



## **MENLO PARK PLANNING COMMISSION MINUTES**

**Regular Meeting**

**October 27, 2003**

**7:00 p.m.**

**City Council Chambers**

**801 Laurel Street, Menlo Park, CA 94025**

**CALL TO ORDER – 7:04 p.m.**

**ROLL CALL** – Fergusson, Fry (Chair), Halleck (Vice-chair), Pagee (arrived at 7:22 p.m.), Sinnott, Soffer present; Bims absent

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

### **A. PUBLIC COMMENTS**

There were none.

### **B. CONSENT**

Chair Fry suggested that consideration of the minutes, items 1-3, be taken at the end of Regular Business. Chair Fry asked if anyone present in the audience wanted to comment on any consent items. It was indicated that consent item B.4 be pulled from the consent calendar.

Planner Smith commented on item B.5 1027 Santa Cruz Avenue that staff had worked with the applicant and the side of the garage was now expanded by the additional eight-inches which created three conforming parking spaces and that the project was in compliance with lot coverage and all other regulations.

- 1. Consideration of the minutes of the September 29, 2003 Planning Commission meeting.**
- 2. Consideration of the excerpts of the September 8, 2003 Planning Commission meeting for 1923, 1927 and 1929 Menalto Avenue.**
- 3. Consideration of the excerpts of the July 21, 2003 Planning Commission meeting for 849-851 Cambridge Avenue.**

Consideration of consent items 1-3 was moved to the end of the Regular Business.

- 4. 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 on-sale beer and wine for La Hacienda Market at 1933 Menalto Avenue.

Consideration of this item was pulled from the consent calendar.

- 5. Architectural Control/Randy Ferrando/1027 Santa Cruz Avenue:** Request for architectural control approval for the construction of an attached three-car garage in the R-3 zoning district.

Commission Action: M/S Halleck/Sinnott to approve as recommended in the staff report with the following change as per staff's comment at the beginning of the discussion for the consent agenda.

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 16.68.020 of the Zoning Ordinance, regarding architectural control approval:
  - a. The general appearance of the proposed addition is in keeping with the character of the neighborhood.
  - b. The development will not be detrimental to the harmonious and orderly growth of the City.
  - c. The development will not impair the desirability of investment or occupation in the neighborhood.
  - d. The development provides adequate parking as required in all applicable City ordinances and has made adequate provisions for access to such parking.
3. Approve the architectural control subject to the following conditions:
  - a. Development of the project shall be substantially in conformance with the plan prepared by Dan Adams, received by the Planning Division on October 10, 2003, consisting of one plan sheet and approved by the Planning Commission on October 27, 2003, except as modified by the conditions contained herein.
  - b. Prior to building permit issuance, the applicant shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies' regulations that are directly applicable to the project.
  - c. Prior to building permit issuance, the applicant shall comply with all requirements of the Building Division, Transportation Division, and Engineering Division that are directly applicable to the new construction.
  - d. Prior to building permit issuance, the applicant shall remove the illegal temporary tent structure located in the right rear corner of the property.
  - e. Prior to building permit issuance, the applicant shall revise the project plans to comply with the recommendations in the arborist report prepared by Henry Ardan, including using a pier and grade beam foundation for the garage addition.

- f. Prior to building permit issuance, the applicant shall submit revised plans indicating that the proposed three-car garage will maintain minimum interior clear dimensions of 30 feet in width and 20 feet in depth subject to review and approval of Planning staff.

Motion carried 5-0, with Commissioners Bims and Pagee not in attendance.

- 6. Architectural Control Review/Gary Ahern/325 Sharon Park Drive:** Request for architectural control review for changes to a storefront in Building B of the Sharon Heights Shopping Center.

Commission Action: M/S Halleck/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 the following findings, as per Section 16.68.020 of the Zoning Ordinance, regarding architectural control approval:
  - a. The general appearance of the structure and the addition is in keeping with the character of the neighborhood.
  - b. The development will not be detrimental to the harmonious and orderly growth of the City.
  - c. The development will not impair the desirability of investment or occupation in the neighborhood.
  - d. The development provides adequate parking as required in all applicable City ordinances and has made adequate provisions for access to such parking.
3. Approve the architectural control review subject to the following conditions:
  - a. Development of the project shall be substantially in conformance with the plans prepared by Focal Point Design, received by the Planning Division on October 7, 2003, consisting of one plan sheets and approved by the Planning Commission on October 27, 2003, except as modified by the conditions contained herein.
  - b. Prior to building permit issuance, the applicant shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies' regulations that are directly applicable to the project.
  - c. Prior to building permit issuance, the applicant shall comply with all requirements of the Building Division, Transportation Division, and Engineering Division that are directly applicable to the new construction.

Motion carried 5-0, with Commissioners Bims and Pagee not in attendance.

- 4. 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 on-sale beer and wine for La Hacienda Market at 1933 Menalto Avenue.

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

Commissioner Soffer asked Director Heineck if she would like to comment on the item. Director Heineck said that this item was similar to several other ABC transfers that had come before the Commission. She said that this was an ABC transfer of license and that the ABC had the authority to decide whether or not to issue the transfer of license. She said that in this instance a partner was being added to the ownership business. She said that State law provided that the local jurisdiction was allowed an opportunity to comment on to whether it suggested that additional conditions be appended to the ABC license. She said that there were very specific provisions under which that recommendation of conditions might be done. She said that it required the identification of problems supported with substantial and specific evidence related to the sale of alcohol. She said examples included drinking in the parking lots but not based on things common to the general operation of the business. She said that if there was substantial evidence of problems with the sale of alcohol and the Commission had identified those, then the Commission could also identify specific conditions that would recommend to the ABC. She said that those conditions must directly mitigate the identified problems caused by the sale of alcohol. She said that once the Commission had made a recommendation to the ABC, the ABC had the authority as to whether or not to accept those conditions and recommendations and attach them to the license; or ABC might make a determination that there was not substantial evidence and would issue the transfer without any additional conditions. She said that Police Chief Chris Boyd was present.

