



PLANNING COMMISSION MINUTES

July 27, 2009

7:00 p.m.

City Council Chambers

701 Laurel Street, Menlo Park, CA 94025

Teleconference with participation by Commissioner Keith from:
13073 Northwoods Blvd.
Truckee, CA 96161
(Posted July 23, 2009)

CALL TO ORDER – 7:01 p.m.

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

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

A. PUBLIC COMMENTS

There were none.

B. CONSENT

Commissioner O'Malley said he would have to abstain on the meeting minutes of June 15, 2009.

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

Chair Riggs asked if staff had gotten his email. Planner Chow said she had but staff had not had the time to review the audio for the special meeting. Chair Riggs said that one of Mayor Robinson's closing comments was his regret that it had taken the Commission about two years to do an amendment to the Zoning Ordinance. Chair Riggs said he questioned the minutes as he would have responded to that statement. Commissioner O'Malley said that Chair Riggs had commented and it was obviously not the Commission's doing that delayed the recommendation to the Council. Chair Riggs said he would like the minutes of the June 1 meeting to be continued so staff might review the audio. Planner Chow said that Commissioner Kadvany also had a clarification for the June 1 minutes. She said Commissioner Kadvany had recalled that the Mayor had indicated he wanted to trust the Commission to carry out assigned tasks, but that was not in the minutes. She said it might be in the discussion on page 6 of the minutes, first paragraph. Chair Riggs suggested that Commissioner Kadvany might

review the minutes and let staff know where he thought that comment might have been made. Commissioner Kadvany said he thought it was during the discussion shown on page 5. Chair Riggs said Commissioner Keith was not at the meeting but questioned the Mayor not knowing the outcome of the Council vote. Chair Riggs said Planner Chow in an email response had said the Mayor had indicated that he could not predict what the Council's action would be on items before the Council. Chair Riggs said on the first paragraph of page 5 that it was City of San Mateo Planning Commissioners, not Council members that the Commission had invited to meet with this Commission. He said he later referred to a combination of their comments and those of Half Moon Bay Planning Commissioners that generally the recommendations of staff and the Planning Commission were rarely overturned. He said in the third paragraph on page 5, line eight, that the point he was making was that the definitions did not relate to size.

This item was continued to a future meeting date.

2. Approval of minutes from the June 15, 2009, Planning Commission meeting.

Commission Action: Approve the item with the following modifications.

- Page 4, 5th full paragraph, 3rd line from the bottom: Replace "Commissioner Keith said the Commission was seeing the project because the addition was essentially a new project" with "Commissioner Keith said the Commission was seeing the project because the addition required a use permit on a non-conforming lot, even if project regulations were met."
- Page 9, 3rd full paragraph, 3rd line from bottom: Insert "Commissioner" in front of "Kadvany."
- Page 11, 2nd paragraph, 1st line: Replace the word "own" with "owned."

Motion carried 5-0 with Commissioners Riggs and O'Malley abstaining.

Chair Riggs said he abstained as he had not received the agenda packet in time to review the minutes.

C. PUBLIC HEARING

1. **Use Permit/Reza Raji/1921 Oakdell Drive:** Request for a use permit to modify the first floor and construct a second-story addition to an existing single-story, single-family nonconforming residence that would exceed 50 percent of the replacement value of the existing structure in a 12-month period on a lot in the R-1-S (Single-Family Suburban) zoning district.

Staff Comment: Planner Chow said there were no additions to the written report.

Questions of Staff: Commissioner O'Malley said that there should be a correction in the staff report under the project description "create a five bedroom, four bedroom" to

read “five bedroom, four bathroom.” He said the following passage was confusing: “The applicant also proposes substantial interior modifications on the ground floor, including a new kitchen, living room expansion, and garage remodel where the total scope of work exceeds 50 percent of the replacement value and triggers use permit approval by the Planning Commission. Although the lot is considered substandard, the proposed project would not add more than 50 percent of the existing floor area, and therefore, a use permit is not required for a new structure on a substandard lot.”

Planner Chow said there were a couple of ways to trigger the use permit review; one was for a nonconforming structure being that the replacement value was 50 percent for a two-story residence or 75 percent for a single-story residence. She said another way use permit review was triggered was whether the lot was considered substandard for a two-story home. In this case, the proposed square footage was less than 50 percent of the existing square footage, so this did not trigger that requirement for a use permit. It required however the use permit review for exceeding the 50 percent replacement value for a nonconforming structure.

