



MENLO PARK PLANNING COMMISSION MINUTES

Regular Meeting

March 13, 2006

7:00 p.m.

City Council Chambers

701 Laurel Street, Menlo Park, CA 94025

CALL TO ORDER – 7:00 p.m.

ROLL CALL – Bims (Chair), Deziel, Keith (Vice-chair), Pagee, Riggs, Sinnott

INTRODUCTION OF STAFF – Deanna Chow, Senior Planner; Megan Fisher, Assistant Planner; Justin Murphy, Development Services Manager; Thomas Rogers, Assistant Planner

A. PUBLIC COMMENTS

There were none.

B. CONSENT CALENDAR

There were no items on the consent calendar.

**C-1 and C-2 excerpts were approved on
April 10, 2006**

C. PUBLIC HEARINGS

1. **General Plan Amendment, Rezoning, Conditional Development Permit, Tentative Subdivision Map, Environmental Review/110 Linfield Project, LLC/110 Linfield Drive:** Requests for the following: 1) General Plan Amendment to change the existing Professional and Administrative Offices land use designations to Medium Density Residential, 2) Rezoning the properties from C-1 (Administrative and Professional District, Restrictive) to R-3-X (Apartment - Conditional Development District), 3) Conditional Development Permit to establish specific development regulations and review architectural designs for the demolition of an office building of approximately 17,500 square feet and the construction of 22 residential units, and 4) Tentative Subdivision Map for the creation of 22 lots and associated common areas. The proposal requires the preparation of an Environmental Impact Report.

Staff Comment: Development Services Manager Murphy noted that Commissioner Deziel was not present and had recused himself from consideration of items C.1 and C.2 due to a prior potential financial interest. He said that staff had no additional comments to the written staff report.

Public Comment: Mr. Kevin Fryer, Mission Valley Properties, said he was representing CFC Trust, the property owners of 175 Linfield Drive. He said this was a continuation of a hearing in December. He thanked staff for their work on the project and in particular Development Services Manager Murphy.

Mr. Fryer said the benefits of the project included the provision of 56 new homes and 8 Below Market Rate units (BMR) to the City; he noted that the project was one of the first in the City to meet the onsite 15 percent BMR requirement. He said they had voluntarily participated in the Linfield, Middlefield, and Willow Traffic Study and they were willing to condition the approval of their project on a fair share contribution to any of the traffic investments that would be implemented as a result of the study. He said in the area traffic study that one of the mitigations suggested was streetscape improvements for Linfield Drive. He said they were voluntarily willing to participate in the streetscape improvements.

Mr. Fryer said that flooding was an issue in the Linfield corridor during the wet season and their project would meet the City's requirements for storm drains by onsite drainage and somewhat larger pipes. He said they worked with Planning staff and Mr. Ruben Niño, the City's engineer, and they had taken the lead on developing several versions of a Linfield Drive Storm Drain Improvement Plan. He said there was staff consensus on the plan and it was described in the staff report. He said these improvements would have immediate benefit and some long-term benefit as the proposed plan would work with future improvements to the storm drain system.

Mr. Fryer addressed encroachments on the 20-foot by 20-foot clear requirement for garages that were of concern at the last public hearing for this project. He said the encroachment in two units was from a step down into the garage and in others from a water heater in the garage; he said they mitigated the encroachments by bringing the step back into the house in the two units and replacing the water heaters in those units where there was encroachment with tankless water heaters. He said that all garages proposed would meet the City's requirement for garages.

Mr. Fryer said the traffic study found that there would be 565 daily trips for the project. He said if they occupied the existing office space with tenants, the traffic study indicated that would result in 611 daily trips. He said the proposed project's impacts on intersections and street segments as compared with office occupancy traffic impacts were pretty much a wash.

Mr. Fryer said the estimated annual property tax revenue for the project was \$530,000, which would include a \$90,000 increase in property tax proceeds that would go to the elementary school district; and a \$45,000 increase for existing elementary school district bonds and parcel taxes. He said that was in addition to a one-time school impact fee calculated at the maximum fee per square foot allowed by the State or \$218,000, \$131,000 of which would go directly to the elementary school district.

Mr. Fryer said that in addition to the open space of the proposed project, the project would pay a park-in-lieu fee of approximately \$1.334 million dollars and those funds were potentially available as cross-over funds for improvements to existing school sports facilities.

Mr. Fryer said they had contracted with Economic and Planning Systems to study the impact of the project on the City's general fund; he said the study found that not only would the project pay for itself, but it would result in a surplus to the City's general fund of \$26,000 annually.

Mr. Fryer said it was a project they were proud of and hoped for the Commission's support.

Commissioner Keith said that the applicant had indicated they were taking a lead on the Linfield Drainage Improvement Plan and asked if the applicant was willing to contribute some fee to a future Storm Drain Fund. Development Services Manager Murphy said that there was a study,

which was looking at the feasibility of creating a storm drain fund. Mr. Fryer said they would consider it if were an actual fund and there was some information on what the fees would be.

Commissioner Keith confirmed that the school impact fee calculation was based on \$2.24 per square foot. She said that the fee had increased in January to \$2.66 per square foot. She asked whether the project was willing to pay the increased fee. Mr. Fryer said that they would. In response to a question from Commissioner Keith, Development Services Manager Murphy said the request for the fee payment would be from the school district, but the City would require proof of payment before issuance of a building permit.

In response to a question from Commissioner Keith, Development Services Manager Murphy said there was no bike lane proposed for the Linfield Drive streetscape improvements. He said part of that was based off the City's Master Plan for bikes as that shows Willow Road as the route with a bicycle facility. Commissioner Keith asked if a bike lane could be included. Development Services Manager Murphy said it could be done but something else would need to be modified. Commissioner Keith asked if the applicant preferred medians to bike lanes. Mr. Fryer said that their concern was implementation of the improvements and that the design was up to the City and the community. Commissioner Keith asked if they would consider solar panels on the roofs. Mr. Fryer said they would consider this but they would need time to analyze what that would mean to terms of cost and viability for the project.