Commissioner Soffer asked why the ABC needed to issue permits. Director Heineck said that it was State law codified in the Business and Professions State Code that gave the ABC this authority over licenses for alcohol and that presumably it was for the welfare of the people. Commissioner Soffer asked if there was a use permit tie-in with an ABC transfer. Director Heineck said that some alcohol licenses existed before the City's regulation for a use permit. She said that this review of a license transfer was unrelated to the use permit process.

Commissioner Soffer asked about the Speedy Mart on Hamilton Avenue and why the Commission had not been able to comment on that ABC transfer. Director Heineck said that use was grandfathered in and that it was a recent change in State law in ABC's procedures that allowed cities to comment. She said that this law did not exist when Speedy Mart was in existence. Commissioner Soffer asked what recourse the City would have in the future if problems developed. Director Heineck said that enforcement of the license was up to ABC but if the use created nuisances and other problems there were other mechanisms that the City could look at using. Commissioner Soffer asked if it would be the City or the neighbors that would contact ABC. Director Heineck said that presumably the neighbors would be contacting ABC. She said that in other instances neighbors had contacted the ABC and the ABC in respect to the neighbors' concerns did not grant a license. She said that that business as a result worked with the neighbors on their concerns and eventually was able to get a license.

Commissioner Sinnott asked what the Commission could discuss under the consideration of this item, noting that issues regarding circulation and parking had been raised. Director Heineck said that the Commission could only discuss issues directly related to the sale of alcohol. She

said that the discussion would center on whether those other issues were directly related to the sale of alcohol and not related to the normal operations of the business.

Commissioner Halleck said that the letters received talked about aesthetics, architecture and window treatment and that the Commission would not be able to address those issues at this time. He asked what specific conditions would be attached if there were identifiable problems. Director Heineck said that they had no examples from Menlo Park or other cities of when conditions were appended to an ABC license. Commissioner Halleck asked if Chief Boyd would talk about the history of any issues related to the subject market, including an armed robbery that had occurred there.

Chief Boyd said that over the past year there had been 66 incidents at the subject market. He said that incidents were defined as the police were called or an officer was dispatched. He said that 21 of those calls were prank 911 calls from the payphone at the subject property. He said that there were 44 other calls that were for a variety of things, such as fraud reports related to the subject market's check cashing business. He said other incidents included traffic and pedestrian stops, as well as the report of suspicious vehicles by residents. He said that there was an armed robbery about three weeks ago at the subject market and this was still under investigation. He said that there have been a number of armed robberies similar to this one on the peninsula recently and that was one line of investigation being pursued. Commissioner Halleck asked if the police activity described was typical of what was seen in Menlo Park for other markets. Chief Boyd said that there were a number of markets in Menlo Park and a number of the incidents were typical. He said that the volume of calls was higher at the subject market than at some other markets, but there were other businesses located at the site as well. He said that there were other similar businesses that had greater problems. Commissioner Halleck asked if there were businesses that have alcohol sales that could be compared with this business. Chief Boyd said that there were two similar businesses in the Belle Haven area and several more on El Camino Real. He said some were strictly in residential areas and some not. Commissioner Halleck asked if those similar businesses had ever experienced armed robbery. Chief Boyd said that at one time or another each of those markets had experienced armed robbery. Commissioner Halleck said that it did not seem that there was substantial evidence of problems regarding alcohol sales at the subject property. Chief Boyd said that none of the calls received over the past year were specifically related to alcohol sales. Commissioner Halleck asked if the Chief knew of any conditions that were imposed by the ABC. Chief Boyd said that he did not. Director Heineck said that the use permit for the market at 812 Willow Road had contained specific conditions about the size of containers for alcohol, the type and the percentage of alcohol that might be sold as well as specific hours. She said that those conditions came from the City and ABC supported them. Commissioner Halleck asked if Chief Boyd saw anything that the Commission might do under this item that would provide benefit to the City. Chief Boyd said that this transfer of a license to a third owner did not in itself call for any actions or conditions.

Chair Fry said that there were several letters from neighbors who provided anecdotal examples of problems with alcohol consumption in the neighborhood, which they attributed to the subject market. She asked Chief Boyd if the police (or code enforcement) were typically called regarding these type of incidents. Chief Boyd said that typically they would be called, but he did not see in the report before him that any of the calls were related to alcohol. He said that he would not say that it never happened, but that the neighbors in that area were responsive in calling the police. Chair Fry said that some of the letters indicated that they had called the police but were not aware if there had been a response. Chief Boyd asked for examples.

Chair Fry said that there were examples cited of people drinking beer in the parking lot and tossing empty alcohol bottles on the ground and public urination in the alleyway. Chief Boyd said there were several instances of general disturbance under which those incidents might fall. Commissioner Soffer asked whether external surveillance was something the police used for businesses that had problems associated with their operation. Chief Boyd said that the City might use surveillance but that it depended on the activity. He said that public drinking and drunken driving were best controlled by patrol officers. He said that narcotics trafficking was different and the police routinely did surveillance for that. Commissioner Soffer asked if it were video surveillance. Chief Boyd said that it was not, that generally it was done with officers and undercover vehicles.

