



MENLO PARK PLANNING COMMISSION MINUTES

Regular Meeting

June 7, 2004

7:00 p.m.

City Council Chambers

701 Laurel Street, Menlo Park, CA 94025

CALL TO ORDER – 7:01 p.m.

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

INTRODUCTION OF STAFF – Cramer, Thompson

A. PUBLIC COMMENTS

There was no public comment.

B. CONSENT

There were no consent items on the agenda.

C. PUBLIC HEARING

1. **Architectural Control/Bob Lockrem/3 Carriage Court**: Request for architectural control approval for exterior alterations to an existing townhouse to enclose an existing balcony with a solarium.

Staff Comment: Planner Thompson said the applicant was proposing to enclose an existing second-floor balcony at the rear of the townhouse with a new glass solarium. She said the change to the exterior of the building required architectural control approval by the Planning Commission.

Public Comment: Mr. Mike Nagy, Concord, said that he was with Century Sun Roofs, the contractor for the proposed project. He said that the purpose of the proposed project was to remedy ongoing problems the property owner had with their living space located under a balcony. He said after spending considerable money recently to re-do their ceiling, the property owners decided to take steps to prevent the problems from re-occurring and to promote their enjoyment of the outdoor environment. He said that the proposed project was a glass structure, which would be framed in the same dark bronze framework as the structures themselves and with sliding windows in the glass for ventilation.

Commissioner Fergusson noted that the proposed work was in an area of southern exposure and asked if there were any energy-savings as a result of the proposed work. Mr. Nagy said that previously there had been rebate possibilities for such work, but they no longer were available. He said there was definitely an energy-savings factor with a southern exposure,

however there were a number of trees in the area which would reduce energy-savings to some degree.

Commissioner Fry asked if there would be some way to shield the area from excess light and heat in the summer. Mr. Nagy said there would be outside screens that would cut the glare and windows which were operable. He said that if the property owners desired they could take the windows out and just have the area screened.

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

Motion carried 7-0.

Commission Action: M/S Fry /Fergusson 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 the following findings, as per Section 16.68.020 of the Zoning Ordinance, pertaining to architectural control approval:
 - a. The general appearance of the structure 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 revision subject to the following conditions:
 - a. Development of the project shall be substantially in conformance with the plans prepared by the applicant, consisting of three plan sheets dated received April 8, 2004, and approved by the Planning Commission on June 7, 2004, except as modified by the conditions contained herein.
 - b. The applicant shall comply with all West Bay 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 and Engineering Division that are directly applicable to the new construction.

Motion carried 7-0.

2. **Use Permit, Variance, and Tentative Parcel Map/Steve Simpson/1015 Florence Lane:** Request for a use permit to construct two new residences on a property that is substandard in regard to lot width and lot area, a variance for both residences to encroach into the 20-foot required separation distance between buildings located to both the left and the right sides of the subject property, and a tentative parcel map to make the two new residential units into condominium units.

Staff Comment: Planner Cramer said that the applicant was proposing to demolish an existing two-story, single-family residence and construct two new two-story, single-family residences. She said the proposal involved construction of two new single-family residences on a substandard lot and required use permit approval by the Planning Commission.

Planner Cramer said that both new residences would encroach into the required 20-foot setback separation distance between residences on adjacent lots on both the left and right sides of the subject property. She said that the proposed left side building separation would be 15 feet, seven inches for both new residences, while the proposed right side separation would be 15 feet, 11 inches for the new front residence, and 14 feet, six inches for the new rear residence. She noted that the proposed encroachments into the 20-foot separation distance between buildings on both the left and right sides of the proposed residences required Planning Commission approval of a variance.

Planner Cramer said that the applicant was also requesting Tentative Parcel Map approval to establish the two new residences as condominium units. She said that the Tentative Parcel Map also required Planning Commission review and approval.

Planner Cramer made a clarification to the data sheet in the staff report. She said the proposal included the removal of three non-heritage trees on the left side of the property, noted as Trees 3, 4 and 5 on the plans. She said the data sheet had indicated that only one non-heritage tree would be removed. She said that there would be a total of nine trees on the property. She said in a discussion with the applicant that day, the applicant had indicated that they would like to keep the trees despite the arborist's recommendation for removal.

Planner Cramer said that staff was recommending approval of the use permit, variance request and Tentative Parcel Map. She said however that staff wanted to make a change to the conditions to add two new conditions "g" and "h," which language had been distributed to the Commission. She said that condition "g" would state: "Simultaneous with the submittal of a complete building permit application, the applicant shall submit a Grading and Drainage Plan for review and approval of the Engineering Division. The Grading and Drainage Plan shall be approved prior to issuance of a grading, demolition or building permit."

Planner Cramer said that condition "h" would state: "Prior to building permit issuance, the applicant shall submit a plan for off-site frontage improvements along Florence Lane subject to review and approval by the Engineering Division. Off-site improvement could include, but are not limited to: repairs to curb, gutter, sidewalks, driveway aprons, and paving."

Questions of Staff: Chair Halleck asked if the applicant was aware of conditions "g" and "h." Planner Cramer said that it was not clear if Planner Smith had contacted the applicant regarding the additional conditions.

Commissioner Fry asked for clarification on the data sheet in reference to landscaping and paving. She said she recollected that landscaping could be hardscape and asked if the landscaping would have permeable surfaces and whether the paving indicated was impermeable. Planner Cramer said that the paving referred only to the driveway. She said that landscaping could include hardscape, permeable and impermeable surfaces.

Commissioner Pagee asked what the allowed square footage of buildings on an R-3 lot was. Planner Cramer said that what was allowed was 45 percent of the lot size. She said for this project, the total square footage of the buildings was 3,015 square feet, but the garage square footage would be deducted. She said for an R-3 lot, covered parking was not included as gross floor area.

Public Hearing: Mr. Noel Smith, applicant, Menlo Park, said that there was 2,537 square foot of livable area which equaled 44 percent of the lot size. He said the existing house in which he and his wife live was built in 1936 and had had no significant upgrades made. He said they have sewer and electrical problems. He said the windows were of poor quality and the oven in the kitchen did not work. He said that he and his wife had gotten estimates for remodeling and the cost of that exceeded what it would cost to tear it down and put up a new home. He noted that the foundations were also bad. He said that in the R-3 neighborhood where they lived, there were no other single-family homes on a lot. He said that the area was mainly apartments and they believed two residences as condominium units was the best match for the area. He said that they had talked to all of the neighbors and had the support of most of the closest neighbors.

Chair Halleck asked Mr. Smith if he was aware of conditions "g" and "h." Mr. Smith said that he was aware of those conditions and they were acceptable. Commissioner Soffer noted that there was a shed or structure in the back and asked if it were a living unit currently. Mr. Smith said that it was a storage shed, eight by twelve feet.

Commissioner Fry said there appeared to be several bay windows in the design that encroached into the setbacks. She asked if the windows would have foundations. Mr. Smith said that they would not and were cantilevered windows. He said that both bay windows would oppose garages and a carport. Commissioner Fry asked about the daylight plane. Planner Cramer said that there was no daylight plane regulation in the R-3 zone.

Mr. Steve Simpson, the architect for the project, said that he and the property owners had not arrived at the variance request lightly. He said they initially tried to design two structures that would fully conform. He said they could not develop a plan that was reasonable in that both the neighboring structures were nonconforming in their setbacks. He said that this really reduced the buildable area, and without a variance they would have designed a 20-foot wide home on a 50-foot wide lot. He said when that was realized, they had consulted with staff on the possibility of a variance. He said that staff had indicated the property was a good candidate for relief from the requirement of a 20-foot separation between buildings.