Commissioner Pagee asked for confirmation that the maintenance of the green space was handled through a Homeowner's Association (HOA) and asked if the BMR units would pay a HOA fee in addition to house payment. Mr. Fryer indicated that was correct. She asked if the HOA fee had been calculated within the affordability of the BMR. Development Services Manager Murphy said that fee was a separate component of the calculation. He said the HOA in this instance would not be maintaining structures so that would help the affordability.

Commissioner Pagee asked whether maintenance of landscaping within proposed Linfield streetscape improvements would be covered by the projects' HOA. Mr. Fryer indicated that if the improvements were developed so that there was landscaping attached to the projects, the HOA would take care of that maintenance.

Commissioner Pagee asked if they had considered a water feature in the landscaping design. Mr. Fryer said they could consider including one. Commissioner Pagee asked if 8 Homewood Place were developed as residential whether there would be continuity of design. Mr. Fryer said that residential development on that site was not definite, but if the Linfield properties were constructed prior to development of Homewood Place that applicant would need to design a project that would fit with the surrounding neighborhood. Commissioner Pagee asked about storm runoff handling onsite. Mr. Fryer said there were onsite improvements to meet storm drain treatment requirements so that water would be held and treated and then released.

Commissioner Sinnott said the architecture was very nice but she wondered about the materials. Mr. Fryer provided a colors and materials board. Commissioner Sinnott said she was concerned about parking and she thought that four-bedroom houses needed at least three parking spaces.

Commissioner Keith asked what the size of the replacement trees would be. Mr. Fryer said they would be 15-gallon. Commissioner Keith asked if they would be willing to increase size of the tree. Mr. Fryer said they would, but they would need to look at the cost involved and the viability of larger trees to grow healthy.

In response to a question from Commissioner Keith, Development Services Manager Murphy said that use of median strips on Linfield would eliminate parking on one side of the street. He said there were three concepts in the street improvement proposals: narrowing the street, leaving the street as is, and installing a median.

Mr. Stu Soffer, Menlo Park, said he appreciated an e-mail he received from Mr. Fryer regarding the changes the applicants had made to the design in response to concerns. He said that planning in this community area was being done piecemeal. He said that comprehensive planning was needed. He said there were nine General Plan Amendments coming up. He said that State law state that if there were four General Plan Amendments within a year that the provisions of the General Plan could be challenged. He said that it would be better to redo the General Plan and do a comprehensive plan for the City. He said that project should be developed as standard R-1 lots.

Chair Bims closed public comment on C.1. and opened consideration of C.2.

2. General Plan Amendment, Rezoning, Conditional Development Permit, Tentative Subdivision Map, Environmental Review/HMH Engineers/175 Linfield Drive:

Requests for the following: 1) General Plan Amendment to change the existing Professional and Administrative Offices land use designations to Medium Density Residential, 2) Rezoning the properties from C-1 (Administrative and Professional District, Restrictive) to R-3-X (Apartment - Conditional Development District), 3) Conditional Development Permit to establish specific development regulations and review architectural designs for the demolition of an office building of approximately 38,500 square feet and the construction of 34 residential units, and 4) Tentative Subdivision Map for the creation of 34 lots and associated common areas and abandonment of a public utility easement five feet in width at the southwesterly portion of the existing lot. The proposal requires the preparation of an Environmental Impact Report.

Public Comment: Commissioner Keith asked Mr. Fryer to show the location of the three-story units on the parcel.

Chair Bims closed the public hearing.

Commission Comment: Commissioner Sinnott said her concern was the parking adequacy; she said that approving as proposed would create an under-parked project. She said there were places on the sites where more parking could be gained. Commissioner Keith said she tended to agree with Commissioner Sinnott on parking; she said that the calculation for determining the number of children was based on the square foot and used 2,500 square feet. She said there were many families with children who lived in homes smaller than 2,500 square feet.

Commissioner Sinnott said that if the applicant were willing to give up some of the four-bedroom units that she would agree to the parking. She said that the developer was getting a General Plan Amendment and the smallest lot size ever given a developer in the City.

Commissioner Keith said that a three-story residence in this area was setting precedence.

Commissioner Pagee agreed about the parking. She said the project would not be able to stay within the prohibition of overnight street parking. She said that there would be limited sunlight on the homes because of the three-story units. She said that there needed to be a bike lane on Linfield Drive and a safe crossing at the Middlefield Road intersection for school children.

In response to questions from Commission Riggs, Mr. Fryer said the developer and the builder understood their prospective market and their team had years of experience in developing and building residential developments. He said the tradeoff for the buyers was less land for a newly constructed house. He said the elements of the design impacted who would find these units attractive. He said an example of a prospective buyer would be a young married couple with no children yet but who had a desire to buy a detached home. He said he thought there was more than one niche of buyer that these homes would be attractive to. Commissioner Riggs said that many residents did not put any of their cars in the garages and used them for storage. He asked if there had been parking issues on other projects they had done. Mr. Fryer said that when in-fill projects were done there were tradeoffs and parking was one of those issues that might suffer because of the priority of other amenities. He said that people who bought these homes would figure out how to stay within the constraints.

Commissioner Keith asked if the applicant would consider fewer of the three-story homes to accommodate more parking. Mr. Fryer said that he could not agree to that right now as the three-story element was important to the economic feasibility of the project.

Chair Bims summarized concerns including adequacy of parking because of four-bedroom units; not enough passive solar and a request for solar panels; and traffic study. He asked if there had been enough input on traffic study. Commissioner Riggs said they had received the traffic study prior to the meeting and of approximately five projects being looked at that none of the projects individually had big impacts. He said it was only on marginal intersections that cumulatively there were significant impacts. Commissioner Keith said page one of the executive summary stated that these three projects would generate 112 net new a.m. peak hour trips and 192 net new p.m. peak hour trips for a total 2,053 new daily vehicle trips. She said if the project were to proceed that it would need to contribute significantly to future traffic improvements; she said perhaps another lighted crossing on Middlefield Road. Commissioner Riggs said the traffic study addressed the issues in a cumulative way, but the burden of all mitigation should not fall on this project. He said there were some traffic issues that could not be resolved.

