



MENLO PARK PLANNING COMMISSION MINUTES

Regular Meeting

April 17, 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), O'Malley (absent), Pagee, Riggs, Sinnott

INTRODUCTION OF STAFF – 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. PUBLIC HEARINGS

1. **Use Permit/Michael D. Moyer/885 Harvard Avenue:** Request for a use permit to construct a second story addition to an existing single-story, single-family nonconforming residence that would exceed 50 percent of the replacement value of the existing structure in a 12-month period in the R-1-U (Single Family Urban) zoning district.

Staff Comment: Planner Rogers said staff had nothing to add to the written report.

Questions of Staff: In response to Commissioner Deziel, Planner Rogers confirmed that it was the half-foot encroachment on one side that was creating the non-conformity.

Public Comment: Mr. Michael Moyer, architect and applicant, said the request was to add a 400 square foot second story and make improvements to the existing structure. He said there would be a good separation from the second story of the new structure to the adjacent property on the left.

Chair Bims closed the public hearing.

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

1. Make a finding that the project is categorically exempt under Class 1 of the current State CEQA Guidelines.

2. Make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be detrimental to property and improvements in the neighborhood or the general welfare of the City.
3. Approve the use permit subject to the following *standard* conditions:
 - a. Development of the project shall be substantially in conformance with the plans prepared by Moyer Associates Architects, consisting of eight plan sheets, dated received March 2, 2006, and approved by the Planning Commission on April 17, 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.

Motion carried 6-0 with Commissioner O'Malley not in attendance.

2. **Use Permit/Maryanne Paveglio/72 Politzer Drive:** Request for a use permit for a first floor addition and remodeling of an existing single-story, nonconforming residence that would exceed 75 percent of the replacement value of the existing structure in a 12-month period in the R-1-S (Single Family Suburban) zoning district.

Staff Comment: Development Services Manager Murphy said the Planner for the project had not yet arrived but he was available to answer questions.

Questions of Staff: Commissioner Sinnott said the property as proposed facing Politzer Drive would now have three non-conforming side yards and questioned how the property configuration was interpreted as she thought it was more consistent with how the home had been built for it to front on Valparaiso Drive. Planner Fisher said that the shortest property line facing the street was considered the front property line, which in this case would be Politzer Drive. Development Services Manager Murphy said the zoning regulations were the basis for the interpretation.

In response to a question from Commissioner Pagee regarding driveway standards and a required 30-foot radius from the corner, Planner Fisher said that the Transportation Division had not yet reviewed the plans. Development Services Manager Murphy said that the Transportation Division did not normally review single-family residential projects until the building process occurs.

Public Comment: Ms. Maryanne Paveglio, property owner, said that the Transportation Division had looked at her plans prior to submission to Planning and had indicated that the radius appeared to be fine. She said the residence had been built in the 1950's to face Valparaiso Avenue. She said with the designation for the front as Politzer Drive that put the existing house into the rear setback, which left an 11.5-foot setback rather than a 20-foot setback. She said their intent was to update the kitchen and bathrooms, but keep much of the floor plan as existing as the home was generally in very good condition. She said there were no windows now or proposed on the wall that was in the rear setback. She said that they had made a request for a change of address and that had been approved, which changed the address from 1505 Valparaiso Avenue to 72 Politzer Drive. She said they planned to build a sound wall on Valparaiso Avenue and would retain the existing landscaping as it would provide good screening. She said they had purchased a small adjacent vacant property and would remove the concrete structure on it and add appropriate landscaping.

In response to a question from Commissioner Deziel, Ms. Paveglio said that they had not proposed windows on the nonconforming side as they assumed it create a privacy issue. Planner Fisher said the plans noticed for the meeting showed the wall with no windows.

In response to a question from Commissioner Pagee, Ms. Paveglio confirmed that the windows were as shown on sheet E.1. She said that they were changing the roof from gable to hip.

Chair Bims closed the public hearing.

Commission Comment: Commissioner Riggs moved to approve as recommended by staff with an additional condition that the applicant could work with the rear neighbor through staff for possible additional window(s) on the North elevation. Commissioner Deziel seconded the motion.

Commissioner Sinnott said she was uncomfortable with the reinterpretation of the lot and loss of setback as well as the design, including the interior bathrooms and the lack of windows.

