



## MENLO PARK PLANNING COMMISSION MINUTES

Regular Meeting  
September 8, 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), Pagee, Sinnott, Soffer (arrived at 7:25 p.m.) present; Halleck (Vice-chair) absent

**INTRODUCTION OF STAFF** – Murphy, Smith, Thompson

### A. PUBLIC COMMENTS

There were none.

### B. CONSENT

#### 1. Consideration of the transcripts of the November 18, 2002 Planning Commission meeting.

Commissioner Fergusson suggested a number of minor changes. Chair Fry suggested a few additional corrections.

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

- Page 8, Line 5: Change “LOS” to “R1S.”
- Page 14, Line 19: Change “ingress” to “egress.”
- Page 15, Line 6: Change “ingress” to “egress.”
- Page 16, Line 17: Change “clear story” to “clerestory.”
- Page 18, Line 14: Change “last” to “east.”
- Page 29, Line 7: Change “shear” to “rear.”
- Page 32, Line 6: Delete “Since.”
- Page 42, Line 14: Change “--” to “are oriented toward.”
- Page 45, Line 6: Change “probable” to “probability.”
- Page 45, Line 8: Insert “in the” between “be” and “backyard.”
- Page 45, Line 9: Delete first “or” in the sentence.
- Page 45, Line 25: Change “of” to “up.”
- Page 52, Line 5: Change “can’t” to “can.”
- Page 57, Line 5: Change “dish” to “fish.”
- Page 67, Line 8: Change “R8” to “RE” or as determined by staff to be accurate.
- Page 76, Line 5: Change “glassy” to “grassy.”
- Page 93, Line 12: Change “to” to “of.”

- Page 93, Line 13: Change “input” to “voice.”
- Page 93, Line 14: Change “if” to “regarding whether.”
- In an addition, individual page numbers should be inserted on pages 61 through 202.

Motion carried, 4-0-1, with Commissioner Sinnott abstaining and Commissioners Soffer and Halleck not in attendance. Commissioner Sinnott was not on the Commission on November 18, 2002.

**2. Consideration of the minutes of the August 25, 2003 Planning Commission meeting.**

This item was continued to the meeting of September 22, 2003.

**3. Review of State Department of Alcoholic Beverage Control (ABC) Application for Person-to-Person Transfer of Ownership:** Review of State Department of Alcoholic Beverage Control (ABC) Application for Transfer of Ownership for Alcoholic Beverage Licenses for Han Daiza, 1010 El Camino Real Suite 140 and Gambardellas Amalfi Inc., 1165 Merrill Street.

Chair Fry noted for the record that the staff report had Resolution 5425 as an attachment. The actual Resolution to be considered was number 5245, which the Commission has received.

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

Make a determination, as per Section 23800(e) of the State Business and Professions Code, pertaining to the granting of an application for a transfer of an Alcoholic Beverage Control license to: 1) Han Daizi, Bonsai Japanese Restaurant, 1010 El Camino Real, Suite 140, and 2) Gambardellas Amalfi, Inc., Gambardellas, 1165 Merrill Street, that no evidence has been presented that suggests that there are problems associated with alcohol consumption or sales at or in the general vicinity of the businesses, and that the granting of the applications is appropriate.

Motion carried 5-0, with Commissioners Halleck and Soffer not in attendance.

**C. PUBLIC HEARING**

**1. Use Permit/ Anatole Zelkin/ 1923, 1927, and 1929 Menalto Avenue:** Request for a use permit for a café, pet groomer, and tax consultant to occupy three individual tenant spaces on a property that is nonconforming in regard to parking.

Commissioner Fergusson and Planner Murphy recused themselves as they own property within 500-feet of the subject property and left the Council Chambers.

Staff Comment: Planner Smith presented the staff report, noting that the property owner was requesting approval for three new tenants at the building at 1923-1929 Menalto Avenue. The businesses of the new tenants would include a dog grooming business at 1923 Menalto Avenue, considered a personal service use; a tax consultant business at 1927 Menalto Avenue, considered an office use; and a café at 1929 Menalto Avenue, considered a retail use. He added that the property is in the C-2 Neighborhood Shopping District and that all three uses

would be considered permitted uses in this zoning district and would be intended to serve the immediate neighborhood. He noted that the existing building is substandard with regard to parking, having no on-site parking where a minimum of 27 spaces is required, and that Section 16.80.020 of the Zoning Ordinance requires that any use occupying a structure that is legal but nonconforming with regards to the parking requirements for the property may be changed to a similar or more restrictive use provided a use permit is obtained. Since all three uses would be new uses at this location, the applicant has requested use permit approval for all three businesses.

Planner Smith reported that two letters regarding the application had been received since the printing of the staff report. One letter was written by Council Member Winkler in which she expressed specific support for the café use in that it would provide a local center for the neighborhood. The second letter was written by Ms. Kelly Fergusson as a resident of the Menalto area and not as a member of the Planning Commission. Ms. Fergusson urged the Commission to approve conditional use permits for all three projects but require mandatory litter clean up for all three tenants, limit the café use to the serving of coffee and fresh baked goods, and delay permanent approval of the cafe until the City completes the installation of a new sidewalk and crosswalks. Noting that Ms. Fergusson had inquired, Planner Smith said that Engineering staff expected the installation of the sidewalk and crosswalks to be complete by the summer of 2004.

Questions of Staff: Chair Fry asked whether the applicant had met with the neighborhood as was previously recommended by the Commission. Planner Smith said that Council Member Winkler referenced a meeting in May in the letter she submitted. Commissioner Bims asked whether the proposed installation of sidewalk and crosswalks interfere with ingress and egress to existing businesses. Planner Smith noted that the sidewalk and crosswalks are on the east side of Menalto Avenue and the businesses at this location are on the west side of Menalto Avenue. He said that the installation of crosswalks might temporarily impact Menalto and Gilbert Avenues. He said that he did not have the project details but could get that information. Commissioner Pagee confirmed with him that members of the audience might speak with Engineering staff regarding the project. Commissioner Pagee asked if there was a definition of café in the regulations. Planner Smith said that the zoning regulations do not have a definition of café or restaurant. Referring to Commissioner Fergusson's suggestion about the café, Planner Smith suggested that the Commission might want to discuss a narrower definition of the café's operations.