Chair Bims said the buyers would know the limitations of the parking and would work within those constraints; he said the problem was guest parking and on-street parking while not an optimal solution would relieve guest parking. He said the benefit of no median would allow more on-street parking and possibly a bike lane.

Commissioner Keith said she would not like the median and wanted more parking, wider sidewalks and bike lanes. Commissioners Sinnott and Pagee agreed with Commissioner Keith.

Commissioner Riggs moved to recommend approval to the City Council as recommended by staff. Chair Bims seconded the motion and added friendly amendments: condition for the applicant to contribute fair share in all traffic measures implemented because of the LMW Traffic Study; condition to pay prevailing school impact fee at time of application; and condition that on-street parking be provided instead of a median on Linfield Drive.

Development Services Manager said the condition for the applicant to contribute fair share in all traffic measures implemented because of the LMW Traffic Study was covered in condition B.16. He said the school impact fee was a requirement and could be added as a condition. He suggested that the comments on the Linfield Drive streetscape improvements be made as a separate recommendation to the Council.

Commissioner Riggs said that he accepted Chair Bims' friendly amendments.

Commissioner Sinnott said that she could not support recommending approval until there was a condition that the project would provide adequate parking. Commissioner Pagee said the applicant had designed a project that tried to make everyone happy, but parking was inadequate.

Commissioner Riggs said perhaps the Commission could specify in the recommendation that there be a prominent sales disclosure of the presentation of the units for sale and in the sale contract stating that the City of Menlo Park has strict regulations on parking. He suggested that Planning staff should review and approve the language of the disclosure. Commissioner Keith said that deed restrictions could be recorded against parking. Commissioner Riggs said that he thought the community would be self-policing regarding parking. Commissioner Pagee said the project had private streets and would not fall under Menlo Park's public street prohibition of overnight parking and would create overflow parking on Linfield Drive.

Recognized by the Chair, Mr. Fryer said that either the sales disclosure or deed restrictions would be fine. Commissioner Riggs said that the streets were private within the project and asked how it would be policed to prevent overnight street parking. Mr. Fryer said that one of the conditions of approval that they agreed to with staff was that the HOA would agree to require that all owners and guests park in designated parking spaces and were prohibited from parking overnight on the private streets as part of the HOA's CC&Rs. Commissioner Sinnott asked how the 20 guest parking spaces were allocated among the 56 units. Mr. Fryer said the spaces were not assigned to particular units and there were limitations on hours of parking on the street.

Commissioner Keith asked about requiring solar panels. Commissioner Riggs said he did not think it was fair to assign that to the project although he strongly supported solar panels. He said there were a lot of advantages to the City from the project and about three disadvantages. He said the project would add attractive housing to the City's housing stock; the project would solve a flooding problem with the sites and streets; it would make various financial contributions to the City; and the applicant had been willing to step up even further on several items.

Chair Bims asked Mr. Fryer if he would respond. Mr. Fryer said regarding solar panels that there was a lot of detail to analyze to see if they would be feasible and it would require more than they could commit to now. Commissioner Riggs suggested to Commissioner Keith that perhaps another separate recommendation to the Council regarding solar panels could be added.

Commissioner Sinnott suggested that Classic Communities' parking be reviewed as to ratio of parking spaces to number of bedroom, guest parking accommodations, whether parking has been a problem as a comparison to this project.

Commission Action: M/S Riggs/Bims to recommend to the City Council approval of the project to include findings related to the approval of the Environmental Impact Report, findings related to the approval of the General Plan Amendment and re-zoning, the Conditional Development Permit, the Tentative Subdivision Map for both 110 and 175 Linfield Drive and the conditions of the approval with following modifications: add condition 5.20 to reference the project's responsibility to pay the school impact fees effective at the time of payment; modify condition 5.13 to add 5.13.3 that CC&Rs would prohibit overnight parking on the internal streets; add a

12th recommendation to the Council to pursue a street improvement plan on Linfield Drive that did not eliminate on-street parking, had no median, and provided bike lanes; and a 13th recommendation for staff to prepare a comparison of parking ratios to number of bedrooms of Classic Homes, number of guest spaces, and whether parking has been a problem for this development and to provide this information to the Council for their consideration.

Motion carried 3-2 with Commissioners Pagee and Sinnott voting against and Commissioner Deziel recused.

3. **Use Permit/Laurel Homes/1175 Johnson Street:** Request for a use permit to construct a new two-story, single-family residence on a substandard lot with regard to lot width in the R-E (Residential Estate) zoning district, and for excavation into required side yard setbacks for lightwells and egress associated with a basement.

Commissioner Sinnott recused herself because of a potential conflict of interest and left the Chambers during the consideration of item C.3.

Commissioner Deziel joined the meeting having been recused for Items C.1 and C.2.

Staff Comment: Planner Rogers said that Mr. Paul Perret, an adjacent neighbor to the subject property, had submitted a letter expressing concerns with the size, bulk, massing, and window placement of the proposed residence. Planner Rogers said another clarification was regarding a property survey. He said he had been under the impression that the property survey needed to be done; however, the applicant had indicated that the survey had been done a couple of months prior and the plan as shown on page B.1 was based on the survey. He said the applicant had a full-sized copy of the survey if desired by the Commission.

Note was made that the contiguous neighbors to the subject property had not received notice about this public hearing although the City had mailed the notices to the contiguous property owners as part of its regular notification process and it was not clear why the USPS had not delivered the notices nor why the persons had not received them. It was also noted that a notice with plans had been sent to the neighbors in January and that the neighbors acknowledged awareness of the proposed project.