Mr. Rob Courtney, Menlo Park, said that he and his fiancé lived on Florence Lane, a neighboring lot on the left side of the subject property. He said that they had given staff a letter tonight. He said their apartment was on the first floor and that they expected the proposed rear facing residence would cut off their last remaining source of sunlight. He said that they have two windows on that side, one of which was currently blocked by the existing house. He said

that it appeared the window would continue to be blocked by the new residence proposed that that their second window's sunlight would be blocked by the second new residence proposed.

Mr. Kamin Kamali, Mountain View, indicated he had a rental property on Florence Lane. He said that his tenant had a lease until 2005. He said upon the expiration of that lease that he intended to move into the structure, which was right next door to the subject property. He said that he thought his property would be directly impacted by the proposal and that while the subject property needed some modification and improvement, he was unsure if this proposal was the best solution. He said that his concern was with the health, safety and morals finding. He said he assumed there would be two families with four people each in the new residences and that there would be multiple cars. He said he was concerned with the noise from the cars and a privacy impact because the houses would be two-story. He said that in the future if he wanted to demolish his property and build a project similar to that being proposed, he was concerned that he would not be able to do so because of the setback limitations. He said that he had seen other single-family residences on the block.

Commissioner Soffer asked how Mr. Kamali was informed about the hearing. Mr. Kamali said that he received the public notice and Planner Smith had contacted him some months ago regarding the project.

Commissioner Fergusson said it was her understanding of the proposed project that the building envelope would move to the center of the parcel which meant that in the future it would be easier for Mr. Kamali to get approval for a similar project. Planner Cramer said that there was a 15.9-foot right side setback and there would probably not be issues with separation distance for the neighboring owner. She said she believed that Mr. Kamali had a four-and-a-half-foot side setback on one side and would have to increase it to 10-feet for new construction. Commissioner Fergusson confirmed with Planner Cramer that this would not necessarily require Mr. Kamali to apply for a variance.

Commissioner Fergusson asked Mr. Simpson to comment on the sun angle and the concern regarding loss of sunlight raised by Mr. Courtney. Mr. Simpson said that he had not checked the existing buildings against the daylight plane as it was not applicable for R-3 lots. He said that the trees in the area probably shaded the area more than the new buildings would. He said that the two trees they were proposing to remove would open up an area between the two structures which would probably let at least as much sun, if not even more, than what was there now. He said that there would be an opening between the buildings and that should allow the sunlight from the southwest sun during the day to the apartment. He said that this design was better in regard to sunlight than if they had designed a duplex, which would have been long and narrow and cut off all of the sun.

Mr. Smith said the existing building was located directly opposite of the apartment building in which Mr. Courtney resided. He said that the new building would be cut back about 20 feet more, and with the new proposed design, Mr. Courtney would see sky rather than the wall of the existing building. He said that they were also putting in a new fence that would give the neighbors more privacy. He said regarding Mr. Kamali's comments that the variance would not affect anyone else and future development on their lots would not require a variance.

Commissioner Soffer said that the need for the variance must come from the particular characteristic of the lot and in this instance it was the character of adjacent properties that

created the need for a variance on this property. Planner Cramer said that the Zoning Ordinance findings for a variance identified the hardship that was peculiar to the property and not due to any act of the owner. She said the placement of the house on the adjacent property was something that was not under the control of the applicant. She said that the variance regulation considered structures on adjacent property and she thought it was fair to extend that consideration to adjacent properties.

Commissioner Pagee asked if the homes on the street behind the project site were all R-3. Planner Cramer said that they were. Commissioner Pagee asked what kind of structures were there. Planner Cramer indicated that there were a variety of structure types. Commissioner Pagee said through years of studying daylight plane, the Commissioners had found that the daylight plane did not really protect daylight. She said that they also discovered that the length of shadow was twice the height of a building at certain times of the year. She said that if the building was 20 feet tall then the shadow from the south would be 40 feet long which would go into the adjacent property. Commissioner Pagee said that this applied from 10 a.m. through 2 p.m. in the winter. Planner Cramer said that a 40-foot shadow would not be present the whole period of time from 10 a.m. through 2 p.m.

Commissioner Soffer asked staff to review the section of the zoning ordinance regarding the granting of variances. Planner Cramer said that it was Section 16.82.310 and Section 16.82.340 listed the findings to be made.

Commissioner Fry said the rule about the shadow being twice the height of the building was a measurement done at 12 p.m. on the winter solstice day. Planner Cramer said that was very close to what staff used.

Mr. Smith said there was a triplex behind the project and the owner of the triplex had given his approval for the project. He said there were five other similar developments in the area and that this project would be the sixth project with two houses on one lot. He said that those projects did not conform to existing regulations. He said this project would conform to all setbacks and square footage requirements except for the 20-foot separation distance between buildings.

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

Motion carried 7-0.

Commission Comment: Commission Soffer asked about adequacy of light for neighboring properties. Chair Halleck said that it was his impression that there would be a wider space and a greater degree of openness with the proposed project than there was with the existing two-story structure.

Commissioner Fergusson moved to approve as recommended by staff, noting she could make the variance findings as required for the issuance of a variance. She said that this property owner was the first on the block to redevelop and upgrade his property. She said because the neighboring properties were non-conforming that this created a particular situation which was a severe constraint for the applicant. She said that the proposed project had very nice architecture and the applicant had put a lot of thought into how the project would relate to neighboring structures. She said that the project would be a very nice upgrade for the street and neighborhood. Commissioner Sinnott seconded the motion.

Commissioner Bims said the applicant could have avoided the variance request by building a one-story that was 20 foot wide would have been more detrimental to the neighbors than what was being proposed. He said that he supported the project.

Commissioner Fry said that she could make the findings for the variance, but there were impacts from two-story structures close to other structures. She said that there would be some impact on light. She said that with the project there would be more light received in some areas of the neighboring building, but probably less in some existing areas that currently received light. She said that she supported the project.

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

1. Adopt a finding that the project is categorically exempt under Class 3 of the current State CEQA Guidelines.
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. Make the following findings as per Section 16.82.340 of the Zoning Ordinance pertaining to the granting of variances:
 - a. The non-conforming side setbacks of the residences on either side of the subject property create a constraint to constructing two new residences on the subject property without the approval of the requested variance.
 - b. The proposed variance is necessary for the preservation and enjoyment of substantial property rights possessed by other conforming property in the same vicinity, and the variance would not constitute a special privilege of the recipient not enjoyed by neighbors.
 - c. Except for the requested variance, the construction of the two residential units will conform to all other requirements of the Zoning Ordinance. Granting of the variance 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 structures would comply with the ten-foot side yard setbacks required in the R-3 zoning district.
 - d. The conditions upon which the requested variance is based would not be applicable, generally, to other property within the same zoning classification since the variance is based on the location of the neighboring residences.
4. Adopt findings that the Tentative Parcel Map has been reviewed by the Engineering Division and has been found to be technically correct and in compliance with the State Subdivision Map Act and the City's Subdivision Ordinance.

5. Approve the use permit, variance, and Tentative Parcel Map requests subject to the following conditions of approval.
 - a. Development of the project shall be substantially in conformance with the plans prepared by SDG Architects, consisting of ten plan sheets dated March 18, 2004, and approved by the Planning Commission on June 7, 2004, 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, San Mateo County Health Department, 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 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 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 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 in the vicinity of the construction project shall be protected pursuant to the Heritage Tree Ordinance. Prior to building permit issuance, the applicant shall implement the tree protection plan as identified in the Arborist Report for review and approval by the Building Division.
 - g. ***Simultaneous with the submittal of a complete building permit application, the applicant shall submit a Grading and Drainage Plan for review and approval of the Engineering Division. The Grading and Drainage Plan shall be approved prior to issuance of a grading, demolition or building permit.***
 - h. ***Prior to building permit issuance, the applicant shall submit a plan for off-site frontage improvements along Florence Lane subject to review and approval by the Engineering Division. Off-site improvement could include, but are not limited to: repairs to curb, gutter, sidewalks, driveway aprons, and paving.***

Motion carried 7-0.

