the total FAL limits within the tier structure and the last two bullets address second floor FALs. She said that it might be helpful for the Council to have a better indication of what Commissioners think about this.

Commissioner Soffer addressed the bullet items regarding FAL. He said that currently there is a mechanism for determining standard and substandard lots and said that he would support modifying the filters of lot dimensions and area to accomplish equitableness and certainty. Commissioner Pagee said that the intent of the ordinance was to eliminate the category of lots between 5,000 and 7,000 square feet as substandard lots and keep only lots below 5,000 square feet as substandard lots, which means the filter has already been changed. Commissioner Soffer suggested that 5,000 square feet might not be the right number and that changing the threshold has impacts that need to be reviewed. Commissioner Halleck said that he understands Commissioner Soffer is suggesting an alternative to the proposed Zoning Ordinance amendment to change the parameters for substandard lots in the existing regulations to accomplish fast tracking of non-contentious projects. Commissioner Soffer said that the issue with substandard lots is that because of their size and configuration there is more potential for impact. Director Heineck asked if he is suggesting changing the development regulations or the definition of substandard lot or both. Commissioner Soffer said that he would change the definition of a substandard lot. Commissioner Halleck said that the summary was fine as written regarding FAL. He agreed with Chair Fry's suggestion to rewrite the summary as two topics. There was no consensus on rewriting the section. Commissioner Soffer said he would put his name next to the second bullet.

Chair Fry referred to the next paragraph and bullet points regarding notification. Commissioner Halleck said that he was comfortable with the whole section as written. Chair Fry asked if there might be some consensus under notification and questioned why the requirement of 300 feet was omitted from the fourth bullet point as it covers all distances including flag lots. She said that 300 feet should be added to bullet point four as that is the State law requirement for minimum notification. Commissioner Soffer said that the State suggests there is a possible economic interest of a public official within a 500-foot radius. Commissioner Soffer said that 300 feet for notification should be required under Tier One. Chair Fry said there is interdependency and Tier One should be designed so that that neighborhood notification is not necessary. Commissioner Halleck said that Tier One should be made as quick and easy as possible, and asked for consensus for Tier Two. Commissioner Sinnott agreed with the proposed Zoning Ordinance amendment that for Tier Two only notification of the contiguous neighbors is necessary as those are the properties impacted. Commissioner Bims said that the impact of Tier Two from a distance perspective should require notification of 60 feet from the property that would capture contiguous neighbors on standard shaped lots and a greater number of neighbors on smaller lots. Commissioner Pagee said that she would like to keep the standard 300 feet for Tier Two. She said that under the overlay zoning process, notification of 20 houses is required which would be equivalent to 300 feet. Chair Fry supported keeping the 300 foot requirement. Commissioner Soffer said that for Tier One the importance of notification is the potential impacts to neighbors by the location of a driveway or other features. Commissioner Pagee said that their discussion had brought up the point that the ownership data is six months old and might result in the contiguous neighbors never being contacted. Director Heineck clarified that bullet point one should be rewritten to show 60-feet and that it is

supported by Commissioner Bims; that Commissioner Sinnott supports the proposal that contiguous neighbors be notified; and that Commissioners Fry, Pagee and Soffer support the fourth bullet point edited to include the 300 foot reference. She asked if bullet points two and three should be deleted. Chair Fry said that those may have been Commissioner Fergusson's points and should be left as is.

Regarding *Section 4 (R-E District)*, *Section 5 (R-E-S District)*, *Section 6 (R-1-S District)* and *Section 8 (R-1-U District)*, *Horizontal Length of Second Floor Side Wall*, Chair Fry said that she did not like the ranges stated in bullet point two. Commissioner Sinnott said that the number on the second bullet point should be 30 feet rather than the range indicated. Commissioner Bims suggested the 30-foot limit for Tier One. Commissioner Pagee indicated support for Tier One to allow single-story residences only and for Tier Two to limit the second floor to 30 feet and a review process with guidelines. Chair Fry said that she would restrict Tier One to single-stories and supported the fourth and last bullet points to establish limiting second floor side setbacks to 150 percent of the side setbacks in addition to the limits on side wall length. Commissioner Pagee said that the text of the ordinance refers to three feet and clarified that the three-foot articulation required after 30-feet would be inward.

