



PLANNING COMMISSION MINUTES

September 24, 2007

7:00 p.m.

City Council Chambers

701 Laurel Street, Menlo Park, CA 94025

CALL TO ORDER – 7:03 p.m.

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

INTRODUCTION OF STAFF – Deanna Chow, Senior Planner; Megan Fisher, Associate Planner; Justin Murphy, Development Service Manager (Attendance beginning with item D-1, 64 Willow Road); Thomas Rogers, Associate Planner

A. PUBLIC COMMENTS

There were none.

B. PRESENTATION

Commissioner Deziel introduced the presentation related to the South Bay Salt Pond Restoration Project that he is serving on a committee for, whose intent was to develop three projects in the Menlo Park area. He said the group wanted public comment on these proposed projects as they were developed.

Mr. Clyde Morris, manager of the Don Edwards San Francisco Bay National Wildlife Refuge, said they were about to undertake the largest wetland restoration project in the west in North and South America. He said the state and federal government bought 15,000 acres from Cargill in 2003. He showed what was called the Ravenswood Pond to the Commission. He noted that they would not do anything between Highway 84 and Bayfront Park yet as these areas have flooding issues, and flood control would be extremely expensive and beyond current funding. He said the County of San Mateo did not have a flood control section and the U.S. Army Corps of Engineers would be needed to construct flood control. He said they were planning a project for what was called the SF2 pond in the short term and the long-term plan was to have a ring of tidal marshes around the Bay. He said the salt marshes are the habitat of two endangered species, the California Clapper Rail and the Salt Marsh Harvest Mouse. He said they were not able to do the long term project because of the Mosely Parcel owned by San Jose, which has flooding issues. He said their short term goal was to create a high density shore bird nesting pond in the SF2 Pond with the intent of having these birds, such as egrets, western sandpipers, and plovers, relocate from the full 15,000 acres to

about 7,000 acres. He said the SF2 Pond was flat and salty and they intended to create 50 islands for nesting with rapid water circulation in and out from the Bay with depths of two to ten inches of water. He said one site had been excavated because of lead shot in the water from hunters' guns when a nearby hunting hut had been used. He said this deeper water area would provide habitat for ducks in the wintertime. He said that they could get 10,000 shorebirds to locate in this area. He said that the islands would be shaped differently and at different heights to see what would provide the best habitat for the shorebirds. He said they would do the outer third of the project when the flooding issue was resolved. He said they would create two viewing platforms along the levee and improve the trail.

Commissioner Bressler asked about the difference between salt marsh and salt ponds, and the current flood control area. Mr. Morris said that a salt marsh was a vegetated area and salt ponds were open water with no vegetation. He said that a nonprofit called Save the Bay would remove all the exotic vegetation along the edge of the pond and replace it with native vegetation. Mr. Morris said the water would be controlled to create ideal habitat for the shorebirds and water levels would be fairly consistent. He said maintaining the external levee kept high tides from getting into the community and the pond. He said that they would also account for runoff from Hwy. 84 and increase the height of the levee.

Chair Keith asked whether the Mosely parcel was preventing them from doing more development. Mr. Morris said the levee on that parcel was breached and rain created run off from Hwy. 84, flooding the frontage road and running off into a salt pond. He said there was an ongoing dispute between Caltrans and the City of San Jose about this. He said San Jose had threatened to challenge Caltrans legally but that had not occurred. He said San Jose would like his organization to take over the parcel. He said they would like to have the parcel, but there was too much expense involved to control the flooding. Chair Keith asked about the cost of the proposed project. Mr. Morris said that originally it was estimated at \$4 million but more recently estimated at \$8 million, which was not available. He said the contractor was reviewing the project to bring the cost of it closer to \$4 million, which was the funding available.

Commissioner Deziel said the working group on the SF2 site wanted public input and asked Mr. Morris to comment. Mr. Morris said that they intended to create an accessible trail with two viewing platforms and to allow walkers and bicycles but not dogs on that trail. He said public preferences ran from allowing all kinds of public access to allowing no public access, and it was not clear yet what native vegetation would be used. Commissioner Deziel asked if it was possible to have a camcorder located to view wildlife and nesting sites. Mr. Morris said that was a good idea and they would look into it.

Commissioner Riggs commented that a trail on which a user could only travel halfway and then had to turn around and go back the same way was of limited value. Mr. Morris said they were working with the Midpeninsula Regional Open Space District to try to connect this trail to another further out, the Cooley Landing area. Commissioner Riggs

asked about launching a kayak from the Flood Slough and if it was possible to kayak to Greco Island. Mr. Morris said that permission to launch a kayak from that site had to be sought from the agency who owns it, but that the water was deep enough to kayak. He said he uses an airboat in the area, but launches from Redwood City. He said boaters needed to pay close attention to the tides, however, because of cord grass, an invasive plant in the channels, that obstructs boats when the water is lower.

Chair Keith asked how wide the proposed trail would be. Mr. Morris said the levee was 12 to 20 feet wide and he expected that the trail would be 10 to 12 feet wide. He said they did not want to increase the levee width as that might impact habitat on either side. Chair Keith said there was a bike path over the Dumbarton Bridge. Mr. Morris said there were 12-miles of trail on the other side of the Dumbarton Bridge and they also planned to improve trails at Bair Island to create continuous trail.