3. **Use Permit Revision/Larry Fang/71 Bay Road**: Request for a use permit revision to modify previously approved plans for a church expansion in order to delete paved parking within the Hetch-Hetchy right-of-way at the front of the property from the approved plans.

Staff Comment: Planner Cramer said that the parking requirement for the Home of Christ Church at 71 Bay Road was 60 paved spaces. She said that the applicant had difficulty leasing land area within the Hetch-Hetchy right-of-way and was requesting a use permit revision to reduce the number of proposed parking spaces. She said of the 88 proposed parking spaces, 28 spaces were located in the Hetch-Hetchy right-of-way. She said as a result the Church would have 60 conforming spaces for the Church's use. She said that staff recommended approval of the use permit revision.

Questions of Staff: Commissioner Fry asked whether there had been extra parking previously. Planner Cramer said that the Church has 300 seats and the requirement had been one parking space for five seats which equated to 60 parking spaces. She said when the project was previously considered there were 88 parking spaces, but that was in anticipation of using the land owned by San Francisco Public Utilities Commission (SFPUC). She said that this land was not available now. She said it was intentional that the required parking was to be located on the Church's property so that if there was a problem with the use of the SFPUC land, the Church would still conform to parking requirements.

Commissioner Soffer asked whether getting SFPUC approval was part of the Commission's previous approval of the project. Planner Cramer said the assumption was that SFPUC approval would be needed but that there would not be a problem getting that approval as some of that property was already used for parking. She said the Church did not anticipate that there would be substantial fee increases for additional parking spaces in the Hetch-Hetchy right-of-way.

Commissioner Fergusson asked for a review of the new circulation plan. Planner Cramer said that was found on B.1 and there would be one way in and one way out of the site.

Public Hearing: Mr. William Fong, Redwood City, a member of the Church, said since the Commission's approval of the project in January 2002, that the Church had been working with the architect on a detailed plan and with the SFPUC to get a reasonable lease for extra parking spaces. He said that the SFPUC had adopted a resolution in 1999 to allow for the imposition of substantially increased fees for a new application. He said that if no change was made to the lease, the SFPUC would allow the leasee to continue to use the land. He said that for a change in the lease, the charge would be \$5,400 per year with the provision that the fee could be increased. He said that the Church felt this was an unreasonable fee for a non-profit organization. He said that they asked County Supervisor Jacobs Gibson to intercede with the SFPUC, but the SFPUC would not yield. He said that they asked the architect to redesign that portion of the land to see if there was sufficient parking space. He said that B.1 of the staff report demonstrated there would be 60 parking spaces on the Church's property and that if the SFPUC would grandfather in the existing spaces used, there would be an additional 9 spaces. He said additionally that the SFPUC would charge \$2.00 per linear feet monthly for a portion of water line that needed to run through the SFPUC's land.

Commissioner Fergusson asked how many cars were parked on the site during peak hours. Mr. Fong said he counted cars on Memorial Day at the Church's current site and there were 45 cars. He said that he also counted on the past Sunday which was the first Sunday of the month and Communion Sunday, which had traditionally had the highest attendance. He said that there were 58 cars. He said that sketch A.1 in the staff report showed neighboring streets and that houses were set back 60 feet so that there might be some street parking available that would not impact those homes.

Commissioner Fergusson asked about street parking. Planner Cramer said that street parking would be allowed during daylight hours.

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

Motion carried 7-0.

Commission Comment: Commissioner Soffer moved approval as recommended by staff. Commissioner Pagee seconded the motion.

Commissioner Sinnott said that she lived near a church and she encouraged the Church to encourage their congregation to not park in front of people's homes and to be sensitive to the neighbors.

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

1. Make a finding that a Mitigated Negative Declaration was prepared for this project, and was approved by the Planning Commission on March 19, 2001.
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 revision request subject to the conditions approved at the January 28, 2002 Planning Commission meeting (included as Attachment F), with the following new condition:

- x. The paved parking for the church shall be as shown in the plans dated revised April 29, 2004, indicating a minimum of 60 on-site paved parking spaces.*

Attachment F: 71 Bay Road

Conditions of Approval from the January 28, 2002 Planning Commission Public Hearing

Findings and Conditions

1. A Mitigated Negative Declaration was prepared for this project, and was approved by the Planning Commission on March 19, 2001.

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. Adopt findings, as per Section 16.68.020 of the Zoning Ordinance, regarding architectural control approval:
 - a. The general appearance and scale of the development is in keeping with the residential character of the existing development in 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; and
 - d. The development provides adequate parking as required in all applicable City ordinances, and has made adequate provisions for access to such parking.
4. Approve the use permit and architectural control requests subject to the following conditions:
 - a. Development of the project shall be substantially in conformance with the plans prepared by Gary Newguard, Architect, consisting of seven plan sheets dated December 10, 2001, and approved by the Planning Commission on January 28, 2002, 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 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 project.
 - d. If required by state or federal regulations, or by the Building Division, construction safety fences shall be installed around the periphery of the construction area. A plan for safety fences necessary during construction shall be submitted to and approved by the Building Division staff prior to issuance of a building permit.
 - e. Prior to demolition permit issuance, the applicant shall submit a plan for the control of dust throughout the duration of the project. This plan shall list specific measures, including but not limited to routine watering of the site. The plan shall also specifically address how dust would be controlled during weekends and other off-work periods. Finally, the plan shall also include a contact name and phone number to receive and address any complaints. This plan shall be subject to the review and approval of the Planning Division.

- f. Prior to issuance of a building permit, a utility plan showing the exact location of all meters, transformers, junction boxes, relay boxes, back-flow prevention devices, etc., that are being installed outside the building and provisions being made to screen such equipment from view, shall be submitted to and approved by the Building Division.
- g. The applicant shall obtain all required encroachment permits or other approvals prior to any construction or work within the City and County of San Francisco Hetch Hetchy right-of-way located at the front of the property, including any paving, landscaping, fencing, vegetative trimming, and signage construction or relocation. A copy of said encroachment permit or approval shall be provided to the Engineering Division prior to building permit issuance.
- h. The applicant shall obtain an agreement with the City and County of San Francisco prior to the construction of any parking spaces within the Hetch Hetchy right-of-way. A copy of said agreement shall be provided to the Engineering Division.
- i. Prior to final building inspection and if approved by Hetch Hetchy, the applicant shall relocate the two signs at the front of the site so that they are removed from the field of vision of a motorist entering or exiting the project site. All relocated signage is subject to the review and approval of Planning and Transportation Division staff prior to issuance of a building permit for the signage installation.
- j. Prior to final building inspection and if approved by Hetch Hetchy, the vegetation in the Hetch Hetchy right-of-way to the right of the project site shall be trimmed to provide adequate sight distances for vehicles exiting the driveway. This trimming shall be performed to the satisfaction of the Transportation Division. The applicant shall maintain the vegetation in the right-of-way in such a way to provide this sight distance in perpetuity.
- k. Prior to the removal of any heritage trees, the applicant shall apply for and obtain a heritage tree removal permit from the Community Development Department.
- l. Prior to building permit issuance, the applicant shall submit a detailed landscape plan that is in accordance with the Water Efficient Landscaping Ordinance. Prior to submittal to the City, the applicant shall review the plan with the neighbors and allow them to comment on the plan. The applicant should consider modifications to the plan based on neighborhood comments. The final plan shall be subject to review and approval by the Public Works Department and the Planning Division. The plan shall specifically include the following components:
 - Replacement trees at a ratio of 2:1 for any heritage trees removed from the site. These trees shall be a minimum of 24-inch box size, and the species of these trees shall be subject to the review and approval of the Public Works Department.
 - Landscape and/or fence screening of the play area.

