



## MENLO PARK PLANNING COMMISSION MINUTES

Regular Meeting

February 5, 2007

7:00 p.m.

City Council Chambers

701 Laurel Street, Menlo Park, CA 94025

**CALL TO ORDER** – 7:01 p.m.

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

**INTRODUCTION OF STAFF** – Deanna Chow, Senior Planner, Megan Fisher, Associate Planner, Thomas Rogers, Associate Planner

### A. PUBLIC COMMENTS

Mr. Kevin Rea, Menlo Park, said he was a neighbor to the project at 531 Pope Street agendized as a consent item. He said he had sent an e-mail regarding the revisions made in response to concerns of privacy, general aesthetics and specific aesthetics. He said he was in favor of those revisions, but that they did not fully address all of his concerns.

Mr. Brian McPhail, Menlo Park, said he was a neighbor to the project at 531 Pope Street. He said he was at the meeting when this project was previously considered. He said he thought the builder was only making minimal efforts to comply with the direction from the Commission, and that the builder needed to make more efforts to meet the quality standards of the neighborhood.

### B. CONSENT

1. **Use Permit/Phil Giurlani/531 Pope Street:** Request for a use permit to demolish two existing single-story residential structures and construct a new two-story, single-family residence and detached accessory building on a substandard lot with regard to lot width in the R-1-U (Single Family Urban) zoning district. *Continued from the meeting of January 22, 2007 at the request of the applicant.*

The Commission's consensus was to pull the item from the consent calendar. Commissioner Riggs asked if the applicant was bound to the materials presented on the materials board. Planner Rogers said that the materials used would need to be in substantial compliance with what was presented on the board. He noted in response to a question from Commissioner Riggs that the photo was not the front elevation of the house but an example of the interaction of the proposed colors. Chair Keith asked about the materials on the columns. Planner Rogers said the stone would be on the front columns and a portion of the columns in the rear and would extend up about 10 to 15 feet on the columns.

Commissioner Riggs said that the effort to render the project with computer stippling was not helpful as it did not show how the specific proposed building would look. He said that the

materials board also did not accurately demonstrate what the constructed structure would have. He said that he felt the revision resolved the architectural issues. He said another concern expressed at the January 22, 2007 Commission meeting related to the quality of the materials. He said the roughness of the drawings and the generic quality of the materials board did not provide enough information to indicate whether the quality of materials issue was resolved.

Commissioner Sinnott said she would be willing to move the project ahead if siding was required and there was an assurance of quality windows. She said the computerized drawing did not show the design well. Commissioner Pagee noted the addition of a gable on the second floor but that there still was a straight wall with no articulation. She said the bellyband shown on the drawing did not look consistent. She said effort had been made to make the renderings nicer, but she did not see that effort had been made to improve the design.

Commissioner Sinnott moved to approve as recommended by staff with an added condition to require horizontal siding, simulated divided light windows with articulated grids on the outside and inside, and a better articulated belly band. Commissioner Riggs said that he would approve without the bellyband requirement. Commissioner Sinnott accepted Commissioner Riggs' modified second to her motion.

Commissioner Deziel said the lot was awkwardly placed as were other lots in the immediate neighborhood, and that it did not appear possible to completely mitigate line of sight.

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

1. Make a finding that the project is categorically exempt under Class 3 of the current 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 Fred Fallah, AIA, consisting of 11 plan sheets, dated received January 30, 2007, and approved by the Planning Commission on February 5, 2007, 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 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 specific conditions:**

- a. ***Simultaneous with the submittal of a complete building permit application, the applicant shall submit revised plans for review and approval of the Planning Division. The plans shall include the following revisions:***
  - i. ***The exterior finish shall be changed from stucco to horizontal siding.***
  - ii. ***All windows shall be specified as simulated or true divided light type windows, not snap-in grids or between-the-glass grilles.***

Motion carried 6-1 with Commissioner Pagee opposed.

## C. PUBLIC HEARING

1. **Use Permit/Mandana Jamshidnejad/578 Olive Street:** Request for a use permit to construct a new two-story, single-family residence on a substandard lot with regard to lot width in the R-1-S (Residential Single-Family Suburban) zoning district, and for excavation into required side yard setbacks for lightwells and egress associated with a basement. *Continued from the meeting of November 27, 2006.*

Staff Comment: Planner Fisher said she had distributed to the Commission additional correspondence received after the publication of the staff report. She said five of the six pieces of correspondence expressed opposition to the project and one piece of correspondence expressed support of the project. She said most of the concerns of the opposing correspondence related to the heritage redwood trees at 560 Olive Street, and loss of privacy and sunlight. She said some concern was expressed about noise from mechanical equipment. She said there was also an arborist report presented by one of the neighbors that disagreed with the amended project arborist report.

Questions of Staff: In response to a question by Commissioner Deziel, Planner Fisher said the revised plans were received by the City during the week of January 10, 2007.

Public Comment: Mr. Steven Pogue, project architect, said they had made changes to the design in response to the Commission's direction at the November meeting, and that this revision was the optimum design for the project site, the neighborhood and the greater community. He said the proposed structure would add character to the neighborhood, used good sighting practice and sensitive massing to the surrounding community while maximizing its rightful maximum legal Floor Area Limit (FAL). He said the house would nestle within its wooded site and was sensitive to tree health and the daylight plane. He said the Tudor design was a well-liked suburban style compatible with houses around the project site. He noted various features of the house that were more conservative than what was required by zoning regulations including the second story height, the front and side setbacks, particularly on the second story, and noted that the massing was broken up with articulation. He said the property owner and he had understood that the Commission wanted modifications to the original plan, but that neighbors when approached by the property owner seemed to believe the Commission had requested a complete revision of the plans. He said they reviewed the site drainage plan and would keep pervious surfaces to protect the neighbors from runoff; they reviewed the arborist report carefully; had prepared a revised landscape plan; continued the one-story element over the entry way; made the architecture of the house more rustic and less chateau in appearance; lowered the dormer to protect the daylight plane; removed windows to protect privacy; raised windowsills on windows over side yards to protect privacy; removed a window from the garage; reduced the size of the lightwell on the southeast side; and reduced light sizes to the minimum that met zoning regulations.

Commissioner Deziel asked about the outreach process. Mr. Pogue deferred to the applicant. Ms. Mandana Jamshidnejad, applicant, Palo Alto, said she had contacted all of the seven neighbors who had attended the first hearing of the project. She said there were four neighbors who never returned her calls or e-mails. She said that it was very difficult to get any input from the neighbors or to schedule the meetings to meet with them, and she was frustrated that the staff report contained comments from neighbors who had never contacted her.

Commissioner O'Malley asked if after the first hearing on the project whether she had contacted all of the neighbors within 300-feet of the project or just the seven neighbors who had made comments. Ms. Jamshidnejad said she had contacted the seven neighbors who had concerns. Commissioner O'Malley asked whether she had let neighbors know that revised plans had already been submitted to the City. Ms. Jamshidnejad said that she had not and again noted the difficulties she had had with scheduling a meeting with the seven neighbors.

Ms. Nancy Cox, Menlo Park, said her home was directly next door to the project site. She provided staff copies of correspondence between her and the applicant.

Chair Keith said that she had 14 speaker cards and she requested that comments be kept to three minutes.