Public Comment: Ms. Kim LeMieux, business owner of Laurel Homes, introduced Mr. Dan Thompson, the designer. She said Mr. Thompson had designed most of the 10 homes that Laurel Homes had built in Menlo Park. She said that she had made a great effort in January to visit the neighbors with full sets of plans and had requested feedback from them at that time. She said however that she had not received any feedback from the neighbors until a week prior to this meeting. She said part of the neighbors' concerns was about the property line as the neighbors were under the impression that a property survey had not been done. She said that the survey was part of the reduced plans the Commission had received and she had a full-size survey report if the Commission desired to see it. She said that she had negotiated with neighbors so that an existing fence when replaced would remain in its current location even though the fence encroaches at some points four to five feet onto her property. She said she was working with another neighbor on the removal of a tree and had indicated to another neighbor on the other side of the project that she would work with him on the planting of trees for screening and had assured him that the fence on his side of the subject property would remain and would not be replaced, which had been part of his concern. She said that neighbor had indicated that the existing garage, which significantly encroaches in

the setback, screens his property from a neighboring church's lights. She had explained to the neighbor that she could not leave the garage where it was nor do anything about the church's light, but she would guarantee that her projects' lights would be screened from his property. She said despite the non-receipt by the neighbors of the public notice for this meeting that the neighbors had been well aware of the proposed project since January and a continuance would be very unfair to Laurel Homes as the applicant.

In response to a question from Commissioner Deziel, Mr. Dan Thompson, the project designer, said the reason the one side of the house on the right side was somewhat tucked in was primarily because of heritage trees in the back and in the front.

In response to questions from Commissioner Pagee, Mr. Thompson said the property was difficult to design because it was narrow and deep. He said a detached garage would have to be way in the rear of the property at a considerable distance from the residence as the location of the residence was dictated by the heritage trees on the property. He said Ms. LeMieux and he had reviewed numerous options and felt the front facing garage was the best option for that lot in terms of aesthetics and the size and use of the rear yard. He said they had looked at a three-bay garage, but the substandard width of the lot in the front meant that a three-door garage would take up most of the front elevation. He said they looked at placing a three-door garage on the side but that created a visual impact for neighbors. He said they looked at other homes they had built in Menlo Park of comparable size and found that two-car garages had worked in those instances. He said they needed a three-foot path from the lightwells for egress so that with the retaining walls, the lightwells projected into the setback four feet.

Mr. Paul Mills, Menlo Park, said that the applicant had spent considerable time speaking with the neighbors about the proposed project. He said the house would be a nice addition to the neighborhood; he said his concern was that the fence between his property and the subject property remain in the same location when it was replaced. He said that Ms. LeMieux had indicated to him that it would remain in the same location.

Chair Bims closed the public hearing.

Commission Comment: Commissioner Pagee moved to approve as recommended by staff with the condition that the shared fence as noted by Mr. Mills remain in its current location when replaced. Discussion ensued and Ms. LeMieux in response to the discussion said she was willing to write a letter agreeing to the current location of the fence when replaced and that the fence not being fully on the property line would be disclosed to the new owner. She said it was a concession she was willing to make.

Commissioner Riggs said there were options for the placement of a three-car garage in the back third of the property and that the home could be moved forward on the lot.

Commissioner Deziel said that the applicant was being sensitive to the neighborhood by not building to the maximum size of the lot and placing part of the structure underground and that larger lightwells had a nicer appearance.

Commissioner Pagee's motion died for a lack of a second.

Commissioner Deziel moved to approve as recommended by staff with direction that the applicant provide staff with a letter stating that the fence would remain where currently

located and that would be disclosed to the new owner. Development Services Manager Murphy discussed the ramifications of making the letter a condition of approval with the Commission and how best to address Commissioner Deziel's concern that a future property owner of the subject property would have to go through the use permit process should they choose to replace the fence on the actual property line. Motion died for the lack of a second.

Ms. LeMieux provided Chair Bims with a letter signed by her stating that the fence replacement on the left side would remain in the location of the existing fence which encroaches upon her property.

Commissioner Deziel moved to approve as recommended by staff. Commissioner Pagee seconded the motion but suggested an amendment regarding lighting. She said that the lights on the property should be required to have deflectors so they would only shine down, not up or out. Commissioner Riggs suggested: "Exterior lighting installed shall be controlled so that no light is directed to the neighboring properties." Commissioner Riggs seconded Commissioner Pagee's motion to amend.

Commission Action: M/S Pagee/Riggs to amend the original motion to add that "Exterior lighting installed shall be controlled so that no light is directed to the neighboring properties."

Motion carried 3-2-0-1 with Commissioners Bims, Pagee, and Riggs voting in support, Commissioners Deziel and Keith voting against and Commission Sinnott recused.

Commissioner Riggs said that he would not support approval of the project as the lot size supported a project that would not need variances to build. Commissioner Pagee said she thought the design could have been done differently and that the size of the proposed structure warranted a three-door garage. Chair Bims said that he did not have a problem with the size of the proposed residence as it was well within the allowable building space, but he was concerned with encroachments into setbacks. Commissioner Keith concurred with Chair Bims' comments.

Commission Action: M/S Deziel/Pagee on original motion, which was amended by Pagee/Riggs motion, to approve as recommended by staff with an additional condition to state: "Exterior lighting installed shall be controlled so that no light is directed to the neighboring properties."

Motion failed 1-4-0-1 with Commissioner Deziel supporting the vote, Commissioners Bims, Keith, Pagee and Riggs voting against, and Commissioner Sinnott recused.

Commissioner Deziel said he had not realized there was opposition to the project and questioned what the reasons were. Commissioner Pagee acknowledged that the applicants had taken the oak tree into consideration for the design and indicated that she had visited the property. She said she was concerned that such a large home would not have a three-car garage. She said there were other ways to incorporate the house or the garage on this lot without having the design "boxed" out to the end of the daylight plane. Commissioner Riggs said the design was not forced by particular needs and he did not think the design was the best for the lot.