- m. Prior to building permit issuance, the applicant shall submit a detailed lighting plan and photometric study for the review and approval of Planning Division staff. The lighting plan shall minimize overall lighting impacts to adjacent properties and shall employ a variety of controls of multiple timers to correspond with the uses conducted in different areas of the site.
- n. Prior to building permit issuance, the applicant shall submit a detailed lighting plan and photometric study for the review and approval of the Planning Division. The lighting plan shall minimize overall lighting impacts to adjacent properties and shall employ a variety of controls and multiple timers to correspond with the uses conducted in different areas of the site.
- o. Prior to building permit issuance, the applicant shall submit a plan for the 7-foot-tall fence along the side and rear property lines for the review and approval of Planning Division staff.
- p. The applicant shall submit detailed construction parking and staging plans prior to building permit issuance for the review and approval of the Engineering and Transportation Divisions. The applicant will be restricted from obtaining an encroachment permit to stage vehicles on public streets.
- q. Prior to issuance of building permits, plans for on-site recycling and garbage facilities shall be submitted for review and approval by the City Environmental Program Coordinator and the Engineering Division. The plan shall be in accordance with the provisions outlined in the Memorandum from the City Environmental Program Coordinator, dated March 14, 2000 (Attachment J).
- r. Prior to issuance of a demolition permit, the applicant shall comply with the requirements of Chapter 12.48 (Salvaging and Recycling of Construction and Demolition Debris) of the City of Menlo Park Municipal Code.
- s. Prior to issuance of a building permit, the applicant shall comply with the requirements of Chapter 12.48 (Salvaging and Recycling of Construction and Demolition Debris) of the City of Menlo Park Municipal Code.
- t. Prior to building permit issuance, the plans shall be revised to include the locations of all mechanical equipment. The equipment shall be located as far as possible from neighboring residential properties and in a manner that minimizes impacts to neighbors. The revised plans shall be subject to Planning division review and approval. All mechanical equipment installed on the site shall comply with the regulations of the City of Menlo Park Noise Ordinance.
- u. All new signage is subject to the review and approval of Planning Division staff prior to issuance of a building permit for the signage installation.
- v. The applicant shall make every effort to avoid demolition, grading, and construction activities during the bird nesting season, roughly considered to be the period between February and June each year.

- w. Prior to issuance of building permits, the applicant shall explore with the City and County of San Francisco, the City Transportation and Planning Divisions and the Menlo Park Fire Protection District, the possibility of reducing the aisle width of the front parking area by changing the design from two-way to one-way traffic, thereby increasing the amount of landscaping at the front of the property. The applicant shall provide written documentation to the Planning Division of these efforts. If all agencies are in agreement that such a change can be accommodated, the plans shall be revised accordingly. The revised plans shall be subject to Planning Division review and approval. Any changes to the parking layout and landscaping shall also be reflected on the final landscape plan submitted for review.
- x. ***The paved parking for the church shall be as shown in the plans dated revised April 29, 2004, indicating a minimum of 60 on-site paved parking spaces.***

Motion carried 7-0.

The Commission took a short recess at 8:05 p.m. and resumed the meeting at 8:07 p.m.

- 4. **Use Permit/Jennifer Duong/611 Menlo Avenue:** Request for a use permit to allow massage use at a new personal service establishment located in the C4 (El Camino Real) zoning district.

Commissioner Soffer recused himself and left the Council Chambers noting that his office was located within 500 feet of the subject property.

Staff Comment: Planner Thompson said the applicant was proposing to operate a day spa with a massage use at 611 Menlo Avenue. She said that massage use was considered a special use under the Zoning Ordinance. She said the applicant was requesting approval of a use permit to include massage use with the day spa business.

Questions of Staff: Commissioner Fry clarified with staff that the day spa only occupied the first floor and the second floor of the building had a different address. She confirmed with staff that issues related to the second floor address were a different matter than the proposal for the first floor address.

Public Hearing: Ms. Jennifer Duong, the applicant, Santa Clara, said that the business would offer facials, manicure, pedicure and massage.

In reply to a question from Commissioner Pagee, Ms. Duong indicated that she had not owned a spa previously. Commissioner Pagee asked if Ms. Duong had worked in a spa within the area. Ms. Duong said that she had worked for a chiropractic doctor before studying cosmetology and being licensed. Commissioner Sinnott asked what percentage of the business would be massage and what would be manicure and pedicure. Ms. Duong said that she would like 50 percent of the business to be manicure and pedicure, 25 percent to be facials and 25 percent to be massage. Commissioner Sinnott asked about the room layout. Ms. Duong said there would be two rooms, one for facials and one for massage.

Commissioner Fergusson noted that the applicant had gone through a background check with Santa Clara County, had completed massage certification and had a license with the State Board of Barbering and Cosmetology. She said the applicant had done the fingerprint screening through the City's Police Department. She asked what kind of training or classes the applicant had taken for massage. Ms. Duong said that she had studied massage for the requisite 600 hours.

Commissioner Sinnott asked if the other masseuses and employees for the business were also certified and whether background checks on them had been done. Ms. Duong said that she would initially hire two employees and eventually a third. Commissioner Sinnott asked about the process to ensure that these employees underwent background checks. Planner Cramer said staff understood that the applicant would proceed with getting approval of the use permit at the location. Planner Cramer said that if the application was approved, the applicant would then hire employees. She said that before those employees could begin work in massage, they would need to go through the screening and background check through the Police Department. She said staff had added a condition of approval to that effect, condition "e." Planner Cramer said that Officer Liz Fambrini, Menlo Park Code Enforcement, was responsible for the processing of these applications. Planner Cramer said that the Menlo Park Police Department was making a comprehensive examination of massage businesses and staff was developing a coordinated process between the Planning and the Police Departments to ensure that massage businesses were legitimate and legal.

Commissioner Sinnott said that she was very concerned that there would be a massage use at the project site. She said that she had heard that prostitution had occurred on the second floor of the building located at the project site. She said that she hoped the City was tightening its regulation of massage use. She said her concern was that men would continue to come to the building site looking for illegal services.

Planner Thompson said that staff had contacted the Police Department regarding the second story tenant. She said the Police Department had been unable to prove that there had been illegal activity. She said the second floor business had a license to sell diet products and had offered other services. She said that the business was shut down because the operators had violated their business license. Commissioner Sinnott clarified with staff that the business was shut down not because of prostitution but because of violations to a business license. She said that her concern regarding prostitution at the site was based on letters included in the staff report packet and conversations she had had with previous tenants of the project site.

Commissioner Bims asked why the business Spa de BEAUTE had vacated the site. Planner Cramer said staff was only aware that the previous business owners were trying to relocate.