Ms. Cox said other neighbors wanted her to have their speaking time before the Commission. Chair Keith confirmed that Mr. John Inglis, Ms. Florence Barr, Ms. Nanci Odishoo and Ms. Sonia Moroder wanted to contribute their speaking time to Ms. Cox. She confirmed that Mr. Frederick Enns wanted to donate his speaking time to Mr. Kevin Harris.

Ms. Cox said there were 16 neighbors who were opposed to the project. She said that the mass and size of the proposed home had not been revised since the last meeting. She said she and her neighbors were not opposed to a second-story development, but rather their opposition was to the mass and size of the proposed building. She said the proposed home was 60 feet wide including its lightwells. She said the applicant was requesting to have the lightwells encroach into the side setbacks and those would directly align with a large bedroom window in her home that was enjoyed daily by a member of her family. She said the subject property was only 70 feet wide and requested that the lightwells not be allowed to encroach into the side setbacks. She said the second story was 1,585 square feet and would run the length of the two one-story homes next to it. She said the structure was so wide that it would impact daylight for those one-story homes. She requested that the second story be recessed from the setbacks. She said the rear balcony and windows as proposed would impact the privacy of the neighbors and requested that those features be placed better. She said that a neighbor Ms. Lee Crawley best described the proposal as "a massive structure being jammed into an inadequate lot." She said the Commission had made comments on the project and that the motion made by Commissioner Pagee at the previous meeting indicated that there should be feedback from the neighbors prior to resubmitting the plans. She said that she and other neighbors had not met with the developer until January 14 at which time they discovered that the developer had already submitted the revised plans.

At this point, Ms. Cox, turned away from the Commission, and asked other neighbors to state whether Ms. Jamshidnejad had shared the revised plans with them prior to resubmitting them. Chair Keith directed that rather than a vocal response neighbors who were not contacted by the applicant should raise their hands, to show a number of persons for the record. Several hands were raised.

Ms. Cox said that Ms. Jamshidnejad had not visited her home, although invited, or other adjacent neighbors' homes to see what impact the development might have on their property. She said she had not seen the revised plans until after they were resubmitted. She said that Ms. Jamshidnejad sent a form letter on December 1 to neighbors after the previous hearing in which she offered cosmetic changes only. She said that she wrote back to the applicant and made specific proposals for effective consultation, requesting a change to and reduction of the massing on the second floor; to move the basement lightwells and egress out of the side setback to protect her family's bedroom window from noise impact; and to move the rear balcony so it would not overlook her family's swimming pool. She said the applicant did not respond to that letter of their concerns until three weeks later. She said at that point in time she and her family were leaving on Christmas vacation. She said she called Planner Fisher to let her know that she would be out of town and found out that Ms. Jamshidnejad had indicated that she never received Ms. Cox's letter. Ms. Cox said she then e-mailed the letter to Ms. Jamshidnejad and that it was untrue that she had refused to meet with Ms. Jamshidnejad.

Ms. Cox said she returned from vacation on January 3 and contacted Ms. Jamshidnejad to schedule a meeting. She said that they went back and forth on potential dates and before they could meet the applicant resubmitted the plans. She said the consultation meeting with the applicant and neighbors on January 14 did not take place on Olive Street as requested by the neighbors but rather at the applicant's Coldwell Banker office in Palo Alto. She said the purpose of the meeting was only for the applicant to show them the revised plans. She said Ms. Jamshidnejad listened to their feedback and took notes, but indicated that she was not the final decision maker indicating that the property was owned by her father and an overseas silent partner. She said the neighbors were very concerned about the lack of response from the applicant as they had not heard from her since that meeting.

Commissioner Deziel said the applicant had indicated that Ms. Cox had not allowed the project arborist access to her property to inspect the redwoods. Ms. Cox said she recalled Ms. Jamshidnejad calling in December about the arborist visiting at the site and that she had indicated to the applicant that she needed to confirm what day the arborist would visit as Ms. Cox's dogs are generally loose in that yard.

Commissioner Deziel said there were trees on Ms. Cox's side of the property line that appeared compromised. Ms. Cox said that they did not have effective screening on the side yard and noted they had landscaped the rear yard recently. Commissioner Deziel said some effective landscape screening might be placed in the side yard if some of the less attractive existing landscaping were removed. Ms. Cox said the effective screening needed there would impact negatively the sunlight that reached their lot and swimming pool and suggested rather than screening for the rear balcony to be moved to the front. She said she would prefer structure changes to screening. Commissioner Deziel asked if Ms. Cox liked the current landscaping. Ms. Cox said that she preferred the trees and noted that the view down the streets was of staid old trees.

Commissioner Bims said there was a letter in the packet that the applicant had indicated was sent to the neighbors. He asked if the neighbors had an issue with the proposed rustic Tudor style. Ms. Cox said it was not the style that was the issue but the mass. Commissioner Bims said there an amended arborist report had been submitted indicating the issues with the heritage redwood trees had been addressed. Ms. Cox asked that Commissioner Bims address the issue of the redwood trees with her husband, Mr. Kevin Harris. Commissioner Bims asked if the applicant had addressed the landscaping with the neighbors. Ms. Cox said that there had only been discussion about one tree and the placement of it.

Chair Keith said in Ms. Cox's letter of December 4 to the applicant that she thanked the applicant for her willingness to move the lightwell that would impact the bedroom window. Ms. Cox said the applicant had indicated her willingness to make that change at the November 28 meeting but had never taken further action regarding that. Ms. Cox said there were different ways to do lightwells and that they were undesirable in the side setbacks on a small width lot.

Commissioner Sinnott said the applicant was offering a tree in some location and that could help screening. Ms. Cox said they had spoken with their gardener about the offered tree and that while there were fast-growing big trees such a tree would create a tunnel effect in the view. She said she would prefer elimination of the rear balcony to the planting of a tree for screening.

Commissioner O'Malley said that he thought the shape and mass of the second story was the biggest issue but it appeared that the other issues were bigger. Ms. Cox said the biggest issue was the second story massing and they would like it to be setback so it would not block the sun. She said also the Crawley's on the other side would have the same problem with the second story blocking light. She said that they had three main issues and those were the massing and size of the second story, the rear balcony and impacts on privacy, and the encroachment of lightwells in the side setbacks and their impact on privacy and noise.

Chair Keith asked if Ms. Cox was aware that the revised plans set back the second story. Ms. Cox said she was but that the set back was not adequate.

Mr. Kevin Harris, Menlo Park, said his wife had addressed the lack of communication on the part of the applicant. He said the revised plans were basically cosmetic. He noted the issues

raised by the Commission at the November meeting, including neighbors' concerns with privacy and light loss. He said the architect was repeating his previous design while making a few cosmetic changes. He said the applicant and architect had not moved or modified the rear balcony; had not changed the second story massing; and had not done light or shadow studies. He said most incredibly that the applicant and architect had provided the Commission with a diagram entitled Exhibit 1.A that purported to show the neighbors' proposal and was shown on page C.7 in the staff report. He said that this was not the neighbors' proposal at all and in fact they had never seen the document before. He said regarding lightwells that both Commissioners Pagee and Riggs had indicated a desire for the lightwells to be placed more sensitively. He said with the redesign that the overall footprint of the house had not changed and the lightwells would still encroach in the side setbacks. He said the applicant was proposing to reduce one lightwell on the side facing his home from 22 to 17 feet but the entire length of the lightwells with that reduction would be 29 feet, which he did not think was particularly sensitive. He said although the Tudor-style home was an improvement, but the applicants' revised plan did not address the massing on the second story.