Public Comment: Mr. Reza Raji said he and his wife were the property owners. He said they had bought the home about nine years prior and had a growing family. He said the challenges with their lot were heritage trees on one end, a swimming pool on the other end, and a nonconforming garage.

Commissioner Pagee said there was not space in front of the garage to park, and asked where they parked. Mr. Raji said they parked in the garage and did not plan to move the garage at all. Commissioner Pagee said if their car was parked in the driveway and blocked the sidewalk, pedestrians would be able to call the police about that. Mr. Raji said that they have a 50-foot setback so even if they parked a car in the driveway it would not encroach into the sidewalk.

Chair Riggs closed the public hearing.

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

Chair Riggs said there was a question about tree numbered four, and asked Mr. Raji to respond as to whether there was a potential to remove that tree. Mr. Raji said the tree in question was not related to the work being done but the arborist had made a note that the health of the heritage tree was in question. Chair Riggs said the design made great consideration for the neighbors and there were interesting design elements.

Commission Action: M/S Keith/Pagee 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 Bay Tree Designs, consisting of 18 plan sheets, dated received July 16, 2009, and approved by the Planning Commission on July 27, 2009, except as modified by the conditions contained herein.
 - b. Prior to building permit issuance, the applicant shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies' regulations that are directly applicable to the project.
 - c. Prior to building permit issuance, the applicant shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
 - d. Prior to building permit issuance, the applicant shall submit a plan for any new utility installations or upgrades for review and approval of the Planning, Engineering and Building Divisions. All utility equipment that is installed outside of a building and that cannot be placed underground shall be properly screened by landscaping. The plan shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes.
 - e. Heritage trees in the vicinity of the construction project shall be protected pursuant to the Heritage Tree Ordinance.
4. Approve the use permit subject to the following **project-specific** conditions:
 - a. Simultaneous with the submittal of a complete building permit application, the applicant shall submit revised plans showing installation of pavers on the driveway and a construction detail with a cross-section of the installation that has been approved by a certified arborist, subject to the review and approval of the Planning Division.

Motion carried 7-0.

2. **Use Permit, Architectural Control/Joseph Comartin/1081 Santa Cruz Avenue:** Request for a use permit and architectural control for the demolition of an existing single-family residence and the construction of four attached single-family dwelling units in the R-3 (Apartment) zoning district. The use permit request includes a proposal for excavation within the front setback for a ramp to a basement garage. As part of this development, the following five heritage

trees are proposed for removal: one valley oak in the rear yard with a 41-inch diameter at breast height (DBH) in poor condition, one deodar cedar at the front right corner with a 38-inch DBH in fair condition, and three Italian cypresses at the front left corner with 20-inch DBH in fair condition.

Staff Comment: Planner Rogers said staff had no additions to the written report. He noted that the applicant had brought a colors and materials board.

Questions of Staff: Chair Riggs asked if the staff arborist had inspected the valley oak. Planner Rogers said that the staff arborist had done a detailed review and found that the tree was in particularly poor condition with root loss.

Public Comment: Mr. Joe Comartin, applicant, said he had a small development company called Woodlane Properties located in Menlo Park. He said prior to starting his own company he had been a project manager with Summerhill Homes. He said his intent was to build sophisticated townhomes and that this project was more urban than similar models he had seen built in Menlo Park. He said the project was trying to get more livable space by tucking the garages under the structure. He said they had been working on the plan for two years and had had a study session with the Planning Commission the previous year. He asked the Planning Commission to consider exempting the pedestrian circulation space located in the subterranean level of the project as articulated in the staff report. He said the project was somewhat unique in maximizing outdoor space, but the project was somewhat punished on square footage as the circulation space required for a person to exit the garage was within the building and was counting toward the total Floor Area Ratio (FAR). He said with a traditional garage the exit would be hardscape and there would be less open space. He requested that the Commissioner consider excluding the circulation space from the underground parking.

Commissioner Keith asked if the applicant was in agreement with doing a replacement 24-inch box tree. Mr. Comartin said he was. Commissioner Keith said she liked the stained cedar shingles and the changes made to the underground and handicapped parking. Mr. Comartin said related to tree box size that a 15-gallon tree would grow as tall as a 24-inch box tree within two years. He said he had spoken with the neighbor who was concerned with the loss of a tree; he said the roots were almost gone on that tree and at risk on falling on surrounding structures.