Mr. Ed Rubenstein said that his wife owned Spa de BEAUTE and they were relocating the business. He said he wanted to share their experience with the two businesses on the second floor of the building, including one which had been a massage parlor. He said over the past seven years that they had their business in this building, they had seen at least two businesses come and go after being shut down by the Menlo Park Police Department. He said those businesses had operated from 7:00 p.m. to late into the night until 2:00 or 3:00 a.m. He said that there had been very heavy traffic of mostly men and that some of those men had mistaken the door of his wife's business as the door of the second floor businesses. He said that the businesses had been licensed for diet products sales and acupuncture but that in both

instances, there had been unsupervised massage at the second floor site. He said the business licenses had been a front for prostitution activities. He said that operating a spa was a wonderful business, but unsupervised massage would not prevent prostitution. He said that there had been a lot of young women in miniskirts who provided specialized massage at this location. He said that one time their business was burglarized at 1:30 a.m. by an individual that was agitated or on drugs. He said that unsupervised massage businesses had attracted a type of clientele that was not good for a downtown location.

Chair Halleck asked what supervised massage would be. Mr. Rubenstein said that it was massage that fell under a doctor's supervision, a doctor with a medical license. He said that massage was not regulated by the State and the State did not license massage therapists.

Commissioner Fry asked what kind of services Spa de BEAUTE provided. Mr. Rubenstein said that his wife was a chiropractor and treated patients as well as provided spa services, including facials and waxing. He said that the proposed spa could operate without massage. He said that he was concerned that a spa with massage could be a front for illegal activities.

Commissioner Bims asked why Mr. Rubenstein and his wife decided to relocate their business. Mr. Rubenstein said that they were relocating because they needed a larger space and the rent had been increasing annually.

Commissioner Fry asked how the City would monitor the spa. She noted that it was possible to have a spa with ethical massage use, noting such an establishment as Elizabeth Arden which provided massage with a spa use. Planner Cramer said that the massage use would be enforced on a complaint basis. She said if someone made a complaint that illegal activities were occurring, the Police Department would begin an investigation, which might be an upfront or undercover investigation. She said one of the reasons that the Planning and Police Department staff wanted to work together on massage use was to identify all of the locations within the City where massage was allowed. She said that previous use permit approvals would be mapped out for the Police Department, who would monitor those sites for any activities that would be unusual such as after hours use.

Commissioner Fry asked whether neighboring businesses might be notified that it was part of their responsibility to report any unusual activities associated with a massage use. Planner Cramer said that was something which could occur as part of the use permit approval.

Commissioner Fry asked whether the second floor was vacant and how long it had been vacant. She asked whether a use permit would be required for a future tenant of that space. Planner Cramer said that the vacancy was fairly recent and the requirement for a use permit would depend on the type of use of a new tenant, noting that the property was zoned C-4. She said that would allow for a variety of services such as retail, personal services or office to be permitted without use permit approval as the project was conforming in regard to parking.

Commissioner Fry asked whether the parking lot behind the subject building was usable by everyone in the building. Planner Cramer said that lot was for use for the building. Commissioner Fry said the parking lot was blind in that activities could occur there without being seen and asked if the Police Department had patrolled it. Planner Cramer said that she was not aware if they had or not when they were investigating the use on the second floor.

Commissioner Fergusson asked whether the property owner had been involved and taken an interest in the proposed project. Planner Thompson said that she was not aware that the property owner had. It was noted that the property owner was not present.

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

Motion carried 6-0-1 with Commissioner Soffer recused.

Commission Comments: Commissioner Fergusson moved to deny the use permit indicating the activities that had occurred at the project site deeply disturbed her. She said that the property owner did not seem to be taking an interest in the project and making sure that any illegal activity at the site was stopped. She said she agreed with the comment that people were used to coming to this site for illegal activity and a change was needed at this site. She said that the proposal was not an appropriate use for the site. Commissioner Sinnott seconded the motion. She said that her main concern was that the site had been historically associated with prostitution for the last two uses as indicated by Mr. Rubenstein. She said that it was important to stop the cycle. She said it was unfortunate that the applicant had desired to put another spa at the site. She said they needed to see more interest from the property owner in the project. She said she was pleased that the Police Department was working on the issue.

Commissioner Bims agreed with Commissioners Fergusson and Sinnott's comments. He said that it would be a definite improvement to the downtown area to have a different business than a spa at this site.

Commissioner Pagee said that she sympathized with the business owner who was attempting to start a business. She said she hoped the applicant would find a different building that would be better suited to the type of business proposed.

Commissioner Fry indicated her sympathy for the applicant and noted that it was not the applicant's fault that the site had a negative history. She asked if the use permit was required because of the massage use and whether the applicant would proceed without a use permit if the business was limited to facials, manicures and pedicures. Planner Thompson said that was correct.

Commission Action: M/S Fergusson/Sinnott to deny the project and make the following findings.

1. Adopt 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 based on previous complaints on uses in the building related to massage and the potential negative impacts of a new massage use on the surrounding properties, the proposed use will be detrimental to the health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use, and will be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the City.
3. Deny the use permit request.

Motion carried 6-0-1 with Commissioner Soffer recused.

5. **Variance/Susan Haviland/30 La Loma Drive:** Request for a variance for a ground floor and second floor addition that would encroach 9.5 feet into the required 20-foot rear setback, and a variance to encroach 4 feet, 8 inches into the required 10-foot separation distance between the main dwelling unit and a detached structure.

Staff Comment: Planner Cramer said the applicant was proposing to remodel and add a second story addition to an existing single-story residence located at 30 La Loma Drive. She said the applicant was proposing work that would require the approval of two variances. She said the existing attached two-car garage currently encroached nine-feet, six-inches into the 20-foot rear setback. She said the applicant was proposing to tear down the existing garage and build a new garage on the same footprint, and add a second floor addition directly on top of the garage. She said that both the rebuilt ground floor and the new second floor addition would encroach nine-feet, six-inches into the required 20-foot rear setback and required Planning Commission review and approval of a variance.

Planner Cramer noted that in addition there was an existing detached tool shed currently located within the 20-foot rear setback. She said that the proposed rebuilt garage and new second floor addition would be located five-feet, four-inches from the detached tool shed where a minimum of 10-feet was required. She said that the proposed four-foot, eight-inch encroachment into the required 10-foot separation distance required Planning Commission review and approval of a variance.

Planner Cramer said the staff report identified that the Commission might wish to discuss further window placement and design as well as siding materials. She said the applicant in discussions with staff had indicated that the proposed design met their current budget considerations. She said staff also identified that landscaping should be added to the site to address concerns about the blank garage wall and privacy concerns of neighbors.

Planner Cramer said based on the added condition to provide adequate landscape buffers, staff recommended approval of the first variance for the encroachment into the rear setback. She said however that staff in reviewing the request for the second variance to encroach into the required 10-foot separation distance between structures found the variance was not warranted, and recommended denial.

Questions of Staff: Commissioner Sinnott said it appeared that the legal front of the property was the narrow side of the property and that it was originally built with a 20-foot setback there and a 20-foot setback on the other side. She asked how staff had determined the front and the back of the property as the property was conforming if the narrow side was considered the front.

Planner Cramer said the property was three-sided and by definition under the Zoning Ordinance, the front property line would be the line contiguous to the street and the rear property line was defined as the line most opposite to the front. She said in that interpretation the line most opposite was called in the application the rear setback. She said the remaining property line was identified as a side property line. She said it appeared that the two legs of that triangle were previously interpreted as side property lines and there had only been a front property line. She said that staff had not found records to confirm this and thus staff had to rely

on the Zoning Ordinance for the interpretation of the property lines. Commissioner Sinnott said that was unfortunate for the applicants as it appeared the original developer had situated the property lines the other way. She said that the City was creating the non-conformity by its interpretation.

