



PLANNING COMMISSION MINUTES

July 25, 2011

7:00 p.m.

City Council Chambers
701 Laurel Street, Menlo Park, CA 94025

CALL TO ORDER – 7:02 p.m.

ROLL CALL – Bressler (Chair), Eiref, Ferrick (Vice Chair), Kadvany, O'Malley, Riggs, Yu – All Present

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

A. REPORTS AND ANNOUNCEMENTS

1. Update on Pending Planning Items

- A. Appeal of proposed Walgreens' application at 643 Santa Cruz Avenue – tentatively scheduled for the August 23, 2011 City Council meeting

Planner Chow said the Commission's decision to deny Walgreen's application for the sale of alcohol at the 643 Santa Cruz Avenue Walgreens was being appealed by the applicant. She said the appeal was scheduled for the August 23, 2011 City Council meeting. She said the June 27, 2011 minutes under consideration by the Commission this evening would be forwarded to the Council as they include the public hearing on the Walgreen's application.

B. PUBLIC COMMENTS

There were none.

C. CONSENT

1. Approval of minutes from the June 27, 2011 Planning Commission meeting.

Chair Bressler said there were three emails from Commissioners requesting modifications. Commissioner Ferrick asked for the item to be pulled. Commissioner Kadvany asked for clarification on Commissioner Ferrick's modification on Page 13, 3rd paragraph to confirm that she wanted to replace "would endeavor" with "would merely endeavor." Commissioner Ferrick said that was correct as that better expressed what she said.

Commission Action: Unanimous consent to approve the minutes with the following modifications as previously emailed to staff.

- Page 1, Last sentence before "PUBLIC COMMENTS:" Replace "around town" with "in and near his neighborhood."

- Page 4, 4th paragraph, 4th line: Replace “She said for this project there was no neighbor objecting. She noted this project had more articulation in its design and while she might support this project, she was concerned about the equability of treatment of applicants and that there had been not contact made with the neighbor most affected by this project.” with “She said for this project that although there was no neighbor objecting, and this project had more articulation in its design, she was concerned about the equability of treatment of applicants and she was concerned that no contact had been made with the neighbor most affected by this project.”
- Page 13, 3rd paragraph, 11th line: Replace “would endeavor” with “would merely endeavor.”
- Page 14, 1st full paragraph, 3rd line: Insert “Mr. Murphy also stated that these individuals were mostly harmless” at the end of the second sentence.
- Page 16, 2nd paragraph, 5th line: Replace “where 75%” with “where, for example, 75%.”
- Page 18, 4th paragraph, last sentence: Replace “4-0” with “4-3.”

Action carried 7-0.

D. PUBLIC HEARING

1. Use Permit and Architectural Control/Carrie Strickland/650 Live Oak Avenue:

Request for approval of a use permit for structural modifications and a change of use from mortuary (vacant) to non-medical office (with the option for retail or personal service uses), and architectural control to remodel the exterior of an existing commercial building in the C-4(ECR) (General Commercial, Applicable to El Camino Real) zoning district. As part of the proposed project, the existing detached garage would be demolished and the parking lot would be reconfigured.

Staff Comment: Planner Rogers said staff had nothing to add to the written report.

Questions of Staff: Commissioner O'Malley said the staff report on page 3 referred to a significant project redevelopment in about three years and asked if there were any details on that project. Planner Rogers said there were not but the applicant had indicated there was a goal to improve the value of the property now as the Specific Plan was moving through its process and then to look at redevelopment under the Specific Plan.

Commissioner O'Malley asked about the nonconformity related to landscaping. Planner Rogers said the minimum landscaping requirement in the C-4(ECR) District was 10 percent and this lot was currently at 4 percent. He said the applicant would be allowed to maintain and not increase the landscaping nonconformity as this was not a major redevelopment project.

Commissioner O'Malley noting the reconfigured parking asked whether there was a standard distance between the ends of parking spaces. Planner Rogers said for the rear parking lot that has 90-degree parking with a shared drive aisle, 23-feet was provided which was the Transportation Department's minimum standard for a shared parking access.

Public Comment: Ms. Carrie Strickland, Works Partnership Architecture, and Mr. Mike Tevick, Intrinsic Ventures, Menlo Park, introduced themselves. Mr. Tevick said their goal was to renovate, reinvigorate and revitalize this site. He said Ms. Strickland's company was located in Portland, Oregon, and he had found them to be quite innovative in taking existing structures and cost-effectively renovating those for employment based growth companies. He said there had been a lot of interest in leasing this space from small start ups, all non-medical, and they

already had part of the building leased for three years with occupancy to take place after this renovation. He said the goal for this building and houses next door was a larger project once the Specific Plan was adopted and implemented which was why they were proposing this simpler project now. He said they were adding landscaping on the frontage area which would not count toward the landscaping requirement but would enhance the appearance.