Public Hearing: Applicant Anatole Zelkin addressed the Commission. He indicated that he was very pleased with what the new tenants were offering the community. Regarding traffic concerns, he noted that two of the businesses are by appointment only. He said that the proposed café would be a European style establishment and noted that the café tenants were unable to attend due to a misunderstanding about the meeting date. He noted that the Commission's concerns for the use of the site have been written into the lease. He said that he thought the café would be a community center for the neighborhood. He expressed his concern that there appears to be a conflict between the City's desire to bring retail businesses into the community and the lengthy difficult process for new businesses to take tenancy and operate. He said that he believed the proposed businesses would be an asset to the community.

Ellen McKinney, co-owner of All Fur Love Pet Grooming, said that she has been a Menlo Park resident for the past 10 years and over the past 16 years, she has established herself as a respected groomer/handler in the area. She said that it was wonderful to be able to operate her

business in the same community in which she lives and expressed appreciation for the warm response she and her co-owner have received from the community.

Patricia Hablutzel, CPA, owner of TaxTime, Inc., expressed her gratitude for the opportunity to have her business in Menlo Park and appreciation for the warm welcome that she has received from the neighborhood. Chair Fry confirmed with Ms. Hablutzel that the businesses hours during tax time would be 8:30 a.m. to 9:00 p.m., Monday through Friday, closed on Saturday, and 10:00 a.m. to 4:00 p.m. on Sunday.

Rich Mintz, Menalto Traffic Safety Group, and a resident of Menlo Park, offered his appreciation to Mr. Zelkin for working with neighborhood groups over the past few months to upgrade the appearance and functionality of the property and bring in attractive businesses for the neighborhood. He expressed one concern with the use permit relating to safety and suggested that approval might be held until the sidewalk and crosswalks were actually installed. He suggested that perhaps that improvement work might occur sooner.

Laure Laprais, a Menlo Park resident, said that she has to cross Menalto Avenue several times a day. She said that her main concern with the proposed project is parking, both for vehicles and bicycles, and although she liked the idea of a café, she wondered what recourse the neighborhood would have if the café caused parking problems. She also wondered whether the use permit would be re-reviewed for the café should the tenants change. She said that the trash in the area continues to be a concern noting that the existing receptacles in front have been full all weekend.

E. Gary Smith, Menlo Park resident, thanked Mr. Zelkin for his efforts to find tenants and improve the appearance of the building. He said that he is concerned about traffic and safety and supported the installation of the sidewalk and crosswalks sooner rather than later. He said that the plaza does not support the parking needed for a café. He suggested that the Planning Commission might work to improve the parking plan for the plaza. He said that lighting is needed in the back of the buildings for security. Commissioner Soffer asked how busy the parking spaces are for ThermaSpa. E. Gary Smith said that the owner allows others to use her parking spots when available. Commissioner Soffer suggested that a nearby church's parking lot might be a parking resource. In response to Commissioner Soffer, E. Gary Smith indicated that lack of parking does negatively impact business. Commissioner Pagee asked E. Gary Smith about the garbage receptacles. Mr. Smith said that there is a new one and it is overflowing, but the trash is not collected until Thursday. He said that the Hacienda Market empties theirs once a day. Commissioner Pagee suggested that the proprietors of the Hacienda Market might be approached to see if an arrangement might be made to allow the dumping of the other trash receptacles in the market's garbage dumpster.

Christine Franco, a Menlo Park resident, said that recently she and her children came out of their home in the morning and encountered a homeless person in the alleyway, who had been sleeping there. The person had urinated and something was stolen from her husband's truck. She said that she was excited about the new businesses but concerned about the impact on that alleyway, particularly with trash and traffic. She requested that a more balanced solution be sought to protect neighbors whose property borders the commercial area along the alley.

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

The motion carried unanimously, 5-0, with Commissioner Halleck absent and Commissioner Fergusson recused.

Commission Comment: Chair Fry commented that some of the issues raised were applicable to the general commercial complex and not specifically to the subject projects. She noted that those issues were not within the purview of the Commission's authority. She suggested that those broader issues might be discussed and listed in an effort to provide the public with some ways to pursue resolution of those issues. Planner Smith suggested that the Commission might want to list issues that could not be addressed immediately. He said that he could inquire of engineering staff as to what sets the timing for the sidewalk and crosswalks installation. Chair Fry said that there appeared to be issues regarding parking, safety concerns relative to the streetscape and crime, trash, bicycle racks, and lighting.

Commissioner Soffer said that the concerns expressed are legitimate and ongoing. He said that the Commission's focus would be much narrower and specific to the project, but noted that the Commission is concerned as well about the larger issues. He said that the Commission had reviewed the Jonathan's Fish and Chips project about which there had been complaints about trash collection and smell. In that instance, the Commission required that garbage be picked up more than once a week. Commissioner Soffer said that he visited the subject property site and there has been remarkable improvement in the appearance of the property. He noted that the proposed uses were unique and not redundant to the area.

Commissioner Pagee suggested that the City might look into having the trash collected more often at the project site.

Concerning the businesses proposed, Commissioner Bims said that he considered whether those businesses would contribute to crime or other negative impacts, or would they bring benefit to the community. He indicated that he thought the businesses would bring benefit.

Commissioner Sinnott agreed with Commissioner Bims that the businesses proposed would not create crime and that traffic concerns would occur in any case. She said that the three businesses proposed fit nicely with what the neighborhood wanted and that the larger issues needed to be considered separately, perhaps at the Council level.

Commissioner Sinnott moved to approve the project as recommended in the staff report. Commissioner Soffer seconded the motion.

Commissioner Pagee indicated that she was happy with the two businesses that were already in operation but noted concerns with the proposed café. She said that she would like to see a business plan and to have the café tenants meet with the neighborhood to determine what the neighborhood wanted the café to provide. She suggested approving two of the three uses and postponing approval of the café until that could be accomplished.

Commissioner Soffer asked whether the café is currently being renovated and what are the plans. He asked Mr. Zelkin to comment. Mr. Zelkin said that the café proprietor is a general contractor, has developed plans, but has not begun any work yet. He said that the proposal is for a European type café. Commissioner Soffer asked if there are current plans. Mr. Zelkin indicated that there are and the tenants are waiting for approval of the use permit before submitting their plans for a building permit. Mr. Zelkin said that hopefully the café might be able to open mid-October. Chair Fry asked what was in the lease regarding the European type café.

Mr. Zelkin said that the lease is specific to coffee and baked goods. Regarding additional products, he expected that the café owners would work with the neighborhood. He said that the café would seat about 25 people.