Commissioner Kadvany asked about the roof, ceiling heights and second story design elements. Mr. Bob Doane, Doane + Doane Architects, said he was the architect for the project, and referred to sheet A.8. He said that the first floor was approximately five feet above grade with a 10-foot ceiling, the second story had an eight foot plateline and three of the dormers were for lighting of the interior space. Commissioner Kadvany asked if the dormers were over the stairwells. Mr. Doane said that sheet A-15 showed how the stairs would get natural light through the dormer. Commissioner Kadvany said there were some interior spaces on the bottom floors and asked about light and privacy

there. Mr. Comartin said they had revised the plans so there were no shared views between the units. He said one of the units had two windows in the family room but they had eradicated those windows in the other units. He said they had eight-foot French doors that would provide light. Commissioner Kadvany suggested a clerestory might provide light as well. Mr. Comartin said they could do a clerestory on the first floor but not on the second floor. He said they had looked at doing a clerestory but that that would create about 20-feet of window in the rear of the units.

Commissioner Kadvany said he had talked to the neighbor and looked at the tree in question and agreed it was in bad health. He said the shingle siding was an improvement.

Commissioner Pagee asked about the finish in the entry way. Mr. Comartin said it would be black wood trim. Commissioner Pagee said she had previously suggested a handicapped-accessible unit or the ability for owners to install an elevator. Mr. Doane said the building code had a set of rules for elevators that required it to access all available space on that floor, which was not possible for this design as there were private entrances for each unit. He said they designed a lift outside of one unit, which would have access to grade, garage, and to the main level living spaces, but it did not get into the elevator rules of the building code. Commissioner Pagee said that there would be nowhere for future owners to install elevators. Mr. Comartin said the original plan was to have elevators but it had the additional complication of square footage as elevator shafts would be counted. He said with the design and building code constraints they looked at a lift for unit 2 so that one was completely handicapped accessible. Commissioner Pagee said she appreciated their attempt. She confirmed with Mr. Comartin that all of the windows were simulated true divided lights. Commissioner Pagee said there were high and low fences, but the units were elevated above the ground. She said the wall along the Santa Cruz Avenue side would not allow for air or light, and suggested perhaps a faux window in that higher wall. She asked what the grilles in the garage would look like. Mr. Comartin said they would be made to look like windows. Mr. Doane said they were a lattice grid with mesh. He said the Santa Cruz Avenue would be landscaped in several layers. Commissioner Pagee asked if they met the requirement for garage ventilation net area. Mr. Doane said that since the garages were individual that they would exceed that requirement.

Chair Riggs said that the windows on the second story were eliminated, and asked whether they had looked at a more diagonal placement. Mr. Comartin said they had, but it would create an off-center feel to the master bedroom. Chair Riggs said he spoke with the City's arborist about the oak tree. He said the arborist agreed that a year ago the oak tree had shown vigor but with root loss on one side it was no longer stable and was a prime candidate to fall. Chair Riggs said the applicant had made efforts to save the tree.

Chair Riggs closed the public hearing.

Commission Comment: Commissioner Keith moved to approve as recommended in the staff report but to require 24-inch box trees rather than 15-gallon trees on the shared property line with Mrs. Fisher. She said she liked the materials, and the parking off Santa Cruz Avenue. She said it was sad about the loss of one heritage tree but the City would gain 31 trees. Commissioner Bressler seconded the motion. He said he like the added green space created by the use of the underground parking. Commissioner Ferrick said it was an impressive design for the reasons stated. Commissioner O'Malley said he appreciated that the applicants had listened to the Commission's suggestions. Commissioner Keith noted that she could no longer hear the proceedings, and indicated she would hang up, so they could call her again. Staff redialed Commissioner Keith but she could not hear them.

Commissioner Pagee said that the Commission did not typically accept straight walls without articulation and there were interesting architectural details on the four straight walls. Planner Rogers requested that if the Commission wanted to formalize the changes regarding the windows as distributed in the revised plans that those be called out in the motion.

Staff tried to reach Commissioner Keith but she still could not hear the proceedings.

Due to the technical difficulties, Chair Riggs tabled the original motion with the consensus of the Commission.

Commissioner Pagee moved to approve as recommended in the staff report to include the window locations per the revised plans dated PC hearing 7/27/09 and for 24-inch box trees at the property line shared with the neighbor. Commissioner Ferrick seconded the motion.