Commissioner Deziel said that connecting bike trails might create commuter use. Mr. Morris said that such a through trail could create a conflict of uses and if that were to occur at the Bair Island site that gates would be used to prevent bicycle commuter thoroughfare. Commissioner Deziel asked about the cost of the long term plan and expressed concern that money invested in the short term plan would not support the long range plan. Mr. Morris indicated that the cost of the long term plan was not yet established. He said while the short term plan would not complement the long term plan that when the long term plan was accomplished the observation platforms being built with the short term plan could be moved. Commissioner Deziel said he liked the idea of the trail being used for wildlife observation.

C. PUBLIC HEARING

1. **Use Permit/David Crouch/800 Magnolia 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 (Single-Family Suburban) zoning district, and for excavation into a required side yard setback for a lightwell and egress associated with a basement.

Planner Comment: Planner Fisher said that the applicant had a short presentation.

Questions of Staff: Commissioner Deziel asked about a requirement for 20-foot separation between structures. Planner Fisher said that was required in the R-3 zoning district.

Mr. David Crouch, Menlo Park, introduced Mr. Rich Bassin, and said they were jointly applying for a use permit to build the proposed home, which would be sold. He said he lived in Menlo Park, his business was in Menlo Park and he had built several homes in the nearby vicinity. He showed photos of various homes in the neighborhood pointing out elements of the architecture of those homes that were picked up in the proposed design, e.g. a house at the corner of Magnolia Street and Stanford Avenue that had a similar roof line and gable. He said they were trying to protect the privacy of the

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neighbors by hiding much of the second story under the roof line. He said they were planning to plant trees to protect neighbors' privacy.

Mr. Rich Bassin, co-applicant, said he had done neighborhood outreach and shared the plans with them. They then tried to accommodate the neighbors' concerns and met with them to show revised plans. He said at one point they decided to flip the house so that it would enhance the neighbor's view from her home office. He said they even talked to one of the neighbors with landscaping experience, and she would consult with them on trees and plants the neighbors would like.

Commissioner O'Malley commented that he was very happy thus far with the applicants' interactions with the neighbors and the compromises made to address their concerns.

Mr. Crouch showed the house to be deconstructed. He noted two heritage trees that were proposed for removal at the request of the neighbors, including a spruce tree that was proposed for replacement by a birch tree at the recommendation of the arborist. He said there was also a pine tree that was crowding an oak tree; the pine tree was also dropping a lot of debris on the neighbor's garage. He said the neighbor would like the pine tree removed, which would improve the health of the oak tree, and the replacement tree would be a heritage tree at the front of the property.

Mr. Crouch showed a house at the corner of Magnolia Street and Stanford Avenue with a pitched roof and gables, elements that they were trying to incorporate into their project. He noted another house that used whitewash shingles. He said they wanted to use cedar shingles and he would whitewash them, perhaps a gray. He said however the color would be determined once the home was built to determine what would look best with the mass.

Commissioner Bims commented on the applicants not deciding on the colors until it was constructed. Mr. Crouch said what would drive the best choice of color would be how the light hit the house, which was more easily perceived once the home was built. He indicated they would also work with the neighbors on the color at that time.

Commissioner Riggs said the neighborhood was predominately single-story and asked why Mr. Crouch chose second-stories as comparables. Mr. Crouch said he chose the first three houses on Magnolia Streets for their design purposes. He said they did not choose the homes because they were two-story but because the homes had what they wanted in their design.

Commissioner Deziel asked if the applicant was providing a range of color options. Mr. Crouch showed another home he had built and commented that its cedar shingles and white trim were beautiful. He said that was one option. He said the second option was another house for which he showed a photo. He said however that the color was a little dark and they wanted a high quality house that had the lighter finish of the cedar seeping through the color. Commissioner Pagee said that the second house did not have the same windows they were proposing in the proposed design. Mr. Crouch said

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that the home in the photo had high-quality windows with grids on the outside, which was what they intended to use.

Ms. Patty Ortenberg, Menlo Park, said that she and her husband had met with Mr. Bassin and Mr. Crouch several times to review the plans and revisions. She said the applicants had been very accommodating. She said regarding earlier concerns about the proposed height of the house that the applicants had reduced the height of the chimney cap to meet the 28-foot height requirement. She said that in principle she did not like two-story homes, noting other two-stories that were being built between her single-story home and another home on the other side, which she thought would impact their light and privacy. She said the applicants were willing to look at a lighter color for the shingles so reflective light would not be so dark into her home and they had changed roof angles to help with the look of density. She said she worked at home and her office was right next to the driveway. Her current view was a single-story home and the sky. She thought she would lose the view of the sky with this project. She said the applicants had agreed to plant trees for screening and reduce the number of windows on that side. She said the applicants also met with them several times to review the final plans being presented tonight. She said that the house as designed looked lovely, but she felt it was too big for the lot and the neighborhood. She said that the new two-story homes being built were designs driven by developers. She said she wished there were more rigorous standards so that second-story homes would not be allowed.

Chair Keith closed the public hearing.

Commission Comment: Commissioner Pagee said this was a developer's plan and not someone's dream home; it was impacting neighbors and the Commission could address certain things such as mass and bulk, and amount of living area on the second floor such as decks and plate heights. She said one chimney had been addressed but one was not even attached to a fireplace and did not seem to have architectural value. She said the home that Mr. Crouch showed them as an example of the proposed design was situated on a larger lot. Mr. Crouch said the lot was wider for that project, but the house's front elevation was larger than what was being proposed on this lot.