Commissioner Kadvany asked if there was existing irrigation for street trees. Ms. Strickland said there was no existing irrigation as there was no landscaping at this time. She said they had requested permission to hand water.

Commissioner Eiref asked about perspective lessees. Mr. Tevick said the tenant who was already signed was Vibes Solution Health Plan. He said this company provides health plan management for tech companies. He said a web based travel management company had expressed strong interest in leasing. He said he expected they could finish construction and have tenants in the building by November 1.

Commissioner Yu asked if the aesthetic of this project would be the baseline for the future redevelopment project as they had indicated doing something quickly for immediate occupancy but which would be flexible for future development. Mr. Tevick said he liked to innovate in architecture and he had found Ms. Strickland's firm to be very innovative and at same time paying close attention to the design and cost. He said he believed that bringing a younger, hipper crowd into Menlo Park was part of what would create vibrancy downtown. He said he was focused on transit-oriented development and providing opportunities to live, work and shop in a downtown area. He said he thought there was a huge potential for this in Menlo Park. Ms. Strickland said the aesthetic approach they took was to retain features and yet make the building and site look completely differently from how it looks now.

Chair Bressler closed the public hearing.

Commission Comment: Commissioner Riggs said he had asked staff questions previously and he wanted to share that information with the rest of the Commission. He said there was a reference to asphalt shakes, which was a Hardy Company product. He asked if there were samples. Planner Rogers said that there was a colors and materials sheet for this project equivalent to a colors and materials board. He said the asphalt shakes, the Hardy panels, were shown on Sheet 22. Commissioner Riggs said he was pleased with the project's adaptive reuse and the applicant planning ahead for renewal in the City. He moved approval as recommended in the staff report. Commissioner O'Malley seconded the motion.

Commissioner Kadvany asked how the decision was made about the number of street trees, noting that if the building was going to be there three years, then some additional trees might be desired. Planner Rogers said the number of street trees was based on the City's Public Works Department's standards for street tree spacing and that three trees were the maximum for this space. He said the applicant would work with the City's arborist and Engineering and Planning staff on the preferred type of tree. He said when redevelopment occurred the hope was the trees could remain or be relocated. Commissioner Kadvany made an informal suggestion that the applicant might want to pursue having more trees in this area.

Commissioner Yu said she had asked about the aesthetics as it was not her preference but appreciated the thought that went into the architecture.

Commissioner Ferrick said parking spaces 12 and 13 on the corner of the lot were not usable as parking. She asked if that space could be used for temporary landscaping. Chair Bressler asked if she wanted that as a condition or recommendation. Commissioner Ferrick asked what others thought. Commissioner Riggs said that the applicants would not be installing irrigation

which would be cumbersome. He said though at six parking spaces per 1,000 square feet the project was over-parked and under-landscaped, and had thought about landscape reserve. He said that the site would be redeveloped in three years and would incur additional costs for landscaping then. Commissioner Ferrick said that was why she was suggesting temporary plantings.

Commission Action: M/S Riggs/O'Malley 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. 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 Works Partnership Architecture, consisting of 22 plan sheets, dated received July 14, 2011, and approved by the Planning Commission on July 25, 2011, 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. Heritage trees in the vicinity of the construction project shall be protected pursuant to the Heritage Tree Ordinance.
- 5. Approve the use permit and architectural control subject to the following **project-specific** conditions:
 - a. The permitted uses include non-medical office, retail stores, and personal services. Non-medical office excludes facilities for physicians, dentists, and chiropractors where the primary purpose of the space is to provide diagnoses and outpatient care on a daily basis.
 - b. Simultaneous with submittal of a complete building permit application, the applicant shall submit an encroachment permit to create a detached sidewalk, which would include the installation of three new street trees, subject to review and approval of the Planning Division, Engineering Division, and City Arborist.

Motion carried 7-0.

- 2. **Architectural Control/SRI International/333 Ravenswood Avenue**: Request for a one-year extension to an architectural control approval for the construction of a carbon dioxide (CO2) capture structure in the C-1-X (Administrative and Professional, Restrictive - Conditional Development) zoning district. The structure is 33 feet, eight inches tall and located next to the interior side of Building S, at the southeastern portion of the site. The requested extension would allow the structure to remain in operation through June 30, 2012.

Staff Comment: Planner Rogers said staff had no additional comments to make at this time.

Public Comment: Mr. Michael Wright, Director of Real Estate and Facilities for SRI International, said the Commission had previously granted a one-year approval for a CO2 capture structure but the project had run into delays related to parts needed and re-evaluation of the design after it became operable. He said they wanted run the structure through another experimental course and needed another year to validate their results.