Chair Keith said that Mr. Harris had almost used his allotted time. Ms. Marcia Enns and Ms. Dolly Verplank indicated they would donate their speaking time to Mr. Harris.

Mr. Harris said the staff report stated that the applicant had only partially addressed issues raised by the Commission. He said the applicant had issued a revised arborist plan and that the arborist had visited his property to measure the trees, but that the revised report was still inaccurate. He said this revised report had got the tree diameter right, but the tree spread was wrong, and tree #13 was not even shown in the right location. He said that he and his wife because of the inaccuracies of the first report and the revised report were not comfortable with the conclusions about the protection of the redwood trees during construction. He said they hired two independent arborists, who prepared reports and who disagreed with the project arborist's conclusion that construction and excavation particularly would not impact the heritage redwood tree roots. He said that regarding tree root impact that a redwood might be healthy afterwards but unstable. He referred to excavation on a property on Evergreen Street that resulted in a large redwood falling because of impact to its roots. He said that a lack of communication with the neighbors about the project, the potential noise, privacy and sunlight impacts, and threats to the heritage trees made the proposed project detrimental to the health, safety and welfare of the neighborhood.

Commissioner O'Malley commented that it was disturbing to him that there were conflicting arborist reports, noting that all of reporting arborists were well-known and reputable.

Commissioner Riggs said there was a fair amount of unity from Olive Street residents about the project. He said zoning regulations applied a two-story height limit with a square footage allowance to which basements were not counted. He said a use permit was required to build a second story on substandard lot and not for lightwell encroachment, which is usually granted. He asked whether the neighborhood was prepared to take action to gain unified protection by pursuing an overlay. Mr. Harris said he could not speak for all the neighbors but he did not think an overlay was needed as there was an existing overlay having the Planning Commission conduct a discretionary review process. Commissioner Riggs said the Commission could only protect to the level of zoning set by the Council. He said that with a neighborhood overlay there could be more stringent protection for the neighborhood than what was in the zoning regulations. He said if the neighborhood indicated tonight that they would pursue an overlay then the Commission might want to continue the project to allow the neighborhood the opportunity to do so. Mr. Harris said he did not think the neighborhood was prepared to do an overlay.

Commissioner Bims said the project arborist had presented a report that was prepared by a registered arborist, and who was a member of the American Society of Consulting Arborists. He asked if the two arborists hired by Mr. Harris were similarly registered. Mr. Harris said that both of the arborists he consulted were registered and the reports listed their registration numbers. .

Commissioner Deziel asked for Mr. Harris' take on his (Deziel's) opinion on the second story mass. Commissioner Deziel noted that he really likes designs with a side-entry garage rather than a front-entry garage, and that such a garage design added to the character of a neighborhood when the front façade of a home did not have a double-wide garage door. He said certain accommodations were needed to allow for such a design. He said in an effort to accommodate the canopy of Harris' redwood the applicant had stepped back the second floor and to accommodate the auto court they had pushed the mass of the second story to be lateral instead of deep. He said the design by taking the full width of the lot was not so deep on the lot that it impacted sunlight much on one side or other. He said he saw that as a worthwhile tradeoff. Mr. Harris said he did not know of anyone who objected to the garage layout specifically. He said the concern raised was the construction of the garage, which would encroach into the tree protection zone. Mr. Deziel said that the tree protect zone was a separate issue. He asked Mr. Harris if he would agree that the second story mass was worthwhile if it allowed for a side-entry garage. Mr. Harris said that people were not objecting to the second story development rather that they would like to see it set back more than proposed.

Mr. Dan Odishoo, Menlo Park, said that he, his wife, and the neighbors had no objections about a home of this size being built in Menlo Park, but. He said they objected to it being built on a substandard lot. He said that homes should be built to the dimensions of a substandard lot and if that meant scaling back, then so be it. He said that the applicant had never contacted him or his wife. He said that both he and his wife had been at the November meeting. He said the home was being built by a developer, who seemed to have no desire to work with the neighbors. He said regarding the conflicting arborists' reports that it was important they reviewed carefully so that the heritage redwood trees on the Cox/Harris property were protected.

Mr. Maurice Schlumberger, Menlo Park, said he got an e-mail on January 12, 2007 from Ms. Jamshidnejad regarding a meeting on January 14 at Coldwell Bank for which no time was indicated. He said that rather than neighborhood outreach being a consultative process, it had been confrontational. He said there were no indications on the plans for passive ventilation. He said the home would need air conditioning and it would be noisy having that mechanical equipment. He said the lightwells in the setbacks were extremely dangerous for fire personnel as there was only two feet between the fence and the well. He said the architect drawings on C.6 were not to scale. He said the home in the middle, the home on the right, and the new home were to scale, but the Crawley's house on the left was scaled up and made to appear larger than it is.

Ms. Marianne Schlumberger, Menlo Park, said she was reading a letter from Jim and Lee, who were unable to attend because of a funeral. (Following comments are from the Crawley's letter.)

The Crawleys' property is adjacent to the project site, and they have lived there for 18 years. They raised their concerns about the project to the Commission in November 2006 that the plans by J5 Development would adversely and directly impact them as neighbors. The Commission asked the applicants to redesign for neighbors' concerns



regarding the proposed style, window placement, sill heights, lightwells in the side setbacks, loss of sunlight and landscaping. Neighbors should have been consulted prior to the applicant resubmitting the plans. Their major concerns: the size and scale of the house was not appropriate for a substandard lot and would adversely affect the adjacent properties; in their case, the proposed development would loom over the entire length of their house. The proposed encroachment of the lightwells into the side setbacks violates setback rules. Setbacks are to create buffers and intrusion into side setbacks would allow the mass of the proposed development to encroach even closer to their home and yard. The size and extent of the second story would severely impact privacy and available sunlight. The second story windows will look directly into their living room, kitchen and family room areas. The rear balcony will overlook their backyard. The massive second story if built where currently proposed will block morning sun well past 10 a.m. in the winter and severely compromise solar upgrades to their home. On November 30 they received an e-mail from the applicant in which she defended the project and asked about the possible location of a non-deciduous tree that would grow well in the shade.

Chair Keith noted that Ms. Schlumberger was almost out of time and asked if any of the neighbors wanted to donate their time. Ms. Joan Inglis, a neighbor, donated her speaking time.

(Comments from Crawleys' letter continue.)

The landscaping proposal was for their side of the project. The applicant left a voice mail message for the Crawleys on December 4, referencing her November 30 letter, and inviting them to call her and discuss the plans. They did not like telephone negotiations so they sent a letter on December 7 to the applicant noting that a single, screening tree was not mitigation for the Crawley's loss of privacy, serenity and sunlight. The applicant indicated later that she had not received the Crawleys' letter until December 16. On December 18, the applicant complained that she had not heard from neighbors. The Crawleys immediately sent an e-mail offering open-ended times and dates to meet and the applicant declined all of those opportunities except for one. The applicant insisted the January 14 meeting occur at her Palo Alto office rather than at the project site or at one of the neighbors' homes. At the meeting, the applicant indicated she had resubmitted plans. Crawleys indicated that the proposed revisions were cosmetic or trivial. The applicant indicated she would have to consult with the architect and the property owner regarding the changes desired by the neighbors. They heard nothing from the applicant after the January 14 meeting. The Crawleys said the neighbors' rights should not be treated so lightly noting they were all taxpayers and had contributed significantly to the City over the many years they have lived there. They felt this particular developer does not intend to use the process to deal with neighborhood concern and it was the responsibility of the Commission to recognize when the process was not being followed and use its authority to deny plans that are injurious to neighboring properties.