Commissioner Sinnott said that she felt they should have faith in the café owner's letter of intent that they plan to serve coffee and baked goods. She said that if there are issues that emerge perhaps there could be a condition to review the use permit in one year. Chair Fry asked if the maker of the motion and the second would consider a restriction to the use permit to restrict the café to coffee and baked goods. Commissioner Sinnott said that she would not entertain that restriction to her motion as the neighborhood might want more from the cafe. Commissioner Soffer asked whether Commissioner Sinnott would consider a review of the use permit in one year rather than limit the café to coffee and baked goods to allow some flexibility. Commissioner Sinnott said that was acceptable to her.

In response to a question by Chair Fry regarding what recourse the neighborhood has should issues come up before one year, Planner Smith noted that code enforcement should be contacted regarding trash complaints. He said that concerns about the uses themselves would be best handled by coming back through the Planning Commission either as required in six months or one year.

Commissioner Bims said that he feared the café use would increase trash at the site and asked whether there could be an amendment to the motion to require the trash receptacles be emptied at least twice a week or more. Commissioners Sinnott and Soffer agreed with that amendment. Planner Smith noted that on other projects, staff worked with BFI to increase the frequency of trash collection. In response to Commissioner Sinnott, Planner Smith indicated that the cost for increased trash collection would normally be the owner's or the tenant's depending on the lease agreement. He said that the receptacles on the corners are supplied by the City and perhaps the cost of collection for those might fall on the City. Commissioner Soffer said that the Commission could not obligate the City to those costs but that normally the property owners/tenants are willing to work with the City.

Chair Fry noted that the issue of lighting and the issues of safety related to lighting had not been addressed. She said bicycle parking was needed as well as vehicular parking and she would like to see a broader parking plan for the complex, noting Commissioner Soffer's comment about using the church's parking lot.

Commissioner Sinnott called for the vote.

Commission Action: M/S Sinnott/Soffer to approve as follows:

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 uses 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 uses, and will not be detrimental to property and improvements in the neighborhood or the general welfare of the City.

3. Approve the use permit for the tenant space located at 1925 Menalto Avenue, subject to the following conditions:
  - a. Development of the project shall be substantially in conformance with the plans prepared by Anatole Zelkin, dated received by the Planning Division on July 31, 2003, consisting of four plan sheets and approved by the Planning Commission on September 8, 2003 except as modified by the conditions contained herein.
  - b. 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. The applicant shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
  - d. All new signage is subject to review and approval by the Planning Division staff.
  - e. Within 30 days of the use permit approval, the property owner shall install slats into the new chain link fence at the rear of the building. The installation of these slats shall be subject to the review and approval of Planning Division staff.
  - f. Prior to installation of any new exterior lighting on the site, the applicant shall submit a lighting and photometric plan for the review and approval of the Building and Planning Divisions.
  - g. Prior to installation of a new fence at the rear of the property, the applicant shall submit a plan for the fence for the review and approval of the Building, Planning, and Transportation Divisions.
  - h. The use permit approval for the cafe tenant at 1929 Menalto Avenue shall be for one year from the date of the Planning Commission approval of this item. At the end of that year, the applicant may request a use permit extension from the Planning Commission.
  - i. Staff shall work with BFI to increase the frequency of trash pick up for the public trash cans located on Gilbert Street and Menalto Avenue in the vicinity of these commercial tenants. The goal of this effort is to increase the frequency of trash pick up to at least twice a week.

Motion carried, 5-0, with Commissioner Fergusson recused and Commissioner Halleck absent.

Commissioner Soffer asked that staff provide the Commission feedback regarding the sidewalk and crosswalks improvements. Chair Fry encouraged the neighborhood to continue working with Mr. Zelkin and the other business owners to address the broader issues of lighting and a parking plan. Commissioner Pagee asked about the handling of the alleyway issues, noting littering, public drinking and drunkenness, urinating in public, trespassing and as they heard tonight, theft. Planner Smith said that the best resource for the public for those issues is the Police Department.

The Commission discussed generally the pros and cons of the City taking ownership of the alleyway and perhaps designating it as a street, but the discussion was inconclusive as to what would be best. Commissioner Soffer urged neighbors to bring code enforcement problems to

the attention of City code enforcement. Chair Fry asked that staff inquire of the Engineering Division as to whether the sidewalk and crosswalks improvement project might be moved up in priority. Chair Fry welcomed the business owners to the City and wished them success.

- 2. Variance/ Leah and David Elkins/ 236 Lexington Drive:** Request for a variance to allow for a four foot, 10 inch right side setback where a minimum setback of five feet, six inches is required and to allow a maximum lot coverage of 44 percent where 35 percent is required in association with a single-story addition to an existing single-family residence in the R-1-U zoning district.

Staff Comment: Planner Thompson said that the applicant was requesting approval of a variance to allow an eight-inch encroachment into the required side setback. She said that the applicant was also requesting a variance to allow a maximum lot coverage of 44 percent where 35 percent was required. She said that a copy of an e-mail from adjacent neighbors concerned with the proposed lot coverage had been distributed to the Commissioners.

Questions of Staff: Commissioner Sinnott asked about a structure at the back of the property and whether that square footage was included in the total lot coverage. Planner Thompson said that the structure was an accessory building of 257 square feet and was included in the total lot coverage. Commissioner Sinnott asked if there had been a history of remodeling on this lot. Planner Thompson indicated that was not known.

Public Comment: Ms. Karen Zak, Zak Johnson Architects, said that she was the architect for the project. She said that the staff report was accurate as to what the applicants were trying to do. She said the project site was already nonconforming in regard to setbacks and lot coverage. She said that the proposed project was to add a modest-sized family room and kitchen addition. She said that she thought the e-mail received by the Commission exaggerated the issues. She said that the existing residence was small and does not sprawl across the property. She said that the project was compatible with the character of the neighborhood.

Mr. David Elkins, the property owner and applicant, said that he and his wife love the Willows neighborhood and their neighbors, but not the small lots. He said that they have two small children and they need slightly more space for them all to live comfortably. He said that combining a family room with the kitchen was optimal as that was where they spend most time together. He said that the design was based on the layout of the house which constrained design efforts. Mr. Elkins said that the accessory building in the rear was a finished unit and that its exterior and tiles matched those of the residence. He said that the unit was part of the property when they bought it and that his wife uses it as a home office. He said that they did not want to burden the neighbors with a second story and that their proposal was the best solution.