Chair Riggs said he would like to amend the motion. He said putting the parking underneath was a great solution and the proposed design of the buildings was exceptional. He said he would like to exclude the garage stairs from the square footage. He said the applicant would like to add 17-inches to the deck and if the stair square footage was excluded that could occur. Commissioner Bressler said he would agree as long as that did not change the design. Commissioner Pagee asked if the 17-inches were on both the first and second floor. Mr. Comartin said the only change would be for the family room and the master bedroom above to have additional 17-inches of depth. Mr. Doane said the room would go to 14.7 feet deep for the first floor and the master bedroom would go to 14.5 feet deep, which would increase the size of the closet. Mr. Comartin said it would allow for two rods in the closet. Commissioner Ferrick asked if that would decrease the rear setback to 52 feet. Mr. Comartin indicated that it would.

Chair Riggs said the friendly amendment was to allow a dimension change of 17-inches into the building and out of the setback such that the additional total square footage would not exceed 246 square feet, and for the windows to remain symmetrical

in the rooms. Commissioner Pagee accepted the friendly amendment and said the setback to the rear from the porch would be 29 feet which was greater than most of the rear setbacks in the City. Commissioner Ferrick, as the maker of the second, accepted the friendly amendment. Planner Rogers asked if the change should be reviewed and approved by staff or the Commission. It was the Commission's consensus that the change would be reviewed and approved by staff.

Commissioner Kadvany asked about the change to the tree size and asked for comment on that. Chair Riggs said landscape architects and growers would say that over three to five years a 15-gallon tree would match a tree planted as a 24-inch box tree as the younger tree would root more aggressively and better acclimate to the conditions. He said he had seen 15-gallon trees take off and others languish, but the benefit for this project to have 24-inch box trees was that the neighbor would have larger trees sooner. He said the cost difference was less than \$100 per tree. He asked how many trees the condition would affect. Planner Rogers said there were four larger trees on the property line that staff would consider covered by the Commission's condition for 24-inch box trees.

Commission Action: M/S Pagee/Ferrick to approve the item with the following modifications.

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. Adopt the following findings, as per Section 16.68.020 of the Zoning Ordinance, pertaining to architectural control approval:
 - a. The general appearance of the structure is in keeping with the character of the neighborhood.
 - b. The development will not be detrimental to the harmonious and orderly growth of the City.
 - c. The development will not impair the desirability of investment or occupation in the neighborhood.
 - d. The development provides adequate parking as required in all applicable City Ordinances and has made adequate provisions for access to such parking.
3. 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.

4. Approve the use permit and architectural control subject to the following **standard** conditions:
- a. Development of the project shall be substantially in conformance with the plans prepared by Doane + Doane Architects, consisting of 23 plan sheets, dated received July 20, 2009, and approved by the Planning Commission on July 27, 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.
 - g. Heritage trees in the vicinity of the construction project shall be protected pursuant to the Heritage Tree Ordinance.

- h. Concurrent with submittal of a complete building permit application, the applicant shall submit a detailed landscape and irrigation plan demonstrating compliance with Chapter 12.44 (Water-Efficient Landscaping) of the City of Menlo Park Municipal Code. The comprehensive landscape plan shall contain information regarding the size, species, location, and quantity of trees (including heritage tree replacements), shrubs, and plants. This plan shall be subject to review and approval by the Planning and Engineering Divisions. The landscaping shall be installed prior to final inspection of the building.
- 5. Approve the use permit and architectural control subject to the following **project-specific** condition:
 - a. Concurrent with submittal of a complete building permit application, the applicant shall submit draft Conditions, Covenants, and Restrictions (CC&Rs) designating the Fremont Street frontage as the front lot line, subject to review and approval by the Planning Division. The approved CC&Rs shall be recorded prior to issuance of a building permit.
 - b. Concurrent with submittal of a complete building permit application, the applicant shall submit revised plans in accordance with the Unit 2 and 3 interior side window modifications that were submitted at the July 27, 2009 Planning Commission meeting, subject to review and approval by the Planning Division.**
 - c. Concurrent with submittal of a complete building permit application, the applicant shall submit a revised landscape plan that specifies that the four new trees along the rear property line (shared between 1081 and 1085 Santa Cruz Ave) be a minimum 24-inch box size at installation, subject to review and approval by the Planning Division.**
 - d. Concurrent with submittal of a complete building permit application, the applicant may submit revised plans that exclude the 242.8 square feet of garage stairways and landings from gross floor area and reallocate that area to extend the rear of the building by approximately 17 inches, subject to review and approval by the Planning Division.**

Motion carried 6-0 with Commissioner Keith temporarily absent due to a technical issue with the teleconferencing system.

Staff reestablished teleconference connection with Commission Keith.