Mr. Bill Verplank, Menlo Park, said his home was directly behind the Cox/Harris house and a corner of his property would touch the project's lot. He said they listened to the November 27 meeting using the webcast. He said he was impressed with how considerate and thorough the process was and the willingness of the Commission to listen to neighbors. He said he had no objection to two-story homes. He said he was impressed that the neighbors had united and visited their neighbors on Hobart Street about the proposed project. He said that there has chronically been a flooding problem on Hobart Street. He said he hoped the proposed project's

drainage plan would protect his property from increased flooding incidents because of the project's additional runoff.

Mr. Greg Klingsporn, Mitchell, Herzg & Klingsporn LLP, Palo Alto, attorney for the applicant, said one of the action items the Commission had given the applicant at the November meeting was to consult with the neighbors. He said this was not a delegation of the approval authority to the neighbors but direction to get consensus. He said there was clearly a sharp divide between the project proposal and what the neighbors want. He said the architect and applicant had addressed all of the other matters indicated by the Commission in November. He said that although the applicant had been willing to do a third set of plans, after the meeting with the neighbors that there was such disparity that there was no way to interpret the changes within the applicant's designs.

Commissioner Bims said the Commission had wanted neighbor input on certain items and asked if there was any success in that. Mr. Klingsporn said that the drainage issue had been addressed and thought the landscaping plan was acceptable. He said regarding the arborist reports that he had only seen the two reports obtained by the neighbors earlier in the day, but had not noted any differences in recommended construction methods from the project arborist's report. He said regarding reconfiguring the setback of the second story and reduction of the encroachment of the lightwells into the side setbacks that the applicant thought she was addressing those issues and the neighbors do not agree.

Mr. Stu Soffer, Menlo Park, said the Commission were the gatekeepers to listen to the voices of the community and he was disappointed in the suggestion to place the burden on the neighbors to get overlay so they get what they want or need, while the Commission has the discretionary authority. He said the Commission could also deny the project based on not meeting Ordinance Section 16.82.030.

Chair Keith closed the public hearing.

Commission Comment: Commissioner Sinnott spoke to a comment made by a speaker that there was no passive ventilation. She said that all of the windows were operable and there would be natural ventilation.

Commissioner Bims said from what he had heard and read that a continuation would only be a waste of time as it did not appear compromise positions had been worked on for all of the areas identified by the Commission at the November meeting. He said the right thing was to look at input from at least adjacent neighbors. He said he would recommend denying the project.

Commissioner Riggs said coordination with neighbors was expected. He said that as he noted in November, an encroachment of lightwells into the side setbacks was not justified as this was new construction, and the home should be designed to avoid encroachment. He said a tree that would solve a view problem would not create a tunnel effect and that a building facing east would not necessarily impact light as there would be increased reflected light. He said the residence was handsome. He said the design was appropriate for an 80 to 100 foot wide lot, not this lot substandard in width. He said if Commissioner Bims was moving to deny the project that he would second the motion. Commissioner Bims moved to deny and Commissioner Riggs seconded the motion. Planner Fisher asked if the motion was to deny with or without prejudice. She explained that without prejudice meant the applicant could come back with a new two-story design within a year and with prejudice meant they could not. Commissioners Bims and Riggs agreed on denying without prejudice.

Commissioner Deziel said he liked the design and thought there were communication issues on the parts of both the applicant and the neighbors. He said the hot button appeared to be the applicant resubmitting the plans before the meeting with the neighbors. He said it was not unusual for an applicant to resubmit plans after five weeks time for review by staff as the applicant continued to collect input from neighbors. He said the other hot button was the fact the lot was substandard, but that was not a basis for rejection. He said the encroachment of the lightwells was also a hot button, but that they were allowed with a use permit. He said he thought the outreach had not been particularly effective, but he was willing to give the applicant another opportunity to work with the neighbors. He said there were compromises that could be made such as additional setback on the right side and eliminating the balcony or making it decorative. He said the finding of detriment the Commission needed to make regarded whether the use was detrimental not whether the process was detrimental.

Commissioner Pagee said she concurred with comments made by Commissioners Bims and Riggs. She said that neighbors needed to be able to work with project proponents who were the decision-makers. She said she would be comfortable with denial of the project as it did not meet the direction the Commission had given in November.

Commissioner Sinnott said the residence was designed beautifully. She said with just a few changes the design could work for all. She said the balcony could be removed and screening added. She said that what was being condemned was the process of the communication between the applicant and neighbors. She said the issues related to the lightwells and their placement, the rear balcony, and landscape screening. She urged the applicant to meet the neighbors at the site and to review what kind of tree might be planted where it would provide screening so that it did not create the feel of a tunnel and to consider where the neighbors' windows were would create reassurance for the neighbors. She said the residence would be a good addition to the neighborhood. She said she could support the motion to deny without prejudice.

Commissioner Bims said he also liked the architectural design of the house. He said the issue was the lot was substandard related to lot width and that with a side-facing garage, auto-court, and lightwells that there was not enough width for all three of those features. He said if the lightwells were pulled back then the house would be too narrow for a side-facing garage and auto court.

Commissioner O'Malley said he concurred with most of the comments. He said that the house design was beautiful but there were too many issues for it to be approved at this time. He said he wanted to keep the beautiful heritage redwood trees central to the considerations. He said it would be awful if the roots on those trees were to be damaged, and a tree should fall. He said he was very concerned with the different arborists' reports. He said if the project came back before the commission he would want assurance that there was one arborist's report that was agreed upon by all.

Commissioner Deziel asked if denial meant that the design should not come back with a side-facing garage. He said if the design was almost there except for an increased setback on second story, eliminating the balcony, and to protect the trees by using hand grading to construct the garage.

Commissioner Riggs said the Commission had given guidance in November to the applicant making seven and eight points. He said that the easy items were addressed and those that

frustrated the applicant were ignored. He said that encroachment into the setback for lightwells was not justified for new construction. He said the size of the house did not fit the size of the lot. He said the project could be continued but the initial continuance had not gotten the message to the applicant that there were issues that needed to be addressed.

Chair Keith said the balcony issue, lightwells, screening and trees had to be addressed. She said there obviously had to be discussion with the neighbors and both the neighbors and the applicant had indicated that the other had not responded. She said this focused on the process and the communication breakdown rather than on the design of the house, which was beautiful but needed some changes to work on this lot. She said she was not sure whether to deny without prejudice or to continue.

Commissioner Sinnott asked staff the difference between the two actions. Planner Chow said if the Commission were to continue the project that it would be helpful to provide direction to the applicants. She said that if the Commission were to deny that they would need to make a finding for denial.

Chair Keith noted that the project was heard last during the end of the year holiday time which made it difficult for people to meet. Commissioner Bims said that continuing the project would be a waste of time. Commissioner Deziel said a denial would require the Commission to show that the project would violate one of the findings of the use permit. He said a continuance would mean that the project was not quite ready for approval. .