Commissioner Pagee said that she had heard from people in the area around the subject market that there had been an increase in debris on the ground from people using the subject market, including beverage containers, and asked whether the problem was controlled if individual containers were not sold. Chief Boyd acknowledged that there were more complaints recently about debris, but that he was not familiar with what ABC could do to control that. Director Heineck said that she was not completely familiar with what ABC could or could not do, but she believed that ABC could impose conditions similar to what Commissioner Pagee was suggesting. Commissioner Pagee asked if that would be the Commission's recommendation or ABC's recommendation. Director Heineck said that the local jurisdiction was able to comment on the license transfer if a specific problem associated directly with the sale of alcohol was identified. She said that there had to be specific evidence that supported the statement of that problem. She said that the City could then identify conditions, but those conditions must specifically mitigate the problem that had been identified. Director Heineck said that ultimately the ABC would make the decision that the evidence the City provided was substantial enough to warrant the conditions. She said that ABC had the ability to find that there was not substantial evidence and transfer the license. Commissioner Pagee asked if the property owners of nearby properties should take photographs of people buying liquor at the market and tossing the containers or of people urinating in the alleyway. Director Heineck said that neighbors have the ability to contact ABC directly and comment on the transfer of license application. Commissioner Pagee asked when the Commission's last opportunity to approve the transfer would be. Director Heineck said that the Commission was not approving the license transfer but rather had the opportunity to provide comments and recommended conditions to the ABC. She said that this evening's meeting was the Commission's last opportunity to do that. Director Heineck said the City had only 30 days to comment from the date the application was received.

Commissioner Pagee asked if there were problems with the sale of alcohol at the markets at Willow and Gilbert and Willow and Durham. Chief Boyd said that the police get calls for all of the markets in Menlo Park similar to those received for the subject market, but some for much more severe problems than the subject market. He said that as far as the type of alcohol sold by the subject market it was similar to all of the markets. Commissioner Pagee commented that perhaps the problems were more severe at the subject market because of its close proximity to residences. Chief Boyd said that there were at least two markets in the Belle Haven area that were in residential areas. Commissioner Pagee asked what the neighbors in Belle Haven had been able to do to address the problems they have. Chief Boyd said that the set of problems in the Belle Haven area were different and more severe, mostly associated with narcotics trafficking. He said that the police have taken an aggressive approach for that problem. He said in that area the police saw many more homeless people, intoxicated and loitering in the parking lots all day and night. He said that they have seen people driving to and from those

markets intoxicated. He said that those activities added to narcotic trafficking created a severe problem; he said that the police did not see that severity of problems at the subject market.

Commissioner Soffer said that he visited the subject market and saw someone selling CD's in front of it. He asked if that was permitted. Director Heineck said that people were not allowed to sit on a City sidewalk and sell merchandise without City approval.

Mr. Geraldo Chavez, CFO for the corporation for which the license was to be transferred to, said that it was not an added partnership, rather that the owner was the President of the corporation, and the license was to be transferred from sole proprietorship to the corporation. He said that the transfer would not add any additional owners. He said that he was aware of the neighbors' issues and that the owners have worked on these issues and had plans make more improvements. He noted however that the request was for a license transfer. Chair Fry asked how the owner has engaged in discussions with the neighborhood. Mr. Chavez said that he tried to attend every community meeting held at one of the local businesses. He said that the neighbors voiced their concerns and the owners would respond to those concerns. He said that the owners try their best to address every single concern as much as they are able. Commissioner Soffer asked how often Mr. Chavez was at the store. Mr. Chavez indicated that he visited the store twice a week, spending a couple of hours there.

Ms. Laure Laprais, Menlo Park, said that the market provided various services such as takeout food, jewelry sales and a cash checking business. She wondered if the transfer would increase the sale of alcohol. She said that she supported mitigating conditions and she expected the market to come up with solutions for the trash on the ground from the market to Elm Street on Menalto Avenue and on Oak and Gilbert Street. She said that the owner indicated that they had plans for the future. She said that she had attended several community meetings and had not seen the owners present. She said that she was concerned about the sale of alcohol and what would happen with the beer and wine containers. She would like the Commission to support conditions and perhaps to review the operations in a year.

Ms. Mary Charlans, Menlo Park, said that she agreed with Ms. Laprais. She wondered how often the police drove by and whether they would do stop in to check on vendors who she suspected were selling merchandise illegally. She said that she had witnessed public drunkenness there often and the noise ordinance was repeatedly broken by activities there. She indicated that she had called the police on those matters often. She said that alcohol tended to be a higher price item and that greater revenue might make the market a more desirable target for robbery. She questioned what the real statistics for this market regarding police incidents was compared to other markets in Menlo Park. She said that she would like to have time to mobilize the community and bring their concerns back to the Commission. She said that she would like an extended review period.

Commissioner Halleck asked how long the ABC license lasted. Director Heineck said that there was no time limit on the license. Commissioner Halleck asked if there was anything that the Commission could do to extend the review period for the license. Director Heineck said that would not occur unless the ABC received a request for a different transfer of license. Commissioner Halleck asked if the license could be revoked once it was transferred. Director Heineck said that the ABC could revoke the license but that the City would not have another opportunity to comment. She said that through ABC's own enforcement mechanisms the license was monitored. Commissioner Halleck confirmed that the City's comment period could not be extended.

