



PLANNING COMMISSION MINUTES

April 20, 2009

7:00 p.m.

City Council Chambers

701 Laurel Street, Menlo Park, CA 94025

CALL TO ORDER – 7:01 p.m.

ROLL CALL – Bressler, Ferrick, Kadvany, Keith (absent), O'Malley (Vice chair), Pagee, Riggs (Chair)

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

A. PUBLIC COMMENTS

There were none.

B. CONSENT

1. Approval of minutes from the March 9, 2009, Planning Commission meeting.

Commission Comment: Unanimous consent to approve the minutes as modified.

- Page 6, 1st paragraph, last sentence in parenthesis; Delete the sentence as it was clarified that Commissioner Bressler voted in favor of the motion.
- Page 6, 2nd to the last paragraph, 4th line; add the word “for” between “more” and “retail”.
- Global change; Replace “Hoffeimer” with “Hoffheimer”.
- Page 13, last full paragraph, 4th line; Replace “by those residents impact.” with “according to EIR traffic impact criteria.”
- Page 13, last full paragraph; 4th line; Add “Additionally, with no southbound left turn possible, the driver’s choice would be first to drive north, following a right turn, and then make a u-turn southward.”

Motion carried 6-0 with Commissioner Keith absent.

C. PUBLIC HEARING

1. Use Permit and Variances/Kristin L. Cox/247 Oakhurst Place: Request for a use permit for first- and second-story additions that exceed 50 percent of the existing floor area and 50 percent of the replacement cost of an existing nonconforming, single-story, single-family residence on a substandard lot with regard to lot width in the R-1-U (Single-Family Urban) zoning district. The

proposed remodeling and expansion are considered to be equivalent to a new structure. In addition, a request for a variance for additions that would encroach approximately 28 feet into the required front setback of 64.8 feet, which is required by Subdivision Ordinance Section 15.16.110. In addition, a request for variances to increase the wall and overall heights of an existing garage that is nonconforming with regard to the required front setback, and to reconstruct an eave overhang that would exceed the maximum side setback intrusion of 18 inches.

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

Questions of Staff: Commissioner Ferrick asked whether she should recuse herself as she knew the applicants. It was noted by Chair Riggs that it was not uncommon for Commissioners to know applicants who came before the Commission.

Public Comment: Mr. Larry Kahle, project architect, Metropolis Architecture located in Mountain View, said he lived in Menlo Park. He said that he and the applicant had submitted a letter of explanation about the project, and that he was available for questions.

Commissioner Pagee asked about the notification of the neighbors behind the subject property. Ms. Kristin Cox, applicant, said she sent out handwritten notes to all five neighbors, the two adjacent neighbors and the three neighbors to the rear of the property to let them know they would be doing extensive remodeling. She said she provided her contact information and asked that the neighbors call if they wanted to discuss the project. She said she heard from the right and left adjacent neighbors; that she met with them and letters from those two property owners were included with the staff report. She said one of the rear neighbors phoned and left her a voicemail; she returned the call but had to leave a voicemail. She did not hear again from that neighbor.

Commissioner Kadvany asked when the two adjacent homes were constructed. Ms. Cox said the one-story residence was built in 1949. She said the two-story residence was remodeled in 1993 or 1994.

Chair Riggs said the site plan showed screening between the new stairwell and the neighbor's house on the left. He said however the trees indicated on the site plan were fruit trees and would not provide much screening. He asked if the applicant had discussed additional screening with those neighbors. Ms. Cox said they would use obscured glass in the stairwells and the neighbors were in fact pleased that there would be a two-story house to block the sun into their living room which the neighbors indicated faded the furniture unless they kept the blinds drawn. She said those neighbors indicated they were looking forward to keeping their blinds open, and that they were very open and positive about the project.

Commissioner Pagee said one condensing unit was shown and two locations for furnaces; she asked if there would be another condensing unit. Mr. Kahle said there would be one only and that was to cool the second story.

Commissioner Kadvany said there was a two-car garage and suggested that the door of the garage be more vertically oriented than horizontally oriented as was indicated on the plan. Mr. Kahle said the width of the garage was not sufficient for two doors. Commissioner Kadvany said that there were garage doors simulated to look like two doors, which were attractive.

Commissioner Ferrick asked about the driveway materials and if they would use permeable driveway materials. Mr. Kahle said that they had not decided yet. Commissioner Ferrick asked that they consider permeable paving material.