Commissioner Deziel made a substitute motion to continue the project with direction to keep the rustic Tudor style and front remove the rear balcony, provide additional side setback on right side on the second story, and get information on the type of foundation for the garage and have two arborists review and analyze those details for potential impacts to the heritage redwood tree, and define what was wanted on the lightwells, noting that 29 feet of lightwells was a lot. He said that the lightwells should be significantly reduced so that windows could be open and lights on in the basement without creating noise or privacy impacts to the neighbor. He said also there should be a revised landscape plan that would target specific neighbor concerns. Commissioner Sinnott seconded the motion.

Commissioner Riggs said he would caution designing from the dais. He said that while he appreciated the effort to protect a handsome house that removing the balcony, pulling back lightwells, and having inoperable windows in the basement were all design matters that the architect would need time to consider. He said he could not make the finding that there was no detriment to the neighborhood.

Commissioner Bims said that he could make the findings for denial as the substandard lot width with side-facing-garage, auto-court and lightwell encroachment into side setbacks created problems with adjacent neighbors which needed to be taken into account. He said he was sure the architect would be able to do a great re-design.

Chair Keith said that if the Commission continued with a list of their specific concerns that the applicant could choose to not do the redesign and then come back later with a new proposal.

Commissioner Riggs said that would not get the message across.

Chair Keith said she would like to make an amendment to the substitute motion to remove the lightwells. Commissioner Deziel said also to add a concerted effort to listen to the neighbors.

Commissioner Pagee noted that lightwells could be denied as egress was needed.

Commission Action: M/S Riggs/Pagee to end debate and vote on the motion on the table.

Vote was 4-3 with Commissioners Deziel, Keith and Sinnott in opposition. Motion failed as it needed two-thirds approval.

Chair Keith said she would like to further amend the substitute motion to require removing the lightwells from the setbacks and to allow eight weeks for neighborhood outreach. The amendment was agreeable to Commissioners Deziel and Sinnott as the makers of the motion and second.

Commission Action: M/S Deziel/Sinnott to make a substitute motion to continue the project with direction to maintain the architectural style and front entry; remove the rear balcony; provide an additional second-story setback of at least two-feet on the right side; provide information regarding the type of foundation to be constructed for the garage; have two arborists review these details and analyze the potential impacts on the heritage-size redwood trees; eliminate the light well encroachments from the side setbacks; provide a revised landscape plan that targets neighbor privacy concerns; and allow eight weeks for the neighborhood outreach process.

Motion carried 4-3 to replace the original motion with the substitute motion with Commissioners Bims, Pagee and Riggs opposed.

Commission Action: M/S Deziel/Sinnott to continue the project with the following direction.

- Encourage maintaining the architectural style and front entry.
- Remove the rear balcony.
- Provide an additional second-story side setback of at least two feet on the right side.
- Provide information regarding the type of foundation to be constructed for the garage. Two arborists need to review these details and analyze the potential impacts on the heritage-size redwood trees.
- Eliminate the light well encroachments from the side setbacks.
- Provide a revised landscape plan that targets neighbor privacy concerns.
- Allow eight weeks for the neighborhood outreach process.

Motion carried 4-3 with Commissioners Bims, Pagee, and Riggs opposed.

Commissioner Pagee said that her dissenting vote did not mean she approved the project.

2. **Use Permit/Dylan and Jessica Casey/319 Marmona Drive:** Request for a Use Permit for a single-story addition and remodeling to an existing single-story, single-family non-conforming residence that exceeds 75 percent of the structure replacement cost in a 12-month period for property located in the R-1-U (Single-Family Urban) zoning district.

Commissioner Pagee recused herself due to a potential conflict of interest noting that she owns property in the area of the subject property. She left the Council Chambers.

Staff Comment: Planner Chow said that since the publication of the report, staff had become

aware of a discrepancy in the location of the right side property line relating to the location of the fence. She said the plans show the existing setback at five feet but the measurement from the fence was four-and-a-half feet. She said staff added condition 4.a to require a survey or locate the original property corners to verify the location of the existing house subject to field verification by the Planning Division. She said the location of the proposed additions would need to meet the side setback requirement of 5.5 feet, and the new one-car garage would have to have a minimum interior clearance dimension of 10 feet by 20 feet. She said worst case scenario for the applicants would be the need to remove the existing wood-burning fireplace and chimney to make the 10 feet depth on the garage.

Questions of Staff: In response to Chair Keith, Planner Chow noted that Commissioner Pagee had questions about the project related to the side setback, need for a variance and flood zone requirements. She said the survey would address the question about the side setback, a variance would not be needed, and the home was not in a flood zone.

Public Comment: Mr. Edwin O'Farrell, O'Farrell & Associates, Cupertino, said the staff report explained very well the circumstances related to the project property. He said from site inspections by himself and a construction engineer that it appears the fence on the right side was placed about a foot and a half into the site property. He said that would be resolved by a survey.

Commissioner O'Malley asked if they agreed to condition 4.a. Mr. O'Farrell said he was not a surveyor but he had measured the property and pulled the subdivision map from the County Records, a copy of which he provided to the Commission for their review. He said it appeared the fence had been installed at the wrong location.

Commissioner Riggs asked if Mr. O'Farrell was consulted for interior changes or the garage project. Mr. O'Farrell said that he was consulted after some interior changes had been done to the house. Commissioner Riggs asked about the financial benefit for the applicants to hold to a one-story design. Mr. O'Farrell said his understanding was that the Casey's originally only wanted to make some modest internal changes to the house, but when work began conditions in the structure were found such as dry rot, wasp infestation in the walls and a garage built below grade that required more action. He said that a one-story met the Casey's' needs.

Commissioner Deziel noted if the plan exceeded the coverage for a two-story house that meant in the future a second story could not be added unless square footage was removed on the first floor.

Ms. Jessica Casey, property owner, said that they were not able to afford to scrape the house and rebuild, although in retrospect perhaps it would have been better for them. She said that she liked the ranch-style home. Mr. Dylan Casey, property owner, said that the proposed work was costing them all of their available resources. Ms. Casey, relating back to comment by Commissioner Riggs regarding the removal of the fireplace, said that they wanted to do the remodel and they would be fine with removing the fireplace if it was necessary to do the project.

Chair Keith closed the public hearing.

Commission Action: M/S Riggs/O'Malley to approve with the following modification.

1. Make a finding that the project is categorically exempt under Class 1 of the current 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 O'Farrell & Associates, consisting of 5 plan sheets, dated received January 29, 2007, and approved by the Planning Commission on February 5, 2007, 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. Heritage trees in the vicinity of the construction project shall be protected pursuant to the Heritage Tree Ordinance.
4. ***Approve the use permit subject to the following specific conditions:***
  - a. ***Prior to building permit issuance, the applicant shall submit a boundary survey or locate the original property corners to verify the location of the existing house subject to field verification by the Planning Division. The location of the proposed additions shall meet the side setback requirement of 5.5 feet, and the new one-car garage shall also have a minimum interior clearance dimension of 10 feet by 20 feet. Building permit drawings shall be revised as needed subject to the review and approval of the Planning and Building Divisions.***

Motion carried 6-0-0-1 with Commissioner Pagee not participating and not in the room due to a potential conflict of interest.