Chair Bims asked whether there was consensus to stay past 11:30 p.m. The Commission was not in support of staying past 11:30 p.m. (3-2). Discussion ensued regarding how unheard items would be handled. Both Commissioners Keith and Pagee said they would

reconsider their position. Both Commissioners Keith and Pagee said that the agenda for the meeting was particularly heavy whereas the agenda for the previous two meetings had been very light and they expressed their desire that future meeting agenda should not be so full. Chair Bims re-pollled the Commission and four Commissioners supported staying past 11:30 p.m. with Commissioner Sinnott recused.

Commissioner Keith moved, and Commissioner Pagee seconded the motion, to continue the project for redesign.

Commissioner Deziel said in reference to a three-car garage that it could possibly be perpendicular to the driveway entry. He said he also thought that the group's concern was the large roof presence in the façade of the proposed home.

Ms. LeMieux asked to speak. She said that the design of the home was very similar to the home in Menlo Park in which she lives. She expressed her frustration that they had designed the project to the zoning ordinance and now were being told to continue for redesign based on subjective design preferences of the Commission. She said that as a builder she needed clear guidelines on what could be built in Menlo Park.

Commission Action: M/S Keith/Pagee to continue the item to allow the applicant to submit a revised proposal.

Motion carried 4-1 with Commissioners Bims, Keith, Pagee and Riggs voting in support of the motion, Commissioner Deziel opposed and Commissioner Sinnott recused.

Item C-4 excerpts were approved on April 24, 2006

4. **Use Permit and Variance/Kelly Fergusson/168 Oak Court:** Request for a use permit and variance to construct a second story addition to an existing single-story, single-family residence on a substandard lot in regard to lot depth in the R-1-U (Single-Family Urban) zoning district. The proposed project requires a use permit to exceed 50 percent of the replacement cost of the existing nonconforming structure in a 12-month period. The proposed project also requires variances to encroach 10 feet into the required 20-foot front yard setback for a second story addition and to accommodate a change in the roofline on the existing first floor, and to encroach 2 feet, 5 inches into the required 20-foot rear yard setback to accommodate a change in the roofline of the existing first floor.

Commissioner Sinnott rejoined the meeting.

Staff Comment: Planner Chow said that staff had no additional comments.

Commissioner Sinnott asked about the issue with the Floor Area Limit (FAL) and the attic. Planner Chow said one of the items proposed for consideration was a change in the roofline that would cause some attic space to be greater than five feet. She said that this was conditioned to be resolved to bring the proposal within a FAL of 2,800 square feet. Commissioner Sinnott asked what the square footage of 2,945 related to. Planner Chow said that was all the square footage plus items included in the building coverage.

Public Comment: Ms. Kelly Fergusson, applicant, introduced her husband, Mr. Robert Zeien, and their architect, Mr. Terry Beaubois. She said their request was for an addition and some variances as the parcel was a flag lot with some unusual orientation. She said the home was built in 1956 when the area was part of unincorporated San Mateo County and was configured

logically with side yards to neighbors' side yards. She said annexation to the City of the Menlo Park changed the rules for residential development and that was why they needed variances. She said they would reconfigure the front entry but would keep much of the existing home as it was because they like the floor plan. She said that they needed more space for their family and also wanted a dedicated music room. She said they wanted a street presence, stained wood garage doors possibly with stained glass windows, and a consistent roof line.

Mr. Zeien said that they currently have passive solar panels on the south facing walls and proposed with this project to install photovoltaic panels on the roof. He said there was a condition in the staff report to construct the music room with sound attenuating materials and that was acceptable to them.

Mr. Terry Beaubois, architect for the project, said his clients had been very clear about what they wanted and needed and they had worked with neighbors on the design. He said that variances were necessary because of the configuration of the lot.

Commissioner Sinnott said that the music room could have been placed on the other side of the house without the need of a variance. Mr. Beaubois said that it could have been located there physically but the location was preferable to the neighbors where it was now located.

In response to a question from Chair Bims, Mr. Beaubois said there would be batting for sound insulation between the studs, a soundboard on the inside of the wall, and the attachment of the interior wall board to the framework would be constructed in such a way as to reduce vibration. He said he was confident that they could meet the condition to not exceed noise levels in the evening as found in the City's Noise Ordinance.

Mr. Hank Lawrence, Menlo Park, said that if the City of Menlo Park had annexed the property after the property owners had acquired the property then the City should provide the property owners what they needed to develop. He said if the property owners had acquired the property after the City had annexed it that they were fully aware of what they were acquiring and it should be treated as any other development project without variances.

Chair Bims closed the public hearing.

Commission Comment: Commissioner Sinnott said she could not support the variance request for the 10-foot encroachment into the front yard as it was not necessary and that an addition could be made to the back of the residence without encroachment. She said that the request for the variance seemed to be in response to the most vocal neighbors. She said this would set a precedent to allow an encroachment into the front setback.

Commissioner Deziel said that if the mass of the second floor was moved to the side the applicants would not be able to construct a roof over the last five feet of the garage unless it was flat or sloped. He said that created a hardship so the question was how much of a variance to grant. He said they should have the opportunity to do a second floor addition with the integration of the roof in an acceptable way and the variance request was appropriate. He said that there needed to be a clarification made between the use permit and the variance request. He said the variance for the owners of substandard lots was a tool to balance their needs and the needs of the neighbors. He said that neighbor objections were not a basis for granting a variance. He said if the applicants liked how the roof could be treated with moving the second floor to the side that he could support the use permit even if there were neighbor objections.

Chair Bims said that it was hard to see the subject property from the street and that the addition would enhance the front street appearance.

Commissioner Pagee said it was a benefit to have as much roof surface as possible for solar panels and that with the configuration proposed, the property owners would be able to accomplish this.

Chair Bims said that moving the second story to the east would put a second story residence about 20 feet from a single-story home.

Commissioner Deziel moved to approve as recommended by staff; Commissioner Pagee seconded the motion.