Commissioner Pagee said she would like to have the height of the structure lowered and that the floor plate could be lowered. Mr. Crouch said the chimney Commissioner Pagee commented upon was located to connect several roof angles. Commissioner Pagee said that the roof could be improved. She said there was a valley missing over the staircase. Mr. Crouch said that was not correct. Commissioner Riggs clarified that what looked like the north side of the gable was actually a flat plane that hovered over a half-gable. Mr. Crouch referred to B.11, the southeast elevation, and said the mass of the house was reduced with a porch that extended back at least 12-feet before the slope changed to a 45-degree angle to create space for the second floor bedroom. Commissioner Pagee said she liked the house Mr. Crouch had built on Olive Street, but it had much less impact on the neighbors and that there had been more work done on the elevations. She said she did not like a chimney installed because it solved a roof problem. She said there were ways to solve the mass and bulk on a narrow lot and still get the square footage. She said that recent projects before the Commission on these

larger lots very successfully placed the light wells outside of the setback. She said the proposed project's light wells extended the entire length of the house and were in the setback.

Mr. Bassin said they had worked with neighbors and gotten their input to develop the proposed design, and the neighbors had given their approval of the design. He said if they lowered or narrowed the roof it would push things out and impact the neighbors even more.

Commissioner Pagee said that the Commission had seen many projects and were in a position to make suggestions to lessen impacts of which neighbors might not have awareness.

Chair Keith closed the public hearing.

Commissioner Riggs said the project was a challenge in that except for the substandard lot width, the developer was proposing to build to rights. He said it was a handsome project; the efforts to keep the eaves low were good; nice materials were being proposed and the applicants had done good neighbor outreach. He said he liked the chimneys as designed and did not think they should be shortened. He said the larger issue for a project was fitting into the context of the neighborhood. He said the project site was in a largely one-story neighborhood, which had yet to comfortably absorb the newer two-stories that had been built. He said the neighbors felt uncomfortable with the project. He said that it was assumed by many citizens that the Planning Commission would look out for them because there were rules and it was the Commission's job to keep some level of balance with light, scale, massing, and proximity of walls, and make efforts to defend consistency of architectural style. He said the massing was still challenging to the immediate neighbors and he would have trouble supporting the project. He said that he could not support light wells in the setback for a new project.

Commissioner Bressler said that the Planning Commission's role was to protect the integrity of neighborhoods. He said however that the project would not have come up for review if the lot were wider. He said that neighbors should be able to decide what kind of architecture they want to maintain in their neighborhoods. He said the City has limited control over conforming lots in general, and he recommended more oversight for all projects, whether to be built on standard or substandard lots.

Commissioner Deziel said it was a lovely house and he was comfortable with two-story development. He said he thought it would run against the City's general welfare to deny two-story development, but he would feel more favorable toward this project if it did not impact so much on the left. He said he had devised a way to define skylight angle, which the right side fit within, but the left side did not. He said that the design seemed to squish the house forward to protect the size of the rear yard. He said the proposed 18-foot 6-inch sheer wall on the left was too much for him to champion the project.

Mr. Crouch said the proposed home had the same floor plan as another project he had built at 745 Olive Street, but he thought this one was more neighbor friendly. He said the second story on the left was off the setback by one or two feet. Commissioner Deziel indicated sheet A.9 and said that the left side followed the daylight plane and he did not see a two-foot setback. Mr. Crouch said the staircase was on the setback but the second-story was stepped back about one foot.

Commissioner Riggs said that one neighborhood with relatively tight lots decided to step back the second stories by five feet. He said that one to two feet off the setback was not going to make big difference to the left side neighbor.

Commissioner O'Malley said he was very happy with the applicants' interactions with the neighbors, and that they had gotten support from the neighbors for the proposal. He said he understood that people did not like a two-story home introduced next to them where there were not that many. He said the City however approves many two-story developments, and he would approve the project as recommended by staff.

Commissioner Bims commented that the applicant had indicated there was a stigma attached to being a builder-developer; however his concern with the proposal was what impacts it would have on the neighborhood. He said the project was nicely designed but he had an issue with the encroachment of light wells into the side setback. He said that a number of neighbors had signed a petition of approval but none of those were adjacent neighbors. He said the one speaker expressed support for the project, but had concerns with the massing. He said he thought the color choice should be part of the architectural control at the beginning of the project.

Commissioner Bressler said he was impressed with the level of outreach and commended the developer.

Commissioner Riggs said he has supported and defended two-story projects; the question was how the second-story addressed the neighbors, whether with great bulk or gently. He said the house would be built to the daylight plane and eventually would impact the neighbor. He said the daylight plane allowed one to shift to right or left according to constraints of the site. He said the Commission should not approve a project in which the color choice was unknown. He moved to continue the project so that the left side bulk was addressed and basic colors and finishes decided.

Chair Keith asked that the chimney tops be addressed. Commissioner Riggs said the chimney tops were hats and he thought they were rather charming. Chair Keith seconded Commissioner Riggs' motion. She said she could not support light wells in the setback. She noted that the applicants had done good neighbor outreach, but having the left hand side directly on the daylight plane was problematic. She said that the 10-foot ceilings could perhaps be lowered to the bulk. She said she was fine with either the gray or natural colors. Mr. Crouch said he would be happy to make the colors natural.