Commission Action: M/S Riggs/Deziel to approve with the following modification.

1. Make a finding that the project is categorically exempt under Class 1 of the current State CEQA Guidelines.
2. Make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be detrimental to property and improvements in the neighborhood or the general welfare of the City.
3. 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 A.G. Frey & Co., consisting of eight plan sheets, received April 5, 2006, and approved by the Planning Commission on April 17, 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. 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.
4. Approve the use permit subject to the following *project specific* conditions:
- a. Prior to building permit issuance, the applicant shall submit to the Planning Division proof of recordation of the lot merger from the County Recorder's office.
 - b. ***The applicant may submit plans to add a window or windows along the rear (north) elevation of the house subject to review and approval of the neighboring property owner at 1475 Valparaiso Avenue and Planning Division staff.***

Motion carried 4-2-0-1 with Commissioners Pagee and Sinnott opposed and Commissioner O'Malley not in attendance.

3. **Use Permit/Michael and Annalisa King/842 Hermosa Way**: Request for a use permit to demolish an existing single-story, single-family residence and construct a new two-story, single-family residence on a substandard lot in regard to lot width in the R-E (Residential Estate) zoning district, and for excavation into a required side yard setback for a light well and egress associated with a basement.

Staff Comment: Planner Rogers said the Commission now had before them a revised arborist report by Mr. Michael Young in which he discussed in more detail the two oaks on 866 Hermosa Way whose canopies overhang on the subject property. Planner Rogers said the revised report did not differ significantly from the original report, but included more detail about protection and preservation of the trees during construction. He said there was also a letter from Mr. Walter Levinson, a registered arborist, who had been hired by the property owners of 866 Hermosa Way. He said Mr. Levinson's letter was somewhat more pessimistic about the construction impacts on the trees. He said he visited the site with Mr. Juan Alvarez, the City's arborist; Mr. Alvarez indicated that 25 percent pruning of the canopy of tree #11 on the site plan was required and 25 percent was the threshold for requiring a heritage tree removal permit. He said the Commission might want to consider if the size of the canopy was an issue with the proposed project and whether a condition should be added to allow more study to determine what amount of canopy it would be necessary to remove.

Questions of Staff: Commissioner Deziel asked whether architectural elements such as chimneys were allowed to penetrate the daylight plane. Planner Rogers said that was correct; but in this application there was also consideration to be made of additional impact to the tree by the proposed chimney location. He said there were ways to modify the chimney for a gas fireplace such as stubbing it out on the first floor level; he noted the applicant was willing to work with Commission on the chimney if that was an issue.

Public Comment: Mr. Lou Dorcich, architect, Soquel, said the property owner was open to eliminating the chimney on the roof, stub it out on the first floor and have it vent through the rear wall.

Commissioner Sinnott said her concern with removal of the chimney was the loss of architectural detail on the two-story wall. Mr. Dorcich said that the neighbor's original concern with the chimney was that it created too much mass and the tree canopy was a secondary issue.

In response to a question from Commissioner Pagee, Mr. Dorcich said that the rear yard was sizable and they were trying to retain that. He said they had looked at other options such as a rear detached garage and a side-facing garage in the front. He said with the former there were issues with trees and with the latter, cars would need to back out and that would be towards the adjacent neighbor's home.

In response to a question from Commissioner Riggs, Mr. Dorcich said light wells were a challenge for basements as they needed to provide light, ventilation and ingress/egress comparable to living spaces on grade and that the encroachment of one of the light wells was into a chosen setback distance of 15-feet that still left more than a minimum 10-foot setback. Commissioner Riggs suggested that no encroachment would have been needed if the house had been built out less.

Mr. Mike King, property owner, said the two arborists' reports indicated that the project could be accomplished with certain tree protection procedures. He said the City's arborist had made the most conservative assessment.

Mr. Michael Young, arborist, distributed photos of the site and trees. He said the canopy of the oak tree over the driveway had not been maintained. He said that tree is in good health and should be fine through the construction process with protection measures in place. He said some pruning was necessary for the construction.

Commissioner Keith, noting the recent rainfall, asked if the oak was in danger of falling over because of heaviness on the one side. Mr. Young said that he had not looked at the base of the tree as it was on the neighbor's. He said that pruning would help prevent that possibility.

