



MENLO PARK PLANNING COMMISSION MINUTES

**Regular Meeting
August 14, 2006
7:00 p.m.
City Council Chambers
701 Laurel Street, Menlo Park, CA 94025**

**Teleconference with participation by Commissioner Keith from:
13073 Northwoods Blvd.
Truckee, CA 96161**

(Posted August 11, 2006)

CALL TO ORDER – 7:00 p.m.

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

INTRODUCTION OF STAFF – Deanna Chow, Senior Planner, Megan Fisher, Assistant Planner, Arlinda Heineck, Director of Community Development, Thomas Rogers, Assistant Planner

A. PUBLIC COMMENTS

There were none.

B. CONSENT ITEMS

There were no consent items on the agenda.

C. PUBLIC HEARING

1. **Use Permit/Timothy C. Chappelle/225 Arden Road**: 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 size in the R-1-S (FG) (Single-Family Suburban, Felton Gables) zoning district.

Staff Comment: Planner Fisher said she had received one new piece of correspondence in support of the project.

Questions of Staff: Commissioner Deziel asked if the intent of condition 4.a was that Attachment D was the quality standard of the tree replacement plan that would be accepted. Planner Fisher said the tree replacement plan had been received later than the original plans were received. She said that staff would like the applicant to incorporate the tree replacement plan into the building plans on one of the building permit sheets.

Public Comment: Mr. Timothy Chappelle with Arcanum Architecture, the architect for the project, distributed a materials board. Mr. Chappelle said regarding the tree replacement plan

that the owners had submitted a permit application for a tree removal because the tree was sick and later received information about the heritage tree removal replacement program at which time they submitted an 8 ½ by 11 plan. He said they had no issues about replacing the tree and would incorporate the plan into the building plans.

Commissioner Pagee said she liked that the applicants had maintained some of the setbacks on the property. She said she was concerned with the use of a metal roof and asked about the finish and reflection. Mr. Chappelle said the finish they would use was called the “pre-weathered finish.” He said the owners were exploring a darker finish and the desire was to make it as non-reflective as possible. Commissioner Pagee asked about the gage to be used because a light, inexpensive gage would create a wave. Mr. Chappelle said that they wanted it to look crisp and clean and would use a heavier gauge. Commissioner Pagee asked if the flashings, gutters and downspouts would correspond to the other finish. Mr. Chappelle said that it would be pre-finished, galvanized and would match the other finish.

Commissioner Sinnott said that this was the first metal roof to her knowledge that the Commission had seen; she asked Mr. Chappelle if he had seen it built and weathered over time. Mr. Chappelle said that he used other products of the manufacturer’s and that it weathers into a light gray and that mutes the reflectivity. He said the property owners want their house to fit in with the natural and aged quality of the neighborhood.

Commissioner Riggs said the applicant was indicating the use of simulated divided light windows but he wondered whether the metal grid would be outside and inside. Mr. Chappelle indicated that was the type of metal grid that would be used.

Chair Bims said he noted several letters of support from neighbors who reviewed the plans; he asked if the neighbors had reviewed the materials board as well. Mr. Chappelle said he was not sure whether the neighbors had seen the materials board.

Chair Bims closed the public hearing.

Commission Action: M/S Pagee/Riggs 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 Arcanum Architecture, consisting of 10 plan sheets, dated received June 22, 2006, and approved by the Planning Commission on August 14, 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. As part of the building permit application submittal, the applicant shall include the heritage tree replacement plan, similar to the plan provided as Attachment D. The plan shall be subject to review and approval of the Planning Division.

Motion carried 7-0.

- 2. Use Permit/Grace S. Chizar/1201 University Drive:** 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 size and width in the R-1-U (Single-Family Urban) zoning district.

Commissioner Sinnott recused herself from consideration of C.2 and left the chambers because the subject property is within 500 feet of her property.

Staff Comment: Planner Fisher said that staff had discussed the location of the proposed driveway to the garage in relationship to the location of a stop sign with the Transportation Division Manager. She said based on that discussion staff was recommending that the item be continued to the August 28, 2006 meeting.

Recognized by the Chair, Commissioner Deziel said until he visited the site he thought the appearance of the proposed garage could be addressed through an up-grade in quality of garage door, trim and perhaps added windows. He said however that the property was right at the corner of the City's central business district and there was an issue with a double garage door being so far forward as it would be obtrusive in appearance. He said he understood the applicant's concern that some other design would require much more paving.

Director Heineck said it was appropriate for the Commission to make comments but that they might also want to open up the public hearing in case there was someone present who wanted to address the project.

Commissioner Deziel asked about the area in front of the bay window in the living room and if that was yard. Planner Fisher said there was no landscape plan yet but there was no paving proposed for that area.

Commissioner O'Malley said that there was a driveway for the existing home and wondered if there was a turnaround. Planner Fisher said that she spoke with the owner and he indicated that he was able to turnaround and drive out facing forward toward traffic. Commissioner O'Malley indicated that he thought the double door garage would actually be safer as people driving in the street would notice that and the possibility of vehicles entering and exiting.

Commissioner Riggs said that the location of the proposed driveway would be in the area of the current storm drain, which needed to be worked out with public works. He said there was a "For Sale" sign at the site and that raised questions as to whether the home was being re-done for the existing owners. He said if the home was for sale that opened up the design possibilities as the design was not being done to a family's specific preferences. He said if the driveway was on the right rather than on the left there would be no conflict with the intersection or for the storm drain. He said he thought there would be more flexibility in the plan rather the City reconstructing the intersection. He said regarding moving the garage forward that generally this Commission preferred not to see that.

Chair Bims called for public comment. There was none.

Commissioner Keith asked for the applicant to address the comments made. Director Heineck said that neither the applicant nor the property owner were present as they understood staff would recommend continuance. She said that the Commission's comments were fine but the Commission would appropriately hold discussion until the applicant/property owners were present.

Commissioner Deziel said that his comments were not to suggest that the applicant put the garage in the rear. He said that perhaps the garage could be handled with architectural detail.

Commissioner Riggs said he hoped that the designer would resist from massing of gables as an architectural detail.

Commissioner Keith said it also appeared that there would be a loss of one parking space for the downtown area with the proposed plan. She said if the project was sent back for redesign that the garage location should be reviewed. She said the arch of the front door and the garage doors simulated one another but the bay window did not simulate the arch at all.

Commissioner Pagee said regarding the double garage door at the street that because this was a downtown area and not a neighborhood it was important to look at the garage doors with the possibility of keeping the garage doors open. She said it would look much nicer in the downtown area to have the double garage doors in the back rather than the front. She said that if the garage was put in the back and the house was moved forward, the property owners would be able to enjoy a greater percentage of the yard in the back.

Commissioner Deziel said that he would support moving the front of the garage 90 degrees away from the street with the driveway as proposed.

Commission Action: M/S Bims/Pagee to continue the item to the August 28, 2006 meeting.

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

3. **Use Permit/Jo Ann Sweeney/1311 Henderson Avenue:** Request for a use permit to determine the Floor Area Limit (FAL) of a substandard lot with less than 5,000 square feet of area, associated with the construction of a two-story addition to an existing single-story, nonconforming residence that would exceed 50 percent of the replacement cost of the existing structure in a 12-month period in the R-1-U (Single-Family Urban) zoning district.

Chair Bims recused himself due to a potential conflict of interest because of the proximity of the subject property to property he owns. (Commissioner Sinnott acted as Chair in his absence.)

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

Questions of Staff: Commissioner Deziel asked whether staff had an issue with the roofline or if it was just being noted for information. Planner Fisher said it was noted for the Commission to consider but the project was recommended for approval.

Commissioner Pagee asked if the property was within a flood plane area. Planner Fisher said that it was not.

Public Comment: Mr. Dennis Smith, San Francisco, said that he had prepared the drawings for the project. He said regarding condition "f" that he did not think the grading and drainage plan would be required as the improvement would be less than 500 square feet. Director Heineck said that would be determined by the Building official when the applicants submitted their building plans. Mr. Smith said there was one letter of support from an adjacent neighbor and provided the letter to staff.

Commissioner Riggs asked if direction from the applicant had something to do with the form of the addition, noting the roofline and that there were no changes proposed to the the roofline or to the existing structure. Mr. Smith said that was correct. He said they were trying to integrate the current design. He said if the direction of the ridge were switched that there ere would not be the living space in that area because of the daylight plane. He said he was willing to extend the ridge in a straight line but he had used standard design criteria for the use of shingles.

Commissioner Pagee asked about the use of solar panels and what systems they would serve. Mr. Smith said in general they were trying to use solar to offset electrical and would look at some on-demand water heaters as well. In response to Commissioner Pagee, Mr. Smith said

that they were just beginning to research the cost of solar panels.

In response to a question from Commissioner Keith, Mr. Smith said that within any elevation the same class of windows would be used.

Acting Chair Sinnott said she would like to see the roof ridge integrated. Mr. Smith said he was willing to do that. Commissioner Sinnott said that there was no symmetry in the placement of windows in the upper level. Mr. Smith said he was trying to create a rhythm of windows for the hallway to provide natural light and on the other side he was addressing privacy with higher sill heights.

The public hearing was closed.

Commission Comment: In response to a question from Commissioner O'Malley, Planner Fisher said that the neighbor's letter as submitted by the project designer indicated that the project would be a positive enhancement for the property and the neighborhood.

Commissioner Riggs said there was much about the plans that looked successful, but the combination of rooflines, the detailing of the roof ridge, and the use of windows were all awkward. He said that he did not think the project would be an asset to the property or the neighborhood. He said there were ways to make an attractive roofline with the elevations proposed. He said he thought that solar panels were highly unlikely for the project because of the cost.

Commissioner Keith said she had concerns about the rooflines and window placement.

Recognized by Acting Chair Sinnott, Mr. Smith said that the proposal was very economical and asked that the Commission keep the property owners' budget considered. He said that using dormers to make a roofline more interesting was a more complicated design and would definitely be more expensive. He said his clients had a fixed budget and he was concerned with incurring additional costs. In response to Acting Chair Sinnott, Mr. Smith said the key issues seemed to be the roof type and window placement.

Commissioner Deziel said he thought that what was being presented had no sense of proportion and appeared to be a "pop-up" addition from the first floor. He said there seemed to be a need for something to bring a sense of proportion with the addition of some architectural aesthetic to the front façade.

Acting Chair Sinnott said her inclination was to continue the project for redesign but with some clear guidance to the applicant. Commissioner Riggs expressed concerns with the budget and the intent of the project and indicated that the neighborhood deserved a more attractive plan and it was not just a matter of adding windows.

Commissioner Deziel said that indicating possible use of solar panels when there was not the budget to do an aesthetically pleasing façade was incongruous.

Acting Chair Sinnott noted that there was a request from a member of the public to speak. Mr. Sweeney, property owner, said that the plans were his idea and those he had given the architect to prepare. He asked how the Commission would like the roof redesigned as this was the second time he was being asked to redesign it. He said the first proposal was for a flat roof and that was not acceptable. He said they were now proposing a ridge and that was not

acceptable. He asked the Commission to be specific as to what they wanted. He asked regarding solar panels whether the cost of those needed to be known before the plans could be approved. Commissioner Deziel said the designer had indicated the budget tended to determine the design and constrain it. He said in his opinion it was an inappropriate allocation to compromise the façade and install solar panels.

Commissioner Riggs asked if the fees would be less if the project were continued rather than denied. Planner Fisher said if the application was denied, the applicants could reapply for a new application and a new use permit deposit would be required. She said if the project was continued there would still be fees applied on an hourly basis. Commissioner Riggs asked if staff time was about the same in either scenario if the cost would be about the same. Planner Fisher said that it would probably equate.

Commissioner Pagee said the applicant had indicated he had been before the Commission previously. Planner Fisher clarified that the applicant had met with staff and this was a redesign requested by staff.