Director Heineck indicated that the same changes regarding notification would be made in the second paragraph regarding *Section 4 (R-E District)*, *Section 5 (R-E-S District)*, *Section 6 (R-1-S District)* and *Section 8 (R-1-U District)*, *Horizontal Length of Second Floor Side Wall*.

Under *Section 10 Lots*, Chair Fry indicated that she would add her name to the third bullet point referring to the elimination of substandard lots as the trigger for review if new guidelines and decision criteria were used in the review process. Chair Fry said that eliminating the trigger of lot dimension created the potential for impacts and the acceptability of that is directly related to the existence of guidelines and decision criteria and notification. Commissioner Soffer said that there are no guidelines and there is no knowing what a "yes" vote on any of the points would accomplish. He said that he would not mind the elimination of substandard lots if there were other criteria to say that Tier One is 85 percent of the allowable FAL. He suggested that other metrics could be used and while he is not comfortable with eliminating standard lots as the trigger, he is also not comfortable keeping them as the trigger. Commissioner Soffer said that these are dependent upon what the guidelines would be, how they would be enforced, and how subjective the application of the guidelines would be. He suggested that the Commission recommend to the Council the need for guidelines.

Under *Section 11 Encroachments and Balconies*, Chair Fry indicated that she would want to indicate that she does not support the encroachment of bay windows on the second floor. Director Heineck clarified that Chair Fry wanted to state that encroachments of bay windows on the second floor would not be allowed in Tier One or Tier Two. Commissioner Pagee said that there is no definition of bay windows and bay windows have been presented to the Commission that includes floor space that could encroach into front, rear and side setbacks and the daylight plane. She indicated that this section should eliminate bay windows on the second floor and that bay windows should be defined as only windows and not floor space. Commissioner Sinnott said that she recalled applications for variances to include floor space with bay windows. Director Heineck said that when the City first adopted FALs, the understanding was that a bay window had to be a window and floor space was not allowed to be part of a bay window. She said that there were three or four projects that wanted to include floor area and not install windows in the bays. Staff determined that they would not consider these bays as bay

windows. The applicants appealed to the Planning Commission and the Commission reversed staff's determination. She said that the Commission set the policy on bay windows through a series of actions that established this broader definition and interpretation of bay windows. She said that the Commission might recommend that bay windows be defined as having no floor space and including windows. It was the Commission's consensus that a bay window be defined as having windows and no floor space.

Chair Fry said that her recollection about *Sections 13 and 14 Solar Access Related to Landscaping and Buildings* was that the solar access would not necessarily be only objective and measurable standards but would be addressed in guidelines. She suggested that "existing" be added before "heritage trees." She said that she thought it had been suggested that the EQC and the Planning Commission could be tasked with developing the new provisions. Commissioners Halleck and Pagee agreed with adding "existing" before "heritage."

Under *Section 15 Daylight Plane*, Chair Fry said that she would add her name to the third and fourth bullet points and that bay windows should be allowed on the first floor only. Commissioner Bims said that there should be no intrusions allowed into the setbacks on the first or second floors or into the building envelope. Commissioner Pagee said that her concern with the daylight plane was raising the grade to the flood level. She noted one project in which the Commission saw the impact of a 19-foot, 6-inch wall that rose 4-feet above the existing grade. She asked if the intention was for the daylight plane to stay at the natural grade. Director Heineck said that grade would be as defined as natural or existing grade. Chair Fry indicated her support. Chair Fry suggested that bullet point seven be modified to add "dormer" at the beginning of the sentence and that the phrase "only be allowed" be replaced with "continue to be allowed". She said that dormers should not be defined as windows that start above the roofline of the first floor, but should instead be required to be embedded into the first floor roofline. Commissioner Pagee agreed. Director Heineck said that the fourth bullet point says that the term "dormer" should be defined to effectively lower rooflines and that the two bullets related to dormers could be combined. Commissioners Pagee and Soffer added their names to the second bullet point.

Under *Section 16 Accessory Buildings*, Chair Fry suggested for the third bullet point that the setbacks for an accessory building that would be used for living purposes would be the same as that required for secondary dwelling units. Commissioner Bims supported the second bullet point referencing that the regulations should include provisions that provide protections from the noise of mechanical equipment.