Commissioner Soffer said that the item was very narrow in scope. He said that the owners were transferring the license from a sole proprietorship to a corporation and that there had not been substantial evidence that there were problems directly attributable to the sale of alcohol. He moved to approve as recommended in the staff report. He said that he agreed with the neighbors' concerns and suggestions and he encouraged them to seek solutions and implementations through the use permit process. Commissioner Sinnott said that she would second the motion and encouraged the neighbors to keep communicating with the owners and police and the owners to keep communicating with the neighborhood. Chair Fry said that the recommendation indicated that the Commission had determined that there were no problems associated with the sale of alcohol. She said that she had heard that there were problems. She suggested that they should comment on those issues, provide what evidence they had, and suggest mitigating conditions. Commissioner Halleck said that a condition might include the size of the containers and the hours of operation.

The Commission discussed conditions, including the size of alcohol containers; hours of operation, for the corporate officials to spend more time at the site to witness the dumping of bottles, public drunkenness and urination; for the corporation to work with the neighbors and police on the problems; and signage that the consumption of alcohol was not allowed on the premises outside the market and in the alleyway. Director Heineck asked what the supporting evidence would be. Chair Fry indicated the letters from the neighbors. Director Heineck said that in Chief Boyd's comments that he stated that the police calls received for the market could not be specifically connected to the sale of alcohol. Commissioner Pagee asked Chief Boyd what he would recommend the neighbors do to provide evidence of drunken individuals urinating publicly and dumping alcohol containers in the parking lot, streets and alley. Chief Boyd said that the residents should call the police every time they witnessed such things and to get descriptions of the individuals and the license plate numbers. He said that the police response on the average was within four minutes. He said that the police would welcome the opportunity to deal with these problems and have a record of the problems. Chair Fry asked if police procedure for complaint calls relating to rowdiness included a determination as to whether alcohol was involved. Chief Boyd said that the standard procedure for calls related to fighting, arguments and excessive noise was the preparation of a report that would note that alcohol was involved. He said that it was important that the involved officers understand all of the issues.

Chair Fry said that she would like to make a substitute motion to determine that there were problems, provide the letters as evidence, and recommend mitigating conditions. Director Heineck reviewed the conditions that had been mentioned. She said that one was that there be no single size alcohol containers sold; the second was that the owners spend more time at the site. She asked if there was a specific recommendation for the number of hours that the owners would be at the site, but she noted that this condition would probably not be enforceable by ABC because of the randomness of ABC's inspection. She said that the third condition was the installation of signage prohibiting alcohol consumption on the premises and the fourth condition was limiting the hours of alcohol sales. She suggested for the last that the Commission specify the hours.

Commissioner Soffer asked if the owners could address the time they spend at the store and the hours of operation. Mr. Ramio Chavez said that he comes to the store everyday and spends six to eight hours there. He said that he had not ever seen people drinking on the parking lot and there was a video surveillance camera on the parking lot. He said that the hours



of operation are 7 a.m. to 9 p.m., seven days a week. Mr. Chavez said that the video camera had a computer recorder and that he did not have signs that the premises had video surveillance. He said that he did not sell individual containers of beer.

Commissioner Sinnott said that the conditions were good efforts but she was unsure what they would change. She said that the most important thing was communication among the owners, the neighbors, and police. Chair Fry noted that her substituted motion had died for the lack of a second.

Commission Action: M/S Soffer/Sinnott to approve as recommended in the staff report to make a determination, as per Section 23800(e) of the State Business and Professions Code, pertaining to the granting of an application for a transfer of an Alcoholic Beverage Control license to: 1) Michoacan Super Inc., 1933 Menalto Avenue, that no evidence has been presented that suggests that there are problems associated with alcohol consumption or sales at or in the general vicinity of the businesses, and that the granting of the applications is appropriate.

Motion carried 4-0-1 with Commissioner Pagee abstaining, Commissioner Fergusson recused, and Commissioner Bims not in attendance.

### **C. PUBLIC HEARING**

- 1. Use Permit/Lisa Anter/1800 El Camino Real:** Request for a use permit for a private recreational use (health and fitness center) on a property that is non-conforming in regard to parking.

Staff Comment: Planner Thompson said that the applicant was proposing to locate Curves, a fitness and weight loss facility for women, in the existing building at 1800 El Camino Real. She said that Curves was considered a private recreational use and required approval of a use permit. She said that the subject site was nonconforming in regard to parking. She noted one change to the staff report - under condition "d" the expiration date should read 2007 rather than 2003.

Questions of Staff: Chair Fry asked about the third bullet under condition "d" that indicated exercise equipment and asked how large equipment was. Staff confirmed that it was large exercise equipment. Commissioner Fergusson confirmed with staff that the applicant would have to provide specifications for the exercise equipment and wall modification to the Building Division for their review.

Public Comment: Ms. Lisa Anter, the business owner and a resident of Menlo Park, said that Curves would fit well into the community by being affordable, supportive, and a unique women's fitness center. She said that Curve's philosophy was that the members would support each other. She said that the routine was 30 minutes done three times a week. She said that routine would fit well into the busy woman's schedule.

Chair Fry said that there would be no more than 12 pieces of equipment on site and that clients were limited to one workout per day. She asked if that was limiting for the business. Ms. Anter said that the business would start with eight pieces of large equipment. She said that 12 pieces of the large equipment was not a constraint and suggested that the condition specify large equipment. In response to questions from Commissioner Soffer, Ms. Anter said that there was

a branch in Palo Alto and Los Altos and that Curves was the largest fitness franchise in the world. She said that they provide barebones circuit training and there were no showers or childcare.