3. **Use Permit/Menlo Business Park LLC/1455 Adams Drive:** Request for a use permit for the use and storage of hazardous materials and for outside storage of equipment in the M-2 (General Industrial) zoning district.

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

Public Comment: Mr. John Tarlton, said he was representing Menlo Business Partners. He noted that the application was for a master use permit for the storage of hazardous materials in a building that houses 30 some scientific research startup companies, many of who were on

their way to making a product. He said that the building was drawing businesses from Stanford University. He referred to Cisco Systems, noting they had started in this building. He said while the City or the property would not be able to sustain the businesses when they become large, they would provide the birthplace of these startup businesses. He said the building previously housed Raychem Telecommunications and the facility had basically been built out as a scientific research facility with a myriad of labs and offices. He said the property owners were initially concerned about leasing this configured space but he began receiving calls from previous tenants who wanted space in this configuration. He noted that they now have 30 tenants.

Ms. Susan Eschweiler, DES Architects, showed the Commission a visual layout of Menlo Business Park and where the building site was located. She said all of the hazardous materials were stored internally but part of the application was to install an emergency generator and 60,000 gallon diesel fuel tank in an existing enclosed area.

Commissioner Deziel asked about the noise rating for the backup generator and why it was selected. Mr. Tarlton said that as exciting as the project was bring ing in new scientific tenants that currently the site was losing money. He said that they had to budget outlay for equipment and said they picked up the generator from a company on Hamilton Court that went bankrupt. He said the generator was fully compliant. He said that a lot of the acquisition for this project had been done in this way to keep down costs.

Chair Keith asked about the age of the generator and how long such equipment was functional. Mr. Tarlton said he thought it was eight years old; he said that it would last a long time as it was hardly ever run. Commissioner Pagee asked what the generator would backup. Mr. Tarlton said it would backup 80 freezers used by the labs for the research. Commissioner Pagee asked whether the generator had to be permitted by Regional Bay Area Air Quality Control. Mr. Tarlton said that had been done and that the generator has a bug trap to filter out fumes. Commissioner Pagee asked how often it was tested and at what hours. Mr. Tarlton indicated the generator would need to run once a week for 5-20 minutes, and the Commission could establish when to do that as they wanted to be a good neighbor and there was no reason for them to run at a particular time.

Commissioner Riggs said he had been asked by residents to make sure the noise of the generator was controlled s as much as possible. He said brownouts, which probably would occur during the summer, would meant the generator might be running all night while neighbors would be trying to sleep with open windows. Mr. Tarlton said they wanted to be sensitive to the Cavanaugh neighborhood, but he did not think the noise would travel from its location to those residences, which he estimated were 700 feet away. Commissioner Pagee said the generator needed intake air and asked whether they could build a sound-rated enclosure. Mr. Tarlton said the generator would sit within a concrete wall enclosure against the wall of the building and would have a concrete wall on three sides. He said there would be a steel door on the fourth side. He said sound would be attenuated by the enclosure and because the generator was located against the building. Commissioner Riggs said the noise would not be attenuated, but reflected. He said he would defer to Commissioner Pagee but noted that sound bats might be used to line the enclosure. He said that with a distance of 700 feet if noise was not an issue he would drop that concern. Mr. Tarlton said sound bats would require a roof which would require fire sprinklers all of which was considerably more expensive.

Mr. Edward Mack, East Palo Alto, said that hazardous waste storage and Mr. Tarlton's comments about being on a budget were contradictory, and that safety and health should not be compromised. He said in reference to the City's noise ordinance limiting sound from 8 a.m. to 6



p.m. that he was a long-time Kavanaugh Drive neighbor to the Menlo Business Park. He said he has phoned the police at 5:00 a.m. to protest the use of leaf blowers at the business park and had police tell him that Tarlton Properties were exempt from the noise ordinance. He said he has also been told that the garbage trucks accessing the dumpsters were also exempt from the noise ordinance. He said that Tarlton Properties had not been a great neighbor and the City of Menlo Park was giving a lot away to allow Tarlton Properties to have businesses there.

Ms. Sadie Taylor, East Palo Alto, said she was a neighbor to the project site. She said she was concerned with her health and safety and that of a neighboring school because of the storage and disposal of hazardous materials. She said she had worked at an O'Brien Drive business and used and stored hazardous materials. She said that employees often did not follow the procedures for the hazardous materials nor did the employee provide eyewash stations. She said she had to fight to have safe working conditions at the company. She said employees did not always report accidents as they might have caused the accidents and were afraid they would lose their jobs. She said she understood that having the buildings occupied created revenue for the City but questioned the frequency of the inspections of the hazardous materials storage. She asked the Commission to consider this application the same as if the property was located near their homes and children's' school.

Ms Faith Hill, East Palo Alto, said the back of her home was on University Avenue. She said she did not support the application as the business was located next to a school. She said that too often residents learn about chemical accidents on the news without any notification to the residences by the businesses where these occur. She said that business owners, employers and employees were able to evacuate and did not have to live 24-hours in the area. She said there should not be a price tag placed on safety and health.

Commissioner Pagee asked how often the County and Fire District perform inspections on businesses with hazardous materials storage. Planner Rogers said he did not have specific knowledge about that. Commissioner Pagee asked about hazardous waste and if that would be removed from the site. Planner Rogers said according to a hazardous waste management plan that all hazardous waste would need to be removed. Commissioner Pagee asked how often the waste was picked up. Mr. Tarlton said that hazardous materials business plans usually indicated what quantity of unused and used materials could be stored onsite. He said that they had hired Ms. Ellen Ackerman as their compliance officer, noting she was with an environmental, health and safety consulting firm Green Environment. He said it was a new concept for a landlord to be responsible for a hazardous materials business plan. He said he believed that one of the speakers had to be referring to one of their previous tenants PharChem who had not handle hazardous waste appropriately and had left the site a mess when they left. He said they sued the company \$5,000,000 for the environmental cleanup. He said that Ms. Ackerman would visit the different businesses unannounced to see how the tenants were operating and whether the types of hazardous materials onsite matched the list of hazardous materials attached to their lease and that handling was being done appropriately.

Chair Keith asked how often Ms. Ackerman was visiting the site. Mr. Tarlton said that she was visiting about once a week right now as she would visit with each new tenant who was storing hazardous waste and review their hazardous waste materials plan with them. He said that once all of the tenants were there, she would inspect monthly and unannounced. He said there was also a requirement to do an annual Hazardous Materials Business Plan review.

Commissioner Bims asked if those details were in the Hazardous Materials Business Plan. Mr. Tarlton said he had not read the plan completely. Mr. Tarlton said the plan was an umbrella

plan that used existing tenants' quantities of hazardous materials and that the plan was required to be updated on an annual basis. He said they hoped that new tenants replacing other tenants would not mean changes in quantities but the annual update would look at what hazardous materials were used and where they were stored. He said that individual tenants would also have to update their individual hazardous business plans. Commissioner Bims asked if that constrained the length of a lease to allow time to update the overall business plan. Mr. Tarlton said the annual update would be done at a point in time and that tenants were not required to sign a lease for any required length of term, but leased month to month. Commissioner Bims asked if this plan acted as any liability for the property owners. Mr. Tarlton said that it did increase the liability as typically a tenant would be responsible, but that was not possible with 60 different small companies so the landlord had to take on more responsibility.

Chair Keith polled the Commission as to whether they would stay past 11:30 p.m. The consensus was to complete the agenda by 11:30 p.m.