Chair Riggs reviewed with Commissioner Keith the modifications the Commission had added to the recommendation in the staff report.

3. **Use Permit/Penelope Huang, Taylor & Huang Properties, Inc./825 Santa Cruz Avenue:** Request for a use permit for a real estate office on the ground floor of an existing commercial building in the C-3 (Central Commercial) zoning district.

Staff Comment: Planner Rogers read a letter received that day, which was from 1150-1148 Crane Street whose businesses were “A Touch of Elegance” and a jewelry store. The writers said they were opposed to a non-sales tax producing real estate office going into the downtown and that the downtown needed more retail and no more offices as customers in the downtown were needed. They asked that the Commission deny the request for a use permit for 825 Santa Cruz Avenue.

Questions of Staff: Commissioner Pagee asked why the in-lieu fee was \$2.00 per square foot and not \$2.18 per square foot. Planner Rogers said to impose a higher fee would require further study and staff did not have the resources to do that. He said that the fee recommended was on the conservative side and more easily defended. He said other fees could be considered. Commissioner Keith asked Planner Rogers to follow up on his comment. Planner Rogers said there were other in-lieu fees being assessed that were listed in the staff report.

Public Comment: Ms. Penelope Huang, applicant, said she was a 22 year resident of Menlo Park and had been a real estate agent in the City since 1989, starting with Cornish and Carey. She said she opened Taylor & Huang Properties Inc. in 1992 from her home. She said for the last three years she used a storefront in the Willows. She said that she currently had one fulltime and one part time agent and one part time administrative assistant. She said her goal was to have a more central location and to increase the number of agents from seven to ten per year and to ultimately have two full time administrative assistants. She said the Downtown Visioning Plan was focusing on diversity and vibrancy in the downtown. She said the Chamber of Commerce had indicated her application would help meet those goals in the downtown. She said that most cities worldwide had real estate offices downtown, particularly those cities having a village character. She said that real estate offices were in a unique position to tout a city. She said the goal was one stop shopping downtown, which she had known living in England and South Africa. She said that real estate businesses thrive in ground floor spaces as walk-ins result in sales. She said that bringing her business downtown would be a benefit to the City and would bring more retail business than the bank that had been at the location. She said that sales tax in-lieu fees were a recent response by the City to the closure of the car dealerships along El Camino Real. She said the fee was not fair to small business owners as ordinarily this revenue was paid for by customers. She said the fee was not required of the owners of vacant office buildings or other small businesses such as hair dressers and coffee shops at which sales tax was not charged for to-go orders. She said there were only four businesses in the City currently being charged an in-lieu fee and of

those four one was a corporate bank and the other a church with a \$4 million budget. She said her business would bring jobs and generate other revenue including property tax. She said the property in question had been occupied by a bank for 51 years and it had never generated sales tax revenue. She said there was plenty of space for retail as there were currently 10 vacant sites in the downtown. She said she also questioned the term limit on the use permit. She said there were fees to the City to apply for a use permit; in-lieu fees were expected to subsidize an ailing economy and when the economy turned around the City wanted to limit her occupancy. She said she first heard about the in-lieu fee when she submitted her use permit application. She said she was willing to run at a loss for a few years to have this downtown location for her business and noted the expense of making interior changes and installing security systems. She said she had a 10-year lease with a five year kickout. She requested that the Commission approve the use permit without the in-lieu fee and the expiration on the permit and give her business a chance.

Chair Riggs asked about her taking the second floor space. Ms. Huang said there was not much space on the second floor, and having a sidewalk front brought business in from walk-ins. Chair Riggs asked if her business did residential real estate. Ms. Huang said primarily.

Mr. Michael Berube, Portola Valley, said he was a former resident of Menlo Park and he was a commercial specialist. He said that the letter received this evening was not from the tenants at 1150-1148 Crane Street as he had found this location for Marty and Mai, and the signatures on the letter were not theirs. He said the Credit Union lease at this property had expired on October 31, 2008 and the landlord had just gotten the space from them in June 2009. He said the Credit Union had had trouble relocating to its new space and had asked for an extension. He said in the meantime he had marketed the property to financing institutions but there had been no takers. He said he then advertised the property and had spoken with several retailers many of whom were hesitant to take a new site and others who could not get the needed financing. He said he had his assistant deliver marketing flyers to every business along Santa Cruz Avenue. He said that the country was experiencing the worst retail economy in the past 60 years.