Chair Fry asked if the encroachment into the side setback was about nine square feet. Mr. Elkins said that he thought that was correct and that the encroachment into the side setback was about eight inches. Commissioner Sinnott asked whether they looked eliminating the area of the addition that would encroach into the side setback. Ms. Zak said that moving the side in eight inches looked awkward and moving the side in two feet created problems with the roof lines. Commissioner Pagee said that there was no fireplace chimney on the side and it seemed there was a clear path to the backyard for emergency access. Mr. Elkins said that there was adequate width and that they currently use that side for ingress and egress to the backyard.



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

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

Commission Comment: Commissioner Sinnott said that she was ready to make a motion to approve as per the staff report. She said that the applicant had a difficult coverage issue with the small lot and she was satisfied with the explanation that moving the side in eight-inches would not work. Commissioner Pagee said that she would second the motion with the added comment that she understood how difficult it was to live on a small lot, and she appreciated that the applicants wanted to stay in the home and chose to add to their home without adding a second story. Commissioner Bims said that he was in favor of the project although he had a basic issue with encroachments into side setbacks. Commissioner Soffer commented that he was supportive of the project, but that he questioned the language of the variance as to this situation being unique to this property. He said that many properties have those conditions and that did not mean that all properties should receive a variance. He said that the Commission had three applications before them tonight for substandard lots and whether parking requirements were being met. He said that he was somewhat troubled with the variance request.

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

1. Make a finding that the project is categorically exempt under Class 1 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 existing floor plan and placement of the existing house on the subject property create a constraint to building an addition 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 by Zak Johnson Architects, consisting of three plan sheets

dated May 22, 2003 and approved by the Planning Commission on September 8, 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 final building inspection, the applicant shall record a deed restriction with the San Mateo County Recorder's Office stating that any second story addition shall be reviewed and approved by the Planning Commission in accordance with the procedures and requirements for a use permit in Chapter 16.82 of the Zoning Ordinance. A copy of the final recorded document shall be kept on file in the Planning Division. This condition of approval shall not be applicable if, and only if, by September 8, 2004 or the date of final building inspection, whichever occurs first, the City has adopted an ordinance amending the regulations for single-family development which eliminates the need to obtain a variance to have a building coverage of 44% at 236 Lexington Drive.

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

- 3. Use Permit/Bill and Karen Muir/156 Dunsmuir Way:** Request for a use permit to construct first and second floor additions to an existing single story single-family residence on a lot that is substandard in regard to lot width and lot area and for additions to an existing legal, nonconforming residence to exceed 50% of the replacement cost of the structure within a 12-month period.

Staff Comment: Planner Thompson said that the applicant was proposing first and second floor additions to an existing single-story home at 156 Dunsmuir Way. She said that the applicant was also proposing a significant remodel to the existing first floor. She said that all new development on a substandard parcel required Planning Commission approval of a use permit.

She said that the residence has a legal, non-conforming right side setback. She said that the proposed addition and remodel would exceed 50 percent of the replacement value of the structure, which also required Planning Commission approval of a use permit.

Public Comment: Mr. Bill Muir, the applicant and property owner, said that he and his wife had been Menlo Park residents for over 10 years. He said that they had bought the home from a business associate who had lived at the subject property for over 30 years. He said that the seller had told them that he had purchased the tree and that the house came with it. He said that they have been very protective of the tree and that their arborist McClenahan had cared for the tree for 40 years. Mr. Muir said that they have worked around the tree for their house design.

Commissioner Pagee asked if the yellow tape on the property indicated the cuts for that tree. Mr. Muir said that they had done some story poles to show the proposed ridgeline of the structure. He said that he had suggested one limb over the house be removed for the safety of the house. He indicated that there were two branches that would also be removed. Chair Fry confirmed that the one long limb would be totally removed and the other limb toward the street would be trimmed. Mr. Muir said that was correct. He said that they want to keep the tree healthy and also balanced. He said that the arborist McClenahan said to remove that one limb for the construction and trim the other for the balance of the tree to keep it safe and healthy.

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

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

Commission Comment: Commissioner Soffer said that he would like to move to approve per staff's recommendation. He said that he thought Mr. Muir had done an incredible job working around the tree. Commissioner Sinnott said that she would second the motion. Commissioner Fergusson said that Mr. Muir had shown her around the property when she did a site visit. She said that she was very impressed with the care that they had taken with the tree and that the proposed design accentuates and accommodates the tree. Chair Fry said that the height of the proposed second floor was a bit high for her, but that the applicant had brought the bulk and mass of the second story in and away from the neighbors.

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

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 subject to the following conditions:
  - a. Development of the project shall be substantially in conformance with the plans prepared by JPH Design Management, Inc, consisting of seven plan sheets, and approved by the Planning Commission on September 8, 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. Heritage trees shall be protected pursuant to the Heritage Tree Ordinance. Prior to building permit issuance the applicants 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 and in the memo prepared by the City's consulting arborist.
- g. Prior to building permit issuance, the applicant shall receive approval for pruning tree number one (66.5 inch valley oak).

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

- 4. Use Permit/Chris Wasney/700 Wallea Drive:** Request for a use permit to allow for excavation into the required rear yard setback for a lightwell in association with a new basement.

Chair Fry noted for the record that her residence was located more than 500 feet from the subject property and did not present a conflict of interest.

Staff Comment: Planner Thompson said that the applicant was requesting approval for a use permit to allow for excavation into the required rear setback to install a lightwell in association with a new basement. She said that the lightwell would encroach three feet and 10-inches into the right rear setback.

Questions of Staff: Commissioner Pagee said that considerable excavation had already occurred on the property; she asked if it was only for the lightwell that they had applied for an

excavation use permit. Planner Thompson said that this use permit was only for the lightwell and did not know if building permits had been obtained. She suggested that the question regarding the other excavation be posed to the applicant.

Public Comment: Mr. Bob Dolin, the property owner, said that he and his family had lived at the residence for over 20 years. He said that they have two small children. He said that they wanted to have a family room to be in the basement. He said that they had submitted their plans for plan check in May 2003, which review indicated that there was a need for a lightwell. He said that they put in a lightwell that was not in the rear side setback in submitted plans so they could get the building permit. He said that they then planned to get a use permit to have the lightwell in the rear side setback. He said that they had intended to be able to begin construction and during that time obtain the use permit for the lightwell. He said that he had expected to have a building permit by now, but had not received it. He said that he believed they had satisfied all the requirements for the building permit and were now requesting a use permit for the lightwell. Commissioner Pagee asked him if the delays were caused by the Planning Commission. Mr. Dolin said that the delays were not caused by the Planning Commission. Commissioner Pagee asked that be noted in the record.