In response to a question from Commissioner Sinnott, Mr. Young said that there was a way to prune to keep the tree looking natural. He said soil compaction could kill off the root zone so protective construction fencing around the tree was the preferred method, but if that was not possible he recommended a covering of wood chips, six to eight inches deep, overlaid with plywood to protect the tree zone.

Commissioner Deziel asked the applicant if he could delay the pruning of the tree until the end of July, which was amenable to the applicant. Mr. King said the foundation would be 15 to 16 feet off of the fence line which was 20-feet away from the tree and about the perimeter of tree canopy. He said the foundation would be made with isolated piers and those would have the least impact. He said that he thought the entire canopy area could be fenced off; he said the pool could be dug by a Bobcat rather a big backhoe.

Commissioner Keith asked Mr. King what his preference was about condition 4.b and the chimney. Mr. King said that he would prefer to have the chimney.

Mr. Jim Stocker, Menlo Park, said that elimination of one of the chimneys would improve the sight line from his yard and he had not ever been concerned that it would impact the canopy of the trees. He said there would be significant pruning of the oak trees and he and his wife would like to see a plan for the pruning and trimming of the two heritage trees as well as to be included in the operation as it occurred. He said it was three arborists' opinion that pruning should occur much later in the summer and not before August 1. He visually demonstrated with a diagram their preference for the location of the tree-protection fence. He said in regard to landscaping around the proposed house's foundation that oak trees were very sensitive to changes in watering and sprinkling. He said their request was for drip irrigation only and the use of plants identified by Best Practices for use near or under oak trees. He requested that there be periodic inspections during the construction process to insure that the tree protection conditions were being adhered to.

In response to a question from Commissioner Riggs, Mr. Stocker said that he thought his responsibility was to prune the portion of the trees on his property and it was the neighbors' responsibility to prune the portion of the trees on their side.

Chair Bims closed the public hearing.

Commission Comment: Commissioner Deziel moved to approve as recommended by staff with the additional conditions as outlined by Mr. Stocker. He said that Mr. Alvarez had indicated that a heritage tree removal permit might be needed because of the percentage of canopy that would need to be pruned. He said his estimate was about 40 percent of the canopy would need to be pruned. He said the neighbor should comment on the selection of an arborist and arborist cutting plan and the cutting should not occur between February 15 and August 1. He said the fencing plan submitted by Mr. Stocker should be used subject to staff review. He said he would require drip irrigation and the use of plants identified for use under or near oak trees. He confirmed with staff that inspections would occur during the construction process and this was not needed as a separate condition. He said that items one and two regarding tree pruning, and items one and two regarding landscaping as submitted by Mr. Stocker and subject to staff

review were part of his motion. Commissioner Sinnott confirmed with Mr. King that this was acceptable to him.

Commissioner Riggs said the two oaks were within 10 feet of each other and wondered if the lesser sized tree had a future. Mr. Stocker said that both of the trees were very healthy and in no danger of fading away or falling.

Commissioner Keith confirmed with Planner Rogers that the Planning Commission could not relieve the applicants of their obligation to go before the Environmental Quality Commission if it was desired to remove more than 25 percent of the tree(s).

Commissioner Pagee seconded the motion as recommended by staff with the conditions as noted with the understanding that the neighbors would work together on maintaining the trees.

Commission Action: M/S Deziel/Pagee to approve with the following modification.

