



PLANNING COMMISSION MINUTES

March 22, 2010

7:00 p.m.

City Council Chambers

701 Laurel Street, Menlo Park, CA 94025

CALL TO ORDER – 7:01 p.m.

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

INTRODUCTION OF STAFF – Deanna Chow, Senior Planner; Kyle Perata, Planning Technician; Thomas Rogers, Associate Planner

A. PUBLIC COMMENTS

There were none.

B. CONSENT

There were no items on the consent calendar.

C. PUBLIC HEARING

1. Use Permit/Taylor & Huang Properties, Inc./648 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. The proposed tenant space is located at the rear of the parcel, facing Parking Plaza 1 and a pedestrian breezeway.

Staff Comment: Planner Rogers said 21 letters of support for the project had been received since the publishing of the staff report.

Questions of Staff: Chair O'Malley asked if this was a new use permit or a revised use permit request. Planner Rogers said that it was a request for a new use permit as the use permit previously applied for at a different location had not become effective due to a successful appeal of the approval.

Responding to Chair O'Malley's question about wording in the staff report, Planner Rogers said that staff believed the proposed project was not inconsistent with the City's proposed Specific Plan. Chair O'Malley asked staff about the statement that the lease would become effective upon the applicant's receipt of a non-appealable use permit and

that the use permit would apply to the property and not stay with the applicant. Planner Rogers said the lease would start when the use permit was in effect and use permits run with the lands and not with the tenants.

Commissioner Kadvany asked about the letter from Mr. Mark Flegel and his comment that first story tenants in the downtown should be retail. Planner Rogers said that offices and services were conditional uses in the downtown. He said in practice new uses on downtown Santa Cruz Avenue have been restricted to retail and office and personal service uses have been permitted through the use permit process for the side streets in the downtown. He said that this address although it has a Santa Cruz Avenue mailing address conformed more to a side street location as its entrance faced the back and the parking plaza. Commissioner Bressler asked if there was a term on the use permit. Planner Rogers said that staff was recommending an indefinite approval. Commissioner Pagee asked about application of an in-lieu fee and whether existing non-retail uses on Santa Cruz Avenue could remain the same use if current tenants moved. Planner Rogers said if the new tenants' businesses were the same uses as existing and if they occupied the buildings within 90 days of the prior tenants' move, there would be no discretionary review. Commissioner Pagee asked if the Cashin Real Estate office on the corner of El Camino Real and Valparaiso Avenue paid an in-lieu fee. Planner Thomas said that building was in the C-4 commercial zoning district whereas discussions on requiring retail on the first floor applied to properties in the C-3 commercial zoning district. Commissioner Keith asked about Mr. Flegel's email and whether in-lieu fees were required on all non-retail businesses in the C-3 commercial zoning district. Planner Rogers said that the in-lieu fee has been applied on a case by case basis.

Public Comment: Penelope Huang, applicant, said it had been over a year since she decided to expand her business downtown. She said she had been unsuccessful in securing 825 Santa Cruz Avenue as her office site due to an appeal by the Flegel family. She said she worked with Mr. Dave Johnson, the City's Business Development Manager, to find a less prominent location. She said the space she was applying for a use permit to occupy had failed as a retail space because of its location and that local merchants had encouraged her to pursue the location for her business. She said she would provide a high-end attractive real estate office that would represent Menlo Park well and that her agents would promote downtown Menlo Park as part of the quality of life. She said they would partner with the Chamber of Commerce and the Downtown Merchants' Association to promote Menlo Park at events and festivals. She said her proposal would create jobs, expand business tax for the City and clients would eat and shop in the downtown.

Chair O'Malley said the report indicated there would eventually be a greater number of employees and asked if the restroom would be sufficient. Ms. Huang said that at expansion there would be 20 employees and they would not be occupying the space all at the same time and that one bathroom would suffice.

Chair O'Malley closed the public hearing.

Commission Comment: Commissioner Pagee moved to approve the use permit as recommended in the staff report and asked the Commission to consider application of a minimal in-lieu fee. Commissioner Bressler seconded the motion. Commissioner Riggs said there was no precedent for applying an in-lieu fee for this property. Commissioner Bressler said he agreed with Commissioner Riggs. Commissioner Ferrick said she was pleased to see the outpouring of support for the proposal by the downtown business community, noting that she had seen retail fail at this location. She said there was logic for applying an in-lieu fee, which did not apply well to this space. Chair O'Malley said this space had proved unsuccessful for retail use and it would make sense to use the space for something other than retail. He said no other real estate offices in the downtown were paying in-lieu fee and he did not think it made sense to apply in-lieu fees in this instance. He said Mr. Flegel supported the application although he was encouraging an in-lieu fee. Commissioner Keith said the location was appropriate for the proposed business and she did not think that an in-lieu fee should be imposed. Commissioner Kadvany made a friendly amendment to change the motion to not require an in-lieu fee. Commissioner Pagee accepted the friendly amendment.