Commissioner Sinnott asked Mr. Dolin why construction had begun without a building permit. Mr. Dolin said that he had stopped the construction when he returned from vacation and was surprised at how far along it had gone. He said that he had relayed to the contractor that the plan check requirements had been met. He said that the contractor started the work on the assumption that the permit would be granted very soon. Commissioner Sinnott asked if Mr. Dolin had considered putting the lightwell on the patio side of the residence. Mr. Dolin said that he had and one set of plans showed the lightwell in a hole with a grate on that side. He said as the lightwell was intended for fire emergency egress that he was concerned with the patio location as there would be a tendency to block the lightwell with patio furniture. He said that the light would not show very well either because of the depth at which it would be located. He said that the choices were to put the lightwell in the rear setback so it was as far away from the neighbors as possible or make the square footage less and put it on the side rather than in the rear side setback. Commissioner Fergusson said that the plans indicated that there was a lightwell for the patio floor. Mr. Dolin said the lightwell was on the original plans, but it was removed because of prohibitive cost. Commissioner Pagee said that she thought accommodations for emergency egress were preferable in the rear setback so as not to cause problems with side neighbors. She asked if Mr. Dolin had looked at changing the dimensions on the family room to allow the lightwell to be moved; for instance make the family room longer along the back of the house. Mr. Dolin said that they were trying to keep as much of their backyard as they could. Mr. Dolin said that the Engineering Division had sent them a letter indicating that if the Commission approved this use permit, there would be other requirements. He said that he was facing another six-week delay for the Engineering Division to review plans based on their requirements. Mr. Dolin asked for relief from the additional Engineering requirements as the rains were coming and it was important that construction got underway quickly. He said that the letter also indicated that all utilities needed to be underground. He said that all of the utilities are currently aboveground and he would like the requirement to indicate "new" utilities. He said that also for the drainage plan, the Engineering Division wanted him to run all of the downspouts through one line to the street. He said that the front of the house, which was not being changed, has two down spouts and that to comply he would have to trench the front yard in which there are heritage trees. He asked for relief from that requirement.

Mr. Chris Wasney, Cody Anderson Wasney, architect for the project, said that a letter dated June 15, 2003 from the Engineering Division to Planner Thompson was received by them two weeks after that date. He said that besides the additional time, money and work that those requirements would create. He felt that it was arbitrary that their application for a use permit was being used by the Engineering Division to impose other kinds of conditions that would not have previously been made. He said that nowhere on the use permit application had it indicated that this additional review would occur or that there might be additional requirements made by other Divisions.

Commissioner Soffer asked when they had begun work on the project with the City. Mr. Wasney indicated about a year ago. Chair Fry asked whether it was the Building Division's process that required the Engineering Division's review or the process for the use permit application. Planner Murphy said that the majority of Engineering Division's review of projects was for larger projects that come before the Planning Commission. Chair Fry asked if that review would have occurred anyway. Planner Murphy indicated that it would not have. In response to Chair Fry's question about building permit process change, Planner Murphy said that a programmatic review was underway to look at development services, but that a new system was not in place yet. Chair Fry asked if condition "e" was part of the building permit process regarding heritage tree protection. Planner Murphy said that was accurate.

Chair Fry asked about construction and dirt around a heritage tree. Mr. Wasney said that when they began the plan check process, they thought they were outside of the tree protection zone. It was later determined that there was one tree in which construction would occur in the root zone. He said that the plan checker did not ask them to resubmit plans with a tree protection plan and arborist report. He said that after they responded to the plan check comments, they received a call from the Building Division that they could pick up the permit. He said that the contractor went to pick up the permit and was told by counter staff that an arborist report was needed. He said that they made the arrangements for an arborist report about two weeks ago.

Commissioner Pagee noted that the lot was standard. She asked if there had not been a use permit application for the lightwell what steps of the process would have been unnecessary. She asked whether the applicants knew up front what was needed for the use permit application. Planner Murphy described the differences between a project that requires use permit review by the Planning Commission and a project that only requires a building permit.

Commissioner Pagee asked the applicant whether the drainage plan was solely for the lightwell. Mr. Wasney said that there was a sump pump and drainage plan for the basement and lightwell. He said that the condition for the lightwell was for other down spouts unrelated to the construction to connect to one line. Commissioner Pagee asked if they were replacing the entire roof and all of the down spouts. Mr. Wasney said that they were replacing the entire roof, but were not replacing the two front down spouts.

Commissioner Soffer said that the requirements of condition "c" were the result of the basement construction. He asked whether this review would have been identified by the building permit process. Planner Murphy said not necessarily as the Building Division required compliance with the Uniform Building Code. Planner Murphy said that in this instance there were additional requirements because of Engineering Division review. He said that the applicant's desire to move the location of the lightwell was what triggered the use permit process and the Engineering Division's review of the plans. Commissioner Soffer commented on the amount of construction that had occurred. Planner Murphy indicated that he had met with a Building

Division official earlier in the day to see how the Building Permit might be issued to allow the applicant to proceed with work while awaiting a determination on the lightwell use permit. He said that if the use permit was approved then the applicant would need to submit revised drawings to Building. He said that he was surprised to learn that construction had already begun.

Chair Fry asked about condition 3.f regarding heritage tree protection and whether that would have been addressed with the building permit. Planner Murphy said that during the plan check the prerequisite protection for the heritage tree on the side of the property was not flagged early on and the applicant had been given notification that the structural part of the plans met City requirements. He said that further review of the plans showed the need for heritage tree protection.

Commissioner Sinnott asked if the lightwell were moved to the patio side whether it would be within the setback. Planner Murphy indicated that it would be within the required setback. Commissioner Sinnott confirmed that if the lightwell was placed in the side setback that there would not have been a need for use permit application and the conditions of the Engineering Division would not apply. She asked the applicant if they had considered locating the lightwell in the side setback. Mr. Wasney said that the issue of the lightwell came up late in the process. He said that the plan checker said that the basement needed a second means of emergency escape and light. He said that when they assessed the situation they thought they could live with the lightwell in the patio area. He said that the tree protection plan requirement came late in the process. He said that the property owner decided that the patio space was too constrained to have the lightwell located there. He said that the additional requirements for a drainage plan determined by the Engineering Division were not related to the basement construction or the lightwell but were additional conditions that could be imposed because of the use permit process. In response to a question from Commissioner Sinnott, Mr. Wasney said that the lightwell could not be aboveground in the patio area, whereas in the rear setback there would be landscaping and the lightwell might be aboveground.