Commissioner Deziel suggested coming up with a list of changes. Commissioner Riggs said that a client needed a design professional who could design plans that solved the client's problem and the Commission should not design from the dais. He moved to deny the project. Commission O'Malley seconded the motion.

Planner Chow suggested that if the Commission were going to deny the project that they might consider to deny without prejudice so that a project in similar nature to a two-story project could return to the Commission for review or otherwise the applicant would have to wait a year to resubmit the project. Commissioner Riggs changed his motion to deny without prejudice; Commissioner O'Malley was in agreement as the second.

Commission Action: M/S Riggs/O'Malley to deny the project without prejudice.

Motion carried 5-1-0-1 with Commissioner Keith not in support and Chair Bims recused and not in attendance.

Commissioner Deziel said the project was not being denied because of the two-story element but because of the appearance and aesthetics.

Chair Bims said the applicant for item C.5 because of her physical condition had requested that her item C.5 be heard before C.4. This request did not have the consensus of the Commission; it was noted that Commissioner Sinnott would be recused for items C.5 and C.6 and item C.4 was not expected to be lengthy.

4. **Use Permit/Christopher Kummerer/624 Central Avenue:** Request for a use permit to determine the Floor Area Limit (FAL) of a lot with less than 5,000 square feet of area, associated with the construction of an addition to an existing single-story, single-family residence in the R-1-U (Single-Family Urban) zoning district.

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

Public Comment: Mr. Chris Kummerer, Menlo Park, said the proposal was for a modest addition and was driven largely by the flood zone requirements. He said they had considered the flood zone requirements and the second-story requirements. He said the owners would add

a master bedroom. He said that the previous year a detached garage was added. He said that after this project there would be a future renovation of the interior space.

Commissioner Pagee asked about cars in the alley; Mr. Kummerer said the property owner could address that.

Ms. Kathleen Rice, property owner, said that Commissioner Pagee was asking about a concern raised in a letter from one of the neighbors that there were cars at times parked at the end of the alley. She said that those cars were another neighbors' and not theirs. Commissioner Pagee confirmed with Ms. Rice that her cars were parked in the garage and there was use of a special permit to park one car on the street. Ms. Rice said that was correct.

Chair Bims closed the public hearing.

Commission Comment: Commissioner Pagee moved, and Commissioner Keith seconded the motion, to approve as recommended in the staff report.

Commissioner Riggs said he contacted Menlo Park Police and he realized there was no provision for enforcement because the City Attorney has identified the alleys as a "gray" zone. He said he had read that at some point the alleys were attempted to be granted from the rear portion of lot so that the center of the alley was the rear lot line of the properties and that the County had not accepted that. He said that the alleys remained private land whether technically deeded to the properties or to the developer that was no longer extant. He said if the City Council has not been successful in addressing alleys that the Commission might want to encourage the Council to take the initial step of enforcing access for which there was a legal precedence as it is done for the sake of handicapped parking on private property.

Commission Action: M/S Pagee/Keith 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 Chris Kummerer Architect, consisting of five plan sheets, dated received June 15, 2006, and approved by the Planning Commission on August 14, 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.
4. Approve the use permit subject to the following *project-specific* conditions:
 - a. Prior to building permit issuance, the applicant shall submit a construction plan as part of the building permit plan set submittal. The construction plan shall include a specification that use of the alley shall be restricted to limited loading and unloading, and that the alley shall not be used for equipment storage or construction staging. The construction plan shall also specify a point-of-contact for all construction related issues and concerns. The plan shall be incorporated into all construction contracts and distributed to owners of all properties abutting this alley. The applicant shall provide documentation that this distribution has taken place, which shall be subject to the review and approval of the Planning Division..

<p>Previously Approved Excerpts from 10/2/06.</p>
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Motion carried 7-0.

- 5. Use Permit Revision and Variances/Sam Sinnott/1981 Menalto Avenue:** Request for a revision to a use permit granted by the City Council to construct a new, one-story single-family residence with sole access from Menalto Avenue in the R-2 (Low Density Apartment) zoning district. The requested revision would allow for a new, one-story single-family residence with sole alley access. Variances are also requested to increase the allowable building coverage from 35% to 40.7%, to reduce the minimum distance between buildings in a dwelling group from 10 feet to 6 feet, to reduce the minimum rear yard from 20 feet to 10 feet, and to reduce the required distance between the rear property line and the garage entrance from 20 feet to 10 feet. A variance is also requested for the existing legal nonconforming parking situation on the front residence; this variance is not required at this time, but would be necessary for a future condominium subdivision.

Commissioner Sinnott recused herself from consideration of agenda items 5 and 6 because of a potential conflict of interest as her husband is representing the property owner on item 5 and she owns property within 300-feet of the subject property in item 6.

Staff Comment: Planner Rogers stated that a couple of items were received after the publishing of the staff report. First, staff received and distributed to the Commission a letter of support for the project from Ms. Linda Weibel, a neighbor of the subject property. In the letter, Ms. Weibel noted that she had made improvements to the alley adjacent to her property that she believes resulted in a cleaner, neater and safer place. Second, a concern had been raised in a letter submitted by Ms. Jennifer Dahmus, another neighboring property owner, regarding the location of a multi-trunk oak tree that spans her property line and the alley. Planner Rogers said he had visited the site and measured the location of the tree and had prepared a revised drawing for the Commission indicating the approximate location of the tree. He said that the applicant, Mr. Sinnott, had also visited the site and had also submitted a revised drawing that showed the tree in approximately the same location as the drawing prepared by staff. Planner Rogers also

submitted a photograph of the tree to the Commission indicating that the tape measure in the photograph depicts the approximate property line. He said that because the tree location may have implications for the backup and turnout for the uncovered parking space located perpendicular to the lot width, staff reviewed the revised tree location with the City's Transportation Manager. He stated that based on the approximate field measurements the Transportation Manager could not say with any conclusiveness whether the tree would significantly impact the movements of a car and that additional study would be necessary to make this determination. Planner Rogers stated that if the Commission decides to approve the project, staff would advise the addition of a condition mandating further study of the impacts on the parking, including that the survey required for the new residence be extended to include the alley and that the design be revised if necessary to protect the health of the oak tree.

Commissioner Deziel asked about the survey. Planner Rogers said that for residential construction in the City, additions to an existing house are allowed to use the existing house and fence lines as the basis for calculating setback lines. He said that in these cases, the property owner assumes the liability for any errors. He said for detached new residences, a survey is required for the Building Department's permit. He said staff's recommendation would be to extend that survey out into the alley to exactly place the oak tree.

Public Comment: Ms. Michelle Harbottle, property owner, requested to reserve three minutes of her comments until the end of the public hearing to respond to any comments of neighbors or other individuals. Chair Bims said that would be fine. Ms. Harbottle introduced Mr. Sam Sinnott, the project architect. She said he would address the nuts and bolts of the design and the variance requests. She said she had distributed an outline and a few extra documents that she would be going through in her presentation.

Ms. Harbottle said that this was her fourth meeting before the Commission. She said that as staff pointed out she had begun this process in December 2003 and she has incurred at least \$25,000 in permit fees from previous meetings with the Commission. She said that all applicants expect a decision on their project. She said that she had hoped staff would have provided the Commission all the paperwork needed for approval of her project should the Commission decide to approve the project. She said the City Attorney had made it clear that it was within the purview of the Commission to approve the requested permits and staff had recommended approval of the bulk of the variance requests. She requested that the Commission make a decision one way or the other about her project this evening. She said should the Commission support her project she believed there was more than sufficient evidence to make the required findings for approval of the revisions of the use permit and the variances. She said that history of the project in the staff report left out one important factor. She said the major criticism of the project made early on was a lack of outdoor usable living space. She said that this feature was changed over the course of the three prior meetings with the Commission. She said the final design approved in October 2004 was for a two-story with access off Menalto Avenue. She said the project met all setback requirements, had ample outdoor living space for each unit, and no variances were required. She said the Planning Commission's decision was appealed to City Council. She said at that hearing the Fire Chief incorrectly testified that the only way the project could move forward was to have access off Menalto Avenue and further stated that her project, for which alley access had always been designated, had not been approved by the Fire District wherein in fact it had. She said the Fire Chief's testimony was instrumental in the Council's decision to impose access from Menalto Avenue. She said even though property owners at 1989 Menalto Avenue had withdrawn from the appeal they had continued to voice their concerns about privacy. She said that impacts to this property were part of the reason the Council stated in its decision to deny the appeal but to

impose the two conditions of the permit. She recalled that she fully supported the neighbor's request for a two-story home. She noted that the neighbors at 526 Central Avenue and 1975 Menalto Avenue had also expressed concerns about impacts from a two-story home. She said it bore repeating that Council actually upheld her use permit to add a second house to the rear of her property and the conditions imposed by Council were to minimize the impacts to the neighbors. She said that Council, because they did not have a study of Menalto Avenue access or a study of a one-story design with Menalto Avenue access, failed to consider the hardship of a one-story design, namely that it significantly limited square footage and compromised the amount of usable outdoor living space. She said a one-story design resulted in the loss of almost 500 square feet of yard space. She said the Council failed to consider the combined hardship of the two conditions, the access from Menalto Avenue and a one-story design, which resulted in unintended consequences. She said with the help of Council members she met with her neighbors and tried to negotiate a solution and considered various options, including a one-story with access off Menalto Avenue, a two-story with access off Menalto Avenue and other scenarios with and without variances. She said that the neighbors could only agree on one feature and that was the one-story design. She said her adjacent neighbor at 1975 Menalto Avenue had voiced support for alley access. She said she spent the next few months working with Council in efforts to mitigate the privacy impacts of a two-story design through landscape screening and a landscape plan for the alley. She said that when she met with the neighbors that their reaction was mixed on the alley but they agreed on the one-story. She said that there was new information that Council did not consider following the appeal including a letter from the Fire District which confirmed approval of her project and alley access and an alley access study that showed the extent of the use of the alleys throughout the Willows neighborhood. She said she also uncovered a landscape plan for 1989 Menalto Avenue, which included the planting of Crape Myrtle trees to mitigate any impacts from the two-story residence, a 23-foot structure, on the neighbor's yard. She said she returned to Council in October 2005 asking for further consideration of her project based on the Fire District letter and other new information. She said that Council agreed but the earliest opportunity to appear was six months hence or April 2006. She said at that point it seemed the most efficient path for her project was to return to the Planning Commission as directed by Council. She said she had been working since October 2005 to come back before the Commission and had again contacted neighbors for their suggestions. She said that since a year had passed since the appeal she could start over with a two-story design for the rear unit, raze the lot, and propose a two-story similar to one built on Menalto Avenue but she ultimately decided to build a one-story as that was the one feature that all the neighbors agreed upon, that Council had intended, and that the Commission would want.

Ms. Harbottle said that she was bringing the third design of her project before the Commission with a one-story and reluctantly with variances as her previous plan conformed to the zoning ordinance and had no variances. She said she went through this redesign with the hope that her neighbors would finally support her project. She said they hired a new architect to design a one-story project and explore access from either Menalto Avenue or the alley. She said that the access with the least impact on the neighbors was from the alley and she would have the architect explain that more fully. She said the underlying reason for Council to impose these two conditions was impacts to neighbors. She said they believed accessing her home from the alley was consistent with the Council's intent. She said that moreover her neighbor at 1975 Menalto Avenue had expressed support for alley access in the past and the neighbor at 1979 Menalto Avenue who was generally opposed to any further development also expressed a preference for a one-story design with alley access. She said her neighbor to the front who was also closer physically than the neighbor to the rear had expressed support for alley access and in fact had concerns about Menalto Avenue access.