Mr. Crouch noted they had done a survey of the one- and two-story homes in the neighborhood and that there was an equal number.

Commissioner Deziel said the motion as it stood gave direction to address the left side mass, the light wells, and the colors. He said it was desirable in his opinion to have light wells in the setback even for new construction. Chair Keith said to remove the direction about color as the applicant had indicated they would use natural color. Commissioner Riggs and Chair Keith did not accept Commissioner Deziel's modification relating to the light wells.

Commissioner Pagee asked about the height of the ceilings and whether they could possibly be lowered. Mr. Crouch said that the floor plates were lowered. Commissioner Riggs said that lowering the ceilings would lower the mass. Mr. Crouch said he could lower the first floor ceiling only about seven inches before it would impact the windows and that he could not do much on the second story without impacting the window design. Commissioner Riggs said the project had a lot of volume on second floor and in the roof, and while the applicant had done a nice job making the elevations friendly that it was not an effective solution in terms of the light angle. Commissioner Riggs said he would not require lowering ceiling heights as that was of significant value to a homeowner. He said the applicants had heard however that the building height was an issue.

Recognized by Chair Keith, Mr. Crouch said he was concerned with the Commission's action as very similar floor plans had successfully come through the Commission.

Commission Action: M/S Riggs/Keith to continue the item to a future meeting to allow the applicant to address the Commission's concerns.

- Reduce the bulk on the left side of the proposed house
- Eliminate the light well encroachment into the side setback

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

2. **Use Permit/Thomas Jackson/508 Laurel Avenue:** Request for a use permit to demolish an existing single-story residence and construct a new two-story, single-family residence on a substandard lot with regard to lot width in the R-1-U (Single-Family Urban) zoning district.

Staff Comment: Planner Fisher said she had distributed letters of approval and a photograph of the existing home and a concept drawing of the proposed home.

Questions of Staff: Commissioner Pagee said that the skylights were to be located on the right side above the staircase and the staff report indicated otherwise. Planner Fisher said that was an error in the staff report.

Public Comment: Mr. Tom Jackson, Menlo Park, said lived in the Willows area and had done 10 projects there prior to this project. He said only three had been demolition/rebuilds. He showed before and after views of projects he had done for O'Connor Avenue, Laurel Avenue, Menlo Oaks Drive, Woodland Avenue, and Walnut Avenue. He showed the rendering for this proposal. He said the front setback would be 26-feet and the side setbacks would be six-feet; the driveway would be on the right and the garage would be toward the back. He said there was good separation between the proposed project and the neighboring residences.

Commissioner Pagee asked why the garage was five-feet from the fence. Mr. Jackson said that there was a gable that hit the daylight plane nearer the fence so the garage was moved. Commissioner Deziel asked if the adjacent neighbors supported the project. Mr. Jackson said they did and had provided letters of support.

Commissioner Bressler asked why there was no basement proposed. Mr. Jackson said that the property was in the flood zone. Chair Keith asked about the columns on the porch, noting they were wider at the bottom and seemed awkward. Mr. Jackson said that the columns would look like the ones shown in the rendering, which had a straight up and down appearance.

Mr. Thomas Logan, Menlo Park, said he wanted to support the builder's project and noted that Mr. Jackson had contributed a great deal to the appearance of the neighborhood with other projects he had built. .

Ms. Norma Donofrio, Menlo Park, said she had lived in the Willows for 36 years and she was supportive of the project.

Mr. Karl Mathia, Menlo Park, said he appreciated the City's careful approach to projects and commended the quality of Mr. Jackson's work. He supported the project.

Mr. Chuck Brynelsen, Menlo Park, described Mr. Jackson as the one-man neighborhood revival. He said he supported the project.

Mr. Paul Sheehan, Menlo Park, said that he and his wife were adjacent neighbors on the left of the project, and they fully supported the project.

Commission Comment: Commissioner Bressler said that the setbacks were generous, and he moved to approve as recommended by the staff and as shown in the rendering. Commissioner Pagee seconded the motion.

Commissioner Bims said there was a lot of approval for the project and the applicant had done a great job garnering support.

Commissioner Riggs said that Mr. Jackson's projects were welcome because of the support of neighbors.

Commissioner Deziel said he thought the massing on the left side was too great, and he hoped that some articulation would be added to break up the sheer wall there.

Commission Action: M/S Bressler/Pagee to approve the item as recommended in the staff report and as shown in the rendering.

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 Barry Volkmann, consisting of three plan sheets, dated received August 13, 2007, and approved by the Planning Commission on September 24, 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, demolition or building permit.
- g. Heritage trees in the vicinity of the construction project shall be protected pursuant to the Heritage Tree Ordinance. Prior to the building permit issuance, the applicant shall implement the tree protection plan and technique recommendations in the Arborist Report for all applicable heritage trees.

Motion carried 7-0.

- 3. **Use Permit/Mary Speiser/160 Garland 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 with regard to lot width in the R-1-S (Single-Family Suburban) zoning district.

Staff Comment: Planner Rogers said that the landscaping plan had been distributed to the Commission and showed new proposed shrubs along both side property lines.