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

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

Commission Comment: Chair Fry said that she would like to move that any conditions that were triggered by the process of relocating the lightwell into the rear setback be optional. She said that the encroachment was only eight inches and that a grading and drainage plan for the lightwell seemed excessive. Commissioner Fergusson said that she would like to second the motion and requested that condition "c" be specifically changed to exclude a requirement for a drainage and grading plan. She said specifically in item "e" to add the wording of "all new utilities." Chair Fry said that she was comfortable with those changes unless the drainage plan and requirement for an on-site bubbler were part of the requirements for the building permit for the basement. She said that if this was triggered by the lightwell then the applicant would have the option to exclude.

Commissioner Pagee said that based on conversations that she has had with Mr. Pat Stone of the Engineering Division she thinks that the expanse of hardscape to the street might have triggered the need for the drainage plan. She said that the applicant might consider breaking that hardscape up so that all of the water would not be running to the street, but would stay on the property. She said that she thinks a bubbler was excessive for an addition to the back of the

residence and that the applicant would need to work with Engineering Division to resolve the drainage plan issues.

Commissioner Soffer said that he had trouble with being asked to retroactively approve the lightwell as the construction had already begun. He said that he did not agree with eliminating the conditions that the Engineering Division was requiring.

Commissioner Sinnott said that she had a problem with the construction being started without a building permit. She said that the lightwell might be relocated to the side setback, which would negate additional requirements.

Chair Fry said that her motion was not to advance work that had occurred prior to a building permit. She said that she was concerned with the differences in review and the complications to the applicant. She said that the applicant was going through the process to have the lightwell situated in the rear setback.

Commissioner Fergusson said that she thought the construction issue was separate from the use permit application. She said that she thought the lightwell in the rear setback was the superior design solution. She said that its location in the patio area would compromise its effectiveness. She said that she was not convinced that the bubbler would prevent excessive runoff into the creek. Chair Fry asked staff if there were other ways to deal with drainage. Planner Murphy said that the bubbler requirements were routine boilerplate requirements for drainage.

Commissioner Pagee said that she agreed on separating the construction issue from this review. She said that she would like the applicant to look at redesigning the hardscape to lessen the impact of water draining from the property.

Chair Fry asked staff to review the motion. Planner Murphy said that the motion was that any conditions triggered by this lightwell would be optional and that as added to by Commissioner Fergusson under condition "c" that the grading and drainage plan, including the bubbler, be excluded. Commissioner Fergusson noted that those should be excluded, and optional, if they were requirements triggered by the use permit process for the lightwell. Planner Murphy said that if the lightwell were to be situated in the rear setback then Engineering Division review would be required; a determination would be made as to whether there was a need for a bubbler. Chair Fry asked Commissioner Fergusson if she wanted to retract her second. Commissioner Fergusson said that she would.

The motion died from the lack of a second.

Commissioner Soffer said that he would move to deny the request as it was unclear as to what was being approved by the use permit. He said that the issues the City was bringing up were not really visible to the Commission. Commissioner Sinnott seconded the motion. She said that she had a concern with moving into the rear setback and that there was an alternative. She said that she thought the rear setback should be maintained.

Commissioner Pagee noted that a patio might be built into the rear setback without the need for use permit approval. She said that in the same neighborhood the Commission approved a patio that took up the entire backyard and that the lightwell was less of an intrusion on the neighbors..



Chair Fry recognized Mr. Walter Harrington. Mr. Harrington suggested that the impermeable surface be reduced by the amount of impermeable surface created by the lightwell. Mr. Wasney said that there was an extensive drainage plan including a bubbler that was already submitted to the City. He said that their concern was with the additional six weeks delay and the requirement for the two drain spouts in front to be tied into the drainage line as the front of the house was not part of the construction and to tie those lines in would require extensive trenching in the front yard.

Commission Action: M/S Soffer/Sinnott to deny the request for a use permit.

Motion failed 3-3, with Commissioners Fergusson, Fry and Pagee opposed, and Commissioner Halleck not in attendance.

Commissioner Fergusson moved to approve per the staff recommendation with an addition to item "e" to add "new" before utilities. She asked staff how to modify "c" to give directions to staff to work with the Engineering Division to streamline the process. Planner Murphy said that he thought staff would be able to streamline the process so that the building could commence as the other requirements were resolved.

Commission Action: M/S Fergusson/Fry to approve as recommended in the staff report with the following modification.

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 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 Cody Anderson Wasney, consisting of six plan sheets dated May 15, 2003, and approved by the Planning Commission on September 8, 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 new 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 the two heritage sized oak trees in the front yard and the heritage sized oak tree in the left side yard for review and approval by the Building Division.

Motion carried 3-2-1, with Commissioners Bims and Soffer opposed, Commissioner Sinnott abstaining, and Commissioner Halleck not in attendance.

Commissioner Pagee confirmed with staff that the applicant still had the option of moving the lightwell into an area that would not encroach into the setback.

- 5. Use Permit/Otolose Fonua/1117 Madera Avenue:** Request for a use permit to construct first and second story additions to an existing single story single-family residence on a lot that is substandard in regard to lot width and area.

Staff Comment: Planner Smith said that the applicants were proposing to remodel and expand an existing single-story residence on a property located at 1117 Madera Avenue. He said that the property was located in the R-1-U zoning district and was substandard in regard to lot width and lot area. He said that the applicants were proposing to expand the existing residence by approximately 1,409 square feet, which would be an increase of approximately 103% in floor area. He noted that since the proposed additions would exceed 50% of the square footage of the existing residence, the project required approval of a use permit for substantial additions to a residence on a substandard lot. He added that Chair Fry had phoned him to point out that the north arrow was missing from the project plans. He said that Hwy. 101 runs east/west and Willow Road runs north/south. He said in relationship to true north that the front of the house faces east, the left side faces south, the rear faces west, and the right side faces north.

Questions of Staff: Commissioner Fergusson asked if the property was in the flood zone. Planner Murphy said that the area in which the residence was located did not have special FEMA requirements.