Public Hearing: Ms. Susan Haviland, Palo Alto, of Haviland Architecture, said that she was the architect for the project. She indicated that the design before the Commission was the result of several re-workings of the original design. She provided visual aids for the Commission, noting the first was a visual of the existing house and also showed the immediate neighbors on La Loma and the corner house on Bellair Way. She said that the structure was one-story with a garage a half-level down from the house on a 10,707 square foot sloping triangular lot. She said because of the shape of the lot there were extremely stringent setback requirements according to the Menlo Park Zoning Ordinance. She said that there was an extremely long street frontage that had a 20-foot setback. She said because the lot was triangularly shaped and all Menlo Park lots must have a rear property line, the longest of the side property lines was the one most opposite the front property line and there was a twenty-foot setback along that line and a 10-foot setback along the side property line. She said there was an existing encroachment of the garage approximately nine and a half feet into the 20-foot setback. She said that the neighbors' residences were mostly one-story, but the neighbor to the side was actually two-stories because of the way it was configured. She said that lot sloped sharply and there was living space over the garage with windows that overlooked the subject property site. She said the neighbor to the rear at 1251 Bellair Way was a second-story with windows that also looked directly into the subject property site. She said there was a heritage oak by the driveway which was magnificent.

Ms. Haviland said that the owners' goal was to add a fourth bedroom, a bath and a separate study to their home with the addition being approximately 600 square feet. She said they wished to keep their existing first floor uses intact without change and to add the desired rooms in the most expedient way and in keeping with the character of the neighborhood. She said the proposed addition was about one-half of what would be normally allowed for a house this size.

Ms. Haviland said given the shape and topography of the lot and extremely large setbacks, there was no possibility of a one-story addition. She said the home was designed as a one story and it was difficult to locate a stair in any of the ground floor without losing some sort of function there. She said that finally the existing foundation of the house could not support a second floor addition.

Ms. Haviland said the design they were proposing worked best. She said that the roof would be three-feet above the existing ridge line. She noted that the windows of the second floor addition would not look directly into any of the neighbors' yards. She said they proposed to use stucco for the cladding material, which was the predominant cladding of the existing house. She said they were proposing vertically oriented windows that echoed other windows, but were somewhat different in size and shape as the bedroom windows had to meet egress requirements.

Ms. Haviland said that with this type of addition, the Carlsons would not have to move out during construction. She noted that it would also provide them a view of their own oak tree. She said two obvious ways to add a second story to this home would have been to add over the bedroom wing or the living room of the existing house. She said if the addition was over the bedroom

wing that there would need to be a stair build, which would have meant giving up some function. She said in the alternate design shown that would have been the loss of one bedroom, which would require that the addition have two bedrooms as well as the study and bathroom. She said also the addition would have to fit with the existing roof shape and be supported by the existing exterior walls which restrained the shape and would lead to an addition of 1,000 square feet. She said the windows would look directly into the second floor windows of the neighbors. She said that such a design would require changes to the existing first floor, the replacement of the foundation and the necessity that the residents would have to vacate the home during the construction. She said also there was an existing wood-burning fireplace and this addition would require a longer flue which probably would not be approved; thus, the residents would have to replace the fireplace with a wood-burning stove. She said that with this scheme the street massing was extreme and the roof would have to be raised nine feet.

Ms. Haviland said that another alternative was to add to the center of the house and again some function would be lost. She said in that instance it would be the utility room, which would need to be relocated. She said the fireplace would also be lost and the additional square footage would be greater than what the property owners wanted.

Commissioner Fergusson asked whether variances would be required for the last two design options described by Ms. Haviland. Ms. Haviland said that a conditional use permit would be required as the addition would cost more than half of the appraised value of the existing structure.

Commissioner Soffer said that was not how the value was calculated. Planner Cramer said that a conditional use permit was required when the work was greater than 50 percent of the replacement cost and because the structure was nonconforming, the costs of the addition and remodeling work would be totaled and compared to the replacement value of the structure. She said that she believed the applicant had discussed this with Planner Smith and there was a conclusion that this design would trigger the need for a use permit.

Ms. Haviland said there was another alternative design, which would lower the garage. She said it was very nice, but it would require regarding the driveway, which would mean the probable loss of the heritage oak tree. She said that the arborist report had been redone to look at that design and the arborist agreed that it would be damaging to the oak tree. She said if the garage was rotated and the driveway was located elsewhere there would be very large retaining walls and a gap in the front landscaping.

Ms. Haviland showed some plan diagrams of the existing structure. She said that it was built in 1958 and was part of the unincorporated area of the County and built according to the County's rules for setbacks for triangular shaped lots. She said that the County rules were quite different and included a 20-foot front and rear setback and five-foot side setbacks. She described how the rear property line had been determined for County properties. She said in 1958 part of the area was annexed into the City. She showed a diagram of what the setbacks would look like if the variances were granted. She showed another diagram of what the site would look like if it was rectangular which she said was very similar to what it would be if the variances were granted. She said that granting the variances would be a normalization of an odd situation for the property owners. She showed some photo montages that illustrated the proposed addition with landscape screening as well as from the garden of the neighboring corner lot. She noted

that part of the garage would be visible, but that there was a young pine tree on the neighboring property that would eventually screen the garage.

Chair Halleck asked if there were any recommendations on how to lessen the impact of the windows on the neighbors' privacy. Ms. Haviland said that the windows would not look directly into the neighbors' property but they were willing to entertain suggestions from the Commission. She said that some of the windows had to stay the size they were as they served an egress function. She said there was as sense of balance in how the windows were currently placed, which they would like to preserve.

Commissioner Fry said the window size was related to ingress and egress. She asked if that was limited to one bedroom window. Ms. Haviland said that was correct. Commissioner Fry asked if the study were truly a study and had no requirements for ingress and egress. Ms. Haviland said that was correct. Commissioner Fry said that there was no comment in the correspondence related to the shed. Ms. Haviland said that the property owners would like to keep it, but they would be willing to remove it if necessary.

Mr. Robert Carlson said that he was a 19-year Menlo Park property owner and he and his family had lived at this address for nine years. He said they were seeking a modest addition to a modest home. He said the current configuration of the home limited privacy in the living area for the individual family members. He said the bedrooms were clustered which limited privacy when they had guests or family visiting, such as aged parents. He said he worked at home more frequently than before and had his office in the dining room. He said they enjoy their neighbors and neighborhood and had strived to work with the neighbors in the design of their addition.

Mr. Carlson said that if the addition was placed on the end opposite of the garage, the windows on the second story would look almost directly in the living area of the home at 40 La Loma Drive and the side and rear windows would view most of the backyard at 40 La Loma Drive. He said that the rear windows would also be approximately the same level as the second story as the house immediately to the rear, which problem would be worsened in the winter with the loss of leaves from the trees. He said that the windows at the northeast would look directly into the property located at the corner of Bellair Way and La Loma Drive.

Mr. Carlson said that the other alternatives developed were more house than what they needed or wanted. He said the addition at the east end of the house would not impact the neighbors to the west and would have negligible impact on immediate rear neighbors. He said the addition would have windows and the view portion of the neighbors to the northeast. He said that they have placed the study at the west end of the addition so the windows would not look directly into the neighbors' backyards and would view mostly trees and landscaping. He said the window at the corner of the northeast was a closet window and it could be frosted. He said the windows in the bedroom area if viewed on tiptoe and from the side could look into the side neighbors' yard. He said the windows would look directly into their own heritage oak tree. He said of the multiple options they had considered that they felt the proposed design was the best in that it was simple, honest, elegant and flowed with the existing floor plan and architecture of the house, and would impact to the least amount the least amount of neighbors.

Commissioner Pagee asked if story poles had been used to give the neighbors a true indication of what the structure would look like and where the windows would be relative to their trees. Mr.