Public Comment: Ms. Mary Speiser, Menlo Park, introduced her husband, Mike Speiser, and spoke about their plan to move their home back to be situated on a conforming width. She said the landscaping plan was developed to protect the privacy of the neighbors' properties. She said in June she met with contiguous and adjacent neighbors regarding their plan to build a two-story home. She said in mid-August she tried to visit every neighbor within 300-foot radius. She said that they have received much support of their proposed project. She said there was only one letter of concern and they had met with that neighbor, and she believed those concerns had been resolved through the proposed landscape screening and the use of the low-noise air conditioner.

Mr. Jon Jang, project architect, said the house would be set back an extra six-foot from the front setback and the garage would be set back almost twice as far as the neighbors' garages. He said the eaves were designed to read like a one-and-a-half-story and not as a two-story. He said there would not be a full-height wall on the right side. He said the side views from the upper windows would not intrude upon the neighbors' patio areas on the sides or from the rear view. He said at the back of the house they hipped the gables to reduce the mass. He said there was a lot of foliage along the rear property line.

Ms. Carole Grace, Menlo Park, said the applicants had done extraordinary outreach to the community. She said however that there was a home built on a standard lot right across from her property with a window that looked immediately into her home. She said that the community does feel that the Planning Commission's role is to look out for them so they were not negatively impacted by new construction. She said she would

like the process to change so that it would not be so onerous for development on substandard lots and more rigorous for development on standard lots so neighbors have some input into those designs. She said a project at Stanford and Olive was the building of two homes, and that two young redwoods were endangered because they were too close to the homes being built. She said with this project that the trees were only 20-foot high in the rear and the proposed home was 28-foot. She expressed concern about the impact of construction vehicles on the curb, sidewalk and street. She asked if the City had a plan to repair curbs, gutters, sidewalks and roads. She asked if the City wanted all redevelopment to be two-story throughout the City.

Chair Keith closed the public hearing.

Commission Comment: Commissioner Deziel moved to approve the item as recommended in the staff report and to include the landscape plan. Commissioner O'Malley seconded the motion.

Commissioner Riggs asked the architect about the garage roof being a different height from the residence. Mr. Jang said that it was part of the articulation of the wall.

Commissioner Pagee asked about the Oregon ash tree to the left of the light well and its root structure as she was concerned it would be impacted by the construction. Ms. Speiser said the arborist had indicated the tree would remain healthy at the proposed location. Commissioner Pagee said it seemed to be the only tree protecting the privacy of the neighbor. Ms. Speiser said there was also a holly tree and a number of birch trees on the neighbor's property line, and the landscaping plan would add additional shrubs. She said the garage roof was designed so as not to block sun to the neighboring property. Commissioner Deziel said there was a privet tree and suggested it be considered for removal as it was a dangerous tree and had a tendency to drop limbs for no apparent reason. Ms. Speiser said that there were two utility poles nearby that tree which meant it had to be pruned regularly.

Commissioner Riggs said that a French Chateau style was not consistent with the neighborhood, but only one neighbor had expressed concern about the project. He said other than the style the project was very supportable.

Commission Action: M/S Deziel/O'Malley to approve the item as recommended in the staff report with inclusion of the landscaping plan.

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 revision subject to the following **standard** conditions:
- a. Development of the project shall be substantially in conformance with the plans prepared by Jonathan Jang Architect, consisting of 16 plan sheets, dated received September 6, 2007, and approved by the Planning Commission on September 24, 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. Simultaneous with the submittal of a complete building permit application, the applicant shall submit plans indicating that the applicant shall remove and replace any damaged and significantly worn sections of frontage improvements. The plans shall be submitted for the review and approval of the Engineering Division.
 - f. Simultaneous with the submittal of a complete building permit application, the applicant shall submit a Grading and Drainage Plan for review and approval of the Engineering Division. The Grading and Drainage Plan shall be approved prior to issuance of a grading, demolition or building permit.
 - g. Heritage trees in the vicinity of the construction project shall be protected pursuant to the Heritage Tree Ordinance. Prior to the building permit issuance, the applicant shall implement the tree protection plan and technique recommendations in the Arborist Report for all applicable heritage trees.

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

D. REGULAR BUSINESS

1. Discussion of Staff Determination of Substantial Compliance Regarding the Building Permit for the Office Building Project at 64 Willow Road.

Commissioner Bressler recused himself noting that he owned property within 500-feet of the project address.

Staff Comment: Development Services Manager Murphy said the staff report contained a chronology of events for the project and provided an explanation of the reasoning that went into the staff determination that the changes to the scope of the project during the building permit process were in substantial compliance with the Planning Commission approval. He said the report also summarized questions received from the community regarding this project and provided answers to those questions, and lastly it addressed lessons learned.

Development Services Manager Murphy said staff made a determination that the building permit plans, which called for removal of the structural beams and columns and selective removal of the foundation, were in substantial conformance with the Planning Commission's approval of the use permit. He said this decision was based on the fact that the location, size and appearance of the building had not changed and that the Planning Commission did not normally review projects based on construction methods. He said the staff report listed nine questions and answers to better explain what happened or what did not happen. He said he could review each question and answer and expand the information if the Commission desired. He said the staff report also identified five steps that staff could pursue to address the issue of changes to project plans and/or scope. He said Step One put applicants on notice that they need to make sure that building permit plans were consistent with Planning Commission approval of the use permit and this step had already been implemented; Step Two was to describe projects in public notices as a new building whenever staff felt the scope of work would effectively result in a new building rather than describe such projects as alteration or remodel; Step Three proposed the modification of a standard condition of approval to clarify the decision making responsibility regarding substantial conformance determinations; Step Four was to document the substantial conformance practice so that the policy was accessible to the public; and Step Five involved developing an amendment to the Zoning Ordinance to create a definition of an "effectively new building" and code applicability of the requirements for that definition.