Under *Section 20 Single-Family Development Permits*, Chair Fry said she has a problem with how the preamble was written, specifically the reference to a streamlined process. She clarified that she has a problem with a process that introduces new loopholes and is as limited in the notification requirements as the proposed Zoning Ordinance amendment. She suggested that the building permit process might be streamlined as well. She said that she believes that some people think the building permit process would be streamlined through this proposal, but the proposal does not address that process. Commissioner Pagee agreed with Chair Fry that having a tiered system and design guidelines would improve the process. She said that it would be inappropriate to create a process that would streamline the development of second story projects that took away solar access and privacy. Chair Fry added her name to the first and second parentheses of names under the third bullet. She said that her suggestion to include the fact sheet was missing. She said that the first bullet under the fourth bullet shows her name but

that she does not agree. Director Heineck said the word “streamline” would be removed and reworded using the comments of Commissioners Fry and Pagee.

Chair Fry said that the bullet at the top of page 11 of the summary should refer to best management practices of other cities. She said that it should reflect that other cities have wrestled with the same issues and arrived at an approach that relates to impacts, and that they have guidelines and design reviews. She said that she does not believe the subcommittee has reviewed the approaches used by other cities and she thinks it is ridiculous for the City to reinvent the wheel. She said that there are some provisions in the proposal that are untested and they would be tested without notification of neighbors and review. She said that she would like to change the bullet to say “Consideration of proven rules, processes and guidelines.” She said that the proposed Zoning Ordinance amendment is experimental. Director Heineck suggested stating “to allow consideration of proven practices from other cities that could be implemented as conditions of approval.” Chair Fry said that she would like to see decision criteria included. She said that she had pulled design criteria information off the web for Foster City, Burlingame and Saratoga that embodies some of the values of those cities and which deals with impacts, such as privacy.

Chair Fry said that where it states “expand the notification boundaries to 300 feet”, her name should be added and the second bullet point deleted. Commissioner Pagee said that she would be happy with the 300-foot notification as well, but she did not want the Council to ignore that in the Willows there are 12 alleys not defined as being owned by anyone so the people across the alley should be identified as contiguous neighbors. Chair Fry agreed.

Under *Section 21 Granting Use Permits*, Chair Fry said that she would remove the word “potentially” in the second paragraph. Commissioner Soffer added his name to Chair Fry’s comment, but he did not like losing the findings that are made under the current use permit process. Director Heineck said that the findings that exist for use permits would continue as part of the Zoning Ordinance but would not apply for the single-family development permit. Commissioners Fry and Soffer said that the Commission’s recommendation was that the use permit findings be added to the single-family development permit. Chair Fry said that this suggests adding something regarding decision criteria to the use permit. She said that the Commission does architectural control and considers the project context for commercial projects, but not residential projects.

Chair Fry said that there was a misspelling in *Section 22 Public Hearings* and that “form” should be changed to “from”.

Chair Fry said that she would add her name to the first bullet under *Section 24 Zoning Overlay Districts*. Chair Fry asked if the third bullet requiring a majority of voters to approve a zoning overlay was correct and if that was a two-thirds vote. Commissioner Bims said that his comment from an earlier meeting was that there should be at least a majority of 50 percent of those who voted who support the proposal. Chair Fry asked if he meant a majority of the residents or a majority of those who vote. Commissioner Bims said that he was looking for the approval votes of a majority of the neighbors impacted by the proposed zoning overlay. Commissioner Sinnott said that she had indicated a two-thirds majority was needed as such a change was serious, and that she agreed with bullet point two. Chair Fry said that she does not think a person who does not choose to vote should be considered a “no” vote. Chair Fry asked if there are six registered voters in the home, who votes. Director Heineck said that the property

owners may vote. She said that in the past, one ballot has been sent to a property. Commissioner Halleck suggested that the distinction be one vote per property rather than one vote per property owner. There was agreement.

Chair Fry noted that several interdependencies had been noted; staff indicated they had captured those.