Carlson said that they had not. Commissioner Pagee said regarding the floor plan that swapping rooms might offer more privacy. She said for example swapping bedroom and bathroom three with the study might give a different solution. Mr. Carlson said the difficulty was one would have to go through the bedroom to get to the study. Commissioner Pagee said that a door could be placed from the hallway to the bathroom. She said that if bathroom three became a study there would be windows to the front. Ms. Haviland said that the study would then get a lot less light and that it was designed this way to have a large study area with large windows. She said that the windows could be raised so the ledge was chin height. Mr. Carlson said that also they have beautiful Japanese maples in the backyard of which the windows in the study as proposed would provide a view. Commissioner Pagee confirmed that the Japanese maples were deciduous.

Commissioner Pagee said that if the driveway were leveled at 92-feet that would be above the roots of the oak tree. Ms. Haviland said the driveway at exactly where the oak tree was would have to be lowered two feet and that would be very close to the trunk and would require a retaining wall. She said the retaining wall would require a footing underneath the driveway. She said the garage itself would have to be lowered to 90.89 feet and close to the tree it would have to go down to 88 feet. Commissioner Pagee said that what she was suggesting was that they not just stop at 92 feet but grade it slightly more so that only one and half foot was lost. She asked what slope was required. Ms. Haviland noted that there was slope required and transition.

Ms. Judi Morrill, Menlo Park, said that she lived in the corner house at Bellair Way and would be the most severely impacted by the proposed addition. She said that she and her husband were surprised to hear that an addition would be placed above the garage, noting how much they use their yard and how the landscaping including the pine tree were planted to obscure what was existing there. She said that they grew the ivy to the level of the shed and the other plants obscured the first floor. She said that neither the property owners nor the architect had looked at how the addition would look from her yard. She said they currently could see the garage from every point in their yard. She said that even though the bedroom windows were on the far side right now they could see the entire top of the garage. She said the idea of a setback was to prevent structures looming over neighbors' backyards. She said adding six and a half feet to the garage would be an imposition. She said that currently there were no windows in the garage, but 10 windows would be added and they would see almost all of those windows. She said that she had written a letter and taken a photograph of the view from her yard, and was upset that staff recommended approving the variance. She said she assumed that her letter had not been considered by staff or the Commission. She said that the garage was much higher already than if it was level ground as the area sloped downward. She said that with the other two alternatives the addition would be higher and bigger but that was normal because of the need for a stairwell.

Mr. Larry Morrill, Menlo Park, said that he and his wife had lived at their home for 30 years. He said that the proposed addition to the garage would almost completely block the view from their backyard. He said that the garage currently cuts off the sunlight into their backyard particularly in the winter. He said that the proposed 10 windows would look directly into their yard. He said there were other options that did not require a variance.

Commissioner Sinnott asked what bothered Mr. Morrill the most and whether a change to the window placement would relieve his concerns or if it was actually the structure that was of the

most concern. Mr. Morrill said that it was the addition of the second floor and that mitigating the windows would not cure the problem.

Mr. George Jaynes, Menlo Park, said the request was for a very large encroachment and that no one had talked to him or the Morrills until the last moment. He said that it seemed as if economics was driving the plan and that this was only for the applicants' convenience. He noted that the addition he made to his home was over the center of the house and he and his family had to vacate the structure while construction was occurring. He said that this project as proposed would invade his privacy and that of his neighbors, who had just put considerable money into their backyard landscaping. He said he was very disturbed that the architect and owners had not talked to them about the burdens the proposed project would put on the economic value of his and his neighbors' properties.

Ms. Jane Jaynes, Menlo Park, said that looking at the angle of the proposed addition, the windows would look into their yard. She said when the trees were not full, their privacy would be impacted. She said she thought that they had built a wonderful addition to their house and did so without encroaching on neighbors' backyards. She said that the Morrill's arbor area would be directly in the view of the windows of the proposed addition.

Chair Halleck said other alternatives would have windows that faced Ms. Jaynes property directly. Ms. Jaynes said the oak tree would mitigate those impacts considerably, and that she would like to see alternative designs considered.

Commissioner Fergusson asked Ms. Jaynes if she had a preference for Alternative 1 or Alternative 2. Ms. Jaynes said that she did not have a preference as she was not fully aware of the details of either proposal.

Mr. Dan Chou, Menlo Park, said that he resided opposite the project site. He said that the encroachment would impact the two neighbors who had spoken, but the alternatives would be second floors on the center or the other end of the house. He said that would not look nice. He said another alternative would be to lower the garage, but that might destroy the oak tree. He said that if the driveway was lowered, he and his wife would see the garage and parked cars. He said he was in favor of the design as proposed.

Mr. Howard Cohen, Menlo Park, said that he and his wife lived directly across the street from the project site and had lived there for 25 years. He said that the Carlsons visited with them previously to any design work and proposed their ideas. He said Mr. Carlson had brought over architectural renderings for his review. He said the Carlsons had not wanted to upset any of the neighbors and had visited with him and his wife and other neighbors as well. He said the general appearance of the house would be larger, but that it was very much in keeping with the existing house and the rest of the neighborhood. He said that they would be happy with the addition as proposed.

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

Motion carried 7-0.

Commission Comments: Commissioner Soffer commented that usually when the Commission looked at variances and issues of privacy, the distance between buildings was usually small like

10 or twenty feet between the houses. He said in this instance there was about a distance of 55 feet from house to house. He said that this reminded him of the project on Woodlands Avenue where there was a distance of 80 feet from house to house. He said the project was protested, and went through several iterations, before it was eventually approved.

Commissioner Sinnott said the project site was a true hardship for the property owners because of the lot's shape. She said that the massing of the house was much better as proposed than in the alternative designs. She said that not everyone would be happy with any of the designs. She said that the proposed design was nicely balanced. She said that it did not matter what was done to the windows as the neighbors did not want to see any structure at all. She said the residents of Menlo Park lived in developments and sometimes residents have to see the corner of someone else's house. She said that change was upsetting but was not worth stopping property owners' enjoyment of their own home. She said because of the shape of the lot there were true grounds for the variance request. She said the other designs would make other neighbors unhappy and the design would not be nearly as good as that proposed. She said the property owners had done a lot of work, noting that they had four different schemes. She said that the distance between the homes of 55 feet was a good point.

Commissioner Sinnott said that she would move to approve as recommended in the staff report with the removal of the shed.

Commissioner Soffer said that the City and County boundary line goes between the project site and that of the neighbors. He asked if the County regulations were more liberal than the City's. Planner Cramer said that she could not comment on the County's rules as they were different but that she had not researched that.

Chair Halleck said that he would second Commissioner Sinnott's motion with a friendly amendment that the study windows be half glazed or shortened in height. Commissioner Sinnott asked the architect how that would look. Ms. Haviland indicated that they would prefer not to change the design, but if window treatment would make any difference to the neighbor, they could consider it.

Mrs. Morrill said she was concerned with privacy and that the windows of the subject property would look into her family room and kitchen.

Mr. Carlson said that they had spoken with County Planning staff, who had indicated that their project would not have needed a variance, if the property were within the County. He said that they deeply respected the need for privacy, but they only wanted a study window so they could enjoy the view of the landscaping in their own yard. He said that he had no interest in looking through frosted glass. He said that he was interested in doing an addition to the house that fit the floor plan and architecture.

Chair Halleck said that he would not second the motion without the amendment.