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 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 March 8, 2010, and approved by the Planning Commission on March 22, 2010, except as modified by the conditions contained herein, subject to review and approval of the Planning Division.

Motion carried 7-0.

2. **Use Permit/Gordon Bell for Clearwire/1330 University Drive:** Request for a use permit to co-locate new wireless dishes, antennas, and associated equipment with existing cellular sites on the roof of an existing multi-family residence in the R-3(X) (Apartment, Conditional Development) zoning district.

Staff Comment: Planning Technician Perata said staff had no additions to the written report.

Questions of Staff: Commissioner Kadvany asked about power requirements for the proposed installation related to safety. Planning Technician Perata said the Building Department would review those requirements and he did not have that information.

Commissioner Bressler asked if the people in the building were noticed about this project. Planning Technician Perata said they had been and had signed off on the project.

Chair O'Malley asked about working with the carrier to bring the installation into compliance. Planning Technician Perata said there was one expired cellular site on the roof.

Commissioner Riggs asked if dishes and antennae became obsolete whether they would be removed. Planning Technician Perata said he was not sure. Commissioner Riggs said in the future staff might ask that question. He said the penthouse was not visible from University or Valparaiso; he asked if staff had considered from other locations and whether antenna were visible. Planning Technician Perata said staff had looked at the site from along University and the Menlo School site.

Commissioner Pagee said one cellular site was installed in 1992 without an expiration date and asked if there had been requests to upgrade. Planning Technician Perata said the site was being used and had been slightly modified recently by Verizon. Commissioner Pagee asked how the term limits were reviewed. Planner Rogers said this building had one use permit that had expired which had been overlooked because of some errors with the City's term limit project database. Commissioner Pagee asked if any of the sites had been updated without going through the permitting process. Planner Rogers said that all of these installations required building permits; he said that none had had substantial changes or anything that would have required Planning Commission review.

Public Comment: Mr. Gordon Bell said he was representing Clearwire. He said they tried to design the installation so it would not have any visual impacts. He said it was mitigated on the side of the buildings above the roof line and would be painted to match. He said that Clearwire was an affiliate of Sprint/Nextel wireless broadband internet services and this installation would accommodate the new 4g technology being advertised. Commissioner Kadvany asked about the network necessary to serve this area. Mr. said there were sites about every half mile. Responding to Commissioner Riggs' earlier question, he said in their agreements with the landlords there was an abandonment clause which required them to remove their equipment if they lose their lease.

Mr. Bob Steele, Menlo Park, said he was representing the homeowner's association for the project site and noted that the negotiations with Clearwire were not yet complete.

Commission Comment: Commissioner Keith moved to approve as recommended. Commissioner Bressler seconded noting that the applicant's negotiations with the homeowner's association were outside the purview of the Commission. Commissioner Pagee asked about the time limit for the use permit. Planning Technician Perata said it was 10 years.

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

1. The project is categorically exempt under Class 1 (Section 15301, "Existing Facilities") of the current California Environmental Quality Act (CEQA) Guidelines.
2. Make necessary findings, pursuant to 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 safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of the proposed use, and will not be detrimental to property and improvements in the neighborhood or general welfare of the City. *(Due to the Federal Communications Commission (FCC) preemption over local law regarding concerns over health where the proposed facility meets FCC requirements, staff has eliminated the standard finding for "health" with respect to the subject use permit.)*
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 Dyna Limited, dated February 17, 2010 consisting of seven plan sheets and approved by the Planning Commission on March 22, 2010, except as modified by the conditions contained herein and the recommended mitigation measures described in the RF report.
 - b. Prior to building permit issuance, the applicant shall comply with all County, State, and Federal 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 that are directly applicable to the new construction.

Motion carried 7-0.

3. **Use Permit/NSA Wireless for AT&T Wireless Inc./2884 Sand Hill Road:**
Request for a use permit to replace three existing antennas with nine panel

antennas mounted to the exterior of an existing screenwall located on the rooftop of a building in the C-1-C (Administrative, Professional, and Research, Restrictive) zoning district. An associated equipment cabinet will be installed on the rooftop behind the screenwall.

Staff Comment: Planner Chow said staff had no additions to the written report.

Public Comment: Ms. Rachael Fenton of NSA Wireless for AT&T Wireless, introduced herself. Commissioner Bressler said there did not seem to be much difference between what was there and what was being proposed. Ms. Fenton said they were increasing the capacity and ability to handle traffic and that the electronics were changing but not the antenna.