Commissioner Pagee asked about fume hoods and scrubbers. Mr. Tarlton said there were fume hoods but scrubbers were not needed. Commissioner Pagee asked if Ms. Ackerman would determine when a scrubber was needed. Mr. T said prospective tenants would submit information to Ms. Ackerman regarding their chemical use and storage, and if it appeared that the tenant would need a scrubber, Mr. Tarlton would tell the prospective tenant that they would not provide space for them as there was no ability to have scrubbers, noting they were very expensive. Commissioner Pagee said that seemed to say that the emissions from fume hoods would not be detrimental to the environment. She said she was also curious about cumulative effects of the emissions, noting that the onus was on the landlord that there would not be cumulative effects. Mr. Tarlton said he would call Ms. Ackerman regarding that. Ms. Eschweiler said that the quantities of chemicals used or stored was very small. Commissioner Pagee said that she wanted assurances to address the neighbors' concerns that the quantities were so small that there would not be cumulative impacts.

Chair Keith noted that page C.25 of the Hazardous Materials Business Plan indicated that prior emergency arrangements were not necessary because of the small amounts of hazardous materials onsite. Mr. Tarlton said he would have to defer to Ms. Ackerman regarding that. Chair Keith noted on page C.27 of the same document regarding employee training that employees would view video training and if necessary, a qualified person would provide onsite training. She asked if that would be Ms. Ackerman. Mr. Tarlton said that Ms. Ackerman would be involved in administrative oversight and would not do training.

Planner Rogers said regarding Chair Keith's concern related to prior emergency arrangements that the hazardous materials business plan was reviewed by the Fire Protection District and County Environmental Health and if there was something that needed prior emergency arrangements they would not have signed off on the plan as proposed.

Ms. Ellen Ackerman, contacted by phone, said fume hoods in and of themselves did not require filters or scrubbers or air abatement measures. She said it depended upon the process and if a company needed a particular process they would need a permit from the Bay Area Air Quality Management District (District). She said all of the tenants were in research and development mode which was usually an exempt activity from such permitting requirements because of the small quantities of hazardous materials. Ms. Ackerman indicated in response to Chair Keith that she had prepared the Hazardous Materials Business Plan. Chair Keith noted the section on employee training and if a slide presentation or video was all that was required for training. Ms. Ackerman said that for small quantities generating waste it was only required that employees

understand safe handling. She said employees handling a much greater amount of hazardous materials would need more training. Chair Keith asked if Ms. Ackerman's company would be a qualified consultant to provide such training. Ms. Ackerman said that they were, but tenants would be able to use other qualified consultants for training.

Commissioner Deziel said that the Hazardous Material Business Plans called for individual business units to create an individual Hazardous Materials Business Plan. Ms. Ackerman said if individual businesses were generating hazardous waste that they needed to get permits from the County Environmental Health to dispose of it. Commissioner Deziel asked how the individual business would be flagged that needed to take this action. Mr. Tarlton said because of their experience with PharChem that tenants would not be allowed to have certain chemicals on the site. He said part of the lease was an attached allowable list of hazardous materials. Commissioner Deziel asked what would happen if the tenant needed to introduce a new hazardous material for their research and development. Mr. Tarlton said the tenant would have to contact them in writing as they would knowingly be in violation of the lease. He said also that Ms. Ackerman would do an annual update and would review the types and handling of the hazardous materials. Commissioner Deziel said that the Hazardous Materials Business Plan did not state that requirement. Mr. Tarlton said that Mr. Ron Keefer, Fire Marshall for the Fire Protection District, required tenants to update their hazardous materials business plan annually. Commissioner Deziel identified condition 3.b as stating the applicant will comply with Fire District regulations and asked whether that brought in this requirement for an annual update. Planner Rogers said that condition 3.b was a catch-all for all of the requirements of the other permitting agencies. He said a change to the quantities and kinds of chemicals listed would require a revision to the use permit. Chair Keith asked if page D.2 could be made a condition noting it was a letter from Mr. Pete Smith, San Mateo County Environmental Health, stipulating that it would allow Tarlton Properties as the lead agency with the requirement that individual tenants would be regulated separately as hazardous waste generators.

Planner Chow noted that any citations or notifications of violations by the Fire District would result in revocation of the use permit. Commissioner Deziel said he was looking for a proactive way to insure oversight. Planner Chow said the Fire Protection District performed an annual review of permitted companies' hazardous materials storage and waste. Mr. Tarlton said that this annual review was required by the Fire Protection District. He said if the Commission was more comfortable having the annual review required in the conditions that would be fine.

Commissioner Bims said he wanted to reconcile the document D.2 which stipulated the individual tenants had to be monitored as separate individual tenants and the Fire District's review of the overall Hazardous Materials Business Plan. Mr. Tarlton said this related to having hazardous materials onsite and its removal. He said there was a cap on how much unused and used hazardous materials could be stored on site. He said hazardous materials used and removed would be the responsibility of the tenants and they would have a hazardous waste generator permit with San Mateo County Environmental Health. He said some tenants would not generate hazardous waste and would not have a need for such a permit. Planner Rogers said this was a requirement of condition 3.b and there was no need to place another layer on San Mateo County Health Department. There was discussion as to whether it would be clear to the tenants that if they store or generated hazardous waste materials that they needed to comply with San Mateo County Environmental Health Requirements.

Chair Keith moved to approve per staff report with an added condition that individual tenants generating hazardous waste would be regulated separately as hazardous waste generators. Commissioner Sinnott seconded the motion.

Commissioner Deziel asked to add a requirement that the applicant would be responsible for initiating a review of the process at least annually. Chair Keith said that was acceptable. Mr. Tarlton asked if Commissioner Deziel meant a review of the chemical inventory. Commissioner Deziel said a review of chemical inventory and tenant compliance. Planner Chow asked if compliance needed to be reviewed through planning or other jurisdictions. Commissioner Deziel said that the requirement of the Fire District for an annual review would meet the condition. Chair Keith suggested added something to condition 3.b that the Fire District would require an annual update. Commissioner Deziel said this would be after building permit issuance and would be annually ongoing. Mr. Tarlton said that he was not sure if this requirement could be placed on the Fire District. Commissioner Riggs said to require a condition for the applicant to initiate an annual review of the Hazardous Materials Business Plan with the Fire Protection District. He said this would give neighborhoods the confidence that use permit could be revoked. Commissioner Deziel suggested a condition stating that at least annually the applicant shall be responsible for initiating a review of chemical inventory and compliance. Planner Chow reviewed the motion: to approve per staff recommendation with modifications that each individual tenant hazardous waste generator was required to get applicable permits (use Mr. Smith's language from D.7) and that annually the applicant would initiate a review of chemical inventory and compliance.

Commission Action: M/S Keith/Sinnott to approve with the following modifications.

1. Make a finding that the project is categorically exempt under Class 3 of the current 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 DES Architects & Engineers, consisting of five plan sheets, dated received on January 18, 2007, and approved by the Planning Commission on February 5, 2007 except as modified by the conditions contained herein.
  - b. Prior to building permit issuance, the applicant shall comply with all sanitary district, Menlo Park Fire Protection District, and utility companies regulations that are directly applicable to the project.
  - c. Prior to building permit issuance, the applicant shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
  - d. If there is an increase in the quantity of hazardous materials on the project site, a change in the location of the storage of the hazardous materials, or the use of additional hazardous materials after this use permit is granted, the applicant shall apply for a revision to the use permit.