Commissioner Soffer said that he would second Commissioner Sinnott's motion. He said that as Commissioner Sinnott had indicated, this triangular lot was the type of lot that needed variances. He noted another triangular lot in Suburban Park. He said that he was not convinced that any alternatives would provide what the neighbors wanted. He said that this was a good design and he thought it was fairly drastic to lower the driveway and garage. He said

that there were trees to screen and a good distance between homes. He said that although the City was not required to adhere to other agency's rules there was a disconnect between the rules in this area because of the County and City boundaries.

Commissioner Bims said the applicant made a good presentation, but it was disturbing that the neighbors did not feel like they had been included in the process. He said that neighbor participation in the development of the design would have brought resolution.

Commissioner Pagee said that privacy was a big issue and she had sought to be on the Commission in response to her neighbors' concern that privacy was not being addressed by the previous Commission. She said that privacy was more of an issue with adjoining or congruent properties than with properties located across the street. She said the addition should be considerate of the neighbors' concerns. She said that the neighbors should not suffer because a project was on a budget. She suggested that the project owners do story poles for the neighbors' review and consider possibly flipping rooms. She said that the heritage oak tree should be preserved, but the grading of the driveway should be considered. She said she could not approve the project as presented. She said the applicant should meet with the neighbors and discuss the issues.

Commissioner Fergusson said that the slope of the lot and the intrusion into the required setback caused the impact to the rear neighbor. She said that she visited the neighboring site and it felt like the proposed project would loom over that backyard. She said story poles would provide much more information. She said that clearly the applicant had thought through the project. She said that the addition could possibly be at the front of the house. She said that the project as proposed would devalue the neighboring properties.

Commissioner Fry said if she looked only at the subject property, it made sense to do the addition as proposed. She said that there was some flexibility with that design in that the foundation of the garage would be redone and with that new walls for the second floor could be brought in away from the neighbors' property. She said that she could not make the finding for the variance that there were no alternatives as there were. She said that the slope increased the impact of the proposed addition for the neighbors. She said perhaps the foundation of the garage could be moved further away.

Ms. Haviland said that one possibility would be to follow the setback line and there would only be a need for one covered parking space and one uncovered parking space. She said that they thought the windows on that setback corner however would be more of an impact on the neighbor than what was proposed.

Commissioner Sinnott said that if the applicants were sent back to develop two other alternatives, there would be other neighbors who would not be pleased.

Chair Halleck said that the neighbors had not seen the alternatives and he said that he did not have enough information to make the finding that the granting of the variance would not be materially detrimental to the public health, safety, or welfare, or would not impair an adequate supply of light and air to the adjacent property.

Commission Action: M/S Sinnott/Soffer to approve as recommended by staff and to remove the shed.

Motion failed 2-5 with Commissioners Sinnott and Soffer supporting and Commissioners Bims, Fergusson, Fry, Halleck and Pagee in opposition.

Commissioner Fry said she would make a motion to continue the project for redesign with direction to the applicant to work with the neighbors to the rear on developing changes to the plans; to use story poles; use possible different window treatment, and consider alternative second floor designs.

Commissioner Sinnott asked whether the property owners would prefer that the Commission deny the project. Mr. Carlson said that he understood what the Commission was saying and apologized if it seemed that the neighbors across the street had been treated preferentially. He said that he had tried contacting the Morrill's and they had not been home. He said that he was concerned that there might not be any way to satisfy some of the neighbors. He indicated that they would work with the neighbors.

Commissioner Pagee said that she would like to add to Commissioner Fry's motion that evergreen trees be added along the rear property line to mitigate privacy impacts to the neighbors.

Mr. Carlson said that there was no location for trees in that area as there was too much shade from existing trees for trees to grow. He said that they had offered the Morrill's financial subsidy for landscaping in the back corner of their house to mitigate impact, but they had not responded to that offer.

Commissioner Fergusson said that perhaps story poles would resolve the issues. She asked if it would be helpful if they commented on the other variance request. She said that maybe if the shed was removed that might open up other opportunities. Commissioner Sinnott said that staff recommended not approving the second variance.

Commissioner Pagee seconded the motion to include the direction provided by Commissioner Fry and to explore landscaping either on the applicant or the neighbor's property.

Commission Action: M/S Fry/ Pagee to continue the project for redesign with direction to the applicant to:

- Work with the neighbors to the rear on developing changes to the plans;
- Construct story poles to allow the neighbors to visualize the impact of the proposed structure;
- Consider changing the size or placement of the windows on the North and Northeast elevations to mitigate privacy impacts;
- Consider alternative second floor designs that may include relocating the garage; and
- Develop a landscape plan that includes the addition of new evergreen trees along the rear property line to mitigate privacy impacts to the neighbors.

Motion carried 6-1 with Commissioner Sinnott opposed.

D. REGULAR BUSINESS

1. Consideration of the minutes of the December 1, 2003 Planning Commission meeting.

Commission Action: M/S Fry/Halleck to approve the minutes of the December 1, 2003 Planning Commission meeting as presented.

Motion carried 7-0.

2. Consideration of the minutes of the December 15, 2003 Planning Commission meeting.

The minutes of the December 15, 2003 Planning Commission meeting were continued to the June 21, 2004 Planning Commission meeting.

3. Consideration of the draft excerpts of the May 3, 2004 Planning Commission meeting for 125 Sharon Park Drive and for 1400 El Camino Real.

Commissioner Fry noted that page 4 indicated "Chair Fry" and should be "Commissioner Fry."

Commission Action: M/S Fry/Halleck to approve the draft excerpts of the May 3, 2004 Planning Commission meeting for 125 Sharon Park Drive and for 1400 El Camino Real as presented with the following change.

- Page 4, Line 42: Change "Chair Fry" to "Commissioner Fry."

Motion carried 6-0-1 with Commissioner Soffer abstaining.

E. COMMISSION BUSINESS, REPORTS, AND ANNOUNCEMENTS

Planner Cramer outlined upcoming Commission meetings, noting a June 17, 2004 scoping session on the Derry project; and a June 28, 2004 meeting with an overview of downtown uses which would be attended by Mr. Dave Johnson, the City's Business Development Director, and Fran Dehn of the Chamber of Commerce as well as a discussion on the relationship between the neighborhood traffic management plans and impacts on development projects. She said that the Transportation Division Manager would provide information on the latter item but would be unable to attend.

Planner Cramer said because of staff's workload they would not be providing the Commission more information on the two items for the June 28, 2004 meeting. She said that as typical there would not be a recorder but if anything came out of the meeting regarding other work the Commission might want to pursue, staff would not be able to prepare summaries or letters. She said that the Commission might want to consider appointing someone on the Commission to do any follow up work. She said that this direction to staff was made by the City Manager.

Planner Cramer said that on August 30, 2004 there would be a study meeting on alleys, and medical offices. She said the City Attorney and Director of Development Services would attend

and that reports written by the City Attorney and staff on the alley issues would be provided to the Commission.

Commissioner Fergusson said that there had been a number of letters on the Traffic Management Plan that had been written to the City Council. She asked if it was possible to notify those people of the June 28, 2004 meeting. Planner Cramer said that if the Transportation Division had a mailing list, she would be happy to send something out. Commissioner Fergusson suggested also putting a notice on the Commission's website at least four days prior to the meeting.

Planner Cramer said that the budget was going to the Council on June 8 and 22. She said that an appeal of the Commission's decision on Shell station signage and architectural control would be heard at the June 15, 2004 City Council meeting.

Chair Halleck asked that a discussion of "excused" and "unexcused" absences be added to a future agenda.

ADJOURNMENT

The meeting adjourned at 10:25 p.m.

Staff Liaison: Tracy Cramer, Senior Planner

Prepared by: Brenda Bennett, Recording Secretary

Approved by Planning Commission on September 27, 2004.