1. Make a finding that the project is categorically exempt under Class 3 of the current State CEQA Guidelines.
2. Make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be detrimental to property and improvements in the neighborhood or the general welfare of the City.
3. Approve the use permit subject to the following *standard* conditions:
 - a. Development of the project shall be substantially in conformance with the plans prepared by Louis D. Dorcich Architect, consisting of 12 plan sheets, dated received March 8, 2006, and approved by the Planning Commission on April 17, 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.
4. Approve the use permit subject to the following *project-specific* conditions:
- a. Prior to the issuance of a building permit, the applicant shall submit a planting plan that shows the location, species, and size of the replacement tree for the proposed heritage tree removal. This plan shall be part of the building permit plan set submittal. The plan shall be subject to review and approval of the Planning Division.
 - b. Prior to the issuance of a building permit, the applicant shall submit revised plans, showing no portion of the chimney on the left side of the residence intruding beyond the daylight plane. These plans shall be subject to review and approval of the Planning Division.
 - c. ***Prior to issuance of a building permit, the applicant shall submit a tree pruning plan for the two coast live oaks along the left property line (labeled as tree #2 and tree #3 in a report by Walter Levinson, Consulting Arborist, dated April 14, 2006) for review and approval of the City Arborist and Planning Division staff. The plan shall be mutually agreed upon by the property owners of 866 Hermosa Way and they shall be consulted at each stage of the pruning process including selection of an arborist and participation of the arborist's cutting plan. No pruning shall be undertaken between February 15 and August 1.***
 - d. ***Prior to issuance of a building permit, the applicant shall submit a specific tree protection plan for the two coast live oaks along the left property line (labeled as tree #2 and tree #3 in a report by Walter Levinson, Consulting Arborist, dated April 14, 2006) for review and approval of the City Arborist and Planning Division staff. The plan shall include the installation of protective fencing that extends as a radius 20 feet from tree #2 or 25 feet from tree #3, whichever is greater. When approaching the footprint of the proposed residence, this fence may be pulled back toward the side property line to leave a four-foot gap for a construction pathway, but in no case should be less than 11 feet from the shared property line. The construction pathway shall be protected by a 12-inch layer of wood chips. The approved tree protection plan shall be integrated into the approved building permit plan set.***

- e. Prior to issuance of a building permit, the applicant shall submit an irrigation and landscape plan for the northwest side of the proposed residence for the benefit of the two coast live oaks along the left property line (labeled as tree #2 and tree #3 in a report by Walter Levinson, Consulting Arborist, dated April 14, 2006) for review and approval of the City Arborist and Planning Division staff. The plan shall limit irrigation to drip installation (i.e., spray systems are not allowed). Any planting shall adhere to accepted practices for planting under oak trees (e.g., as listed in the Sunset Western Garden Book). The approved irrigation and landscape plan shall be integrated into the approved building permit plan set.***

Motion carried 6-0 with Commissioner O'Malley not in attendance.

- 4. Use Permit/Jude C. Kirik/605 Hermosa Way:** Request for a use permit to demolish an existing single-story, single-family residence and construct a new two-story, single-family residence on a substandard lot in regard to lot width in the R-E (Residential Estate) zoning district.

Commissioner Pagee recused herself and left the chambers due to a potential conflict of interest.

Staff Comment: Planner Fisher said that staff had nothing to add to the written report.

Public Comment: Mr. Jude Kirik, Pacific Peninsula Architecture, said he was representing the property owners who are long-time residents of Menlo Parks.

Commissioner Deziel asked about the lighting on the sports court. Mr. Kirik said the lights would be fence-mounted and there would not be any offsite glare.

Chair Bims closed the public hearing.

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 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. 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 Pacific Peninsula Architecture, consisting of 14 plan sheets, dated received April 3, 2006, and approved by the Planning Commission on April 17, 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.
4. Approve the use permit subject to the following *project specific* conditions:
- a. Prior to the issuance of a building permit, the applicant shall submit a heritage tree replacement plan that shows a minimum of two 24-inch box trees to replace the removed olive tree and pine. The plan shall be subject to review and approval of the Planning Division.

Motion carried 5-0 with Commissioner Pagee recused and Commissioner O'Malley not in attendance.

C-5 excerpts were approved on May 8, 2006.

- 5. Major Subdivision, Variance, and Use Permit/Joe Colona/695 Oak Grove:** Request for a tentative map to create nine commercial condominiums in an existing building, a variance to allow the provision of existing substandard parking to continue in lieu of meeting parking requirements for condominium conversions, and a use permit to allow personal services and financial establishments on the ground floor in a C-3 zoned property.

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

Questions of Staff: In response to Commissioner Pagee, Development Services Manager Murphy said there were instances wherein the City has adopted in-lieu of tax fees. He said the square footage of a building that could potentially used for retail has been assessed a fee most recently at about \$2.00 per square foot on an annual basis. He said in another instance sales tax receipts were counted and the difference between the amounts calculated for a \$2.00 per square foot in-lieu fee was paid annually. He said the fee has been imposed in three incidents

in somewhat three different ways. He said staff had not recommended imposition of an in-lieu fee for this project because of the design and location, but that the Commission could consider an in-lieu fee for the property.