Commissioner Riggs said that potentially the music room could be placed over the entry and suggested that if the desire of the Commission was to relocate that room that this question should be posed to the architect and property owners.

Commissioner Sinnott noted that there appeared to be a balcony on two sides and thought those were not allowed in side yards. Mr. Beaubois said that it depended on the definition of a balcony. Planner Chow said that this was a balcony as it projected. She said it was proposed for the left side, which was considered the rear of the property and would have a 30-foot setback and the balcony above the front entry was considered the side yard, for which there was a 20-foot setback. Mr. Beaubois said the deck where it extended from the first floor was 20-feet 11-inches from that property line.

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

1. Make a finding that the project is categorically exempt under Class 1 of the current State CEQA Guidelines.
2. Make the following findings as per Section 16.82.340 of the Zoning Ordinance pertaining to the granting of the variance:
 - a. The configuration of the structure with respect to the orientation of the lot and the presence of heritage trees in the rear and side present constraints to how an addition to the residence could be constructed.
 - 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 variances, the construction of the addition and remodel will conform to all other requirements of the Zoning Ordinance. Granting of the variances will not be materially detrimental to the public health, safety, or welfare, and will not impair an adequate supply of light and air to adjacent property.
 - 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 configuration of the property and existing structure.

3. Make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will not be detrimental to the health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be detrimental to property and improvements in the neighborhood or the general welfare of the City.
4. Approve the use permit and a variance subject to the following *standard* conditions:
 - a. Development of the project shall be substantially in conformance with the plans prepared by Terry A. Beaubois, AIA & Associates, consisting of nine plan sheets, dated received March 2, 2006 and approved by the Planning Commission on March 13, 2006, 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, Engineering Division, and Transportation Division that are directly applicable to the project.
 - d. 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.
 - e. Heritage trees in the vicinity of the construction project shall be protected pursuant to the Heritage Tree Ordinance. Prior to the building permit issuance, the applicant shall implement the tree protection plan and technique recommendations in the Arborist Report for all applicable heritage trees.
5. Approve the use permit and variance subject to the following *project specific* conditions:
 - a. Prior to building permit issuance, the applicant shall submit revised plans and supporting documentation to show that the music studio will be contain sound attenuation to meet the City's Noise Ordinance for the nighttime hour.
 - b. Prior to issuance of a building permit, the applicant shall submit revised plans with a total floor area not to exceed 2,800 square feet that would not materially change the exterior appearance of the house subject to review and approval of the Planning Division.

Motion carried 4-2 with Commissioners Bims and Sinnott opposed.

5. **Use Permit/Juan de Leon/1944-48 Menalto Avenue:** Request for a use permit to rebuild an existing legal, nonconforming dwelling unit and carport in the R-2 zoning

district. Subject to use permit approval, the same number of residential units may replace an existing legal, nonconforming residential unit and existing nonconforming parking conditions may continue. In addition, a request to approve a Below Market Rate (BMR) agreement to designate one of the attached units as a BMR unit and utilize an allowed floor area limit (FAL) bonus.

Development Services Manager Murphy said it was 11:30 p.m. and the Commission needed to address the remaining items as to whether they would be heard tonight or continued to the next meeting. He said that potentially one public hearing could be added to the March 27 agenda or two of the regular business items could be added to that agenda.

It was the Commission's consensus to open and close all of the remaining agenda items.

Development Services Manager Murphy recused himself due to a potential conflict of interest with item C.5 and left the Council Chambers.

Staff Comment: Planner Rogers said that staff had no additional comments.

Public Comment: Mr. Juan de Leon, the property owner and applicant, said they had purchased the property about two years prior and with the designation of a BMR unit, they were requesting some additional density and parking considerations.

Chair Bims closed the public hearing.

Commission Comment: Commissioner Keith moved to approve as recommended by the staff report and noted that the City needed more BMR units, and this would perhaps be the first one-bedroom apartment BMR in the City. Commissioner Sinnott seconded the motion.

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

1. Make a finding that the project is categorically exempt under Class 1 of the current State CEQA Guidelines.
2. Make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be detrimental to property and improvements in the neighborhood or the general welfare of the City.
3. Approve the Below Market Rate Housing Agreement.
4. Approve the use permit subject to the following *standard* conditions:
 - a. Development of the project shall be substantially in conformance with the plans prepared by Madson Design, consisting of six plan sheets, dated received February 21, 2006, and approved by the Planning Commission on March 13, 2006, except as modified by the conditions contained herein.
 - b. Prior to building permit issuance, the applicants shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies' regulations that are directly applicable to the project.

- c. Prior to building permit issuance, the applicants shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
- d. 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.
- e. Prior to building permit issuance, the applicant shall submit plans indicating that the applicant shall remove and replace any damaged and significantly worn sections of frontage improvements. These revised plans shall be submitted for the review and approval of the Engineering Division.
- f. 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.
- g. Heritage trees in the vicinity of the construction project shall be protected pursuant to the Heritage Tree Ordinance. Prior to the building permit issuance, the applicant shall implement the tree protection plan and technique recommendations in the Arborist Report for all applicable heritage trees.

Motion carried 6-0.

- 6. Use Permit and Variance/Homer Bryant, Bryant Development/950-960 Middle Avenue:** Request for a use permit to demolish a single-story, single-family residence and to construct two two-story, single-family residences and associated site improvements in the R-3 (Apartment) zoning district. Request for variances to build covered parking spaces encroaching in the side yard setback and to reduce the distance between buildings on adjacent properties to less than 20 feet in the left and right side yards.

Staff Comment: Planner Fisher said she had no additional comments to the staff report.

Questions of Staff: Commissioner Pagee said that the left side setback was at 10-feet and asked why an attached garage was not considered part of the building setback. Planner Fisher said that was an error and the setback should be shown as five-foot four-inches.

Public Comment: Mr. Homer Bryant, the applicant, said there was a redwood tree that had been topped and would be removed because of its poor health. He said they had three arborists look at the tree and they had concluded the tree was ill.