Ms. Harbottle said that a one-story design, even with variances, with access from Menalto Avenue would result in an over paved lot, inadequate outdoor living space, and significant impacts to her neighbors. She said she believed that this would not meet the intent of the Zoning Ordinance or the Council's decision. She commented that Sam Sinnott would go through the Alley Access study to confirm this point. She stated that she believes her project complies with Council's decision as the one-story design eliminated neighbors' privacy concerns and the alley access was the less impactful option. She said there was no measurable detriment to the neighborhood, the neighbors or the City. She said there would be no added intensity of use on the alley and the use would result in less intensity than what was approved for 510 Central Avenue as sole access for a 2,800 square foot home. She said as shown in the history of the alleys document that there had been numerous projects on her block with alley access that had been recommended by staff and approved by the Commission, including 510 Central Avenue that was also upheld by Council.

Ms. Harbottle said that she and her neighbors basically want the same things – to have clean, safe neighborhoods in which to raise children, good schools, and a peaceful environment. She said her project was consistent with the ideals of the City of Menlo Park. She requested approval of her project. She said that if granted she requested the Commission modify Council's decision as set forth in the outline, under number five. She said that if this proposal was not acceptable to the Commission, she requested that they reconsider her original proposal which was for a modest two-story with access from the alley. In conclusion, she commented that the neighbors would still be able to pick blackberries along the unpaved portion of the alley.

Mr. Sam Sinnott, project architect, said that the property owner had incurred an enormous amount of time and money to satisfy the requirements of the Council and address concerns of the neighbors. He said that in doing so Ms. Harbottle had set precedents for doing this kind of project. He said this was a housing project and housing was desperately needed in the City and provision of housing was a goal of the General Plan. He said both units should be as high quality as possible or they would be less of a benefit to the neighborhood. He noted, with reluctance, that a staff member lives behind the project whose wife is opposed to the alley access. He said that it was impossible for staff to be completely objective about this project.

Mr. Sinnott went through the staff report headings. He said regarding "Architectural Design" that he and the property owner were willing to add windows to the rooms for greater ventilation and light. He said a skylight in the living room was a possibility. He said because the two units would be accessed from different directions and could not be significantly viewed by one another that they believe the distinct design of the rear unit is acceptable and was an improvement over the design of the front older home. He said this would be more glaring if both units were accessed from Menalto Avenue, but since they are not, you don't clearly see both units. He said regarding "Heritage Trees and Landscaping" that the impacts to trees would be addressed as noted in the attached arborist's letter, a landscaping plan would be submitted with the Building Permit application, the yard as arranged would provide the most landscaping in the areas that are oriented to the sun and would provide a buffer between the units. He said if the rear unit were accessed from Menalto then the private, sunny, landscaped yards would be sacrificed for a paved driveway and turnabouts. He said regarding "Use Permit" that a use permit had been granted for a second building of the size they were proposing by both the Council and the Planning Commission. He said the Council asked that a single-story solution with access from Menalto Avenue, but not sole access, be considered. He said that because no graphic access study from Menalto Avenue was provided by staff or the property owner, and a single-story scheme that would access from Menalto Avenue had yet to be designed, this application was a revision of the existing use permit with variances, introducing new information

not available at the previous hearing. He said regarding "Alley Use, Side Access and Parking" that alley access was an established development pattern in the Willows. He said as mapped on page D-4 of the staff report approximately 50 percent of the properties that have alley access in the Willows actually use it. He said on the block of the proposed project there are two existing R-2 units built just a few years ago with sole access from the alley. He said the properties at 624 and 626 Central Avenue are less than a block away from this proposed project and had their sole accesses changed from Central Avenue to the alley less than a year ago and that this is a more intense change than he is proposing. He noted that the Planning Commission unanimously approved the change. He said that a partial record of recent garage permit applications with alley access was included in the information distributed to the Commission by the property owner. He said the only difference between this project and the ones on Central Avenue was that this property owner was unlucky enough to have the project objected to by a few neighbors. He said the Transportation Manager signed a letter, included in the packet, which approved the project with a minor condition and that expressed no concerns. He said Planner Rogers had noted that the oak tree was believed to be located at a two feet difference than previously shown and that a drawing had been re-done, but he did not think there was any significance as it moved along the fence line and not into the alley. He said that the plan review showed the location of poles and trees with the graveled pavement ending short of the asphalt paving two lots away to prevent through traffic as desired by the Transportation Division. He said that the long history of alleys in the Willows has created no problems with blind intersections, lighting, child safety or most of the concerns of staff - there is no record of problems. He said the staff report stated "The Willows neighborhood has set the current policy of looking at each individual block." He said the block of Menalto Avenue in question already has alley access. He said over the weekend a large trailer was brought into the alley to remove yard clippings. He said regarding "Emergency" that the plan had been reviewed and approved by the Fire District for emergency access from both Menalto and Walnut Avenues. He said there was no need to extend the all weather walkway and eliminate landscaping in the front since that access was only provided as an option for a piece of equipment that is about two and one half feet wide. He said that Menalto Avenue access was not feasible but if it were it would be an inferior option as it would remove a heritage tree, dramatically impact a neighbor's bedroom window on the south, eliminate the sunny yard for the rear house, increase traffic on Menalto Avenue, remove the yard for the front residence entirely, and increase the hard impervious surfaces. He said that the proposal to access from Menalto Avenue is ridiculous and that access from the alley would result in significantly fewer impacts than a driveway on Menalto Avenue and was consistent with Council's intent. He commented that access from Menalto Avenue does not meet the spirit of the Zoning Ordinance. He said that Council action to study Menalto Avenue access had unintended consequences since they were designing from the podium and didn't have graphics to analyze. He said a driveway on Menalto Avenue would be approximately five feet away from the neighbor at 1975 Menalto to the south while alley access would be approximately 55 feet from 1989 Menalto and 57 feet from the neighbor to the rear. He said the owner of 1994 Menalto Avenue also objected to a Menalto Avenue driveway because they already have a driveway coming out in front and don't want another one. He said regarding "Variances" that the Council approved a rear home of the size proposed, and that a single-story design as approved by Council increases the coverage from 35 percent to 40.7 percent. He said that staff supports this variance and the variances for the rear yard, garage entrance and nonconforming parking space but opposes the variance for the separation of buildings. He said the building separation proposed would maximize the yards and unit separation with the approved floor area. He said that this was a fire separation issue. He said the property owner wanted to add a window on the southeast elevation for the master bedroom. He said that if that could be accomplished with a fire rated wall assembly then the fire separation was achieved. He said that the issue was really a building issue, but that a variance

is needed because of the planning issue. He said staff has not provided the written findings to support these variances similar to other applications. He said their request was for the Commission to write those findings and include them in its approval. He said that they requested the Commission approve the use permit revision and associated variances. He said the proposal conformed to all the reasonable requirements of the Council and the variances were justified as the lot was 15 feet less in width than a conforming R-2 lot. He said the Commission would need to modify the Council's direction regarding site access as the Council did not have adequate information to make the earlier decision suggesting access from Menalto Avenue. He said that in his 22 years of experience he had never worked with a client who had done more to conform to the Zoning Ordinance, satisfy the Council, Planning Commission and staff, and address the concerns of neighbors.

Commissioner Riggs asked about the comment from the Fire Department that it is not immediately visible where the 1981 Menalto Avenue is when they come up to perform a rescue. Mr. Sinnott said that the property owner intended to do a condominium conversion and minor subdivision on the property. He said at that time she was planning to change the address of the rear unit from 1981 Menalto to an address on Walnut, so that emergency vehicles would pull up on Walnut. He said that she was willing to get direction from the Police and Fire Departments for other options.

Director of Community Development Heineck stated that Development Services Manager Murphy owns property in close proximity to the subject property, but has had absolutely no involvement in the review and processing of this application either currently or in the past. She stated that Mr. Murphy has been physically absent whenever the project has been discussed in the office and he has not influenced staff's review or position on the project. She stated that staff has treated all neighbors' comments the same as is done on all projects for which input is received. She stated that the comment made this evening has no basis in fact.

Mr. Dick Poe, Menlo Park, said he recalled selling a property in the Willows with access solely off the alleyway. He said he was taken aback by the length and breadth of the staff report and the issues presented to the Commission and the length of time it has taken. He said the Commission had the opportunity to put the project to rest and move on with other important matters. He said there are a lot of other people including his clients in the Willows using the alley for access. He said this is an R-2, not an R-1, lot and there were lots in close proximity with similar access. He indicated that the applicant had been put through a lot and the Commission should approve the project.

Ms. Diane Mavica, Menlo Park, said her home is right next door to the subject project. She said they have a new home and she wanted to express that they had also gone through the process for a permit and she understands the time and expense it takes. She said there was an August 2004 Commission meeting on alleys and the overall takeaway from that meeting as it related to alleys was that the issue of development should be handled on a block-by-block case as each block was different – some do not run from street to street, some are blocked by a house or some are next to a commercial district. She said that at that meeting comments from the Commission indicated concern that these developments have greater impact on neighbors and have the potential to change the character of the neighborhood. She said there was apprehension among residents that paving alleys would increase traffic and they had suggested bollards but the City Attorney had indicated the City could not place obstructions in alleys. She said she had looked at County records and the dedication offer had been rejected. She said she did not think the original intent when the neighborhood was designed was to have traffic through the alleyway as the sewage lines and utility poles were located almost in the middle of

the alleys. She said her concerns were consistent with the concerns expressed at the August 2004 meeting and that was for safety, unresolved alley ownership, the rural environment alleys provide, and the traffic impact. She said she and her husband supported other options as presented in their letter that would not have alley access including a one-story rear residence with access from Menalto Avenue. In response to a question by Commissioner Deziel, she responded that she would support an option for a two-story residence at the front of the lot and a one-story residence at the rear of the property, both with Menalto access. She reiterated that there are several options that would be acceptable, but that for all options, access should be provided from Menalto Avenue.

Ms. Irene Lawrence, Palo Alto, said her husband owns the residence at 510 Central Avenue. She said she had concerns about the inequality of use of the alleys. She said that due to historical circumstances some people seemed to have more equality of use of the alleys. She said that she had seen real estate literature promoting small residences located on a private lane and she thought that it was inappropriate to describe alleys in that manner. She said she thought it was a mistake to think of the alleys as possibly developing into second-class or imitation streets and at most they might be developing into shared driveways. She said the concerns people have about traffic on the alleys were equally true on any driveway even on a long driveway with access as for instance in this case from Menalto Avenue. She said any driveway that had to go from the main street had to be 10 feet in width; she said that would be 20 percent of the width of any of the properties in this block. She said if the driveway were to extend from the main street to the rear of the property that paves 20 percent of the lot. She said she thought that was far more detrimental to the environment than putting what appeared to be a planned pervious surface in the alley. She said she supported alley access in this project and in others. She said she thought the issue of safety for children was a bit of a red herring in that smaller children would not reasonably play unsupervised in the alley and while older children might want to play ball in the alley that was not uncommon on other city streets. She said additionally that since the alley would be blocked partway she doubted that it would be used as a through way.

Mr. Jim Lucas, Menlo Park, said the alley is a unique area and well used by the community. He said he thought the cumulative impact of alley access was going to change the character of the alleyway. He said additional paving was going to impact the amount of undeveloped portion of the alley and would almost make it a street. He said that the alley should be maintained as it is for the community's use.

Commissioner Deziel asked Mr. Lucas if his property had sole access from the alley. Mr. Lucas said that it did and was the last house on the alley as entered from Elm Street. Commissioner Deziel said Mr. Lucas was concerned that alley access on the other side of the alley would have cumulative impacts that might affect him. Mr. Lucas said that it would affect the whole area in addition to him. He said it would change the flavor of the alley.

Commissioner Riggs said that Mr. Lucas currently has what the applicant wants to have. He asked Mr. Lucas if he found alley access to be unacceptable for him. Mr. Lucas said he did not find it unacceptable but his fear was the cumulative effect of additional development on the alleyway. Commissioner Riggs said that Mr. Lucas' property was on one end and the subject property would be accessed from the other end and there was no discussion of a throughway in the middle. Mr. Lucas said however that the middle would get very narrow. Commissioner Riggs asked if it was the middle area where Mr. Lucas and his children played. Mr. Lucas said that it was. Commissioner Riggs said the area the City Attorney had indicated should be free and shared access was actually for some people their private yards by virtue of being there first.