Commissioner Pagee asked about the relocation of the existing antenna that project above the screen. Ms. Fenton directed attention to sheet A2 which showed the antenna that would be removed and the new ones added. Commissioner Pagee confirmed with Ms. Fenton that the newer installation would be lower than the existing.

Chair O'Malley closed the public hearing.

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

1. The project is categorically exempt under Class 1 (Section 15301, "Existing Facilities") of the current California Environmental Quality Act (CEQA) Guidelines.
2. Make necessary findings, pursuant to 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 safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of the proposed use, and will not be detrimental to property and improvements in the neighborhood or general welfare of the City. *(Due to the Federal Communications Commission (FCC) preemption over local law regarding concerns over health where the proposed facility meets FCC requirements, staff has eliminated the standard finding for "health" with respect to the subject use permit.)*
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 CDG, LLC, dated received March 16, 2010 consisting of eight plan sheets and approved by the Planning Commission on March 22, 2010, except as modified by the conditions contained herein and the recommended mitigation measures described in the RF report.

- b. Prior to building permit issuance, the applicant shall comply with all County, State, and Federal 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 that are directly applicable to the new construction.

Motion carried 7-0.

- 4. Use Permit/3-V Biosciences/1050 Hamilton Avenue:** Request for a use permit for indoor use and indoor and outdoor storage of hazardous materials for the research and development (R&D) of therapies for the treatment of infectious diseases at an existing building located in the M-2 (General Industrial) zoning district. A new diesel generator is proposed to be located outside the building, within an existing equipment enclosure.

Staff Comment: Planning Technician Perata said the applicant had made a modification to have the hazardous waste indoors rather than in an enclosed shed with the generator where it currently was stored. He said the revised floor plans had been distributed to the Commission at the dais and copies were available for the public at the table in the back of the room. .

Chair O'Malley said that in 2000 an outside generator had been approved at this site; he asked whether the proposed generator was equivalent to the previous one. Planning Technician Perata said it was not clear what the size of the previously approved generator was.

Public Comment: Mr. Johan Oslob, Associate Director of Chemistry, 3-V Biosciences, said his company was a small startup focusing on finding novel medicines for the treatment of human diseases for which there were significant unmet medical need. He said they would conduct cell based research to identify new means of treating such diseases. He said they were proposing to do biochemical assays, some small chemical census and to use the facility as their business headquarters. He said they had engaged Ms. Ellen Ackerman of Green Environment to help them with their safety, hazardous waste and environmental plans.

Commissioner Bressler said they would use tissue cultures to prepare biological samples and asked if the viruses they would investigate were airborne. Mr. Oslob said that work was currently done in Switzerland. He said they were discussing whether they would do that work at this site. He said they would follow all regulations if they were to do so. Commissioner Bressler asked staff if airborne viral agents were worked with at this site whether that would come back before the Commission. Planner Chow said should that occur staff would find out if there was a different process with the Fire Department and Environmental Health and if it was a different process.

Commissioner Kadvany questioned some of the magnitude of the hazardous materials shown on the inventory sheet such as chloroform at an average daily amount of 10 pounds. Mr. Oslob said chloroform has a high density. He said they would not use those amounts but that was what would be stored. Ms. Ellen Ackerman, Green Environment, said some chemicals had to be reported in weight for County Environmental Health and differently for the Fire District as to the type of chemical so if it was liquid it would be reported to the Fire District as gallons. Commissioner Keith asked what the distinction between “dangerous to the environment” and “harmful” was. Ms. Ackerman said that each chemical has a Material Data Safety Sheet which was used to categorize chemicals. She said there were European and American standards and that the terms “dangerous” and “harmful” were relative and subjective and more of a European convention than an American convention. Commissioner Keith asked about the number of employees. Mr. Oslob said that there were 15 employees and they expected to have 25 employees by the end of the year.

Chair O'Malley said it appeared that there was one lab and the rest of the facility was offices. Ms. Ackerman said the hatching indicated the storing of hazardous materials and were labs. Chair O'Malley said all of the hazardous materials would be stored above the flood zone and he was comfortable with that. He said the inventory had very toxic substances and extremely hazardous substances. Ms. Ackerman said those listed as very toxic came from the Materials Data Safety Sheets and extremely hazardous was a regulatory definition. Chair O'Malley said on page D22 that the box indicating the availability of spill kits had not been checked. Ms. Ackerman said that was her error and there would be spill kits throughout the facility.

Chair O'Malley closed the public hearing.