In response to Commissioner Pagee, Development Services Manager Murphy said the parking requirement came into effect in 1986 when the City adopted Floor Area Ratio (FAR). He said in this instance, there was a need for a variance as the project did not meet those parking requirements.

In response to Commissioner Pagee, Development Services Manager Murphy said the FAR for one building at 773 Santa Cruz Avenue was approximately 100 percent and there was no requirement to do additional parking on other private property as he recalled. He said the FAR for another building at 888 Santa Cruz Avenue exceeded 100 percent so the property owners provided three additional parking spaces at the rear of the property with access off the Parking Plaza. He said the 885 Oak Grove Avenue project was similar to this project because the buildings were built prior to the 1986 parking requirement using FAR. He believed that the Commission had approved the use permit for that project.

Public Comment: Mr. Joe Colona, applicant, Los Altos, said he had no additional presentation to make. He said the staff report indicated that medical office use would be limited to 50 percent; he said their intent was to allow medical office use on the third floor, restrict it on the second floor, and have none on the first floor. He said there were existing long-term leases for medical uses on the second floor.

In response to Commissioner Sinnott, Mr. Colona said he thought having the third floor solely for medical office use would push that use over 50 percent FAR. He said based on the FAR, the total square footage allowed for medical office use would be 3,000 square feet. He said the existing medical office use on the second floor was 1,200 square foot. He said they had designed the third floor for medical office use and it would have 4,435 square feet.

In response to Chair Bims, Development Services Manager Murphy said the lot size was 6,000 square feet and 50 percent of that would be 3,000 square feet and was based on the feasible condominium area. Mr. Colona said they were requesting slightly more FAR on the third floor for medical office use and to restrict medical office use on the second floor.

In response to Commissioner Pagee, Mr. Colona said interest in the third floor space had been expressed by an immunologist. He said the closest handicapped space was across from their building about three parking spaces away and there was another space available at the end of the building. Mr. Bohacek, building owner, from Menlo Park, said there would be upgrades to address life safety issues and bathroom issues related to ADA. He said all of the elevators were ADA compliant. Mr. Colonna said that removing some of the condos on the ground floor for parking was not economically feasible.

In response to Commissioner Keith, Mr. Colona said there had been discussion about an in-lieu parking fee for which there was no program currently. He said the existing building had a parking nonconformity, but was considered legal. He said they would not add to the nonconformity, but he understood there was a parking problem for the City. Commissioner Keith noted that the applicant had offered to give the City a gift of \$250 per space that might be used to get the parking in-lieu fee program begun. Commissioner Keith asked whether the applicants were willing to accept a condition that none of the medical offices would have a surgery use. Mr. Bohacek said that the term "surgery" could apply to a doctor giving a child a

shot for asthma and that the building and units were not set up to support either a hospital surgery type use or even a dental office use. Commissioner Keith asked about the common area on the third floor. Mr. Colonna said that it was about 400 or 500 square feet; he said that they were under staff's recommendation by about 900 square feet.

Commissioner Pagee asked if Mr. Harry Morey's concerns had been addressed noting that the staff report had indicated that the matter was resolved. Development Services Manager Murphy said that meant only that a response had been made to Mr. Morey.

Mr. Richard Li, Menlo Park, urged the Commission to approve the project as proposed. He said that such units provided affordable real estate for business owners. He said also that business owners at the site tended to take better care of their property than absentee landlords. In response to a question from Commissioner Pagee, Mr. Li said that he had no financial interest in the project, but in the future he would be interested in buying such a commercial unit. He said that he did not own a commercial building.

Mr. Dick Poe, Menlo Park, said he is a real estate agent and that he was supportive of Commissioner Keith's suggestion to ask the City Council to consider instituting a parking in-lieu fee. He said the City's downtown business district had one of the most stringent parking requirements in the area with the requirement of six spaces per 1,000 square feet of floor area. He said that made it difficult for any investor to upgrade buildings as codes have changed since the buildings were built. He said he praised Menlo Park to his prospective residential clients and some had commented that the City looked a bit "shabby" to them. He said the City has fiscal problems, and receives revenue from various sources of which business was a significant source. He said the City needed to have a real estate and business friendly environment to provide the tax base and the attractiveness of the City. He said that would attract the tax base that would provide revenues to pay for the parks, police, street improvements, and the many functions of the City government. He said the building on the proposed project site had gotten caught in downzoning and has become shabby. He said the Commission had an opportunity to begin thinking about the improvement process. He said the proposed project was one step forward in that process. He said he was acutely aware that many of the commercial buildings in the downtown are owned by absentee landlords. He said he has had many conversations with the tenants in those buildings in which they complained strongly about the conditions of those buildings. He said as tenants they were not able to make the investment to upgrade those buildings.