Regarding the Negative Declaration, Commissioner Halleck said that regarding the first paragraph he did not know if it would require an environmental impact report (EIR). He said that some of the changes might require a higher level of CEQA review. Director Heineck said that would mean an added degree of analysis of the Negative Declaration to document the significance of impacts, but that the impacts could still be determined to be insignificant and not trigger an EIR. Chair Fry indicated that she agreed and suggested adding the word "potentially" before "significant" in two places in the opening preamble and replacing the word "would" with "may" before "require an Environmental Impact Report". Commissioner Halleck said that he does not want to water down what others have said and allow his experience with CEQA to change those comments, but he noted that words like "may" are more appropriate to an EIR. He said that he supports staff adding increased analysis. Commissioner Soffer compared the environmental impact of the proposed Zoning Ordinance amendment with the collective impact resulting from the incorporation of those regulations. He said that without review the Commission would not see the impacts and that for that reason an EIR might be necessary. Chair Fry said that the use permit process is a way that potential impacts are mitigated. Chair Fry referred to the sentence, "Members of the Commission expressed concern that the project description does not accurately reflect the proposed changes." Chair Fry said that the changes that would be created by the proposed Zoning Ordinance amendment are not even defined and there are blanks and ranges in the document. She said there are statements that houses would not increase in size, yet the method of calculating FAL is changed and would allow for larger house sizes. She said that she did not see how a Negative Declaration could be done on an incomplete and misleading project description. Commissioner Halleck asked if she wanted to add that the project description is incomplete and might subject the City to a potential lawsuit similar to Allied Arts. Chair Fry agreed and recommended keeping language that the project description does not accurately reflect the proposed changes. She said that much of the analysis in the Negative Declaration is based on a previous EIR done for the General Plan. Director Heineck clarified that the EIR for the General Plan was done in 1994. Chair Fry said that there was concern that the analysis needs updating.

Commissioner Halleck said that he did not have comments on the specific items. Chair Fry suggested that the numbering on the summary match that of the Negative Declaration. Under *Land Use and Planning*, she said that in the second comment she had made regarding projects and immediate impacts on an adjacent property the words "examining" and "for it," should be removed. Chair Fry said that the last statement on the bottom of page 12 is the first instance of the comment that the FAL does not change under the proposed Zoning Ordinance Amendment and that the changes would primarily restrict or maintain the majority of regulations. She said that statement is misleading.

Commissioner Soffer noted the time was 10:00 p.m. and wondered what the Commission needed to vote on. Chair Fry said that the Commission should vote on the Negative Declaration. Director Heineck said that the Commission should vote on the summary that contains the recommendations. Chair Fry said that she would submit individual comments.

Director Heineck suggested that staff would need those in two days in order to be incorporated into documents being prepared for the Council. Director Heineck said that it would be helpful to discuss what the Planning Commission wants to present to the Council in the upcoming study session. Chair Fry agreed and noted that a number of Commissioners felt that changes should be made and the question would be how those changes would be accomplished.

Commissioner Halleck moved to forward the summary packet on the proposed Zoning Ordinance amendment and not recommend approval of the Negative Declaration. Director Heineck said that the motion may be that the Commission is recommending to not approve the Zoning Ordinance amendment and Negative Declaration as proposed and that the Commission would forward detailed recommendations on changes for both of those documents for Council consideration. Commissioner Sinnott said that she would like to move the recommendations on to Council and to recommend approval of the Negative Declaration. Commissioner Soffer said that there are three things to vote on, the Zoning Ordinance Amendment, the Negative Declaration and the Commission's body of recommendations.

Commissioner Sinnott moved that she would like to recommend approval of the Zoning Ordinance Amendment as written except for the recommended changes on basement FAL, below grade setbacks and tandem parking. The motion died for lack of a second.

Commissioner Sinnott moved to recommend approval of the Negative Declaration. The motion died for lack of a second.

Commission Action: M/S Soffer/Pagee to find the Negative Declaration insufficient and to not recommend approval of it to the City Council for the reasons outlined by the Commission in its recommendations and throughout its discussions of the document.

Motion carried, 4-1-1, with Commissioner Sinnott opposed, Commissioner Bims abstaining, and Commissioner Fergusson not in attendance.

Commission Action: M/S Soffer/Pagee to not recommend approval of the Zoning Ordinance Amendment as proposed to the City Council.

Commissioner Soffer indicated that he could not recommend approval because of a lack of notification and the elimination of checks and balances found in the current use permit. Commissioner Pagee said that she could not recommend approval because the proposed Zoning Ordinance amendment does not address problems of bulk and mass or provide certainty and an energy-efficient design, and there are loopholes not clearly defined that encourage bulk and mass and lack of certainty. She noted also that the tiered system is vague without the guidelines that would define how it would be applied and the tiered system as proposed does not capture the problems that the Commission has seen.