- e. Any citation or notification of violation by the Menlo Park Fire Protection District, San Mateo County Environmental Health Department, West Bay Sanitary District, Menlo Park Building Division or other agency having responsibility to assure public health and safety for the use of hazardous materials will be grounds for considering revocation of the use permit.
  - f. If the business discontinues operations at the premises, the use permit for hazardous materials shall expire unless a new business submits a new hazardous materials business plan to the Planning Division for review by the applicable agencies to determine whether the new hazardous materials business plan is in substantial compliance with the use permit.
4. Approve the use permit subject to the following *project-specific* condition:
- a. Concurrent with submittal of a complete building permit application, the applicant shall submit documentation that the West Bay Sanitary District's requirements for additional information and warning letter postings have been met, subject to review and approval of the Planning Division.
  - b. *Per the San Mateo County Environmental Health Division, individual tenants that generate hazardous waste shall be regulated separately as hazardous waste generators.***
  - c. *The property owner shall initiate an annual review of the site's chemical inventory and the compliance of tenants with the requirements of the Menlo Park Fire Protection District, San Mateo County Environmental Health Division, and any other relevant protection agencies.***

Motion carried 6-1 with Commissioner O'Malley opposed.

**4. Use Permit/ Susan M. Eschweiler, DES Architects/1490 O'Brien Drive: Request for a use permit for the use and storage of hazardous materials in the M-2 (General Industrial) zoning district.**

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

Public Comment: Mr. John Tarlton, Tarlton Properties, said that the request was for a research and development company for the production of ethanol. He noted that they wanted to be good neighbors and had given his business card with his cell phone number to Mr. Mack, a speaker on the previous item. He said he had not intended to imply that budgeting meant short-changing safety as that was not the case. He said his company gives to the East Palo Alto community including support of playing fields at Castanyo School for the last 10 years, participating in Rebuilding Together every year for last 10 years in East Palo Alto, and providing support to the East Palo Alto Police Department.

Mr. Dan Verser, CEO of ZeoChem, said that they were transforming cellulose biomass from agricultural and forest waste into a totally renewable fuel base and doing so in a novel way. He said they were funded by a venture capital company in Menlo Park and were re-locating from Colorado. He said the technology was energy-efficient, environmentally sound and economical.

Commissioner Pagee asked where they would get their materials. Mr. Verser said that the location determined what waste was available and that would be wood waste in the Bay Area. . Commissioner Pagee asked if the company would use small amounts of waste. Mr. Verser said that it would be as they were strictly research and development.

Commissioner Bims asked if the venture capital company had attracted them from Colorado. Mr. Verser said that the funding was an attraction, but noted the receptivity of people in the area to the idea and also to find people with skills to support this development. Commissioner Bims asked if the research would continue at this site if they should move into manufacturing. Mr. Verser said he thought the research center would remain here.

Chair Keith closed the public hearing.

Commission Action: M/S Deziel/Bims to approve the item as presented in the staff report.

1. Make a finding that the project is categorically exempt under Class 3 of the current 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 DES Architects & Engineers, consisting of six plan sheets, dated received on January 16, 2007, and approved by the Planning Commission on February 5, 2007 except as modified by the conditions contained herein.
  - b. Prior to building permit issuance, the applicant shall comply with all sanitary district, Menlo Park Fire Protection District, and utility companies regulations that are directly applicable to the project.
  - c. Prior to building permit issuance, the applicant shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
  - d. If there is an increase in the quantity of hazardous materials on the project site, a change in the location of the storage of the hazardous materials, or the use of additional hazardous materials after this use permit is granted, the applicant shall apply for a revision to the use permit.
  - e. Any citation or notification of violation by the Menlo Park Fire Protection District, San Mateo County Environmental Health Department, West Bay Sanitary District, Menlo Park Building Division or other agency having responsibility to assure public health and safety for the use of hazardous materials will be grounds for considering revocation of the use permit.
  - f. If the business discontinues operations at the premises, the use permit for hazardous materials shall expire unless a new business submits a new hazardous materials business plan to the Planning Division for review by the applicable agencies to determine whether the new hazardous materials business plan is in substantial compliance with the use permit.

Motion carried 7-0.

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

1. **Consideration of minutes from the November 13, 2006, Planning Commission meeting.** *(Continued from the meeting of December 18, 2006 and from January 22, 2007)*

Commission Action: Unanimous consent to approve the minutes with the following modification.

- Page 3, 2nd paragraph, 2nd line, change the word “presently” to “presented.”
- Page 5, paragraph with sentence beginning “Mr. Frank Carney” change “\$33,000,000” to “\$3,000,000.”
- Page 8, second to last line, change “was to two feet.” to “scaled to two feet.”

2. **Consideration of minutes from the November 27, 2006, Planning Commission meeting.** *(Continued from the meeting of January 22, 2007)*

Commission Action: Unanimous consent to approve the minutes with the following modifications.

- Page 2, 6th paragraph, 1st line, insert after the word “and” the phrase “his description of” and delete the phrase “profile describe” after the word “client.”
- Page 3, 2nd paragraph, last line, add the phrase, “,but belonged to an Atherton address” at the end of the sentence.
- Page 7, 1<sup>st</sup> paragraph, 3<sup>rd</sup> line replace the 2<sup>nd</sup> full sentence with “He said staff was recommending a condition “4.c” that would read as follows:”Concurrent with building permit submittal, the applicant shall submit a revised site plan, showing the access aisle next to the accessible parking space with a width of eight feet and a clear path of travel from the head of the access aisle to the front door. These revisions may result in the loss of one parking space and the removal of some landscaping at the front of the building. The revised site plan shall be subject to review and approval of the Planning and Building Divisions.” after the sentence that ends in “needed.”
- Page 11, 2<sup>nd</sup> paragraph, last line, insert the word “good” after the word “a” and before the word “idea.”

3. **Consideration of minutes from the December 18, 2006, Planning Commission meeting.** *(Continued from the meeting of January 22, 2007)*

Commission Action: Majority consent to approve the minutes with the following modifications, 6-0-1-0, with Commissioner O'Malley abstaining.

- Page 5, 7th paragraph, 4th line, replace the remaining sentence after the word “that” with the phrase “one of the speakers said “One-story Eichler living is our dream.” But requiring the applicant to live someone else’s dream is demoralizing.”
- Page 6, 2<sup>nd</sup> paragraph add the word “Commissioner” before “Keith” at the beginning of the first sentence, and insert the word “a” before the word “difficult” in the first sentence.
- Page 6, 2<sup>nd</sup> paragraph, 2<sup>nd</sup> line remove the word “feelings” after the word “horrible.”

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

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

Planner Chow provided an update on upcoming planning items on the City Council agenda and noted an upcoming meeting of the Environmental Quality Control Committee regarding emissions that Chair Keith would attend.

Chair Keith said there had been an article on green building and she would like to hold a study session and invite the referenced expert to speak to the Commission on green building.

### **ADJOURNMENT**

The meeting adjourned at 11:39 p.m.

Staff Liaison: Deanna Chow, Senior Planner

Prepared by: Brenda Bennett, Recording Secretary

Approved by Planning Commission on April 9, 2007.