Public Hearing: Mr. Otolose Fonua said that he and his family had recently bought the house. He said that they have six children and would like to expand the residence. The applicant's assistant, Mr. Thomas, said that he was available for questions.

Commissioner Soffer asked about the parking, noting that there was only one parking space. He asked if there could be another parking space. Mr. Thomas said that there had been no mention of a need for additional parking.

Commissioner Pagee confirmed with staff that the required front setback was 20 feet and that the property has a 29-foot front setback. She asked whether the driveway might be turned in front of the house to allow for more parking. Planner Smith said that potentially there would be enough space to widen the driveway by 10 feet, which would make about half of the front area paved. He noted that the distance from the face of the garage to the street was 40 feet and that there was room for two cars to be parked in front of the garage. Commissioner Pagee suggested to the applicant that they might want to look at increasing the parking because of the size of the family.

Commissioner Fergusson said that she did not understand the parking requirement as the plans indicated a two-car garage. Planner Smith said that the plans were incorrect as there was a one-car garage. He said that the driveway allowed for the parking of two more cars and that potentially the driveway might be expanded for a fourth space.

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

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

Commission Comment: Commissioner Pagee said that she liked how the plan broke up the mass in every elevation and that there was plenty of roof line showing. She said that she was impressed by the level of detail. She said that she was concerned about the one-car garage, but saw options for future parking. She said that the project would be a great improvement to the existing structure and an asset to the neighborhood. Commissioner Sinnott said that she would move approval as recommended by the staff report. Commissioner Pagee indicated that she would second the motion.

Commissioner Fergusson asked about the window treatment and whether they would be simulated true divided light or simulated divided light. Mr. Thomas indicated that it would be based upon what the owner could afford. Commissioner Fergusson asked if the Commission were comfortable giving the applicant the option to install simulated true divided light, simulated divided light or plain glass windows throughout the residence. Commissioner Sinnott, the maker of the motion, was amenable to the suggestion as was Commissioner Pagee, the maker of the second.

Commission Action: M/S Sinnott/Pagee to approve as recommended in the staff report with the following modification.

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 injurious or detrimental to property and improvements in the neighborhood or the general welfare of the City.
3. Approve the use permit request subject to the following conditions:
  - a. Development of the project shall be substantially in conformance with the

plans prepared by J & M Design, consisting of two plan sheets dated received September 2, 2003, and approved by the Planning Commission on September 8, 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. The applicant shall have the option of using simulated divided light, simulated true divided light, or clear panes for the windows throughout the residence.

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

- 6. Use Permit and Architectural Control Review/Carroll Pegeroz for Mid-Peninsula Housing Coalition/1221-1275 and 1317-1385 Willow Road:** Request for a use permit to exceed the maximum allowed fence height by adding a three-foot-tall metal security fence to the top of the existing six-foot-tall masonry block wall along the perimeter of the property and architectural control review of new lighting standards proposed in conjunction with other site improvements at the Gateway Apartments.

Staff Comment: Planner Murphy said that the Mid-Peninsula Housing Coalition, owners, would like to make improvements at both the 1200 and 1300 blocks of the Gateway Apartments on Willow Road that would enhance the sense of community and address the issue of security. He said that the applicant was requesting use permit approval to exceed the maximum allowed fence height to add a three-foot tall metal security fence to the top of an existing six-foot tall masonry block wall and architectural control review for the installation of new security lighting.

Questions of Staff: Chair Fry said that the fence plan seemed to indicate a vertical element and one horizontal piece. Planner Murphy noted page circle-b.13. He said that there were vertical bars that curved backwards and were tied together by one horizontal bar. He said that the height would vary and the maximum height overall was nine feet, noting that the masonry block wall was of different heights. Commissioner Soffer asked if the fence would be at the front or back of the property. Planner Murphy said that the masonry block wall at the front of the property has this feature already and the walls in question were at the rear of the 1200 and 1300 block property and to the right of the 1300 block property. In response to a question from Commission Sinnott, Planner Murphy said that no letters or communications had been received from the neighbors. Planner Murphy said there was a condition of approval to require that the lighting be adjusted to protect the neighbors, but that the fence was considered a positive element to improve security.

Public Hearing: Mr. Bruce Jett, Bruce Jett Associates, landscape architect, displayed diagrams of the wall and the proposed lighting. He said that the security fencing and security lighting were part of a greater effort to make the Gateway Apartments complex a more community oriented project. Mr. Jett said that a flood wall installed in 1986 effectively blocks the project from Willow Road and that police are not able to see into the project. He said that traffic can enter and exit the property quickly which makes the site difficult to secure. He said that on the 1300 block of Willow Road, a gas station was the site of criminal activities and when the police arrived, those persons would run and jump this fence to escape from the police. He said that several of the neighbors have tried to resolve the situation by putting up plywood to protect their property. He said that they thought the community oriented activities, such as the tot play lot would serve the community better in the front, rather than the rear, area. He said that through this process they solved a drive through traffic problem with retractable bollards.

Commissioner Pagee asked if the fencing had been used before and if it was effective. Mr. Jett said that they had met with the police last year to review the issues. In addition, they hired a security company to advise them and that it was felt that this fencing would be effective. She asked if a nine-foot fence was tall enough. Mr. Jett said that both the police and security company indicated that this height would effectively slow down anyone trying to get over it. Commissioner Fergusson said that the tot play lot in the back had a problem with garbage overflowing from a dumpster; she said that the gateway to the community was a dumpster and suggested that the garbage overflow be addressed. Mr. Jett said that the tot play lot was being moved to the front of the complex. He said that he agreed about the garbage and that the dumpsters were located in a public right-of-way. He said that the dumpsters probably could not be moved at this point in the project. Commissioner Fergusson suggested some type of gating around the dumpsters. Mr. Jett said that he would bring that to the owners' attention. Commissioner Bims asked about the bollards. Mr. Jett said that they are retractable. He said that there was concern about emergency access. He said that there are a number of ways that the bollards could be handled and that they would work closely with emergency services to develop the best solution.

Chair Fry asked about the new lighting and how the middle section would be lighted. Mr. Jett said that the middle section would not be lighted; the lighting was for the parking lot area with security cameras to prevent illegal activities in that area.