Commission Comment: Commissioner Riggs moved to make the findings and approve the item as recommended in the staff report. Commissioner Keith said she would second the motion with the addition of a condition that if airborne infectious disease was brought to this site or to any site in Menlo Park that it would need to come before the Planning Commission. Commissioner Riggs asked if that was already required by the City. Planning Technician Perata said if the chemical inventory changed in the future the project would not be in compliance and would come back before the Commission. He said the Commission could add a condition just in case. Commissioner Keith said she would want the use permit to definitely come back before the Planning Commission. Commissioner Bressler said that should be required for any infectious agents the company might use, whether airborne or not.

Commissioner Ferrick said it was exciting to have a new company in the M2 zone and that it would be a good asset for the City.

Commissioner Pagee asked how frequently the Fire District and other agencies inspected businesses with hazardous materials. Ms. Ackerman said there were annual fire department inspections and that County Environmental Health inspected every one,

two or three years depending on the quantity. She said the County has a separate biomedical inspection division.

Commission Action: M/S Riggs/Keith to approve the item as recommended in the staff report with the following modification.

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 provided by Dennis Kobza & Associates, consisting of six plan sheets, dated received March 16, 2010, and approved by the Planning Commission on March 22, 2010 except as modified by the conditions contained herein, subject to review and approval of the Planning Division.
 - b. Prior to building permit issuance, the applicant shall comply with all sanitary district, Menlo Park Fire Protection District, and utility companies regulations that are directly applicable to the project.
 - c. Prior to building permit issuance, the applicant shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
 - d. If there is an increase in the quantity of hazardous materials on the project site, a change in the location of the storage of the hazardous materials, or the use of additional hazardous materials after this use permit is granted, the applicant shall apply for a revision to the use permit.
 - e. Any citation or notification of violation by the Menlo Park Fire Protection District, San Mateo County Environmental Health Department, West Bay Sanitary District, Menlo Park Building Division or other agency having responsibility to assure public health and safety for the use of hazardous materials will be grounds for considering revocation of the use permit.

- f. If the business discontinues operations at the premises, the use permit for hazardous materials shall expire unless a new business submits a new hazardous materials business plan to the Planning Division for review by the applicable agencies to determine whether the new hazardous materials business plan is in substantial compliance with the use permit.

4. Approve the use permit subject to the following specific conditions:

- a. ***Prior to the storage and/or use of infectious diseases at the site, the applicant shall notify the Planning Division. The storage and/or use of such materials are subject to the review and approval of the Planning Commission.***

Motion carried 7-0.

D. REGULAR BUSINESS

1. Substantial Conformance Review Update

Planner Chow said staff wanted to check in with the Commission as to how well the communication on substantial conformance review update was working. She said staff was proposing one change to how information was conveyed and that was to do by memo rather than email.

The Commission's consensus was that staff's efforts regarding substantial conformance review were appreciated and supported the concept of a memorandum email attachment, which could be linked to the Planning Commission's agenda if further discussion was requested on an item.

E. COMMISSION BUSINESS

1. Update on pending planning items.

A. El Camino Real/Downtown Specific Plan (Phase II) Process

Planner Chow said the Commission was being requested to hold a special Planning Commission meeting on April 12, 2010 for the El Camino Real/Downtown Specific Plan. There was Commission consensus that they could meet.

B. 101-155 Constitution Drive and 100-190 Independence Drive (Menlo Gateway Project)

Planner Chow said the term sheet would be presented to the City Council on April 6 and that the term sheet staff report was to be released this week. She said the project would be considered by the Housing Commission on April 7 and before the Planning

Commission as a public hearing on April 19 and then May 3, when the Commission would be asked to make recommendations to the City Council. She said the project would then go before the City Council as a public hearing on May 25 and June 15, when the Council was expected to take action.

Commissioner Kadvany asked about the main areas of recommendation the Commission would make. Planner Chow said the recommendations would be on all components of the project including the environmental impact report, development agreement, general plan amendment, and rezoning.

Commission Bressler said the City Council wanted to approve the project and the Commission's role was to point out some of the problems associated with how it was being proposed. He said there were big issues that needed to be aired.

Commissioner Keith said there had been numerous discussions about the negotiations and asked when the Commission would get information on what had been part of the negotiations. Planner Chow said the staff report to the City Council on the term sheet would be released that week. Chair O'Malley said there tended to be a disparity between term sheets and development agreements.

F. REPORTS AND ANNOUNCEMENTS

Planner Chow said there was a luncheon on performance sponsored by the Silicon Valley Leadership Group on Wednesday. Commissioner Ferrick said it was sold out.

ADJOURNMENT

The meeting adjourned at 8:48 p.m.

Staff Liaison: Deanna Chow, Senior Planner

Recording Secretary: Brenda Bennett