Mr. John Matthews, the architect for the project and a resident of Palo Alto, said that there was only one condition that they were concerned with and that was 3.d related to the renewal of the use permit. He asked why a renewal was necessary as the lease was for four years with an option to renew for four years and the franchise license was for 10 years. He proposed that as long as the applicant conformed to the conditions of the use permit that was sufficient and review and renewal were unnecessary.

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

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

Commission Comment: Commissioner Soffer said that regarding the applicant's request to extend the use permit that he agreed with staff because there were three or four other businesses located there and that the parking was very much under the required 40 spaces required. Commissioner Soffer moved to approve as recommended by staff. Commissioner Halleck seconded the motion.

Commissioner Fergusson asked staff about the complaints made about parking on Buckthorn Way. Planner Murphy said that a few years ago that one of the tenants' parking overflowed onto Buckthorn way and residents complained. Chair Fry asked about the parking demand. Planner Murphy said that the previous tenant had had seven employees and this use could have more people on site than seven, thus staff recommended a condition to limit the timeframe tied to the lease.

Mr. Matthews said that they did not think this was a fair comparison as the previous tenant had seven employees on the second floor and twenty employees on the first floor.

Commissioner Sinnott asked if the four-year renewal of the use permit required a new application and payment of application fee. Planner Murphy said that the condition stated that the use permit would expire in four years, but that the Commission could specify that the use permit could come back for review or it could roll over if there were no complaints received. Planner Murphy said that the use permit could be granted in perpetuity or it could be tied to the 10-year franchise license. Commissioner Sinnott asked for an amendment to the motion to allow the use permit to roll over for an additional four years if there were no complaints. Commissioner Soffer said that the permit had to come back for review because of the notification process. Planner Murphy said that the Commission through its conditions could state that there would be notification of property owners within 300-feet when the use permit would renew automatically. Commissioner Soffer said that eliminating the use permit application fee would impact the City's budget. Commissioner Fergusson said that she was concerned that a noticing process would take staff time without recompense. Planner Murphy said that if the Commission imposed the condition described by Commissioner Sinnott there might not be a way for the City to recover its costs unless the permit expired. Commissioner Soffer asked why the staff had recommended a four-year review of the use permit. Planner Murphy said that was based on the nonconforming parking, that the building was multi-tenanted, there was a blanket use permit for one space, and there had been neighbor complaints about

overflow parking in the past. He said that staff had made a best effort to create conditions that prevented problems with parking and reflected what the applicant required for the business.

Commissioner Soffer said that he agreed with staff's recommendation and called for the vote. Chair Fry said that staff had also recommended that the word "large" be added before "equipment" and that the expiration date should be change to 2007.

Commission Action: M/S Soffer/Halleck to approve as recommended in the staff report with the following changes.

1. Adopt a finding that the project is categorically exempt under Class 1 of the current State CEQA Guidelines and the City of Menlo Park Environmental Review and Implementing Procedures.
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 John A. Matthews, consisting of two plan sheets, dated September 8, 2003 and approved by the Planning Commission on October 27, 2003 except as modified by the conditions contained herein.
  - b. Prior to building permit issuance, the applicant shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the new construction.
  - c. All new signage is subject to review and approval by the Planning Division prior to sign installation.
  - d. The approval shall expire on October 27, 2007, four years from the date of the Planning Commission approval, subject to the following restrictions:
    - No more than two workers shall be on the site at any one time during normal business operations;
    - No more than ten clients shall be on the site at any one time during normal business operations;
    - No more than 12 pieces of large exercise equipment shall be on the site available for clients;
    - Workouts shall be limited to one 30-minute session per client per day;

- Hours of operation shall be limited to 7:00 a.m. to 1:00 p.m. and 4:00 p.m. to 7:00 p.m. Monday through Thursday and until 6:00 p.m. on Friday, 8:00 a.m. to 11:00 a.m. on Saturday, and closed on Sunday.

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

2. **Use Permit/Jing Quan/20 Kelly Court:** Request for a use permit to construct a mezzanine of approximately 1,384 square feet and modify the mix of office, assembly and warehouse uses on the existing first floor of a building in the M-2 zoning district and a use permit for the storage and use of hazardous materials on the property.

This item was continued to the regular meeting of November 17, 2003 prior to the October 27, 2003 meeting.

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

1. **Architectural Control/Montgomery Anderson/75 Arbor Road:** Request for architectural control review to modify an existing fence, by replacing a portion of the fence with a new fence segment approximately five feet from the front property line (approximately four feet closer to the front property line than the existing fence) to screen a main switchboard panel adjacent to Arbor Road.

Staff Comment: Planner Cramer said that the applicant was requesting architectural control approval to modify an existing fence by replacing a portion of the fence with a new fence segment which would result in the fence being located approximately four feet closer to the front property line than the existing fence. She said that Section 7.3 of the Allied Arts Guild Preservation Permit, Minor Alterations, stated that alterations that were not substantially in conformance with the project plans, but adhered to all of the development regulations, shall be processed through architectural control. She said that in this instance, the replacement of the existing fence would be visible from Arbor Road and was considered a substantial change. She said that staff had worked with the applicant to accommodate their needs and found the proposal to be appropriate. She said that staff had not received any calls or comments on the project and recommended approval.

Public Comment: Mr. Monty Anderson, principal with Cody Anderson and Wasney Architects, said that the project was underway. He said the proposal was to relocate the main switch panel and run new electrical service from Arbor Road. He indicated that the relocation was necessary to avoid disruption to a dense group of redwood and heritage trees. He said that it also appeared that decorative paving, which they were trying to preserve, would be impacted. He and the project manager found what they considered to be a better location for the main switch panel in an area near the entrance to the Arbor Road parking lot. He said that if the fence was brought forward they had space to install the equipment and trenching would be done through a paved asphalt area and would not impact any of trees or pavers on the site. He said that they could mitigate the effect of moving the fence closer to Arbor Road through modifications to the Arbor Road landscaping plan.