Mr. Lawrence Zaro said he was the property manager and had worked many times with Mr. Berube, who had always done excellent work for the families who own this property in finding retail businesses. He said Mr. Berube had been vigorously looking for a tenant, and although various people came forward, none could actually take the lease. He said when he was shown Ms. Huang's lease application he visited her storefront office in the Willows and knew immediately that she would be a great tenant. He said the lease was for 10 years with an option to step out of it at five years. He said he had great respect for Ms. Huang's willingness to open a business downtown when merchants were not able to secure a loan.

Chair Riggs closed the public hearing.

Commission Comment: Commissioner Bressler said that three of the four assessed in-lieu fees had expiration dates. Planner Rogers said the expirations were on the use permits. Commissioner Bressler said the applicant had made a good argument for her applicant. He said the Social Hall was a retail space that went to non-retail and asked about the 885 Oak Grove office building. Planner Rogers said he believed that space had always been an office building. Commissioner Keith asked if it had always been assessed \$1.58 per square foot. Commissioner Pagee said she thought it was a relatively new business. Commissioner Bressler asked about the 550 Ravenswood Avenue and the 620 Santa Cruz Avenue sites. Planner Rogers said that 620 Santa Cruz Avenue had originally been built as a bank building and when the bank left, Alain Pinel real estate took it and paid the in-lieu fee. More recently Citibank took occupancy and continued to pay the in-lieu fee.

Commissioner Bressler said that this application was not for a site that had been retail and was going to non-retail. He said this business was more beneficial downtown than a financial institution. He said in-lieu fees were imposed on a case-by-case basis and there was no policy, which allowed the Commission discretion. He said the fee would be a burden at least initially for the business owner.

Commissioner Pagee said that it had been financial institutions downtown that had driven away retail business because these corporations could afford the higher leases. She said the dynamics of the zoning were changed to encourage retail businesses and discourage financial institutions. She said there would be a benefit from property taxes from this proposed business, but not all of it would necessarily be for Menlo Park. She said that a 10-year lease and no expiration on the use permit would keep the property from generating sales tax revenue when the economy improved. She said she thought the in-lieu fee was warranted.

Chair Riggs asked how many square feet there were. Planner Rogers said there was about 2,400 square feet. Chair Riggs said that would be about \$5,000 a year for the in-lieu fee. Commissioner Ferrick suggested that perhaps there could be no in-lieu fee now but at five years when the use permit expired, if the business was prospering to then consider imposing an in-lieu fee if the business owner chose to remain at this location.

Commissioner Keith moved to approve as recommended in the staff report. She said the space has been non-retail for 30 plus years but the City was doing its downtown visioning and the goal was more retail. She said she supported the five-year term on the use permit. She said she understood Ms. Huang's comments about the in-lieu fee but she did not think \$2.00 per square foot was too onerous. She said Ms. Huang had a lovely office now and her business would probably be an asset to the downtown. She said she did not want sites downtown to remain vacant. Commissioner O'Malley seconded the motion. He said he was concerned about businesses that were no longer in Menlo Park and the vacancies along Santa Cruz Avenue. He said in five

years he would expect the space to be much more valuable for retail than today. He said the in-lieu fee had been applied to other use permits, and he said it should be applied to non-retail uses in the downtown.

Commissioner Ferrick asked if in-lieu fees were based on expected sales tax revenue. Planner Rogers said there was narrative related to the social hall and how the \$2.00 per square foot range was developed. He said the business on Ravenswood Avenue had a lower fee applied due to its distance from downtown. He said for Santa Cruz Avenue sites a fee around \$2.00 per square foot was applied but when businesses were away from the downtown the in-lieu fee was typically less.

Commissioner Kadvany said there were strong arguments from both sides. He said he was inclined to something in the middle such as keep the time limit on the use permit but not impose an in-lieu fee at this time.

Chair Riggs said he also liked Commissioner Ferrick's suggestion for a five-year use permit renewal and to look at an in-lieu fee at that time. He said Ms. Huang was well-spoken and this was a vacant site among many downtown. He said in his experience that use permits that come up for renewal generally found favor.

Commissioner O'Malley said that there were 11 vacant businesses along Santa Cruz Avenue and if the Commission did not require an in-lieu fee for this application there would be similar requests from other business owners. .

Commissioner Ferrick asked about deferring the fee. Chair Riggs said he thought this was an attractive alternative to retail. Commissioner Bressler noted that the property had not had a retail use prior to this time.

Motion failed 3-4 with Commissioners Bressler, Ferrick, Kadvany and Riggs in opposition.