Chair Fry said that she supports the motion to not recommend approval of the proposed Zoning Ordinance amendment. She reviewed the document using the criteria of impacts on adjacent neighbors, neighbors, and community to evaluate it. In her personal review, she used yellow marker to highlight where the proposal is indifferent to those criteria, green highlight where the proposal addresses those criteria and red highlight where the proposal ignores those criteria. She found that the majority of highlights were red. She said that, for the most part, nothing in the proposal achieved the criteria of process and impacts on adjacent neighbors. She said that

the proposed Zoning Ordinance Amendment ignores the community and the neighborhood. She said the unique thing about Menlo Park is that there are individual neighborhoods that attract people for the neighborhood characteristics and the proposal ignores that. She said that it applies even looser rules and does away with an existing process that limits or mitigates negative impacts.

Motion carried, 4-2, with Commissioners Bims and Sinnott opposed, and Commissioner Fergusson not in attendance.

Commissioner Halleck moved to forward the Commission's recommendations to the City Council. Chair Fry asked if that would include the recommendations yet to be made. Director Heineck suggested that the Commission wait to the end of the meeting to include those additional recommendations.

Commissioner Soffer said that to the extent the current process has problems or is inequitable, he hoped that there was some way to find out what those concerns are and work on it. He said that the problem with the proposal was that the Commission was never asked at the outset what the Commission's observations were. He said that he would really like the Commission to have the opportunity to work on this.

Commission Action: M/S Halleck/Fry to forward the Commission's recommendations including those made at the end of the meeting to the City Council.

Motion carried unanimously, 6-0, with Commissioner Fergusson not in attendance.

Chair Fry asked for any additional recommendations to make to the Council that have not been made, and discussion on how to use their hour with the Council on September 9, 2003.

Chair Fry wanted to personally recommend that the work be completed "in the right way". She said that there are issues with the permit process that have not been analyzed to get to the root cause. She said that this analysis did not happen with the rescinded ordinance or with the current effort. She said that the issues the Commission has to wrestle with are not included in the proposal. She said that a hard look has to be given to the potential for loopholes and that the proposed Zoning Ordinance amendment is not tight enough to be a solely rules-based process. She said that if the problems are defined and changes are made to address the problems, and loopholes are identified, then there should be a proposal that works toward a rules-based process. She suggested that there be a break-in period wherein there would be a safety net that includes extra review. She said that the project description needs to be completed accurately and the Negative Declaration analyzed accordingly.

Commissioner Soffer said that he does not think the ordinance was ready to be implemented and that it should be reviewed more.

Commissioner Bims said that with some slight modifications, the proposed Zoning Ordinance amendment could be workable. He noted loopholes in the existing ordinance that create undesirable results and that the proposed ordinance amendment closes those loopholes. He said that setbacks should be setbacks and people should be provided with clear guidelines for the Tier One process.

Commissioner Sinnott said that her only recommendation would be that the proposed Zoning Ordinance amendment be reviewed in 18 months to see how it is working and if revisions are needed. She said that it addresses most of her concerns and would move the second floors back. She said that it would ease up the onerous and expensive process for people.

Commissioner Pagee said that she had been involved with this process in both Menlo Park and San Carlos for the past five years. She said that San Carlos has a superior process for dealing with these problems. She said that the City of Menlo Park has definite problems that are not solved and actually ignored by the proposed Zoning Ordinance amendment. She said the proposal addresses speed and ignores compatibility, daylight plane, and solar access. She said that a review in 18-months without a safety net might easily fail the residents. She said that no other city allows the unchecked construction that this proposal would allow.

Chair Fry recommended that if the Council accepts the Commission's recommendations that the Council's subcommittee work with the Commission to try to look at all of the recommendations and the CEQA review together with public outreach and seek approval by a ballot measure.

Chair Fry addressed how to structure the hour study session with the City Council. She suggested that they define the problems and criteria, make recommendations and then discuss the major topics. There was consensus for that approach.

D. COMMISSION BUSINESS

There was none.

ADJOURNMENT

The meeting adjourned at 10:40 p.m.

Staff Liaison: Justin Murphy, Principal Planner

Prepared by: Brenda Bennett, Recording Secretary

Approved by Planning Commission on September 22, 2003.