Commissioner Soffer confirmed with Mr. Anderson that the utilities would be underground and that the panel was not a transformer. Commissioner Halleck said that he had not seen a landscaping plan and asked if the plan would include irrigation. He asked about the existing sidewalk in front of the proposed location of the fence segment. Ms. Hinton said that they were

being required to replace the sidewalks. In response to a question from Commissioner Halleck, Mr. Anderson said that the distance for landscaping between the proposed fence and new sidewalks would be four to five feet. Ms. Hinton confirmed that there would be an irrigation system there. Chair Fry said that the fence seemed to be on the edge of the driveway and asked whether the fence might be angled in away from the driveway. Mr. Anderson said that they had studied that issue and they could bring the fence in two feet so that the landscaping could continue along that strip. Chair Fry asked also that the vegetation be kept at three feet as she was concerned about visibility. Mr. Anderson said that the driveway was only for entrance. Chair Fry said that allayed her concerns.

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

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

Commission Comment: Commissioner Pagee moved to approve as recommended in the staff report and Commissioner Soffer seconded the motion. Chair Fry asked to amend the motion to include moving in the fence along the driveway. Commissioners Pagee and Soffer accepted the amendment. Commissioner Halleck requested an amendment under item 3.d to state that the landscaping plan included an irrigation plan. Commissioners Pagee and Soffer accepted that amendment.

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

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 16.68.020 of the Zoning Ordinance, regarding architectural control approval:
  - a. The general appearance of the proposed addition is in keeping with the character of the neighborhood.
  - b. The development will not be detrimental to the harmonious and orderly growth of the City.
  - c. The development will not impair the desirability of investment or occupation in the neighborhood.
  - d. The development provides adequate parking as required in all applicable City ordinances and has made adequate provisions for access to such parking.
3. Approve the architectural control subject to the following conditions:
  - a. Development of the project shall be substantially in conformance with the plan prepared by Cody Anderson and Wasney, received by the Planning Division on October 6, 2003, consisting of two plan sheets and approved by the Planning Commission on October 27, 2003, except as modified by the conditions contained herein.

- b. Prior to building permit issuance, the applicant shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies' regulations that are directly applicable to the project.
- c. Prior to building permit issuance, the applicant shall comply with all requirements of the Building Division, Transportation Division, and Engineering Division that are directly applicable to the new construction.
- d. Prior to installation of new landscaping, the applicant shall submit a revision to the landscape and irrigation plan to identify the species and size of shrubs to be installed between the new fence and front property line for review and approval by the Planning Division.
- e. The applicant shall construct a six-foot long extension of the fence that is no more than two feet from the left side of the panel. The fence extension shall match the proposed fence in regard to height and materials.
- f. Prior to building permit issuance, the applicant shall submit revised plans showing a two-foot setback from the proposed fence to the driveway and a corresponding adjustment to the placement of the electrical switch panel subject to review and approval by Planning staff.

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

**2. Sign Review & Architectural Control/Ron DuHamel/495 El Camino Real:**

Request for sign approval for new and replacement signs, including a 16-foot tall freestanding sign, containing the colors yellow and red, and approval of architectural control for changes to the two pump island canopies.

Staff Comment: Planner Smith said that the project site was located at 495 El Camino Real in the C-4 zoning district at the corner of El Camino Real and Middle Road. He said that the site was developed with a Shell service station and the applicant was proposing exterior modifications to the building and canopies to modernize and update the appearance of the site, which required architectural control approval. He said that the applicant also was proposing to modify the signage on the site, including replacing the freestanding sign on the corner as well as replacing or modifying the signage on the canopies, the main building and the pump islands. He said that the proposed signs contained the colors red and yellow, which were listed as discouraged sign elements in the Design Guidelines for Signs. He said that the signs required Planning Commission review of a sign permit. He said that the pole sign was being replaced by a monument sign that was over eight-feet in height, which also required Planning Commission review.

Questions of Staff: Commissioners Fergusson, Halleck and Pagee noted that they had not received the large plans. Commissioner Soffer asked why the Commission was seeing so many applications for gas stations. Planner Smith said that this application was not typical of the other service stations applications that the Planning Commission had seen recently, or would see in the near future, as the applicant was not upgrading the infrastructure but modernizing and standardizing the appearance. Planner Smith said that the applicant was present and had display boards.

Public Comment: Ms. Haleh Mousavi, ARC Inc. Architects, apologized that the plans were received late as she sent them overnight before noon on the previous Friday. She said that this was Shell's international program for all of its facilities and the proposal was to paint the building white with a 12-inch band of gray on the bottom. She said that the service center was gray and that they proposed to add fascia to the canopy. She said that they were proposing to combine all of the signs into one sign.