Commissioner Pagee asked what would prevent the lighting from spilling over into the neighbors' windows beyond the fence. Mr. Jett said that to avoid light spillage over the property line, the light fixture specified had a house light shutoff, which was a shield to prevent light

spillage over the property line. He said that they would work with staff to ensure there was no spillage. Commissioner Pagee asked about the people living in the apartments and the impact of the lighting on them. Mr. Jett said that they would use the house light shutoff also on the side facing the buildings. Commissioner Pagee said that the lights were designed for security to keep the parking lot illuminated. Mr. Jett said that also if someone was trying to get over the fence, the police would be able to see the person.

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

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

Commission Comment: Chair Fry said that finding 3.d in the recommendations said that adequate parking should be provided. She said that the Commission did not have information on the parking. Planner Murphy said that parking was a requirement of architectural control.

Chair Fry recognized Ms. Boa-Tran Troung, the project manager for the Gateway Apartments; she said that they were proposing a one-to-one replacement for the parking so that there would be no loss of parking.

Commission Action: M/S Sinnott/Soffer 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 findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed fence extension 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. Adopt findings, as per Section 16.68.020 of the Zoning Ordinance, regarding architectural control approval for the lighting:
  - a. The general appearance and scale of the lighting is in keeping with the residential character of the existing development in the neighborhood;
  - b. The lighting will not be detrimental to the harmonious and orderly growth of the City;
  - c. The lighting will not impair the desirability of investment or occupation in the neighborhood; and
  - d. The development provides adequate parking as required in all applicable City ordinances, and has made adequate provisions for access to such parking. Furthermore, the lighting assists in making the parking areas more secure.
4. Approve the use permit and architectural control subject to the following conditions:

- a. Development of the project shall be substantially in conformance with the plans prepared by Bruce Jett Associates, consisting of 15 plan sheets dated August 29, 2003, and approved by the Planning Commission on September 8, 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 building permit issuance, the applicant shall submit a revised lighting and photometric plan showing that the on site lighting will create 1.0 candlefoot or less of light bleeding off of the subject property. This revised plan shall be submitted for the review and approval of the Planning Division.

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

**7. Use Permit Extension/Mary Gebhardt for Alain Pinel Realtors/620 Santa Cruz Avenue:** Request for a use permit extension to allow a real estate office to continue to operate in a building located in the C-3 zoning district.

Staff Comment: Planner Smith said that the applicant, Alain Pinel Realtors, was the current occupant of 5,774 square feet of a 6,424 square foot, two-story building located at 620 Santa Cruz Avenue. He said that the remaining 650 square feet were occupied on the ground floor by the Menlo Café along the Santa Cruz Avenue frontage. He noted that in the C-3 Zoning District, retail stores were the only permitted uses and a real estate office was a conditionally permitted use. He said that the applicant was requesting an extension of a previously approved use permit for an additional five (5) years, extending the use permit to February 7, 2009.

Questions of Staff: Chair Fry asked how the \$2.00 per square foot per year in lieu of sales tax was determined. Planner Smith said that it was unclear how it was originally established, but that there was another property that had an in-lieu fee requirement that was based on the consumer price index.

Public Hearing: Ms. Mary Gebhardt, Alain Pinel Realtors, said that she believed that all of the merchants have benefited from the presence of Alain Pinel Realtors in that area. She asked that the Commission extend the use permit.

Ms. Jenny Jen, the owner of Menlo Café, said that seven years ago the Commission gave her the chance to have her business in Menlo Park. She said that she loves the community. Commissioner Fry said that her business was popular and asked if she had thought of expanding. Ms. Chen said that not at this time.

Commissioner Fergusson asked how much Alain Pinel Realtors paid the City for its business license fee. Ms. Gebhardt indicated that she did not know. Planner Smith said that the in-lieu fee paid by the business for the last five years was \$32,820.

Chair Fry asked if they have tried to rent the space for retail. Mr. Walter Harrington, property owner, said that economic times are difficult. He said that he was happy to be able to bring businesses like Stacks and Menlo Café to Menlo Park. He said that he asked their support for this request. Commissioner Soffer asked the lease length for Alain Pinel Realtors. Mr. Harrington said that the original lease was for 10 years with an option to renew for 10 years.

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

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

Commission Comment: Commissioner Fergusson moved to approve per the staff's recommendation and Commissioner Sinnott seconded the motion. Chair Fry suggested a friendly amendment that condition "e" be linked to the consumer price index. The friendly amendment was agreeable to both the maker of the motion and second.

Commission Action: M/S Fergusson/Sinnott to approve as recommended in the staff report with the following modification.

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 uses 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 uses, and will not be detrimental to property and improvements in the neighborhood or the general welfare of the City.
3. Approve the use permit to operate a real estate sales office located in a building at 620 Santa Cruz Avenue for an additional five years, subject to the following conditions:
  - a. The 650 square feet fronting Santa Cruz Avenue, defined as the "front space," shall be utilized for retail purposes only throughout the term of the Use Permit.
  - b. The Use Permit shall only be valid so long as the front space is utilized for retail purposes.
  - c. In the event that the front space is not utilized for retail purposes for a continuous period of six (6) months, the Use Permit shall be subject to revocation.
  - d. During any time that the front space is not open for business and operating as a retail use, the property owner shall pay to the City an in-lieu fee of four dollars (\$4.00) per square foot per year, pro-rated for such vacancy period.



- e. During the period of the Use Permit, the applicant or property owner shall pay a fee (plus a yearly Business License fee) to the City in lieu of sales tax for the ground floor area occupied by the applicant. The fee for the first year (base year) shall be \$2.00 per square foot. The fee for each year thereafter shall be adjusted annually according to the percentage change in the All Urban Consumer Price Index (CPI) for the San Francisco-Oakland-San Jose area.
- f. The Use Permit shall be for five years only and shall automatically expire at the end of five years at which time the entire first floor shall be occupied as retail use unless the City approves an extension of the Use Permit at that time.
- g. The retail tenant shall be allowed to utilize the exterior area in front of the entire Santa Cruz Avenue square footage, including the recessed area if desired by the tenant.

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

Chair Fry confirmed that the consideration of the minutes of the August 25, 2003 Planning Commission meeting would be moved to a future meeting.

#### **D. REGULAR BUSINESS**

There was none.

#### **ADJOURNMENT**

The meeting adjourned at 11: 34 p.m.

Staff Liaison: Justin Murphy, Principal Planner

Prepared by: Brenda Bennett, Recording Secretary

Approved by Planning Commission on April 5, 2004.