Chair Riggs moved to approve the use permit for a period of five years with an option to renew and to consider the option to apply a fee in five years. He said Commissioner Bressler had noted that this site had not been a retail use for 30 years. Commissioner Kadvany seconded the motion. Commissioner Keith said she would support the motion although she did not think \$5,000 a year was onerous for the in-lieu fee, but the prior non-retail use was a strong argument.

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

1. Make a finding that the project is categorically exempt under Class 1 (Section 15301, "Existing Facilities") 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. 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 Taylor & Huang Properties, consisting of five plan sheets, dated received May 29, 2009, and approved by the Planning Commission on July 27, 2009, except as modified by the conditions contained herein, subject to review and approval of the Planning Division.
4. Approve the use permit revision subject to the following **ongoing, project-specific** conditions:
 - a. The use permit shall expire on May 29, 2014, unless the applicant obtains approval of an extension of the use permit by the Planning Commission.
In-lieu fee to be reconsidered at application for renewal of use permit in 2014.
 - ~~b. During the period of the use permit, the applicant or property owner shall pay a fee (plus applicable yearly Business License fees) to the City in lieu of sales tax for the 2,400 square feet of area leased by the applicant. The fee shall be set initially at \$2.00 per square foot and paid annually. The fee for each year thereafter shall be adjusted annually according to the percentage change in the All Urban Consumer Price Index (CPI) for the San Francisco-Oakland-San Jose area. The procedure for collecting the in-lieu fee shall be established by the Finance Division.~~

Motion carried 7-0.

Commissioner Pagee said it should be noted that this action would not set a precedent, and she would like staff not to acknowledge this with other applicants. Commissioner Keith said it sounded like Ms. Huang had not heard of the in-lieu fee until later in the process, and suggested that staff tell people about the fee when they come in to apply. Commissioner Bressler said that if this space had been retail, his view would have been different. Commissioner Ferrick said her concern with the Commission's decision was that spaces available for retail might be exempt now. Commissioner Bressler said the idea behind the in-lieu fee was to encourage retail when there was a market for it but that market had collapsed. He said the in-lieu fee should be looked at in five years for this application. Commissioner Kadvany noted that the in-lieu fee was variable and if retail was valuable then perhaps a higher fee would be defensible in the future.

- 4. Use Permit/Tyco Federal Credit Union/3715 Haven Avenue:** Request for a use permit for a credit union to locate on the second floor of an existing commercial building and a new automatic teller machine (ATM) associated with the credit union to be installed on the first floor exterior of the building located in the M-2 (General Industrial) zoning district.

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

Public Comment: Ms. Chris Brown, CEO of Tyco Federal Credit Union, said they had to vacate their current location and were moving less than a mile away to 3715 Haven Avenue, and were requesting that the use permit be transferred to this close location.

Commissioner Pagee asked if there were motion security lights or what lighting would be installed. Ms. Brown said there had to be certain candle lights available and they would have to ensure those were installed. Commissioner Pagee asked how long they had been at their current location. Ms. Brown said they had had an outdoor ATM at their existing location since 2000. Chair Riggs asked if the ATM would be under the stair well. Ms. Brown said that was correct. Commissioner Keith asked about the ATM being accessed by non-members, and if there was a key access. Ms. Brown said there was no intention of installing a key access. She said that as currently operated their ATM was the only one within three miles that did not charge surcharge for non-members' use.

Mr. T.J. Bianchi, landlord for the site and a tenant, said he totally supported the project and could see no negative impact. He said there was lighting outside the building and additional would be added over the ATM. He said he would work with the City's Building Official on what type lights would be needed.

Chair Riggs closed the public hearing.

Commission Action: M/S Pagee/Keith 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 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. 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 Soga+Associates, consisting of 12 plan sheets, dated received July 15, 2009, and approved by the Planning Commission on July 27, 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 requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
- 4. Approve the use permit subject to the following **ongoing, project-specific** conditions:
 - a. If the business discontinues operations at the premises, the use permit for a credit union shall expire within 90 days unless a new credit union submits a business plan to the Planning Division for review to determine whether the new business would serve the employees of the immediate area and is in substantial compliance with the use permit.

Motion carried 7-0.

D. REGULAR BUSINESS

1. **Review of Substantial Conformance/351 Terminal Avenue:** Review of proposed roof changes on an existing single-family residence for substantial conformance with a previously approved use permit.