Commissioner Pagee asked about landscape screening at the end of the garage. Mr. Bryant said they were planning to replace the removed redwood tree with three boxed trees that would be spread around the property to provide screening and privacy. Commissioner Pagee asked whether there was room for a car to back out of the parking area for Unit 2 and noted there was

no planting strip. Ms. Bryant said that there was enough room for a car to back out, but that they could not use planting in that area because of the requirement for pavers. She said that they would put as much landscaping as possible on the site. Commissioner Pagee asked about gutters on the buildings. Mr. Bryant said that there would be gutters tied to a drain. Commissioner Pagee confirmed that the windows would not be true divided light.

In response to a question from Commissioner Deziel, Ms. Bryant said they would select trees that were indigenous to the area as the replacement for the redwood tree.

Commissioner Riggs said the materials being used by the applicants were quite attractive and asked whether they had considered divided lights. Mr. Bryant said that the true divided lights were too expensive for his budget. Commissioner Riggs said that the simulated true divided light windows were very nice and affordable with grids on the outside and inside.

Mr. Bryant said that landscape screening was important to them as well as to the neighbors.

Ms. Lisa Hall, Menlo Park, said her concern was with the removal of the redwood tree as it was 60-feet tall. She said if at all possible she would like to see the tree preserved and for different siding to be used on the building. She said the arborist report noted that the tree was in fair condition. She said it provided shade and privacy for her home.

Mr. Bill Harold (sp.?), Menlo Park, said that he lives in the first floor unit of the same building in which Ms. Hall lives. He said he was a sports writer and during baseball season often worked nights. He said that he hoped on the weekend that construction would start late enough so that he could get enough sleep. He said he also suffers from asthma and allergies and was concerned about dust from construction. He said that his building got very hot in the summer and the redwood tree would be missed for the screening and shade it provided.

Ms. Bethany Ball, Menlo Park, said she was concerned about the loss of the redwood tree and said that its removal would impact a lot of people.

Ms. Coleen McBride, Menlo Park, said she loved the redwood tree and would like to hear more about what was wrong with the tree as it looked very healthy to her. She said she was concerned with putting two houses on a small lot and did not see how landscape screening would protect the neighbors from the impacts of looking at two-story walls.

Mr. John Gerber, Menlo Park, said he was a real estate agent and had worked with the Bryants on several projects. He said that the Bryants worked hard to protect trees in their projects and in this instance the redwood tree was diseased and impaired the use of the lot.

Mr. Bill Harold said that two, two-story residences would effectively block light to the building where he lives.

Chair Bims closed the public hearing.

Commission Comment: Commissioner Sinnott moved to approve as recommended by staff. She understood the concern about the loss of the tree. She said that there would be replacement of the tree and a landscape screening plan was required. Commissioner Deziel seconded the motion. He said that the tree was topped, which was unfortunate. He said the location of the tree made it difficult to use the lot economically. He said that also the neighbors could plant trees on the neighboring properties.

Commissioner Pagee suggested that the applicants choose trees that have fewer allergens attached to them. Commissioner Keith said that it was sad about the redwood tree, but it put so much constraint on the buildable portion of the lot. She said that the proposed replacement trees were fairly large. She suggested an amendment to give the applicants the option to do true or simulated divided light windows. Commissioners Sinnott and Deziel accepted Commissioner Keith's friendly amendment.

Commissioner Riggs said that the redwood tree was actually located so that it faced south and not southwest and would only provide shade in the fall or early spring. He said that three new trees could very potentially provide more shade than the one tree.

Discussion ensued about construction times. Development Services Manager Murphy said the exception that allows for weekend work did not apply to this property.

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

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 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 substandard lot width, nonconforming setbacks of buildings on adjacent properties, and the turning radius required by the Transportation Division create a constraint to the design potential for the redevelopment of two residential units on the site with the required number and size of parking stalls without approval of the requested variances.
 - b. The proposed variances are necessary for the preservation and enjoyment of substantial property rights possessed by other conforming properties 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 variances, the construction of the two units will conform to all other requirements of the Zoning Ordinance. Granting of the variances will not be materially detrimental to the public health, safety, or welfare, and will not impair an adequate supply of light and air to adjacent property since the structures will improve the nonconforming setback condition, provide adequate on-site parking, and meet the floor area ratio, height, building coverage and landscaping requirements per the R-3 zoning district.

- d. The conditions upon which the requested variance is based would not be applicable, generally, to other properties within the same zoning classification since the variance is based on the configuration of existing buildings on the adjacent properties and a lack of desirable parking alternatives that meet the Transportation Division's turning radius requirements.
4. Approve the use permit and variance requests subject to the following *standard* conditions:
- a. Development of the project shall be substantially in conformance with the plans prepared by Homer Bryant, updated and received on January 24, 2006 by the Planning Division, consisting of nine plan sheets and approved by the Planning Commission on March 13, 2006, except as modified by the conditions contained herein.
 - b. Prior to building permit issuance, the applicants shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies' regulations that are directly applicable to the project.
 - c. Prior to building permit issuance, the applicants shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
 - d. 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. Landscaping shall properly screen all utility equipment that is installed outside of a building and that cannot be placed underground. The plan shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes.
 - e. Prior to building permit issuance, the applicant shall submit plans indicating that the applicant shall remove and replace any damaged and significantly worn sections of frontage improvements. These revised plans shall be submitted for the review and approval of the Engineering Division.
 - f. 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.
5. Approve the use permit and variances subject to the following *project specific* conditions:
- a. Prior to the issuance of a building permit, the applicant shall submit a detailed landscape plan that shows a minimum of three 24-inch box trees to replace the removed redwood tree. The plan shall be subject to review and approval of the Planning Division.

- b. Prior to the issuance of a building permit, the applicant has the option to submit building plans detailing the use of simulated divided light windows in the proposed units. The plan shall be subject to review and approval of the Planning Division.***

Motion carried 6-0.