Development Services Manager Murphy said the Commission had received a letter that day from Mr. Morris Brown that focused on the project being described as a remodel when he thought it was more appropriately described as a new building; and drew attention to the application of the Use Based Parking Guidelines for the project.

Questions of Staff: Commissioner O'Malley said from comments made at the previous Commission meeting he had a preview that one gentleman was upset with this project. He asked if the applicant had completely demolished the building contrary to the Commission's terms of approval. Development Services Manager Murphy said people

had raised concerns about the project and those had more to do with the length of the demolition process. He said one issue was that the building plans approved by staff contained more demolition than the plans showed originally to the Commission.

Commissioner Pagee said she had no intent of criticizing the process or what had been done by the Commission or the City, but she hoped that the Commission would ask more of the applicant. She said the fact that the applicant was not required to provide a full set of plans for the application probably led staff to not understand the entire planned scope of work and also created a void in the Commission's consideration as they did not have full information. She said the Commission relied on staff; staff relied on the applicant to disclose, and there was inconsistency in what happened. She said a letter received from the project's structural engineer did not address the fact the plans showed a complete demolition of the slab. She said the structural plans the Commission had seen had shown some columns being replace and others maintained. She said there was much more work that staff did not know about simply because the entire plan sheets were not provided to them at the time the application was made, yet the plans before them tonight indicated that they had been created at that date. She suggested for future applications for the Commission's review that they be provide half-size plans so the Commissioners could read them more easily.

Commissioner Deziel asked what the proposed Step Three would accomplish from staff's perspective. Development Services Manager Murphy said the suggestion was to incorporate a line in the conditions of approval to clarify the practice of making substantial conformance determinations and whose responsibility that was, which would go hand in hand with the policy to explain how staff went about making those determinations. He said it was not meant to change any practice to date but to clarify what the practice is. Commissioner Deziel said that it had been a long-held practice.

Commissioner Deziel addressed Mr. Morris Brown's letter and had not found any new issues raised in it. He asked Development Services Manager Murphy about the BMR fee. Development Services Manager Murphy said that item four in Mr. Brown's letter regarding BMR fees was something to be reviewed again with the City Attorney, who was presently out of town. He said that he could see how other attorneys might interpret the issue differently and argue that the math could be performed differently. Commissioner Deziel said that when new square footage was built the BMR fee was paid, but when an existing building was replaced with a new building it was not paid again. Development Services Manager Murphy said it related to how the exemption was applied and was looked at along the logic that the fee was either paid or the building existed prior to the BMR fee requirement. Commissioner Deziel said another item from Mr. Brown's letter referred to studying the Use Based Parking Guidelines; he said the Commission had done so as part of the review process and had deliberated upon it during the use permit approval. Development Services Manager Murphy said Mr. Brown was drawing attention to the fact that those guidelines were used.

Commissioner Deziel said his view for the record was that when this project was presented to him he had envisioned that every piece of skin, interior wall, floor, and roof

would be removed and it would look like a stick structure, and since, relative to that, the applicants had asked for permission to take out the structure itself. He said the real issue was that the demolition took a long length of time, which he thought occurred because the applicant was trying to save the foundation as they had said they would. He said grinding the concrete for disposal was efficient, and he thought the applicants were being dunned in their efforts to be green in the demolition and disposal process. He said he would not want to see construction documents as suggested by Commissioner Pagee. He said the project basically looked like a new building but he realized the applicants found that when they began construction it was either take down all of the structure or take it down wall by wall. He could see how staff made its determination of substantial conformance but he could also see the public's misconception about the project.

Commissioner Riggs said he had reviewed his notes from the use permit review in September. He said the Commission had been given the May 2007 permit application plans. He said that the demolition plan called for structural columns to be removed. He asked whether staff had notes related to the applicant coming to staff and indicating they had found different field conditions and would need to take out the columns. Development Services Manager Murphy said this was noted on the building permit plans but that applicants did not necessarily come to staff and the burden was on staff to pore through such things. He said the applicants thought they were telling the City in January that they were planning to do more demolition with the plans they submitted.

Commissioner Riggs said the key difference between the plans the Commission saw and what occurred was removal of column structures. He said that if the project had come before the Commission proposing to raze the entire building to the floor slab that he would have approved the project. He said that usually architects and contractors needed to wait for building permit approval before they did destructive investigation so that the building was not made unusable prior and with no recourse for leasing. He said he had concluded at time of the use permit approval that this was a new project, that although the floor slab would be used the building would be completely different from the existing building. He said this made good sense functionally in that it allowed for mature trees to be preserved and gave the option to maintain the existing parking layout.

Commissioner Bims asked about Step Four and changes to procedures to add an item for consideration when making a substantial conformance determination, and if that determination would still be made by staff. Development Services Manager Murphy said staff believed that ultimately there was the need for some subjectivity and could not easily come up with something that would lead to a straight, simplistic determination, but they wanted to identify the criteria to be used in the consideration of making the decision. He said that one thing that came to light with this project was the issue of the actual construction activity and scope of work. Commissioner Bims said the way the determination was currently being made relied upon the applicant to notify staff of changes but without a review to see if the applicant had omitted something. Development Services Manager Murphy said if such a situation like this were to occur in

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the future that staff would most likely notify the Planning Commission by e-mail to agendaize it. He said that future cases would not be exactly like this one but it would be another consideration in making such determinations. Commissioner Bims said this step was just clarifying that staff has the discretion to look at method of construction.