Chair Riggs said he had spoken with staff about the findings for the variances. He said the peculiar hardship of this project, which hardship was shared with a few other properties, related to properties annexed into the City from the County which then came under the City's Zoning Ordinance after it was adopted later than the annexation. He said the Zoning Ordinance applied to this parcel meant that 64.8-foot front setback requirement would be more than half the depth of the lot, and would create a hardship by limiting the potential development area to a small portion at the rear of the lot. He said that the Zoning Ordinance should be amended by the City to correct this issue for those parcels subject to this hardship. He said that he could make the other three findings.

Chair Riggs closed the public hearing.

Commission Comment: Commissioner Pagee said there were three variances being requested by the applicant, and while she could support making the finding for the hardship related to the front setback, she could not support the finding of hardship for the garage height and eave overhang variance requests. She said with the extensive remodel that the architecture should have been designed to not have those features requiring a variance request.

Commissioner Kadvany said staff had indicated that while the elements of the request were stylistically related and although alone they might be difficult to consider as a hardship, they were linked to the constraints imposed by the Zoning Ordinance. He indicated that the eaves were innocuous to him. Commissioner O'Malley said he agreed with Commissioner Kadvany on that point.

Commissioner Pagee said the second and third variance requests were tied to architecture and the architecture could be changed. She said that the extent of the remodel allowed for more possibilities.

Commissioner O'Malley moved to approve the item as recommended in the staff report. Commissioner Ferrick seconded the motion.

Chair Riggs said the architect had made a persuasive argument in that the existing garage roof height and slope were not consistent with the remodel. He said the community would benefit from the proposed project, which was an attractive design.

Commission Action: M/S O'Malley/Ferrick to approve the item as recommended in the staff report.

1. Make a finding that the project is categorically exempt under Class 3 (Section 15303, "New Construction or Conversion of Small Structures") of the current California Environmental Quality Act (CEQA) Guidelines.
2. Make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be detrimental to property and improvements in the neighborhood or the general welfare of the City.
3. Make the following findings as per Section 16.82.340 of the Zoning Ordinance pertaining to the granting of variances:
 - a. The hardship is based upon the unique condition that this relatively narrow and wedge-shaped parcel was created as part of a 1946 subdivision in unincorporated San Mateo County and only later annexed into the City of Menlo Park in 1949, after which the requirements of Subdivision Ordinance Section 15.16.110 have been retroactively applied to create an unusually large and restrictive front setback requirement of 64.8 feet, which is more than half the depth of the lot. This condition is particular to the property and not created by any act of the owner.
 - b. The variances are necessary for the preservation and enjoyment of substantial property rights possessed by other conforming property in the vicinity, in particular with regard to buildable area, which would otherwise be restricted to a small portion of the rear of the lot. This condition is not typical to other conforming property in the vicinity, which are typically rectangular in shape and which feature approximately 20-foot setbacks, and as such the variance will not constitute a special privilege.
 - c. The proposal will comply with all other development requirements, such as building side and rear building setbacks, daylight plane, and building height, and the first- and second-story setbacks are greater than typical residences in the same zoning district. As a result, the project will not be materially detrimental to the public health, safety, or welfare, and will not impair an adequate supply of light and air to the adjacent properties.

- d. Because the variance request is primarily based upon the specific lot dimensions and the unique condition of a relatively narrow, wedge-shaped parcel on a “U”-shaped street that was created prior to the imposition of the requirements of Subdivision Ordinance Section 15.16.110, the conditions upon which the requested variance is based would not be applicable, generally, to other properties within the same zoning classification.
4. Approve the use permit and variances subject to the following **standard** conditions:
- a. Development of the project shall be substantially in conformance with the plans prepared by Metropolis Architecture, consisting of seven plan sheets, dated received April 13, 2009, and approved by the Planning Commission on April 20, 2009, except as modified by the conditions contained herein, subject to review and approval of the Planning Division.
 - 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.

Motion carried 4-1 with Commissioner Pagee opposed, Commissioner Bressler abstaining, and Commissioner Keith absent.

2. **Use Permit/Menlo Business Park LLC/1600 Adams Drive:** Request for a use permit for the use and storage of hazardous materials inside a building and associated with research and development purposes in the M-2 (General Industrial) zoning district.

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

Questions of Staff: Commissioner O'Malley commented that the Commission had approved a similar request in the past for 1455 Adams Drive but that slightly different chemicals had been listed. He said the blanket use permit similar allowed tenants to move in and out with greater ease. Chair Riggs asked staff whether the previous application was approved with identified tenants. Planner Fisher said she would research that staff report and respond later in the meeting.