Chair Fry asked if the monument sign would be the same size as that at Valparaiso Avenue and El Camino Real. Ms. Mousavi said that it was the same size. Chair Fry asked where the sign would be located as it was not shown on the plans. Ms. Mousavi said that it would be located perpendicular to El Camino Real. Chair Fry said that the red on the fascia over the pumps at another Shell station was not illuminated, but this one was proposed to be. Ms. Mousavi said that Planner Smith had indicated that feature might cause concern. She said that she had gotten approval from Shell to replace the illuminated bar with a red detail band on the canopy if the Commission would prefer that. In response to Chair Fry, Ms. Mousavi said that Shell was proposing to replace all of the hat-shaped roofs with flat roof. Commissioner Pagee asked if the canopy would be replaced or remodeled. Ms. Mousavi said that it would be remodeled. Commissioner Pagee asked if the lighting would still shine down and not cast a shadow on adjacent properties. Ms. Mousavi said that there was not any lighting being added and that the only illumination would be the Shell logo. Commissioner Fergusson said that some of the service station renovations the Planning Commission had been reviewing had been necessary because of state law and new environmental regulations. She asked if the infrastructure at this station conformed to those regulations. Ms. Mousavi said that she did not know as this proposal was not for any structural changes.

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

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

Commission Comment: Commissioner Fergusson asked staff what was counted as sign and not counted as sign in the proposal. She asked if the yellow band going around the canopy was signage or paint. Planner Smith said that was not signage and just the color of the canopy. Commissioner Fergusson asked if this yellow was part of the guidelines for signs. Planner Smith said that the yellow paint was architectural control for which there were no guidelines. He said that the color had not been compared to the new proposed guidelines for signs, which had not yet been approved. Commissioner Fergusson commented that there was a lot of bright yellow and she liked the gray color and the proposed monument sign. She said that it would look better if gray was introduced to break up the red and yellow around the canopy.

Commissioner Sinnott said that she agreed with Planner Smith's comments in the staff report about the mansard roof. She said that she thought the stark flat roofs would be an eyesore. She thought that the three rooflines should be integrated and the use of yellow should be reduced. She said that she would like the roofs to match those in the surrounding area. Commissioner Sinnott asked staff to explain what part of the face was being discussed on page 4, the last line of the second full paragraph of the staff report that stated "...repainting the existing gray face of the canopy with a yellow and red face to match the proposed changes to the building." Planner Smith said that the existing canopy with the existing mansard, hat-like roof structure, has a much smaller band than what was being proposed. He said that band was predominately gray with a small partial band of yellow around the base of the hat-like roof structure. He said that staff's suggestion was to make that band completely yellow and possibly

add the red element being proposed in a much thinner band, which would give the yellow and red band appearance but would keep the roof structure intact. He said that he did not know if that would give Shell enough room to put the illuminated Shell sign as proposed. Chair Fry asked the applicant if that would be acceptable to have the non-illuminated red band, but retain the existing roofline and fascia width and height. Ms. Mousavi said that Shell might be willing to look at a white fascia rather than yellow. She said that Shell was not keeping the peaked roof structures. Commissioner Fergusson said that her recollection of another gas station being built was that the logo was painted on the canopies and not illuminated. Chair Fry said that she tended to agree that the proposed colors were a bit much. She said that she preferred that if yellow were used that it be a more narrow band with a color behind it like gray. She thought the colors were jarring at the entry to a residential neighborhood. She said that the rest of the proposal was a vast improvement, and noted that the monument sign was elegant. Commissioner Sinnott asked if the other Commissioners would want to see the mansard type rooflines retained. Chair Fry agreed. Commissioner Pagee said that she thought there was a great improvement in the look by consolidating the signage into one sign. She said that the mansard type roof toned down the station. She suggested that Shell keep the mansard roof. She noted that there was a new Safeway being developed across the street and the Commission had given them direction to have that architecture complement and integrate with other buildings in the area.

Commissioner Fergusson said that overall the Commission liked the improvements but had concerns with the canopies over the pump stations. She said that the Commission might give the applicant some suggestions and continue the item. Chair Fry said that if the applicant agreed, the Commission could recommend tonight conditions to keep the mansard roof structures, for there to be no illumination of red, to keep the yellow band narrow, and use white or gray on the fascia, or if needed the applicant could come back. Ms. Mousavi said that if Shell was going to take away the fascia they would paint the roof white. She said that there would probably be no red or yellow bands on the fascia and no signage on the canopy. Commissioner Fergusson asked if the alternative proposed was for the roof to be white and no signage on the canopy. The Commission discussed the color of the roof. Commissioner Sinnott thought that white would look odd with the shingle effect. Chair Fry said that the mansard style was usually gray. Commissioner Halleck said that what was being recommended was changing the proposal. Ms. Mousavi said that Shell would need to approve painting the roof with gray. She said however that often if something was a condition of approval, Shell would want to move ahead with the project. Commissioner Pagee asked what the trigger was for adding art to a project. Planner Smith said that the work had to exceed \$250,000.

Commissioner Fergusson moved to approve as recommended in the staff report with a condition to keep the mansard roofs, to paint the mansard roofs on the canopies gray, no signage on the canopies, and the building mansard roof would be painted the same gray as the mansard roofs on the canopies. Commissioner Halleck said that he would second the motion but wanted to give staff the ability to administratively approve a sign on the canopy mansard roof if Shell could design one to fit. Commissioner Fergusson said that she thought the internal illumination was too gaudy of a look. Commissioner Halleck retracted his amendment to the motion and suggested that as the color on the pumps and the base of the new facilities was a darker gray than what was existing that Shell be allowed with staff's approval to choose a shade of gray for the roofs and the base of the building. Chair Fry suggested that the color be a shade of gray similar to what it was now or to match the base of the building. Planner Smith said that the existing proposal was that both the canopies and the building have a twelve-inch tall gray band at the bottom and the rest of the building and roof were to be white. He asked if



the recommendation was for the building to be white with the roof to be gray or for the gray base and the building to be a lighter gray carrying up to the roof, or if the building was to be white and the roof light gray, or would Shell be allowed the flexibility on that. Commissioner Halleck said that with a gray band, a white building and the roofs a shade of gray that this might be too much of a contrast. Commissioner Sinnott agreed. Commissioner Halleck said that he thought the building should be gray as it is now so there was not a stark contrast and allow Shell to work with staff to determine the appropriate colors. Commissioner Sinnott said that she thought the white would create too much glare. Commissioner Halleck said that Shell could come up with white trim and suggested leaving the colors for staff to work out with Shell as long as there was not solid white on the building. Commissioner Fergusson asked if the columns at the gas pumps were proposed to be white. Commissioner Halleck proposed to leave those color determinations to staff and the applicant.