Mr. Lucas said it was not a private yard but an open area where children from the neighborhood played. He said there was also a walking path and people walked their dogs there. Commissioner Riggs stated that kids also play on his paved street. Commissioner Riggs asked Mr. Lucas to consider if he lived at the Menalto address for five years and someone requested to develop what is his property now if he would be against that as it would be the first "notch" into the play area. Mr. Lucas said he probably would be against it.

Mr. Tom Jackson, Menlo Park, said he supported the project. He said the alley issue had arisen many times. He suggested it was about time that the Council and Commission and the people got together and came to a resolution as to what they were going to do with the alleys in the Willows. He said every time the issue surfaces that an enormous amount of time was spent going back and forth as to what to do. He said it was time to develop a consistent policy for everyone in the Willows with access to the alley. Commissioner Deziel asked where Mr. Jackson's property was in location to the alley. Mr. Jackson said it was on the corner of Central and Walnut Avenues and the alley was in back of him. Commissioner Pagee asked about the location of his project. Mr. Jackson said that was at 526 Laurel Avenue and he was going through the same exercise regarding alleys. He said he was providing access to that property from Laurel Avenue. He said a lot of people use the alley and walk their dogs. He said that he thought it was a terrible idea to pave the alleys.

Ms. Jennifer Dahmus, Menlo Park, said she lived directly behind the subject property. She said she was very concerned with how the project was now proposed. She said she strongly supported the City Council's January 2005 decision and that it was the best option of all the options previously discussed and would provide the greatest benefit for the property owner, the neighbors, and the City. She said a single-story home with sole access from Menalto Avenue would provide a substantially larger rear yard of approximately 500 square feet as compared to the 150 square foot patio in the currently proposed plans. She said it also avoided all alley issues which, from the discussions this evening and previous dialogues on the alley, was an issue that should be brought up in the context of a broader forum but at a minimum consider the concerns of the affected property owners. She said a potentially even more compelling alternate development scenario involved two new units on the property comprised of a new two-story unit on the front and a new one-story unit at the rear with sole access from Menalto. She said this would potentially create greater benefit for the property owner, the neighbors and the City while also potentially maximizing the property owner's financial gain. She said this alternative was particularly compelling due to the property owner's indicated interest in pursuing a condominium subdivision which would provide the opportunity to examine the property in the broader context of creating an optimally redeveloped property. She said that in her letter she had outlined her specific concerns regarding three of the five variances. She said that entering and exiting the alley onto Walnut was a potentially dangerous situation for pedestrians crossing the alley entrance on Walnut. She said Walnut was a school route and many children every morning and afternoon cross the alley. She said when exiting the alley onto Walnut there was a blind spot because of a five or six foot fence. She said even a careful driver would have difficulty seeing a small child crossing the alley. She said that the large multi-trunk heritage tree and a power pole in the alley posed a very tight situation that would not allow for a car to easily access the garage or the proposed second parking space. She said in the handout she would distribute that she had outlined the potential benefits of three scenarios. She said Scenario #1 was the currently proposed plan before the Commission; Scenario #2 was a single-story residence with sole access from Menalto Avenue; and Scenario #3 was a new two-story unit in the front and a single-story unit in the rear with access from Menalto Avenue. She said as shown in the handout the benefits of Scenarios #2 and #3 both outweighed the currently proposed plan. She said she respectfully requested that the Commission uphold the City

Council's January 2005 decision by following the findings and recommendations for denial outlined in the staff report. She said this would give the Commission an opportunity to consider alternate development scenarios including a scenario comprised of a new two-story unit in the front of the property and a new single-story unit at the rear of the property with sole access from Menalto that would provide greater benefits to the property owner, the neighbors and the City.

Ms. Harbottle, the property owner, said that Commissioner Riggs had asked about signage for the project and potential confusion of emergency service providers. She said one way to eliminate confusion would be appropriate signage and they planned to provide whatever signage the Fire District required. She said as a practical matter signage could clarify for both the Menalto and Walnut access exactly where the rear property would be located. Through the Chair, she asked whether any written guidelines regarding alleys had been prepared following the August 2004 Commission meeting on alleys. She commented that she believed the consensus from that meeting is that a lot of the property owners along the alley were afraid the City was going to muck things up and while new construction was discussed no definitive findings were made.

Mr. Sinnott, project architect, said the alley improvements would be gravel not paved. He said the square footage of the rear yard as proposed was greater than 150 square feet and was very close to 500 square feet. He said the lot was clearly too narrow for two driveways and the options proposed by the neighbors include tearing down the existing front house to provide one driveway, which was not reasonable. He said alley access should not be decided by neighbors as it has to be equitable.

Chair Bims closed the public hearing.

Commission Comment: Commissioner Riggs questioned whether the City was still trying to save trees noting that it appeared a second driveway from Menalto would require the loss of a tree. Planner Rogers confirmed that, as was discussed in the staff report prepared for the January 11, 2005 Council meeting and was brought up in the meeting itself, the new driveway would likely require the removal of a Silver Maple tree from the front of the 1981 Menalto property. In response to a question from Commissioner Riggs, Planner Rogers stated that the tree is of heritage size at approximately 30 inches in diameter. Commissioner Riggs said the reason he had been wondering whether the City wanted to save trees stemmed from another application by an agency that wanted a grand space with a fountain and the agency assumed a heritage oak could be removed to accommodate the space. He noted that he understood the tree would be removed. He said that he was unclear why the City was starting to drift that way, but noted that he was not comfortable with the direction. He questioned how the proposal to take 10 percent for one driveway and another 10 percent for a second driveway from a 50-foot wide lot could be considered as a serious alternative. He noted that the Commission was uncomfortable with another proposal that just came before them because it fronted a two-car garage directly on the street, creating a 20-foot wide driveway. He stated that this is simply the same 20 feet, maybe a little more, spread in two sections.

Commissioner Pagee said she had spent many hours listening to alley access issues. She said the fact that there were two other residences with alley access that had been approved by previous Commissions should not set precedents for this particular residence. She said she did not know what led to the approval of the first project but she did not vote for the second project. She said her longstanding view has been that the City should address the alley issues as there has been more and more redevelopment along alleys. She said that currently alleys are for access, that they are secondary access to existing homes that currently have garages that face

the back of their homes. She said to her knowledge there were three houses; one built in the 1950s and the two more recent houses that actually have a front door and a doorbell that face the alley. She said that it is not common practice and that the problem with having the development of homes that face the alley or secondary dwellings meant an increase of traffic in the alley. She said increasing the traffic would increase the problem as the cars enter the sidewalk. She said the homes on either side of the sidewalk have the ability of putting a fence and landscaping along the alley access to disguise the alley and that frequently there is no thought given to the need for a clearance as there is no guideline requiring the fence to be a maximum three feet in height on either side of the alley. She said before allowing alley access and creating streets out of these alleys the safety issue of alley access needed to be considered. She said two front doors had been added to this alley in the late 1990s and 2000 and no one had considered what would happen in the future. She said as Planning Commissioners they were supposed to be looking ahead. She asked what would happen if the Commission keeps giving away alley access. She said that the Council and Planning Commission had to devise a safe way to develop these alleys. She said until the issues with alley access were resolved that there should not be any alley access approved beyond the current use. She said that this property needed five variances was unprecedented. She said it was like putting a square peg into a round hole. She said that just because this is an R-2 lot, does not mean that this is the appropriate size dwelling for the property. She said that the intent was to convert the properties to condominiums. She noted that Mr. Sinnott had created beautiful condominiums on Partridge that the Commission had approved. She said that this was an ideal place to tear down the front house. She said the property had been granted a carport years ago, which was ugly. She said the project would be much better with front access and front door presence on the main street without having to go through multiple variances to obtain the approval. She said that the alley is not a street and it was not intended to be a street. Planning Commissions prior to this one had made the mistake of allowing two more homes to face the alley and a cottage to have sole access. She said before that occurred again the City had to determine what the alley is, take ownership of the alley and had to provide guidelines and determinations of material to be used in the alleys.

Commissioner Deziel said the applicant had mentioned that she wished staff had provided the paperwork necessary for approval. He said confusion had arisen regarding interpretation of the section titled "Recommendations" in staff reports. He said he thought it perhaps related to the fact that the Development Services Manager has not been on this project that resulted in what he thinks was a breach of service quality. He said he would like to ask the Director of Community Development to establish a policy; that he would ask the Chair if this doesn't happen to agendize a discussion to establish policy that any time an applicant paid a fee for an application that the staff report would contain paperwork for both denial and recommendation. He said that occurred in the City of San Mateo and he believed it occurred in Palo Alto. He said he did not mean that staff needed to recommend either action, and while he believed he spoke for the whole Commission when he said they welcomed staff's opinion in the conclusion section, that he felt very terrible the City would charge an applicant, in this instance about \$30,000, to give the applicant a date to come before the Commission and at the last minute the applicant was essentially ambushed. He said there was no reason that an applicant would pay \$30,000 unless they could come and have their shot at having the Commission say yes to their project. He said that the section of the staff report might be relabeled with some appropriate conditionality such as "Options" section. He said that "Recommendation" really referred to the draft text and should provide draft text for both approval and denial. If the Commission wants to deny the project then here is the recommended draft text for doing so. He said the Commission makes the findings, not staff, and the Commission might want to modify the text. He said the "Recommendation" section should not be interpreted as staff's recommendation. He said that

was stated in the City's current policy and was established in the reorganization that was implemented by the current City Manager. He said this was in reference to the Program Base Budget description of services that was attached to the budget a year or two ago. He said the Community Development Department has four sections with two that relate to the Commission; one is the comprehensive planning program and the second is the land and building development services program. He said within that was zoning review. He said when staff writes a report that his opinion as a Commissioner was that staff must wear two hats and provide adequate due diligence and quality for the services. He said that was stated in the performance management document which described programs as a collection of services and this was where staff spends its time serving the customer. He said there was a statement that all systems are oriented toward effective quality services. He said it was unacceptable service to ask an applicant to spend that kind of money and then spend more of the applicant's money drafting a negative recommendation and not draft an affirmative recommendation. He said he was asking the Director of Community Development to establish a policy that would not leave an applicant in the breach like in this case and if that did not occur he would like to see it as a future agenda item.

Director Heineck said that the vast majority of staff reports the Commission sees have one recommendation and one set of findings. She said generally that it is a recommendation for support so it is not typical that staff lays out all possible options with findings and conditions in the majority of cases. She said there are a few cases where there really is a balance between adverse and beneficial impacts to a project and that the project could be decided one way or another based on neighborhood input that might come in at a meeting. She said in those rare cases staff has provided multiple options with all findings and conditions. She said that staff does not provide multiple findings in cases where they believe doing so would create a potential legal conflict between those finding statements. She said in this case and in others similar to this, staff does not believe there are justifiable findings to support a recommendation of approval. She said that was why they developed that option for the Commission. She said if the Commission believed this was a project that should be approved that the Commission then needed to specifically outline what those justifications are and staff would write those along with a full set of conditions. She said it becomes an issue of not setting up an illegal and internal conflict within the staff report by presenting opposing sets of findings in the staff report. She said there is a distinct necessity to set a specific set of findings that represent staff's best professional judgment. She said that had been the position of both the City Attorney and the City Manager in crafting these, both of who reviewed this particular staff report.

Commissioner Deziel said when he first arrived on the Commission the recommendation section arrived with true vanilla boilerplate text. He said in this context that staff could have at least provided that or even something with underlying blanks for which the Commission was responsible to fill in the blanks. He said that staff did not pursue the analysis very far because he did and he found the findings to make the case that this proposal as proposed actually achieved the intent of the City Council in its direction better than what was achievable by imposing both of the two development conditions, i.e. one-story and sole Menalto access. He said he had prepared a written recommendation for approval and he had copies to distribute. He said it covered the findings for the variances and a brief finding for the use permit, and supplementary findings for the use permit intended to provide the direction that staff has requested. He said that with this the Commission could actually take action tonight to make the findings and approve the revision to the use permit.