Commissioner Kadvany asked if there were any comparisons of other cities' practices for applications like this. Planner Fisher said there were none.

Public Comment: Mr. John Tarlton, Menlo Business Park, said that this represented an expansion of Menlo Labs, noting that Menlo Lab One had been in operation for a few years. He said at Menlo Lab One 32 tenants' research and development projects had been incubated. He said the addition of Menlo Lab Two would provide Menlo Business Park with the opportunity to bring additional infant companies in, noting that these ventures were generally out of Stanford University Office of Technological Licensing. He said these companies did not yet have venture capital to lease a big facility. He said in Menlo Park it was required for any tenant who used more than five gallons of a chemical to have a conditional use permit. He said these companies which were often comprised of two or three PhDs out of Stanford did not have either the time or money to apply for a conditional use permit, which at a minimum was a three month process. He said with the Menlo Labs, Menlo Business Park was creating an environment where they could act on behalf of the tenants. He said that previously this building had been used for incubating software companies, which need had gotten less. He said through making a relatively small capital expenditure, Menlo Business Park hoped to attract more science labs as tenants.

Commissioner Kadvany asked the applicant to describe the process of risk management between the time such a tenant would occupy and then leave the site. Mr. Tarlton said within minutes of meeting the interested tenant and touring the facilities that the Menlo Business Park representative would describe the process related to the blanket use permit and the use of an in-house safety consultant. He said such tenants were required to provide a list of chemicals and the quantities that they intended to use, which became part of the lease agreement. He said tenants needed to get written permission from Menlo Business Park if the tenant wanted any change to the chemicals and quantities used. He said that list was given to Ms. Ellen Ackerman, Green Environment, Menlo Business Parks' environmental health and safety consultant.

Ms. Ellen Ackerman, Green Environment, San Carlos, said her team would look at the chemicals proposed to be used and the quantities. She said they provide the tenants with a “Guidelines to Hazardous Materials Use in Menlo Labs” that reviews all of the permits and licenses that might be needed and the authorizing agencies. She said a blanket use permit gave tenants the ability to have hazardous materials but did not relieve tenants of regulatory obligations. She said that the tenant’s information was provided to the Fire District for their review. She said she acts as the point of contact for the Fire Department, noting that recently Menlo Lab One had its annual Fire District inspection. She said the Fire District gave her a list of comments and corrections that she then took back to the tenants for responses. She said she then gathers all of the responses and sends one package to the Fire District. She said the Guidelines were very clear that tenants must contact her if they wanted to change anything in their inventory of chemicals. She said she also does an internal inspection on tenants’ facilities.

Commissioner O’Malley asked about the abbreviation EHS. Ms. Ackerman said that stood for “Extremely Hazardous Substance” and noted that there were federal regulations related to EHS.

Commissioner Kadvany indicated he would like to see the list of EHS. Ms. Ackerman said it was a 12-page list and in 10-font. Commissioner Kadvany said that page 2 of the report indicated that the types and amounts of chemical to use could not change without a use permit, but that those were categorical. Ms. Ackerman said it was and that was formulated based on tenants’ use of chemicals in Menlo Lab One. She said since there were not any tenants identified yet for Menlo Lab two that this was her best projection of what would be used. Commissioner Kadvany asked if there were any limits on tenants such as the amount of chemical for each. Mr. Tarlton said that would be subject to review as he did not typically allow a tenant to take an outsized portion of the chemical inventory. Commissioner Kadvany asked if there were regular inspections of and meetings with tenants to see how they were handling their inventory. Mr. Tarlton said Ms. Ackerman and her team did annual inspections, and that they were also in the building frequently as many of the tenants hire Green Environment as their environmental and safety consultant. He said there was also an onsite building engineer and while not doing a daily audit of each tenant, the engineer gets to know the tenants’ operations well. Commissioner Kadvany asked how tenants were held to the agreement for the space. Mr. Tarlton said the leases were month-to-month.

Commissioner Pagee asked if the Fire District made random or scheduled inspections. Ms. Ackerman said because of the hours of operation that the Fire District scheduled inspections as some of the tenants might work only at night. Commissioner Pagee said that the Fire District was legally able to make unannounced inspections. Mr. Tarlton said that was correct.

Commissioner Ferrick asked if on future use permit applications like this whether a column could be added to show what quantity of chemicals remained for use. Ms. Ackerman said that would be readily possible and could do that for future applications.

She said that thresholds for a hazmat business plan would not go neatly into another column.