D. REGULAR BUSINESS

1. **Architectural Control and Sign Review/David Lundy with RHL Design Group/710 Willow Road**: Request for sign approval for new and replacement signs containing the color red, and approval of architectural control for changes to the service bay building and pump island canopy.

Staff Comment: Planner Fisher said the representative for RHL Design Group had to leave but she had information about the project and the petition by neighbors regarding possible illegal activities at the site. She said the police had indicated that there were not any more problems with this gas station site than with other gas station sites in Menlo Park. She said however that the snack shop sells pocket torches that could be used as crack pipes, a Slim Jim that could be used as a universal lockout tool, glass containers that could be molded into methamphetamine bowls, and key chains with bowls that could be used for the smoking of marijuana. She said the police and the business owner were willing to work together to remove these items from the snack shop. She said that many of the incidents that neighbors had included in their petition had not been reported to the police. Commissioner Pagee asked about an RV parked behind the gas station. Planner Fisher said that she could not really speak to that, but if it was moved it would increase open space and potentially increase area for loitering. Commissioner Pagee said it was possible to leverage a cleanup at the site. Planner Fisher said that one of staff's recommendations was for improved lighting which the business was willing to do. Planner Fisher said in response to observations by Commissioners Deziel and Riggs about the acceptability of the red in the canopy and the identified problems with the site that improving the appearance of the site could improve conditions and activities at the site. In response to a question from Commissioner Keith, Planner Fisher said that the business owner had agreed to call the police about any vehicles left on the site. Commissioner Riggs said that it was a choice of the business owner to sell the drug-related paraphernalia and he thought that this might be more of a matter for the City Council to look at the site's use permit.

Public Comment: Mr. Todd Lingley, Menlo Park, said he represented twenty-two residents who live in the area. He said the individuals in the repair shop were very nice and willing to keep the site up but that they only rent the site. He said however that Union 76 has the funds to make the site better. He said that there is drinking during the day and the night; public urination day and night; and there had been another RV that minors had broken into and in which methamphetamine paraphernalia was found afterwards. He said that what was being sold in the snack shop was very objectionable and that adults were buying tobacco products for minors. He said there was also marijuana smoking on the site. He said that the trailer in the back should not be removed until some barrier was erected to keep homeless people out of there and bar the use of area for drug use activity. He said the upgrade was good and they were requesting some additional improvements with improved lighting and barriers to the back area.

Commissioner Deziel asked if the conditions of the existing use permit were being violated. Planner Fisher said that unfortunately the site's use permit was old and had essentially no conditions. Development Services Manager Murphy said that the City could attempt revocation

of the use permit, but did not have a strong basis to pursue that. Commissioner Riggs said this should be presented to the City Council and some attempt should be made for revocation and put this problem into the newspaper. Commissioner Deziel said that the architectural review should be separated out from the other issues, but perhaps under the aegis of the architectural review some improvements could be made that would address neighbors' concerns. Commissioner Sinnott said that construction would preclude some of the negative activities on the site. Mr. Lingley suggested good security fencing to restrict access to the storage trailer in the back. Commissioner Riggs said for additional improvements that the narcotics unit should be involved as well as other experts and the neighbors. Mr. Lingley suggested natural and manmade barriers. Commissioner Riggs suggested however that there be a more comprehensive approach and suggested the Commission make an ad hoc recommendation to the City Council regarding the other issues of the site.

Commissioner Sinnott moved, and Commissioner Pagee seconded the motion, to approve as recommended by staff.

Commissioner Deziel said that the banner included a gross amount of red. He proposed a substitute motion to approve all elements except for the three-foot red on the canopy or to include the trim color on the canopy. Commissioner Keith seconded the substitute motion.

Commission Action: M/S Deziel/Keith to substitute a motion to approve as recommended in the staff report except for the three-foot red on the canopy or to include the trim color on the canopy.

Motion carried 4-2 Commissioners Bims and Sinnott opposed.

Commissioner Keith said she wanted to amend the motion to include security chain link fencing at six feet in height around the storage trailer and to require additional landscaping to improve the security and appearance of the site.

Commissioner Riggs said this was being suggested on the recommendation of a neighbor and the Commission had gone to the site to look at its appropriateness, but no experts had considered the best solution for the site. Commissioner Deziel said that was why he wanted the sign approval to go forward and look at future action on the use permit.

Development Services Manager Murphy said based on what was discussed that staff could work with the applicant to bring a more proactive submittal to the Commission at the March 27, 2006 meeting.

Planner Fisher asked for clarification on the fascia on the canopy and if less red would be preferable. Commissioner Deziel said for this application, but not the next item. Chair Bims said he would prefer to continue both D.1 and D.2.

Chair Bims moved a substitute motion to continue items D.1 and D.2 and Commissioner Riggs seconded the motion.

Motion carried 6-0.

Commission Action: M/S Bims/Riggs to continue the item to a future meeting for more discussion.

Motion carried 6-0.

2. **Architectural Control and Sign Review/David Lundy with RHL Design Group/1380 El Camino**: Request for sign approval for new and replacement signs containing the color red, and approval of architectural control for changes to the service bay building and pump island canopy.

Commission Action: M/S Bims/Riggs to continue the item to a future meeting for more discussion.

Motion carried 6-0.

3. **Consideration of the minutes from the December 12, 2005, Planning Commission meeting**.

Commission Action: Unanimously continued to a future meeting.

4. **Consideration of the minutes from the January 9, 2006, Planning Commission meeting**.

Commission Action: Unanimously continued to a future meeting.

E. COMMISSION BUSINESS, REPORTS, AND ANNOUNCEMENTS

- **Review of upcoming planning items on the City Council agenda.**

ADJOURNMENT

The meeting adjourned at 12:55 a.m.

Staff Liaison: Justin Murphy, Development Services Manager

Prepared by: Brenda Bennett, Recording Secretary

Approved by Planning Commission on May 8, 2006.