Chair Bims asked if the handouts were for discussion or within the context of a motion. Commissioner Deziel said he would move the text and noted that he had sent a copy to

Commissioner Keith. Director Heineck said that there was the matter of the conditions. Commissioner Deziel said he had developed the conditions. Director Heineck said that those conditions would need to be reviewed by not only Planning staff, but also by Transportation and Public Works staff as well as the City Attorney. She said it would be her recommendation that if what Commissioner Deziel had written was acceptable to the majority of the Commission and that was a clear statement of findings then that was good guidance that staff could write up. She said that staff were happy to take the conditions and review with the applicable departments but she highly recommended that the Commission postpone the action to allow that to happen and for staff to fully draft that document.

Chair Bims said he understood staff's position in recommending denial of the use permit revision and asked what the hesitancy was to approval. Director Heineck said that it was not the findings, but she had concerns about the specific conditions that were appended to the approval. Chair Bims asked whether those would deviate from typical boilerplate language because of the variances. Director Heineck said that they could in this case.

Commissioner Deziel said the handout included the current valid use permit and that his motion leaves in tact the conditions the Council approved except for the changes he is proposing and so all of the standard conditions, the review by the Building Department and Transportation, etcetera, will remain. He commented that his proposed edits are outlined. He said that if the proposal ends up being acceptable tonight in terms of language, then perhaps it needed to be reviewed but that he would not like to preclude an action to approve the project tonight since the text would be drawn from the original use permit and therefore, has already been approved by the City Attorney. At the request of Chair Bims, he outlined the proposal. He asked the Commission to look at page 1, item A that is the standard findings tailored to this specific property. He said item A(b) had been broken out into two separate findings. He said there was language specific to all five variances. Referencing items B and C, he noted the proposed changes that he inserted by hand on the second page. He said the hand-written changes on page 2 were a model of what the text on page 1 is proposing for items B and C. He said for example that he deleted condition 3h because since it is a one-story home there is less privacy concern since privacy issues have been addressed, so we don't really need to burden the applicant with a landscape plan since the original intent of the landscaping plan was screening. He said the protection of the heritage tree is left to the heritage tree Protection Plan in the arborist report and that is already a condition. He referred to the page labeled "City Council Action," and what he believed would further the Council's intention was to make the change in defining item 2 to change access from Walnut to the alley. He said also the words "injurious or" needed to be inserted as they had been typographically omitted and were needed to meet the text of the Zoning Ordinance as found in other projects. He said for condition 3(a) that this was the condition where the Council's decision was implemented for the plans to come back with the Menalto access. He said the Commission would replace condition 3(a) with the standard condition 3(a) which says the project will proceed substantially according to the plans dated June 15, 2006 prepared by Sam Sinnott. He said that condition 3(h) would be deleted and condition 3(i) would be replaced with language suitable to staff in reference to the most current arborist report. He said that two conditions needed to be added that could be drawn from the text in the original use permit which basically specified the alley access would be compacted gravel in condition 3(j) and condition 3(k) would be the alley maintenance agreement. He said those were all the edits needed to approve the project and included language previously approved by the City Attorney or were such things as were customary for the Commission to act on subject to staff review of the language. He said he believed that the approval could go forward. He said if the Commission did not do the whole thing tonight and it was systematically

set that it went back to his point that this was an automatic embedded delay in this project and this did not feel right to him so he did all the work to bring us to this point.

Chair Bims asked about the insertion of "injurious or." Commissioner Deziel said that was the text in the Zoning Ordinance and text used in the normal use permit finding and it just happened to have been left out of this particular use permit, although he was not sure why. He further offered to read from the Zoning Ordinance beginning with the words "will not be detrimental to". He stated that the words were part of the boilerplate text that needs to be inserted and that he did not want this applicant unprotected by not getting the standard findings. Chair Bims noted that for other items on the agenda this evening that those words had not been part of item 2. Commissioner Deziel said that he had not done an exhaustive search but he noticed it was in the Zoning Ordinance text and it was in a use permit finding for 510 Central. He commented that he wanted the findings brought to full conformance per the Zoning Ordinance. In response to Chair Bims, Director Heineck said that it was not typically added to the findings but it could be added. She said many times findings are modified for specific projects based on the specific application so the Commission will find differences in the wording of findings. Commissioner Deziel presented a copy of the language used for the use permit finding for 510 Central Avenue. Chair Bims noted that it is not included in many of the applications. Commissioner Deziel stated that he would find the language in the Zoning Ordinance. Chair Bims asked about the condition requiring City Attorney review of a maintenance agreement and whether Commissioner Deziel was implying that there should be a new maintenance agreement that included 1981 Menalto Avenue prior to the building permit issuance. Commissioner Deziel said that on page 1 under item C(5), the Commission could add a sentence, so if this is not introducing too much risk that it needs City Attorney review, then he would propose inserting the language from the original use permit that was approved by the City Attorney. He noted that the issue was that there was already a recorded maintenance agreement and that the intent was to give the City Attorney the right to review and approve the alley maintenance agreement before its recorded. In this case, the City Attorney can review what's already been recorded and if he wants any changes, he can specify them and then the document would have to be rerecorded. In response to a question by Chair Bims, he clarified that he was saying that the agreement is already there so what he believes they can do is add language, as long as it does not prevent the Commission from taking action tonight. He read the following sentence: "The recorded alley maintenance agreement shall be submitted for review by the City Attorney and any revisions shall be rerecorded." Commissioner Riggs said that this was adding flexibility for the City and was optional but not critical to the applicant.

Commissioner Deziel said he would like to cover the basis for the findings verbally as part of the public hearing and discover the insight that this proposal actually is the better one. He said it was understandable that staff did not want to countermand Council's direction but the applicant had gotten lost in the process. He said that Council asked for two conditions for a one-story and access from Menalto Avenue and that was in response to the public issues in the appeal that said there were privacy issues and traffic issues. He said the applicant has proposed a one-story unit and everyone agreed that addressed the privacy issues. He said now there was the issue of distributing the impact of one new dwelling unit's worth of traffic across the neighborhood. He said on page 2 was the outline of what he was talking about. He said that he would submit that Council's intent with its direction on this project was to find the fairest way to minimize the impacts on the immediately surrounding neighbors. He said there was a notion of minimizing impact and divvying up impacts so it was fair, as limited to the immediate neighbors. He said they were now down to the traffic impact of one dwelling unit and how that should be allocated. He said if the access was from Menalto there was one dwelling unit's worth of traffic passing within one or two feet of the existing house in front and within six feet from the property

on the left. He said emissions, noise, privacy and all of those issues raised in the appeal would then impact the bedroom window of the neighbor on the left. He said all of the other neighbors were 50 to 100 feet away. He said if the access were from the alley then the impact of the traffic of one unit would never get roughly more than 50 feet from a dwelling unit. He said that clearly there would be a far less concentration of impact and that it was distributed over an alley that was designed to bear the distribution of traffic and utilities. He said he could not find that requiring Menalto access minimized the impact of one new residential unit's worth of traffic. He said from the City's perspective there was a clause in the findings that there could be a detriment to the City as a whole and staff raised that point. He said the parcel was zoned R-2 "Low Density Apartment" and that for decades it had been presumed that one additional dwelling unit would be allowed. He said he failed to see the impact on the City, particularly since the 5.6 traffic trips per day created by one townhouse dwelling unit did not even trigger the TIA guidelines. He said also that regarding the amount of impact on the rear neighbors, because they have been claiming that alley access has an impact on them, that this property already has a gate on the alley and there was nothing to prevent a future owner's teenagers from pulling in pickup trucks all day long through that gate. He said that all properties on this alley have a right of private access, an explicit deeded right of private access, based on an easement that was granted and recorded. He said that the rear property's detriment is measured relative to the fact that they can assume that this property has the right to one dwelling unit's worth of traffic. The side setbacks preclude the front house from being accessed from the alley so this retains the precisely one dwelling unit's worth of traffic coming in off the alley. So, there is no increase in impact and no measurable detriment to the rear property. He said that he had worked his way through items 1(a) and 1(b) on the second page and made the point that the alley access better achieved the intent of the City Council's direction.

Commissioner Deziel presented a supplementary finding, noting that it was an entirely separate point, but that both of his points are an independent basis for making the findings. He asked that the Commissioners look at the Menalto Access Study Sheet, page A.1.2. He said there was an unintended compounding of problems by the two conditions directed by Council and he thought that was unintended by Council. He said if any one wanted to ask the Council they could appeal any decision made by the Commission. He said the plan with access from Menalto entirely paved the middle yard and made the property look like it was an apartment. He said the Council said that the applicant would be allowed the square footage and that this becomes the basis for the variances. He stated that he believes the proposed design does not meet the intent or spirit of the Zoning Ordinance. He said Section 16.02 of the Ordinance states the purpose of the Zoning Ordinance and with regard to item 2(c) on page 2 that the purpose of the Zoning Ordinance was to encourage the most appropriate use of land. He said establishing a practice whereby properties that have right of access via alleys but requiring them to explode the pavement up to 20 percent of the lot's width and paving over the middle of the yard was not an appropriate use of land. He referenced the speaker from 510 Central describing the alley as having the potential for environmental benefit as shared driveways. He said that although the applicant would have 500 square feet of rear yard, it is only 10 feet wide and that quantity does not equal quality. He said he believes that having some opportunity for privacy with green in your middle yard is worth more than volume. He said he did not believe the Commission could find that this was an appropriate use of land and it did not support the maintenance and extension of the charm and beauty inherent to the residential character of the area. He said if the access was placed off the alley that the building would be allowed to have a proper façade, whereas if you pave the access from Menalto there would be no place to step out the front door but onto the parking lot. He stated that he could not find that this meets the spirit and intent of the Zoning Ordinance. He stated that he wanted to refute the staff findings regarding confusion with the addressing. This property could be addressed on either Menalto or Walnut depending

on the Fire District, but in either case signage can address the issue. He said that excess traffic on the alleys was not going to happen because the alleys are not intended to be through streets. He commented that people would not drive on alleys if they can drive faster on the streets. He commented that not everyone wants alley access, so the alleys really function as shared driveways for at most several homes in each direction. He believed this provided the basis for the use permit findings.