Chair Riggs said the revised plan seemed to indicate that the building coverage had been changed and asked if there was an increase in square footage. Planner Chow said her understanding was that the roof would be extended over the balcony and this would not change the building coverage as there had been a post for the balcony on the approved plans. She said this plan sheet supplemented the plan and photographs emailed to the Commission. Commissioner Pagee said that the roof on the north elevation was changed from two hip roofs to one hip roof with a gable end. Planner Chow said that was correct and that the hip had been extended to end above the balcony. Commissioner Pagee noted that this raised peaks in the east and west elevations. Chair Riggs said there was no impact on the daylight plane and the overall height remained 2.5 feet below 28 feet. He asked if the applicant had been cautioned to get approval before building this change. Planner Chow suggested the applicant could address that question.

Public Comment: Mr. Alex Hoermann, property owner, said his builder brought to his attention that the stairs would not be protected from rain and anything stored under them, such as garden tools or tools, would get soaked, and suggested extending the roof. Mr. Hoermann said that made sense to him as it added to the functionality. He

said when that was done there would have been a tiny sliver of hip left, so the builder suggested a gable end, which the structural engineer supports. He said when the City inspector looked at the roof, he noticed the change and said he (Mr. Hoermann) should contact Planning.

Commissioner Pagee asked if there were any other changes. Mr. Hoermann said there were not.

Chair Riggs closed public comment period.

Commission Comment: Commissioner Pagee said the plans were changed from what had been approved and the building already built, but in this instance she thought it improved the appearance of the rear elevation. She moved to find the proposed revisions in substantial conformance with the approved use permit. Commissioner Bressler seconded the motion.

Commission Action: M/S Pagee/Bressler to find the proposed revisions in substantial conformance with the approved use permit.

Motion carried 7-0.

E. COMMISSION BUSINESS

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

Planner Rogers said there had been a successful Community Workshop #2 in June with about 200 people attending. He said since then staff and the consultant had been reviewing the input received. He said the Oversight and Outreach Committee would meet Thursday, July 30 at 6 p.m. He said the focus of the meeting was to review the initial direction of the community and start a preview of what would take place at the third and final Community Workshop on September 17. He said the Planning Commission on August 24 and the City Council on August 25 would review what was developed.

B. Burgess Gymnasium and Gymnastics Center

Planner Chow said the Council had approved the project with some conditions. She said they had agreed with the Commission that employees should not park in Lot 6 and that staff should prepare mitigation plans for large events with impacts to Alma Street. She said they also directed that parking counts be done the first year of use at three, six, and twelve months, and two parking counts the second year. She said the Council was looking at LEED certification for the building and an inexpensive solution to the left turn at Alma Street and Ravenswood Avenue.

F. REPORTS AND ANNOUNCEMENTS

Planner Rogers said the environmental and fiscal analysis documents for the Bohannon Menlo Gateway proposal had been distributed to the Commission. He said the applicants had held community meetings on the project with one held in the afternoon for business community members, which had about 15 attendees, and one in the evening for residential community members, which had about 10 attendees. He said the final community meeting would be July 29. He said they were also discussing what the public benefit should be from the project. He said the Commission would see the EIR on September 14 after the other Commissions had reviewed. He said the Commission would then have opportunity to review more of the proposed project at a later meeting. .

Chair Riggs asked about architectural control. He said the Planning Commission had not really had an opportunity to review that, and he did not want the project going forward with the assumption that these elements were approved. Planner Rogers said that the previous reviews did not indicate tacit approval of the project and there would be multiple opportunities for the Commission's review to occur, particularly in October 2009 for the architectural control.

Commissioner Kadvany said he went to one of the sessions and one of the architects was present. He said there were two separate architects, one for the hotel and one for the office building. He said that both architects should be present for the review by the Commission. Chair Riggs said that staff would request the authors of the design to attend the October meeting. Planner Rogers said that would be the most appropriate meeting for that. Chair Riggs asked if there was a schedule of when they were looking for approval. Planner Rogers said the applicant had sketched out hearing dates through the end of the entitlement dates with a goal of March 2010. He said the applicant would like to develop the Marriott fairly soon. Chair Riggs said it would be better to get architectural control comments early. Commissioner Pagee asked if the architectural review of the project changed the design from what was considered in the EIR, whether the applicant would have to go through the EIR process again. Planner Rogers said if the changes created a less intense project that would remain within the scope of the EIR to be considered but if there was to be a more intense project, additional environmental review would be needed.

ADJOURNMENT

The meeting adjourned at 9:43 p.m.

Staff Liaison: Deanna Chow, Senior Planner

Recording Secretary: Brenda Bennett