Chair Keith referred to Step Five relating to the creation of a definition for an “effectively new building” versus “new building,” noted that changing the zoning ordinance was particularly onerous and difficult. She said there was a definition for “new construction” but it only applied to the M-2 district and asked if there was a way to make it apply to more than that. Development Services Manager Murphy said there was a difference between the definition for “new construction” and that for “new building.” He said they would not want to notice the public of “new construction” when someone was just adding a mezzanine. He said a definition of “new” or “effectively new building” addressed the potential of demolition and construction. He said it was necessary to understand what worked technically in the ordinance and then address requirements for that definition without which the definition would be meaningless. He said it would have to be longer term project to change the zoning ordinance.

Commissioner Deziel noted in reference to the first item in Mr. Brown’s letter that there would not have been an EIR triggered even if the project had been considered as a new building because it was a replacement building and less than 10,000 square feet. Development Services Manager Murphy said looking at CEQA exemptions that would be the basic determination. Commissioner Deziel said they received planning review and staff’s determination of substantial compliance before the applicant began the demolition permit. Development Services Manager Murphy said that occurred before the granting of the demolition permit.

Commissioner Pagee said she had issues with the definitions in the front of zoning that only applied to M2 and residential. Development Services Manager Murphy said for actual requirements that there were no specific requirements for C.1 under the term “new construction.” He said there were requirements elsewhere in the ordinance for “new construction” but those would not apply to this project. Commissioner Pagee said the organization of the zoning ordinance allowed for these types of holes.

Mr. Vincent Bressler, Menlo Park, said as a resident of the neighborhood in which this project occurred that it was really important to receive public comment before the Commission characterized its position. He said this issue would never have come up except for the prolonged month during which the contractor ground and pulverized cement eight hours a day with neighboring residences a hundred feet away or less. He said that kind of activity needed to be reviewed by the City and neighbors needed to be protected. He said the question of whether they tore down some pillars was not the issue but the problem was the creation of a commercial site during the pulverization of concrete. He said whether the grinding activity conformed to the noise ordinance or not, it had been an intolerable condition for residents. He said if the Commission had been aware of that process they would not have approved the project.

Ms. JoAnne Goldberg, Menlo Park, said she resided a few blocks from the project site. She said she had heard tonight and on other occasions that the Planning Commission would take care of the residents. She said that neighbors had no forewarning that this project would have been done the way it did and the word "demolition" had appeared nowhere in the original staff report. She said that the jack hammering occurred during the summer, was up to 10 hours a day on the weekdays and also happened on the weekends. She said the noise even from 100-feet away was intolerable. She said that if Commissioner Riggs had been aware this was going to be a demolition that he would have insisted on protection for the residents during it that process. She said that there were other alternatives such as making no changes to the foundation or pulverizing the concrete offsite. She said it was an awful summer for anyone who lived within proximity of the project. She said parking at the site was an issue. The previous office use had had 30 more parking spaces than this project which would be a larger office space, and 130 parking spaces had not been enough before as there had been overflow parking that occurred on the surrounding streets. She said it would be good if the applicant could be required to provide more parking. She noted also that a residential development had taken over another site which had had parking lots and the people in those residences would also park on the streets.

Mr. Don Brawner, Menlo Park, noted the publication of a demolition permit published on August 24, 2007 after the demolition had happened. He said the jack hammers were motorized. He said he thought this had been a well-thought out scam. He said that a staff person had even described the project as a demolition to one of the neighbors prior to Commission review. He said tonight's staff report was erroneous, and the developer and partners did not spend what they should have spent. He questioned allowing the project to continue after the structure had been demolished.

Mr. Morris Brown, Menlo Park, said the essential issue for him as a member of the public was that the site now had nothing on it so he could only assume it was a new project. He said that his point regarding the BMR fees, about which he had talked to the City Attorney, was that BMR fees should have been applied to this project. He said Mr. Rap presented the project to the neighbors as a remodel and the addition of square footage. He said he had led a referendum against the Derry Project and had been told that he was "late to the game." He said projects like it and this one came in under the radar so that residents were not fully aware of the extent of the work. He said people were upset with the continued use of the administrative parking requirements and if this had been noticed as a new project then more people would have paid attention to the project.

Commissioner Deziel asked if Development Services Manager Murphy's five steps addressed Mr. Brown's concern. Mr. Brown said they did.

Mr. Michael Dalal, Menlo Park, said his bedroom window was directly across the street from the project and that the jack hammering had been intolerable and forced lifestyle changes as he was a programmer and worked late, so he was home until 9 a.m. or so.

He suggested in the future that for any projects having a noise level as high as the jack hammering should have constraints to protect the residents.

Chair Keith said that they had received numerous complaints and had visited the site, and the Commission had requested this discussion and asked staff to address the issues.

Commissioner Pagee asked if the contractor had provided a timeline to share with the residents with a phone number for complaint resolution. Development Services Manager Murphy said that staff would work with the contractor to get a timeline as there would be additional construction that would generate noise. Chair Keith asked that when the City Attorney returned that staff get a determination on the BMR fee. Development Services Manager Murphy said what he reported was based on his discussion with the City Attorney, but if there was any change to that he would report it. Chair Keith asked who approved the changes. Development Services Manager Murphy said that he had made the determination. Chair Keith noted that the Commission had rejected the use of the Use Based Parking Guidelines for the Gaylord project.