Chair Riggs asked what Planner Fisher had found from the prior blanket use permit in 2007. Planner Fisher said the minutes mentioned an expectation of 30 tenants but those were not identified.

Chair Riggs said with annual inspections only it could be surmised that these startups could operate for most of a year with no oversight. Ms. Ackerman said the tenants see the building engineer early on upon taking occupancy and many of the tenants hire her firm for consulting services; that if the tenants have to file a hazmat business plan with the county, the county conducts an inspection. Chair Riggs said hypothetically that the group from Stanford moves into the space with the ability to use a few basic chemicals when one of them decides that just one more chemical was needed. He said if that person was not a co-owner of the company they might not even think about the lease requirements or be concerned with legality. Mr. Tarlton said that these scientists who leave Stanford and come to Menlo Lab experience a dose of reality related to constraints. He said these scientists have much more leeway at Stanford University. He said they present Menlo Business Park with their desired list of chemicals and discussion begins with Menlo Business Park who states their position that the tenant cannot need all of those chemicals, and the list is whittled down. He said the lease document is 12 pages in large font and double spaced. He said two of the pages talk about chemical use and what can or cannot be done with an addendum that lists the chemicals they will use. Chair Riggs posed that the tenant might decide they needed more of a chemical than what was listed or in fact the tenant might use more than they expected. Mr. Tarlton said that there were physical limitations to the size of the space in Menlo Labs and an increased use of chemicals would require more space. Chair Riggs asked about tenants using EHS. Ms. Ackerman said six of the tenants in Menlo Lab One list EHS which has to be reported and permitting gained for as small a quantity as one gram. Chair Riggs asked about the building engineer's presence at the facility. Mr. Tarlton said the building engineer was onsite every day and interfaced with tenants regularly.

Commissioner Bressler said he appreciated the efforts Mr. Tarlton has made to streamline the permitting process. He said his concern was with new substances that might be created for which there was not regulatory history. He asked if Mr. Tarlton had a sense of how much creation of new organic chemicals there was and if there was a need for concern about the behavior of them. Ms. Ackerman said she understood the basic concepts of research and stays aware of regulatory changes for such things as nano technology for which there was no regulatory basis for enforcement yet. She said she makes sure that a facility is operating in a responsible manner. She said when tenants leave they have to do a cleanup so they do not leave something weird and bizarre. Mr. Tarlton said they control inputs and outputs but cannot regulate in between; he noted that they do not have any tenants for whom biosafety would be a concern. He said their tenants are micro-tenants and tenants that would produce substances in

larger quantities would be in other larger facilities. Commissioner Bressler noted that these tenants had higher visibility than scientists working at Stanford or SRI.

Commissioner Ferrick asked what flood protection was in place to keep the chemicals safe and secure. Mr. Tarlton said the flood elevation required by FEMA for this building and the 1400 Adams Drive was nine feet above sea level. He said most of Menlo Business Park including Menlo Lab One was built at is built at eight feet above sea level. He said that Menlo Lab Two was built at nine feet above sea level.

Commissioner Ferrick asked if chemicals would stay secure if there was a flood. Mr. Tarlton said one foot of water was not going to be a concern, and he was more concerned with seismic events. Ms. Ackerman said materials were stored and self contained on the floor and other materials were on shelves.

Chair Riggs closed the public hearing.

Commission Action: Commissioner Pagee moved to approve as recommended in the staff report. Commissioner Bressler seconded the motion.

Commissioner Kadvany said he was supportive of the goals but the decision was delegating risk management based on trust of the applicant. He said it was an excellent goal but the decision was beyond his role as a Commissioner.

Commissioner Ferrick said that there were a number of safeguards and layers of regulations.

Commissioner Pagee said Menlo Business Park was owner of the use permit and asked if the property owner changed whether the use permit would go with new owner, and whether there could be a condition that it did not. Planner Fisher said use permits run with the lands and a new owner would need to comply with the process and regulations. She said f there were new operations, then a revised use permit would be needed.

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

1. Make a finding that the project is categorically exempt under Class 1 (Section 15301, "Existing Facilities") 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 nine plan sheets, dated received on April 3, 2009, and approved by the Planning Commission on April 20, 2009 except as modified by the conditions contained herein.
- b. Prior to building permit issuance, the applicant shall comply with all sanitary districts, 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 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 5-0-1 with Commissioner Kadvany abstaining and Commissioner Keith absent.

D. REGULAR BUSINESS

There was none.