Commissioner Deziel said regarding the findings related to the variances on page 1, item A that Council restricted the development to a one-story unit and this was an extraordinary situation and a condition of the property that created a hardship. He said that the highlights of his findings are that the majority of the lots in this area were able to develop to the maximum allowable FAL, and the Council saw this intuitively and they said the applicant should be allowed to build the maximum FAL. He referenced item A(b2) regarding the variance for the front. He said that there is a compounding problem that propagates itself in that once you take 500 square feet of your middle yard to make the house one-story, yard is lost. He said the person is now constrained to a one-story and now has lost yard, which is a hardship. He said to maintain some amount of yard for the front house the Commission would allow them to reclaim some of the footage from the parking stall that would be placed in tandem. He made the comparison that they are losing about 500 square feet of yard due to the one-story design, but could reclaim about 200 square feet by accepting the proposed parking as standard. He moved to make the findings of all five variances as stated under item A on page 1 of his handout; and he moved item B on page 1 to change paragraph number two in the current use permit, which is the finding, to replace the words "Menalto Avenue" with "Walnut via the alley." He said that he would request staff to insert or not insert "injurious or" to be the standard protection any other applicant would have in the City. He moved to approve the use permit revision and variances as outlined in item C on page 1 subject to changes to the conditions. Regarding the conditions, and as appears in item C and on the page titled "City Council Action" to: replace condition 3(a) with the standard paragraph that relates to the architect's sheets; eliminate condition 3(h) for a landscape plan on the basis that the structure is now one-story and no longer needed screening; replace condition 3(i) with a new sentence: "Project shall conform to the tree protection plan and the most current arborist report" with the text subject to review and modification by staff to make the condition workable based on the updated arborist report; and add condition 3(j) either with wording as he proposed from the original use permit or edited but including language to specify that the entrance shall be off Walnut and the alley surface shall be compacted gravel that meets the engineering division's requirement for all-weather surfaces and the Fire Department's requirement for 40 pound loads. He clarified that he was recommending adopting it as drafted in item C(4) on page 1. In response to a question from Chair Bims, he stated that page 1 could be executed to change the document, subject to staff's comment and modification of item C(4). He noted that the alternative was to go back to the text from the original use permit that gave options that would need to be selected, although it was essentially the same text. He then moved as specified in item C(4). He said that in item C(5) he proposed a condition with specific language. He noted that he did not want to open up doors for delay because he is concerned about whether or not the applicant has basic services due to them. He noted that he would be happy to have C(5) replaced with the original language in the use permit the Commission approved. They will end up interpreting it, and it's okay because it's been recorded so they have to do the loop again a second time. He stated that it was the Commission's option. Chair Bims stated that the language in item C(5) was clear. Commissioner Deziel stated that that was all that was needed in the motion, but that staff had asked for direction on findings and it's been clear that appellants have picked on the fact that findings were not described enough, so he added page 2 with supplementary findings. So, if the Commission agrees, he would load this into the motion and would accept additions. He

stated that he wanted to add one more finding and then noted that the Commission had basically covered his whole outline. He stated that the findings focus on whether there is detriment but no one had mentioned that this project would improve public safety. He continued to say that it is a well established fact in urban design that investment in an area and additional eyeballs in an area increase public safety and he would like to add this as item 5 on page 2. He described page 2 as supplementary findings that provide an overabundance of explanation that would then be available to Council to allow Council to realize that this is a better way. Commissioner O'Malley seconded the motion.

Commissioner Pagee asked if Commissioner Deziel had checked possible impacts of additional bedroom windows on the adjacent residences and if compacted gravel onsite was considered a type of driveway. She asked if Commissioner Deziel had taken the time to consider the impacts if the front house were replaced and what that project might look for in the way of variances to maximize its yard and access. She asked if that were to happen if there were ways to improve yards for this house in the back that really has nothing now. Commissioner Deziel said regarding the windows that he was willing to allow additional bedroom windows as it was one-story. He said any room that currently had only one window could be allowed another window on a different wall. Chair Bims asked if Commissioner Deziel wanted to add windows with no landscaping possibility. Commissioner Riggs said that was fairly standard in a one-story design. Commissioner Riggs requested to add that the Fire Department had suggested a four-foot pathway for access to the back. He noted that the gurney is 30-inches so it can get through three-foot doorways and while he respected their preferences, they were not always needed. He said on a site that already has all of the paving it could use that he would request the elimination of this condition. Director Heineck said that the four-foot path was a requirement of the Fire District. Commissioner Deziel commented that they may get their primary emergency access switched over to the alley and the Commission should not require the four-foot pathway because if the Fire Department needs that path they will get it anyway. He noted that the plans are being approved without it and if the Fire Department requires it, it will be provided but the City won't be requiring it.

Director Heineck asked to make some comments on the proposed conditions. She said the conditions were written for a different project and she could not guarantee that they would be applicable to the proposed project. She said the Commission could adopt these conditions but there was no guarantee that they would cover every issue with this set of plans since staff had not reviewed the conditions as drafted tonight. She said that neither the applicant nor the neighbors had been given an opportunity to comment on the conditions and changes being discussed. She said the conditions do not provide any direct requirement from the Fire District. She said that the Fire District had been specific with staff in stating that they would only allow for an address along Menalto Avenue and would not allow for an address along Walnut or the alley. She said there is a general condition that covers the Fire District requirements but by approving it that way the Commission would be allowing the Fire District to set all of the requirements for the project upon its review of the building permit. Commissioner Deziel commented that he understood that the Fire District could have requirements that would change the project, even requiring a revision to the approval, but that the project would have an approval.

Chair Bims polled the Commission and it was the Commission consensus that they would not meet past 11:30 p.m.

Commissioner Riggs said he noted that there was a feasible alternative that only required a use permit and it was passed by the Planning Commission but denied by the City Council. He said the Council may have denied it based on inaccurate testimony from the Fire Chief or may have

had other reasons, but public testimony was heavily toward a request for a single-story. By Council removing this as an alternative that did not require variances, specifically in response to pressure by vocal neighbors is a highly unusual condition. He stated that he hopes that never occurs again in the town. He said the proposals for having a driveway from Menalto simply said that backing out of the driveway would be okay. He noted that backing out the full length of a lot onto a street seems much less wise than coming out of an alley even with fences on both sides. He said it was incredulous that the neighbors suggested that the applicant should spend another half million dollars and build something new in the front of the lot. He stated that he would agree that the front house might not be acceptable if this were a tear down and build for the purposes of a sale. He said this was a property already occupied and enjoyed and there is no money to do a grander scheme. He said among the safety advantages that, if indeed this is upgrading the alley three houses in, then approximately six homes excluding the ones on Walnut would have improved access for the Fire Department. He said he reacted to the reference to the alley as being a shared driveway. He said he could understand that people could see a slow building of additional cars and resultant traffic on the alley but the truth was that even if every lot on Menalto accessed the alley that you would rarely see a car in motion. He said the shared driveway concept was a good concept and he hoped it would become consistent with fair, reasonable and low impact use. He said he would like to acknowledge that there was an issue with cars coming out of the alley at Walnut directly onto the sidewalk. He said that compared to having traffic back out of the driveway onto Menalto and compared with people coming out of their garages and driveways next to hedges, that while this was not a desirable situation, it was not the only condition under which this situation was found. He said that he felt that the applicant had been effectively cornered into making a single-story residence but that she and Mr. Sinnott had done the only thing they can to maximize usable outdoor space. He said if ever there were a justification for access from an alley that this was it.

Commissioner O'Malley said he supported the motion.

Commissioner Keith said this was a very difficult issue and she agreed with Mr. Sinnott that alley access should be considered equitably. She understood Commissioner Pagee's concern that the other two properties with alley access allowed by previous Commissions should not have occurred. She said however the reality now was there were two properties who had received permission for alley access from prior Planning Commissions. She said about increasing traffic on the alley that there might be an increase but that meant it was being decreased somewhere else. She said that the issue of ownership of the alleys was not going to be decided any time soon. She said she agreed with Ms. Diane Mavica that "ownership was the million dollar question." She said there was a complaint from one of the letter writers that this project would require five variances. She said that the Planning Commission had approved recently another project on Oak Court that had required four to five variances as well. She said the zoning was R-2 in this section and many of the lots in other sections that were R-2 were already developed and that the approval of this project would not impact other alleys. She said more eyes on the alley should make the alley safer as well. She agreed also with Ms. Mavica that the one-story residence was much preferable to the neighborhood. She said she would support the project.

Chair Bims said the original use permit was for a two-story and did not require variances with access from the alley. He said he thought that was a better design. He said there were several findings staff wanted the Commission to make regarding denying the project. He said that paragraph two essentially would impose a moratorium on all new development with alley access. He said that was posed to Council and they did not feel comfortable ruling on a moratorium and he did not feel comfortable in effect declaring a moratorium. He said that there

were ways to mitigate risk from access conflicts when alleys interface with streets. He said regarding paragraph 3(a) that the redesign had the potential to eliminate all the requested variances but he thought the two-story did that a lot better than a one-story would without variances with access from Menalto. He said regarding 3(b) that other property owners have access to the alley which is what they were trying to deny this applicant so he did not see how this was preserving property rights enjoyed by others. He said in paragraph 3(c) that the argument also applied to driveways and that driveways have the same issues. He said that alleys are not streets and driveways are not streets and each has their own characteristics and we should not try to blur them. He said that ideally the City would have a policy governing the use of alleys but the City does not have a policy. He said the alleys have consistently been used and the City would have to allow some way for alley access with maintenance agreements, allowing access for R-2 lots, and mitigations for alley and street interfaces. He said regarding landscaping that 1989 was a two-story with windows that look down onto 1981 and if 1981 was allowed more windows without any required landscaping that there might be some privacy issues raised regarding the two-story looking down into the one-story. He said he would support the motion.

Commissioner Pagee said that she really wanted to push the City Council to consider making decisions on alleys regarding safety, landscaping, lighting, paving and consistent maintenance. She said that until that occurred she would continue to vote against any new access to alleys.

Commissioner Riggs said that it was not out of the question that Council could direct the hiring of a landscape architect to look at the alley situation and propose designs. He said that he would suggest this be done as a charrette to minimize the amount of research the landscape architect would do and would have the most possible participation of the neighbors. He noted that the neighbors do not speak with a single mind but there is clearly a shared asset and that this is like headline news in that if people do not come together and decide what they want as a group, there will be constant division. He asked the Chair if this request could be part of the motion to make the recommendation to City Council. Chair Bims said that he would like to vote on the motion on the floor first.

Commissioner Deziel said that Director Heineck had indicated that not all of the conditions proposed by the Commission had been noticed but the paperwork all showed access to the alley and all we would be adding is the alley access. He said that there is nothing different than was disclosed in the documents that is compacted gravel and the technical note about the alley maintenance agreement. He said considering that it was the clear intent for the Commission to take action for approval was there something the Commission could state so that staff could not come back saying the approval had missed on a technicality. Director Heineck said that if the Commission were comfortable with his exact wording as drafted, she would suggest that be the action the Commission take. She said based on that if there was anyone who was uncomfortable with that then they had the right to appeal the decision to the City Council. Commissioner Deziel said that he took exception that Director Heineck was holding this project to a double standard. He said the Commission routinely approved conditions in word and intent for which staff follows through in making the wording work. Director Heineck said that Commissioner Deziel had already indicated that the Commission would allow staff to modify some of these added conditions to include the reviewing authority and different divisions and departments. She said they would clearly add that as in any other case, but otherwise they would not look at adding any other conditions that the Commission had not already outlined or deleting any that the Commission had not indicated here and would accept the wording of the findings as outlined.

Commission Action: M/S Deziel/O'Malley to make the following findings and approve the use permit revision and variances, 5-1 with Commissioner Pagee opposed and Commissioner Sinnott recused and not in attendance.

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 a new one-story structure on the rear portion of the property at 1981 Menalto Avenue with access from Walnut via the alley will be compatible with the existing neighborhood character and development patterns and will mitigate impacts to adjacent properties in regard to light access, privacy, alley use, and building mass, and, therefore 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.

Supplementary Findings Supporting the Use Permit Revision:

- a. Access from the alley better achieves the intent of City Council.
 - i. We believe Council's intent with its direction on this project is to find the fairest way to minimize impacts on immediately surrounding neighbors. Council did not intend to block alley access in principle. Council upheld 510 Central access on this same alley.
 - ii. The impacts raised by neighbors relate to privacy and the distribution of the impact of one new dwelling unit's worth of traffic (noise, pollution, congestion, etc.)
 1. One-story development addressed the privacy concerns.
 2. Regarding the distribution of traffic impacts:
 - a. In the case of Menalto access, the impacts would be borne by the front house and the left neighbor's house at distances of about 1 foot and 6 feet respectively, which represents a significant concentration of impact;
 - b. With access via the alley, traffic impacts on immediately surrounding neighbors will be much farther away from all neighbor dwellings, and therefore much less concentrated on any one neighbor, which actually implements Council's intent;
 - c. Although alley access slightly increases impacts on neighbors facing the alley, these neighbors, and the city have always know that each lot on the alley is entitled to at least one dwelling unit's worth of alley access, but the proposed project will keep the number of dwelling units on this lot with access via the alley at one, so there is no increase in impact on the alley and therefore no detriment (the front house will be precluded from access because of the 5 foot side setbacks); and
 - d. The city as whole experiences no detriment compared to other possible projects because the project does not exceed the allowed density.