Commissioner Deziel asked if staff had found out why the demolition had taken so long. Development Services Manager Murphy said it appeared that the concrete grinding had taken the longest. Commissioner Deziel confirmed with staff that the City had a certain disposal/recycle requirement but that this work did not have to be done onsite. Development Services Manager Murphy said the City required the diversion of waste. He said noise readings were made at the site and were below the maximum decibel level but that did not exclude the noise exceeding that level when there no one there to measure it.

Commissioner Riggs said he appreciated the response by staff to the issues. He said concrete grinding onsite was optional as the disposal area was not very far from the project site. He said that they should rethink allowing this within a mile of residences. He said short of an ordinance that the Commission would have to consider such impacts for future projects. He said it would be very helpful to see a project noticed as “effectively new” and would be more valuable than more drawings and does not ant not see more drawings.

Chair Keith said she would like to see the demolition process clarified to prevent future nuisances such as occurred on this project.

2. Discussion on Approaches to Reviewing Single-Family Residential Development.

Planner Chow said staff in response to the Commission’s direction at the prior meeting regarding consistency in the design review process had copied for the Commissioners’ use the previously proposed, adopted and rescinded Design Guidelines.

Commissioner Riggs said those guidelines were not what he had in mind. He said he wanted the Commission to respond to the expectation that the Commission looked out for the neighborhoods. He said a resident had asked him if the Commission had given any consideration in the approval process as to what a project would actually look like when it was built. He said it occurred to him somewhat recently that the Commission has made a short list of aesthetic judgments and looked at such things as second floor window placement and size, landscape screening for privacy, and location of garages toward street frontage to name a few. He said that with two or more homes being built the Commission really looked at the aesthetics but less so for the individual residential projects. He said that he has a duty to say something when the proposed architecture was not consistent with the neighborhood. He said residents seem to expect that the Commission will look at projects in such a way.

Commissioner Deziel asked what Commissioner Riggs' proposal was. Commissioner Riggs said it was for the Commission to be more willing to speak up on the aesthetics of projects and how it would fit in neighborhoods.

Commissioner O'Malley said that guidelines were not legally binding. Development Services Manager Murphy said that if the Commission wanted to consider guidelines more in depth he would consult the City Attorney. He said there were mandatory guidelines that could be stringent and legally required.

Commissioner Riggs said he would like to see consistency in the Commission's review of aesthetics and if it became predictable it might become part of staff's conversation with applicants and he thought that would help the process. He said that the ideal would be this consistency and easily applied format in the zoning ordinance but that was not going to be done anytime soon.

Commissioner Bims said that having guidelines would provide a vision for how neighborhoods would develop. He said he could see the guidelines changing as the Commission members changed. He said the guidelines would make the most sense of the City did not have a zoning ordinance with holes that needed to be fixed and a General Plan that needed to be updated.

Commissioner Pagee said that guidelines would only work in Menlo Park if they could be applied across the board. She noted the speaker's comments that anything went for homes built on standard sized lots. She said other cities develop guidelines and they work.

Commissioner Bressler said they needed to start with the zoning ordinance to require nonconforming and standard lots to go through the same review process, and asked how that would be accomplished. Development Services Manager Murphy said there would be an extensive public process. He said the beginning of such a process would be authorized by the City Council and would be part of this project priority setting process.

Commissioner Bressler asked if this could be added to the project priority discussion. Chair Keith said it could be added to the list for the Commission's future discussion.

Commissioner Riggs suggested formulating a very simple recommendation that could achieve consensus. Commissioner Deziel said that Commissioner Bressler's goal should be separate from Commissioner Riggs' proposal.

Commissioner Deziel said the notion of compatibility with the neighborhood led to mediocrity and would affect property values negatively. He said he thought the French chateau home proposed was wonderful. He said it was beyond onerous to require compatibility with aesthetics.

Commissioner Riggs said that he thought owners of the older homes might not agree with Commissioner Deziel. He said he was not against renewal of neighborhoods or two-story homes.

Commissioner Deziel said that some variation of the second-story setback might become part of the rules related to proportion using the skylight angle, which would address scale and mass. He said he was not in favor of guidelines but was in favor of things that were objective and deterministic.

Commissioner Bims said he supported looking at projects for compatibility with the existing neighborhood but also with a look to the future appearance of the neighborhood.

Chair Keith said she would not want to stifle creativity in the design for new homes, but she wanted projects to be respectful of neighbors and protect their privacy. She would like to see San Mateo's and San Bruno's guidelines as well as Redwood City's requirement for the second story setback. She noted that Commissioner Riggs was looking into having a guest speaker address the Commission at a future meeting on the use of design guidelines.

E. COMMISSION BUSINESS, REPORTS, AND ANNOUNCEMENTS

1. Review of upcoming planning items on the City Council agenda

Planner Chow provided the Commission with a brief review of an upcoming planning item on the City Council agenda.

ADJOURNMENT

The meeting adjourned at 11:29 p.m.

Staff Liaison: Deanna Chow, Senior Planner

Prepared by: Brenda Bennett, Recording Secretary

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Approved by Planning Commission on November 19, 2007.