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

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 16.68.020 of the Zoning Ordinance, regarding architectural control approval:
  - a. The general appearance of the proposed addition is in keeping with the character of the neighborhood.
  - b. The development will not be detrimental to the harmonious and orderly growth of the City.
  - c. The development will not impair the desirability of investment or occupation in the neighborhood.
  - d. The development provides adequate parking as required in all applicable City ordinances and has made adequate provisions for access to such parking.
3. Make a finding that the signs are appropriate and compatible with the businesses and signage on El Camino Real, and are consistent with the Design Guidelines for Signs.
4. Approve the architectural control and sign review subject to the following conditions:
  - a. Development of the project shall be substantially in conformance with the plan prepared by ARC Inc., consisting of nine plan sheets dated September 26, 2003, and approved by the Planning Commission on October 27, 2003, except as modified by the conditions contained herein.
  - b. Prior to building permit issuance, the applicant shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies' regulations that are directly applicable to the project.

- c. Prior to building permit issuance, the applicant shall comply with all requirements of the Building Division, Transportation Division, and Engineering Division that are directly applicable to the new construction.
- d. Within 30 days of the architectural control and sign approvals, the applicant shall remove the illegal pennants from the two pump island canopies.
- e. Prior to building permit issuance, the applicant shall submit revised plans with the following modifications and clarifications subject to review and approval of Planning staff:
  - Maintain the mansard roofs on both canopies and the main service center building;
  - Eliminate any proposed signage from the canopies;
  - Propose building and roof colors in shades of grey that range from the existing grey of the building to the proposed grey of the base of the building, using white as an accent color and not a field color.
  - Show the proposed location of the new monument sign on the site plan.

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

**7. Consideration of the minutes of the September 29, 2003 Planning Commission meeting.**

(This item and the next two items, Consent items 1, 2, 3 were moved from the beginning of the agenda to the end of the agenda and are now number 7, 8, and 9 under Regular Business.)

Chair Fry said that on page 3 in the second paragraph that the statement “some businesses do not have signs for reasons” should be expanded to include some of the reasons that were mentioned in that discussion “such as security as would be in the case with a data center.”

Commission Action: M/S Fry/Sinnott to approve as presented with one modification.

- Page 3, 2<sup>nd</sup> Paragraph: Insert the following phrase at the end of the first sentence “such as security as would be in the case with a data center.”

Motion carried 6-0, with Commissioner Bims absent.

**8. Consideration of the excerpts of the September 8, 2003 Planning Commission meeting for 1923, 1927 and 1929 Menalto Avenue.**

Chair Fry said that she thought on page 4 in the final paragraph that Commission Soffer asked a question of Commission Sinnott and not of her. Planner Smith confirmed that from his notes.

Commission Action: M/S Fry/Sinnott to approve as presented with one modification.

- Page 4, Final Paragraph: In the last line of the final paragraph on the page, replace “Chair Fry” with “Commissioner Sinnott.”

Motion carried 6-0, with Commissioner Bims absent.

**9. Consideration of the excerpts of the July 21, 2003 Planning Commission meeting for 849-851 Cambridge Avenue.**

Commissioner Soffer said that on page 3 he recollected that Mr. Sam Sinnott asked for approval or denial without changes and wondered if that was reflected. Chair Fry said that on page four it indicated that Mr. Sinnott said that the applicant was asking approval but that Mr. Sinnott had indicated that the applicant was seeking approval without conditions or denial. Commissioner Fergusson said that the first line of the fifth paragraph on page four did not read right. She suggested a change to the wording to make the sense of the sentence clearer. Chair Fry said that on page 6, the third paragraph, that “neighbor” should be plural.

Commission Action: M/S Fry/Sinnott to approve as presented with the following modifications.

- Page 4, 5<sup>th</sup> full paragraph – Replace first sentence with the following: “He said that they are asking approval, including eliminating the staff recommended conditions that would have required the increased rear setback and elimination of the right side setback encroachment for the sunken patio, or a denial.”
- Page 6, 3<sup>rd</sup> paragraph – In the first sentence, change the word “neighbor” to “neighbors.”

Motion carried 5-0-1, with Commissioner Sinnott abstaining and Commissioner Bims absent.

**E. COMMISSION BUSINESS, REPORTS, AND ANNOUNCEMENTS**

**1. Scheduling Planning Commission Meetings for Calendar Year 2004.**

The Commission commented on its preferences for the upcoming calendar year regarding the scheduling of study meetings and possibility of accommodating vacation time for the Commission during the summer. Staff will return with a draft calendar at the next Commission meeting.

In other business, Chair Fry requested that upcoming appeals of Commission decisions to the City Council be placed on the Commission’s agendas for discussion.

**ADJOURNMENT**

The meeting adjourned at 10:00 p.m.

Staff Liaison: Justin Murphy, Principal Planner

Prepared by: Brenda Bennett, Recording Secretary

Approved by Planning Commission on May 3, 2004.