Chair Bims closed the public hearing.

Commission Comment: Commissioner Keith said she would move to approve as recommended by staff with a modification to 6.a to provide that the third floor could be dedicated to medical office use rather than the 50 percent limit as recommended by staff; she also wanted the Commission to make a recommendation to the Council to accept the applicant's offer of a one-time fee of \$250 as a parking in-lieu fee for 35 spaces and for the Council to begin looking at a parking in-lieu fee program. Commissioner Sinnott seconded the motion.

Commissioner Deziel said he could not make the finding for the variance as he could not determine what rights a conforming property that was going to subdivide into condominiums would have, that this property does not have and should be allowed to obtain. He said a conforming property would be allowed to use the 100 percent FAR for a condominium project that would meet the parking requirements. He said business ownerships of condominiums were great. He said the Commission has requested the Council to consider relaxing this rule; he said

staff had asked to hold off until discussion on a parking structure had occurred. He said the applicants were suffering because of that. He said however that it was the purpose of the subdivision ordinance to establish standards for upgrading a property to a subdivided, salable and separate parcel. He said the subdivision created the opportunity to add value and at that point the levy should be made to fund any deficit in parking. He calculated that there was a deficiency of 18 parking spaces and a parking in-lieu fee should be about \$30,000 per space. He said that he did not think the medical usage should be restricted but rather should be encouraged. He said he would allow maximum medical usage with payment of a parking in-lieu fee. He made a substitute motion to continue the project for redesign for the applicant to work with the parking requirements and use a market-rate for the parking in-lieu fee. Motion died for the lack of the second.

Commissioner Riggs said there were some long-term leases at the existing building, some through 2011, and that would make an immediate change to medical use difficult. He said that 25 years ago the minimum for a parking in-lieu fee had been \$6,000 per space. He asked if the continuance would be to allow the applicant to go to the City Council to start the process (parking in-lieu fee program). Commissioner Deziel said the continuance was to allow staff to create some contract with the applicant to pay parking in-lieu fees into a fund. Commissioner Riggs said he was concerned about asking for a contract when there was no process to refer to nor did he know how the business community would view such an action.

Commissioner Pagee said she thought that if a parking structure was built that all of the businesses benefited by that would contribute towards the cost. She said it was not clear whether these applicants would both have to pay now and later.

Commissioner Keith said she understood Commissioner Deziel's concerns and she would modify her motion to make a recommendation to Council to research establishing a parking in-lieu fee program with an amount to be determined. Commissioner Sinnott asked if that was tied to this project. Commissioner Keith said her intent was not to hold up this project. Development Services Manager Murphy said that the motion separated the recommendation for the parking in-lieu fee program from the project approval; he said that it probably was best at this time to not identify an amount for the potential fee.

Commissioner Pagee said she would also like to recommend that the Council look at an annual parking in-lieu fee rather than a one-time fee. Commissioner Keith said she would accept that modification to her motion. Commissioner Sinnott was amenable to those modifications.

In response to Commissioner Riggs, Development Services Manager Murphy said to his knowledge that this was the first commercial condominium conversion project in the City for which a variance needed to be requested.

Commissioner Deziel withdrew his substitute motion and moved to deny the application. The motion died for a lack of a second.

Commissioner Riggs said that approval of the variance would set precedent. He suggested creating an opportunity for the applicants and others who had spoken in support of the project to put pressure on the Council to address businesses need for a parking in-lieu fee program. He moved to continue the project and allow the applicant to put appropriate pressure on the City Council about either an in-lieu fee or some other parking alternative. Motion died for lack of a second.

Commissioner Deziel said he could make the findings for the variance in that the hardship for the property was that there was no parking district to allow the owners to upgrade the site. He suggested the applicants make a gift of \$10,000 per parking stall for the 18 stalls the project would be deficient. He said the incentive to Council was for them to establish a parking in-lieu fee.