E. COMMISSION BUSINESS

1. Review of planning items on City Council agendas.
 - A. El Camino Real/Downtown Specific Plan (Phase II) Process

Planner Chow said there was a good turnout for the first workshop with about 100 people in attendance.

Commissioner Ferrick said the outreach committee did a great job. Commissioner Bressler thanked the Presbyterian Church for providing the facility for the meeting. Commissioner O'Malley said he noticed a number of new faces. Chair Riggs concurred and noted he was reassured that consultants were doing a much better job at the individual stations than the previous consultant. He said as an outreach member that

he received fairly little conversation when he went door to door with a flyer about the workshop. He said those who spoke the most had no faith in the council to support the process.

B. Gross Floor Area Zoning Ordinance Amendment

Planner Chow said that Commissioner Bressler reported on the Commission's two-page summary related to the Amendment to the City Council on April 6. She said at the next meeting, the City Council would adopt an ordinance. She said there were modifications from the Planning Commission's recommendation: 1) 16.04.325 (b) (7) – the Planning Commission recommended counting stairwells and elevator space only on the first floor and the City Council changed that so those items were counted on each floor; 2) 16.04.325 (c) (1) – the Planning commission had recommended a 5% maximum allowance for nonusable/non-occupiable space and the City Council recommended a 3% maximum allowance.

Commissioner O'Malley asked what the rationale was for the reduction from 5% to 3%. He said that the Commission spent months going over the Zoning Ordinance Amendment. Commissioner Bressler said one of the Council members felt that the Commission had deviated from Council's direction and voted against the amendment. Another thought no changes should be made to the existing Zoning Ordinance. He said other members felt that they needed to reconcile their action with some constituents and also try to respect what Commission had done. He said he was asked for the basis of the 5% maximum allowance. He said his response was that was derived based on some Commissioners' experience with building design. He said for elevators/stairwells that someone at the Council meeting pointed out that Palo Alto and Redwood City count those on all floors; he said it was also noted that those cities have a less tight floor area ratio. He said it was a 90-minute discussion and their action was a political compromise.

Commissioner Kadvany said he hoped that the ultimate goal of the specific plan process would be instructions on writing code; he asked what input was possible to get the City away from the unmotivated codes of its Zoning Ordinance. He said the lengthy discussions were because of the form of the entity itself and through the visioning plan he hoped to get away from this way of regulating development. Chair Riggs said that during the interview process of the consultant that they asked about how to have that input and it was indicated they would have that opportunity.

Commissioner Ferrick suggested that Commissioner O'Malley go to the Council and make public comment on the item before they voted on it. Chair Riggs said that certainly applied to any Commissioners. He said in late January/early February that the then current Mayor and Mayor presumed met with him and they volunteered that in their opinions individually that they thought the Council had to cut back on second guessing its Commissions. He said approximately a month later he was approached by a third Council member who made the same comment about not making changes to well-

vetted Commission work. He said related to the visioning plan that the major concern he heard from people was that the Council would not support the outcome.

Commissioner Bressler said that through the specific plan process there should be several options presented to the Council so there were choices for them. He said the Zoning Ordinance Amendment ran into trouble because there was a perception that the Commission did not follow Council direction.

C. Menlo Gateway (Bohannon Hotel/Office Mixed-use Project) Council Subcommittee

Planner Chow said the public outreach and development review process outline was approved by City Council and that had a very detailed meeting schedule. She said that she expected the draft EIR for the project would come before the Commission in July.

D. 1706 El Camino Real – Traffic Impact Determination

Planner Chow said the developer was seeking a Council ruling that there was less than significant impact related to left turns from El Camino Real to the project.

Commissioner Kadvany asked about the assumptions for the trips in and out of the site and whether it was six spaces per 1,000 square feet. Planner Chow said the trips were based on 10,166 square feet of medical/dental office building. She said the ITE rates were used for trip generation. Commissioner Kadvany asked how that matched with the assumption of six spaces per 1,000 square feet. Planner Chow said parking demand was separate from trip generation.

Planner Chow reminded the Commission that the Commissioner training session would be next Tuesday April 28, 2009.

Commissioner Pagee said that the house in C.1 they considered should have been completely demolished and rebuilt. She said she had trouble approving little frivolous things because of zoning restrictions. Chair Riggs said he had commented that the Zoning Ordinance should be changed so that these situations did not occur.

F. REPORTS AND ANNOUNCEMENTS

ADJOURNMENT

The meeting adjourned at 8:43 p.m.

Staff Liaison: Deanna Chow, Senior Planner

Recording Secretary: Brenda Bennett