- b. Requiring Menalto access conflicts with spirit of the zoning ordinance described in 16.02.020/16.02.050.
 - i. Access via Menalto, as shown in the Menalto Access Study (sheet A1.2 6/15/06), would necessitate paving over essentially the entire left and middle yards on the lot. The rear unit would have a “back yard” limited to 10 feet in width in the rearmost 10 feet of the rear yard, and it would have an unattractive front façade, because almost the entire middle yard would be paved over. The front house would have no private yard.
 - ii. Access via the alley would result in significantly less paving, about 500 square feet less, in the important middle and side yard areas. The front house would get a meaningful side yard. The rear house would get a statelier “front” façade on the alley, and a “back yard” with up to 17.5 feet in width, rather than 10 feet.
 - iii. Considering the effects of such an extreme concentration of paving in the middle yard, as would be necessitated by Menalto access, we find that this approach runs against the spirit and purpose of the zoning ordinance because:
 - 1. It conflicts with encouraging the most appropriate use of land;
 - 2. It undermines and precludes extension of the charm and beauty inherent to the residential character of the area;
 - 3. It would establish a negative precedent for the orderly development of the area in question; and
 - 4. It is an undue hardship and unnecessary to carry out Council's intent of minimizing the impact of one new dwelling unit on this lot, and of fairly allocating impacts.
 - c. Considering that alleys are not through streets, that not all lots are likely to want alley access, traffic source is limited to several lots at each end of the alley, and we see little cumulative impact on this particular alley.
 - d. Street address confusion can be minimized with signage at the end of the alley or in the front of the property.
 - e. Increased activity and investment brought to the alley by this project will increase public safety on the alley.
3. Make findings, as per Section 16.82.340 of the Zoning Ordinance pertaining to the granting of variances:
- a. Council's requirement that this project be restricted to one-story development is an extraordinary situation and condition of the property that creates a hardship for the applicant with regard to developing the Floor Area Limit (FAL) allowed on the property, which Council did not intend to limit.
 - b. The proposed variances are necessary for the preservation and enjoyment of substantial property rights possessed by other conforming property in the same vicinity, and the variances would not constitute a special privilege of the recipient not enjoyed by neighbors. The majority of lots in this area are able to develop the maximum allowed FAL. The excess coverage resulting from alleviating the first hardship creates a second hardship with regard to amount of yard space customarily enjoyed by lots in the area; this justifies the fifth variance, to allow the existing parking for the front unit (non-conforming covered parking and one tandem stall located on the property in the front yard) to count as meeting current requirements.

- c. 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 side setbacks meet zoning requirements, the project is only one-story, and there is ample distance between the proposed project and all buildings, including the front house, where although the project would be less than the minimum required 10 feet for the length of approximately eight feet, the two buildings will be separated by 14 feet or more along the majority of their facing walls. Except for the requested variance, the project will conform to all other requirements of the Zoning Ordinance.
 - d. The conditions upon which the requested variances are based would not be applicable, generally, to other properties within the same zoning classification since the variances are based attempting to meet ad hoc development conditions and objectives imposed by City Council as a condition of granting a use permit specific to this property.
4. Approve the use permit revisions and variances subject to the following conditions:
- a. Development shall be substantially in conformance with the plans prepared by Samuel Sinnott and Company, Inc. dated received June 15, 2006 consisting of five plan sheets (excluding A1.2 titled Menalto Avenue Access Study) and approved by the Planning Commission on August 14, 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, Transportation Division, and Engineering Division that are directly applicable to the project.
 - d. Prior to issuance of a demolition permit or building permit, the applicant shall submit a plan for construction safety fences around the periphery of the construction area for review and approval of the Building Division. The Building Official may waive this requirement on a case-by-case basis. The fences shall be installed according to the plan prior to commencing construction.
 - e. Prior to building permit issuance, the applicants shall submit a plan for any new utility installations or upgrades for review and approval of the Planning, Engineering and Building Divisions. All utility equipment that is installed outside of a building and that cannot be placed underground shall be properly screened by landscaping. The plan shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes.
 - f. 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. Prior to building permit issuance, the applicant shall submit a revised construction parking and materials storage plan that is incorporated into the building plan set and

that is available at all times as part of the on-site job plans. The plan shall include the location of debris storage, materials storage, parking and traffic circulation. The plan shall indicate that no construction worker parking or storage of any materials is allowed in the alley. The plan shall be subject to review and approval by the Planning, Building and Transportation Divisions and the City Arborist to identify any impacts to trees.

- h. Construction shall conform to tree protection measures listed in the most recent arborist report.
- i. Prior to building permit issuance, project plans shall be revised to show an upgraded access alley, extending from the alley entrance on Walnut Street, including the areas identified in the plans dated received June 15, 2006. The improvements shall include a surface composed of compacted gravel that meets the Engineering Divisions requirements for an all weather surface and the Fire District requirement for 40,000 lb. loads.
- j. Prior to building permit issuance, the recorded Alley Maintenance Agreement shall be submitted for review by the City Attorney and any revisions required by the City Attorney shall be made by the applicant and the document shall be re-recorded with evidence of the re-recorded document provided to the Planning Division.
- k. Prior to building permit issuance, the applicant may alter the project plans to include additional windows subject to Planning staff review and approval.

6. Conditional Development Permit Revision/Elizabeth Cullinan/1330 University

Drive: Request for a conditional development permit revision to reduce the off-street parking requirement from 122 spaces to 94 spaces, in order to allow for the removal of 33 parking lifts, in an existing 60-unit multi-family residential building in the R-3-X (Apartment - Conditional Development) zoning district.

Planner Comment: Planner Rogers noted the distribution to the Commission of a handout entitled "1330 University Drive – Unit Type and Parking Breakdown." He said there were some differences between this information and the information presented in the staff report but nothing that would substantively change staff's recommendation. He said the number of current parking lifts was 30 but the number discussed in the staff report had been 33. He said the Board of the Homeowners' Association had removed three of the lifts because of lift failure. He said with the three less lifts that still provided for 124 spaces and that met the code requirement for 122 spaces. He said an attorney representing one of the residents of the unit questioned the number of units cited in the applicant's letter, page C.3. He said the applicant refers to ten one-bedroom units, 32 two-bedroom units, and 18 three-bedroom units. He said based on the information provided in the "Unit Type and Parking Breakdown," the breakdown was two one-bedroom units, 28 two-bedroom units, and 30 three-bedroom units. He said that would change the number of parking spaces as shown on page C.3 but it would not change staff's recommendation as regards the unique conditions on the site.

Questions of Staff: Commissioner Deziel said the parking lifts looked atrocious and he thought they must violate some safety codes. He asked if staff had done research to see if there was some basis to require their removal. He said that he was differentiating between a reduction of the parking standards and the removal of the lifts. Planner Rogers said that if the parking

requirement were not lowered and there was a condition that presented an immediate hazard at the site then technically it would be required to remove the lift(s). He said there was no way to provide the lost parking outside of the way it was currently provided. He said they could not provide currently landscaped areas without a new architectural control application. He said if the lifts were presenting an immediate health, safety and welfare hazard that lift would need to be removed but a new lift would need to be installed to replace it absent a reduction in the parking requirement.

Public Hearing: Ms. Elizabeth Cullinan said she was with Neal Martin and Associates, a local planning firm in the area. She said they normally represent jurisdictions and had been retained by the Menlo Park University Towers Board to represent them in the request of parking reduction. She introduced Mr. Greg Rubens with Aaronson, Dickerson, Cohn and Lanzone, the law firm retained by the Board, and Mr. Gary Black with Hexagon Transportation. She said they were respectfully requesting an amendment to the Conditional Development Permit to allow 94 parking spaces at 1330 University Drive. She said the top 10 reasons for the request were: 1) The traffic study prepared by Hexagon Transportation showed the need for 77 parking spaces and that was a conservative estimate in their opinion. 2) This project in their opinion represents smart growth. 3) The population is senior, have fewer vehicles and are taking advantage of the City's shuttle system. 4) The lifts are currently difficult to operate and dangerous as well for vehicles and people. 5) Part of their submittal and presented as attachments were complaints. 6) She said there was a deterrent to use the parking because of these reasons, basically the danger, inconvenience and the possibly the delay could be caused by trying to access or egress the lifts. 7) The lifts do not accommodate the current larger vehicles than those manufactured in 1968. 8) The vehicle ownership goes back to the point of smart growth and the demographics of this community. 9) The current vehicle ownership in the community was currently at 59 vehicles. 10) She said they had assurances recommended by staff in the conditions of approval as well as a requirement to amend the Conditional Development Permit if a problem arose so that it could be addressed. She said they had been working on the application since 2004 and began with Mr. Rubens doing some basic research, then the hiring of her firm to come up with a superior parking alternative. She said what they had was the lengthiest and most expensive process but they believed that it was a superior alternative for a long-term solution and aesthetically pleasing to Menlo Park. She said one other alternative the Board considered was an architectural control amendment that would have placed parking in the landscaped strips and in the rear recreation area of the building. She said that would not be aesthetically pleasing and would create a limited number of additional parking spaces specifically 19 parking spaces which would bring the total to 113 spaces. She said it would also have a negative impact to the rear yard of both this project and the development behind the project to the east. She said the second alternative considered was a no action alternative. She said however it was the position of the Board that the lifts were dangerous, raised liability concerns and were a loss for maximizing parking opportunities. She said about 30 of the lifts are not used. She said the only use of the lifts was on the upper level for one inoperable vehicle. She said that basically brought existing parking opportunities down to 94, which was nearly identical to their request.

Ms. Cullinan said there was a Board action supporting the current proposal as well as a petition. She said there was a letter from Mr. and Mrs. Reed, who were opposing a mandatory removal of lifts and that had been resolved by having the option, rather than a mandate, to remove lifts. She said they had received comments from Ms. Zefts and Ms. Heilman regarding parking congestion in the area as well as from Mr. Kirk via his attorney Mr. Knapp concerning parking capacity, Board procedures and the responsibilities to maintain the lifts. She said that finally there was a letter from Mr. Kirk that day regarding the inconsistencies in bedroom count. She

said that she thought the Commission could see from the record that the requirement for parking spaces in the past for the original project was based on the number of units rather than on bedrooms. She said in response to those comments they have a strong majority support for the optional removal of the lifts, a parking study conducted by an expert in the field, there was no evidence of Board procedural problems (and had been a private matter as well), the proposal was optional as long as the lifts were deemed safe, the number of bedrooms had been clarified and corrected, and the market forces have put the Board in this position because of the larger cars now manufactured. She said short of increasing the height of the garage which would disrupt the entire structure of the building there was no way to control the issue of accommodating two vehicles.

Ms. Cullinan said they were respectfully requesting an amendment to the Conditional Development Permit to allow 94 parking spaces. She said that they did not consider it detrimental to the community as evidenced by the parking study and the number of supporters who wished to speak. She said they fully agreed to the staff's conditions of approval.

Chair Bims asked regarding the "Breakdown of Unit Types and Parking Requirement" whether the parking column showed the number of parking spaces allocated to each unit. Ms. Cullinan confirmed that. Chair Bims confirmed that the "Cars" column showed how many vehicles were actually owned.

Commissioner Pagee suggested in the interest of time that members of the audience agreeing with the application could raise their hands and be counted and any members of the audience in disagreement could present their comments.

Commissioner Deziel questioned the total parking spaces of 95 and if they were assigned. Mr. Rubens said the 95 were the 66 assigned spaces and the 30 lifts. Ms. Cullinan said there were also 28 surface outdoor parking spaces. Commissioner Deziel said that if the 30 lifts were removed that would leave 66 assigned spaces.

Mr. Greg Rubens, Aaronson, Dickerson, Cohn and Lanzone, San Carlos, said he was the attorney representing the Menlo Towers Homeowners' Association. He said that their proposal was to remove the parking lifts without affecting the subterranean parking or the surface parking allocations. He said the surface parking spaces would remain open, and would not be assigned to individual units.