Commissioner Keith suggesting modifying her motion to recommend that the Council determines a parking in-lieu program, the amount of the in-lieu fee, and whether it was paid once or annually. Commissioner Sinnott said she saw the goal in creating some pressure on the Council and this would not hold up the project. Commissioner Deziel said he could support the motion if the fee was required of the project for the variance to proceed.

Commissioner Keith said her motion as modified was to add a condition of approval that a parking in-lieu fee must be paid for the variance to proceed and the amount would be determined by City Council. Commissioner Sinnott accepted the modification. Commissioner Riggs suggested adding "process" so that "the amount and process would be determined by City Council." Commissioner Sinnott was concerned that the process could take a long time. Commissioner Pagee said that the Council might ignore the Commission's recommendation. Commissioner Sinnott accepted the modification.

Commissioner Riggs moved the question.

Commission Action: M/S Keith/Sinnott to approve as recommended by staff with the following modifications.

1. Make findings that the project is categorically exempt under Class 1 of the current State CEQA Guidelines.
2. Make findings that the proposed major subdivision is technically correct and in compliance with all applicable State regulations and City General Plan, Zoning and Subdivision Ordinances, and the State Subdivision Map Act.
3. Make the following findings as per Section 15.32.020 of the Subdivision Ordinance pertaining to the granting of variances:
 - a. The variance is subject to conditions of approval, namely the limitation on the amount of medical office use, in order to assure that the variance shall not constitute a grant of special privilege inconsistent with the limitation upon other properties in the same vicinity.
 - b. Because of special circumstances applicable to the subject property, namely that fact that the parking requirements were modified after the building was built, the strict literal application of the Subdivision Ordinance is found to deprive the subject property of privileges enjoyed by other properties in the vicinity since there is no other feasibility option to provide the currently required parking.
 - c. Under the circumstances of this particular case, the variance, rather than the sections at issue in the Subdivision Ordinance, actually carries out the spirit and intent of the Subdivision Ordinance for a commercial condominium conversion.

4. 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.
5. Recommend approval of the major subdivision, variance, and use permit subject to the following *standard* conditions:
 - a. Development of the project shall be substantially in conformance with the plans prepared by Young and Borlik Architects and MacLeod and Associates Civil Engineers and Land Surveyors, dated received February 2, 2006 and consisting of five plan sheets, and recommended by the Planning Commission on April 17, 2006.
 - b. Prior to recordation of the final subdivision map, the applicant shall submit CC & R's (covenants, conditions and restrictions) to the Engineering Division for the approval of the City Engineer and the City Attorney prior to the recordation of the final subdivision map. The final subdivision map and the CC & Rs shall be recorded concurrently.
 - c. Prior to approval of the final map, the applicant shall submit a code compliance report to meet current life safety requirements for review and approval of the Building Official.
6. **Approve the major subdivision, variance, and use permit subject to the following *project specific* conditions:**
 - a. ~~Prior to approval to the final map, the applicant shall submit a proposed restriction that limits medical office to a maximum floor area ratio (FAR) of 50 percent for review and approval of the City Attorney. The applicant shall record the restriction prior to recordation of the final map and shall submit a copy of the recorded document to the Planning Division.~~ **Medical office use will be restricted to the third floor of the condominium building.**
 - b. Prior to approval to the final map, the applicant shall submit a proposed restriction that states the ground floor shall not be used for office use for review and approval of the City Attorney. The applicant shall record the restriction prior to recordation of the final map and shall submit a copy of the recorded document to the Planning Division.
 - c. Recommend that the City Council determines a parking in-lieu program, the amount of the in-lieu fee, and whether it would be paid once or annually.
 - d. **Prior to approval to the final map, the applicant shall pay a parking in-lieu fee for the variance to proceed and the amount and process shall be determined by the City Council.**

Motion carried Keith/Sinnott to approve, 6-0.

D. REGULAR BUSINESS

There was none.

E. COMMISSION BUSINESS, REPORTS, AND ANNOUNCEMENTS

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

Development Services Manager Murphy said there were no additional items to report on beyond what was included in the staff report.

ADJOURNMENT

The meeting adjourned at 10:00 p.m.

Staff Liaison: Justin Murphy, Development Services Manager

Prepared by: Brenda Bennett, Recording Secretary

Approved by Planning Commission on May 8, 2006.