Commissioner Deziel noted that if a resident wanted to keep a lift that they could do so but would need to maintain it. He said however when the residents bought their units it was not a requirement for them to maintain the lifts. He asked how the applicant proposed to handle that inequity. Mr. Rubens said it was his understanding from the Board of the Homeowners' Association that when requests to have lifts removed had been made the removal had been at the cost of the homeowner making the request. He said regarding maintenance of the lifts that the Board owned them and provided maintenance currently. Commissioner Deziel said that deferred maintenance would be transferred to the homeowner if they requested to keep the lift. Mr. Rubens said that the draft parking policy provided some liability protection so it was not a reallocation of the maintenance because the lifts had been removed when they had failed. He said by removing the 30 lifts that would remove the impediments that had been described in those spaces. He said there are currently empty spaces where the lifts are located. He said those cars were parking on the City streets and in the surface lot. He said the perceived parking problem at the site was because of the lifts. He said the lifts if removed would open up 10-foot wide parking spaces in the garage that would be easy to access. He said the

photographs distributed graphically illustrated the problems. He said the height of the lift when elevated was at six-foot or at the eye level of many people. He said when a person exits the car they are greeted by the legs of the lift, which extend from the front of the vehicle to the back and are 10-inches in height. He said when the lift is down there was an impediment as the car had to be placed exactly straight on the lift to work. He said they were going to remove that impediment and were trying to do so in an orderly way. He said there was a large complex with many property owners and some people felt they needed the lifts or might need them in the future. He said however that very few people used them. He said within the history of the project that the lifts were an after thought. He said that when they were designed there was no understanding of how car size would change over the years. He said compact SUVs did not fit on the lifts. He said Mr. Black's report indicated that over 14-foot of height was needed for a standard vehicle and a Honda Civic might not even fit in the upper level. He said the Board was very concerned about some significant injuries that might occur from the use of the lifts. He said they had looked at all of the alternatives as well as replacement cost. He said a \$10,000 minimum would be required for each lift and that would be \$300,000 for all 30 lifts, but that would not create a solution to the parking problem on the site. He said there was a 10-foot height limitation and there would still be an inability to get today's vehicles into those lifts, and there would still be all the impediments because of the space constraints. He said the Board wanted to solve the problem in a long-term manner. He said the proposed parking policy and the ability for staff to bring any problems back to the Commission in the future added the ability to deal with the problem.

Mr. Richard Ebberly said he had been an employee at the Towers from 1974 to 1980. He said when the building was built that the demographics were quite different. He said almost every lift had been used on a daily basis and there were virtually no problems or accidents. He said that he did not think the width of vehicles had changed and he thought that cars would become smaller in the future. He said that Mr. Kirk did not want to lose the lifts. He said Mr. Kirk was 77 years old and had parked under the lift for 30 years. He said Mr. Kirk had never bumped himself or his car doors. He said in the future that young families with two cars might move into the site and would want two parking spaces.

Mr. Thomas Knapp said he was the attorney for Mr. Kirk, a tenant and property owner at the site. He said that a number of residents had come to the meeting to show their approval of the project. He said however there were a number of letters from residents opposed to the project. He said that this was an application to reduce the amount of parking for a major, multi-family development by almost 30 percent. He said they acknowledged that some of the residents at the Menlo Towers were having difficulties with the parking lifts. He said there were perhaps other ways to deal with that problem. He said in the staff report there was a method of reallocating spaces to allow residents who were under-using their allocated parking spaces to lease them to other residents who needed more space or were having trouble using their parking lifts. He said the parking study done by Hexagon Transportation indicated there was plenty of parking. He said that might be the case today but he thought the Commission should take a long view. He said currently there were a number of senior residents but over time the units would change hands and it was very possible that younger families would move into those units and they would own more vehicles. He said to eliminate 30 percent of the parking should in his opinion give the Commission pause and they should consider the precedence value of such a decision. He said they disputed the claim that the lifts were obsolete. He said there were at least eight companies in the U.S. that manufacture the lifts and parts. He said the Homeowners' Association in their reserves was collecting money from dues and putting that aside to service and maintain the lifts in the future. He said replacement of the hydraulic

cylinders was scheduled for 2010. He said they respectfully requested that the application be denied.

Mr. Tormey Ward, Menlo Park, said he was a resident and a member of the governance board for Menlo Towers. He said he had a list of three pages of signatures from residents and neighbors supporting the proposal. He said the Board has 22 requests to remove the lifts. He said that none of the 30 lifts were being used at the present time. He said if an owner wanted to keep the lift, he could.

Mr. Robert Steele, Menlo Park, said he was a resident of Menlo Towers and had served on the Board for three years. He said the lifts were not used and were dangerous. He said his informal survey of the garage over the past few years was that the lifts were not used except for two vehicles that were obviously vintage cars and were being stored. He said that at no point had the Board wanted to abdicate its responsibility for the maintenance of the lifts. He said the use of the lifts was part of the property owners' deeds.

Mr. Gary Black, Hexagon Transportation Consultants, said that it was stated that his firm's survey showed that the existing use of the parking was such that the lifts were not needed. He said that was true but the other part of the report looked at typical parking ratios of other similar units in the Bay area and across the country. He said these showed the maximum parking ratio typically found was one and a half spaces per unit, which would be 90 spaces in this instance. He said their letter stated they were quite comfortable that if many of the lifts were removed there would be plenty of parking in his opinion.

Chair Bims closed the public hearing.

Commission Comment: Commissioner Pagee moved to recommend approval of removal of the parking lifts when desired by the property owners of those stalls and for the Board to continue to maintain lifts for those wanting to keep their lifts; and at some time in the future if additional parking was found to be needed that they accommodate the parking on site and not request street parking. Commissioner Riggs seconded the motion.

Commissioner Riggs asked if the parking ratio of 1.5 per unit was similar to the Oak Grove project the Commission approved recently. Planner Chow said that she did not have that information at this time. Commissioner Deziel said it was more than 2 per unit. In response to a question from Commissioner Riggs, Planner Chow said that staff recommended approval with conditions as cited to allow for review by the Community Development Director should future parking problems arise. Commissioner Riggs asked if future buyers would be apprised of the parking limitations. Mr. Rubens said buyers would be given a copy of the parking advisory that has a general advisory about the parking issue and that lifts might be removed. He said the deed has a use easement over the parking space and the garage spaces were assigned. Commissioner Riggs confirmed with Mr. Rubens that a future buyer would be informed that there was only one space available if that occurred.

Commissioner Deziel said he thought there was a problem with the motion as the Commission could only recommend on relaxing the City's parking standards and not the removal of the lifts. He said the precedent aspect of the proposal was a profound issue. He said he would move a substitute motion to continue the item to allow staff and the attorneys time to resolve how to remove the lifts without the City just relaxing its parking standards. He said as an alternative he would consider relaxing to 113 spaces if the applicant came back with a proposal to install 22

more stalls on the rear dock. Commissioner Deziel questioned the traffic study as there was only one data point. Commissioner Pagee seconded the motion.

Commission Action: M/S Deziel/Pagee to substitute a motion to continue the project to allow resolution of removing the lifts without relaxing the parking standards.

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

Chair Bims said that if the lifts were removed that the parking standards would have to be relaxed. Commissioner Pagee said that the City of San Francisco had parking lots that used lifts to double up on parking. She said she had not heard anything from the Board about research on putting lifts back in the garage. She said that she had no problem approving a decrease in parking in this lot knowing that presently they could meet their standards, but she also wanted that they would never be able to come back and request street parking. She said that she did not see any point in keeping something (lifts) that did not work nor were safe. She said the lifts were 30 years old at least and would certainly break down. Commissioner Deziel said that they were not really lifts as they were in tandem; he said they were more like a storage jack.

Commissioner Riggs said in San Francisco open air lifts were used so there was not a height issue. He said he agreed that the lifts for the project could have been maintained and he felt that by choice there had not been maintenance of them. He said however even in the best condition these lifts did not seem to be the best answer. He said there were two ways that the Commission could relieve the applicant of their obligation so the lifts could be removed: reduce the parking standard by 30 spaces or require the applicant to use some of their open space and add parking and reduce parking standard to that. He said that staff had anticipated this and provided not just usage but a vehicle ownership count, which seemed to leave room for guest parking, at the rate of .5 spaces per unit. He said he was comfortable with staff's qualification that the parking might be reevaluated and might have to come back to the Commission. He said he was inclined to vote against the substitute motion and support the original motion.

Commissioner Deziel said if the original motion were to go forward he would at least like to see requirement for an engineering study on installing stalls at the back. Commissioner Riggs said this was a pre-existing building with a parking problem and if the Commission would not allow them by parking count to remove the lifts then the applicant had 60 very difficult to use spaces whereas they could have 22 open and usable spaces. Commissioner Deziel said that was assuming the owners could not find another way to enforce lift removal. He said that if the building ownership turned over to more families the parking would be short as there were 14 three-bedroom units with only one assigned parking space. He said that the original motion would make this a permitted development program. Chair Bims said that there was a deeded space as well as shared spaces. He said if the belief was that the lifts must go then the Commission had within its ability to create a condition to allow for them to go. He said the motion would work with additional conditions such as residents were not allowed to use street parking and that also addressed some of Commissioner Pagee's concerns. Commissioner Deziel said he would like to see the feasibility of putting the parking on the deck. Chair Bims said that the Commission could require 28 shared spaces in addition to the parking spaces without the lifts. He said residents were not currently using the lifts so he did not see how the removal of them could create a parking problem. Commissioner Riggs said the Commission could state the approval such that in the future the applicant might have to provide the additional spaces on the deck or they might have to invest money in the lowest level for more parking.

Commissioner Deziel said that he did not think enough work had been done on the proposal so that the lifts were removed and the development agreement was left as is. He said he saw no way to get extra parking unless it was part of the Commission's decision now. He asked staff if there was a way to make a finding that parking was non-conforming to begin with and it always had 94 stalls. Director Heineck said she did not think the Commission could as that was documented as part of the Conditional Development Permit for the property. She said there was a specific determination that this was an adequate approach to meeting parking requirements.

Chair Bims asked the applicant if there were any additional comments they would make that might help with the gridlocked position of the Commission. Mr. Rubens said that initially they asked to use landscape reserve but after discussion with staff they realized that would create a parking reserve that might put into play the landscaping and patio area on the site and would not finally resolve the issue. Commissioner Deziel said that he thought there must be a civil code by which the lifts could be deemed unsafe and be stripped out of the garage by law. Mr. Rubens said he is also a municipal attorney and if there was such a scenario and the police declared the lifts unsafe and had them removed, the only alternative for the Board would be to replace the parking. He said they were only asking to relax the parking to conform to the practice and history of the project. He said staff had thought through this and were recommending it with a built-in way for the Commission to look at it again through the Community Development Director at any time in the future should a problem arise. He said that was one of the shortfalls of the current permit in that it did not deal with the "what-ifs."

Commission Action: M/S Deziel/Pagee to continue the project and ask the applicant to pursue legal means and return with more information related to that.

Commissioner Deziel suggested an amendment to the motion so that if it were not possible to force the removal of the lifts by some law that the Commission would like to see some feasibility of where parking would go if it had to rely upon the Community Development Director to increase the number of parking back up. He said if condition 7.d was engaged where would the parking stalls go? Commissioner Pagee seconded the amendment. The Commission agreed to the amendment with consensus.

Commission Action: M/S Deziel/Pagee to continue the item to allow staff and the applicant to explore whether there were ways to remove the lifts without the Commission having to reduce the parking requirement and if the applicant returned without that then they would provide an engineering feasibility determination for additional parking stalls in the event that the Community Development Director had to require increased parking.

Motion carried 4-2 with Commissioners Pagee and Riggs voting against and Commissioner Sinnott recused.

Staff Liaison: Arlinda Heineck, Community Development Director

Prepared by: Brenda Bennett, Recording Secretary

Approved by Planning Commission on October 23, 2006.