Commissioner Kadvany asked if the noise baffling used had made a difference. Mr. Wright said for their noise study a consultant did a complete noise study with the operation of the device and also made ambient readings as well which showed interestingly that there was enough ambient noise in the vicinity to drown out the noise of equipment.

Chair Bressler closed the public hearing.

Commission Comment: Commissioner Ferrick moved to approve as recommended in the staff report. Commissioner Riggs seconded the motion. Chair Bressler noted for the record that the staff report indicated there were no code violation complaints associated with the existing installation.

Commission Action: M/S Ferrick/Riggs 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. Adopt the following findings, as per Section 16.68.020 of the Zoning Ordinance, pertaining to architectural control approval:
3. The general appearance of the structure is in keeping with the character of the neighborhood.
 - a. The development will not be detrimental to the harmonious and orderly growth of the City.
 - b. The development will not impair the desirability of investment or occupation in the neighborhood.
 - c. The development provides adequate parking as required in all applicable City Ordinances and has made adequate provisions for access to such parking.
4. Approve the architectural control subject to the following **standard** conditions:
 - a. Development of the project shall be substantially in conformance with the plans prepared by SRI International, consisting of six plan sheets, dated received May 27, 2010, and approved by the Planning Commission on June 14, 2010, except as modified by the conditions contained herein, subject to review and approval of the Planning Division.
5. Approve the architectural control subject to the following **project-specific** conditions:
 - a. The architectural control shall expire on June 30, 2012, and all associated equipment shall be removed, unless an extension is approved by the Planning Commission.

Motion carried 7-0.

3. **Use Permit and Architectural Control/Peggy Lo for Lo Property Management/2484 Sand Hill Road:** Request for a use permit and architectural control for the construction of a new 11,392-square-foot office building (Building 9) and associated site improvements at the Quadrus campus located at 2400-2498 Sand Hill Road in the C-1-C (Administrative, Professional and Research, Restrictive) zoning district. The proposal includes the elimination of approximately 1,798 square feet of gross floor area from Building 1 and the demolition of approximately 685 square feet from Building 4 in order for the gross floor area to be used in Building 9, and the removal of two heritage oak trees, both in fair condition, due to the potential impacts from the proposed construction. Parking would be provided in a combination of striped spaces and landscape reserve parking. As part of the proposal, the applicant is requesting approval of a Below Market Rate In-Lieu Fee Agreement.

Staff Comment: Planner Chow said staff had no additional comments and noted the colors and materials board was being passed around for review.

Questions of Staff: Commissioner Riggs asked if the City had investigated the possibility of relocating the two Oak trees with the applicant. Planner Chow said that they had not because of the condition of the trees.

Public Comment: Ms. Peggy Lo, Quadrus Property Manager, said this proposal was a wonderful culmination for the plan Kaiser had initially created for building out the site.

Mr. Richard Campbell, Hoover Associates, project architect, said the staff report was well written and comprehensive. He said the design objectives were to meet the tenant's programs. He said the building would be on a podium in the hillside and would preserve the architectural style of the campus. He noted that architect Cliff May had done the original design for the site that Hoover Associates had worked with him on those designs. He said another objective was to disturb as little as possible the existing landscaping. He said about 60 percent of the proposed building would be situated on what was not an asphalt parking lot. He said that they would retain 10 heritage trees in the immediate vicinity but would need to remove two Oaks, one of which was growing under the cover of two other trees and one located in the footprint of the new building. He said they would replace those with 36-inch box Live oak trees in better locations. He said the building had great opportunity for views toward the foothills, which was being enhanced with balconies and decks. He said they were seeking a sustainable design and they were almost at Gold LEED level and would at the least qualify for a high Silver LEED. He noted it was up to the owner whether they pursued the actual certification.

Commissioner Kadvany asked why concrete was required over the metal decking in the building where square footage was being abandoned to free up square footage for this project. Mr. Campbell said the concern was the space had to be abandoned and the head space reduced to prevent the space from being reused. Commissioner Kadvany asked about the value of LEED certification. Mr. Campbell said LEED silver was very easy to attain. He said with many of their projects the property owners did not want the actual certification because of the cost associated with the certification process. Commissioner Kadvany asked if the building would have operable windows. Mr. Campbell said they were looking at that but most mechanical engineers did not like operable windows as it affected energy efficiencies.

Commissioner Eiref asked how much it would cost for the metal and concrete in the basement area. Mr. Campbell said they did not have an estimate for that work.

Chair Bressler closed the public hearing.

Commission Comment: Commissioner O'Malley moved to approve as recommended in the staff report. Commissioner Riggs seconded the motion. He noted that the study session on this project was very helpful. He said related to moving the Oak trees that although they could be moved it was very expensive, but he wanted to bring their availability to the attention of the City Public Works Department as the City seemed to lose one to two oaks every winter.

Commissioner Kadvany asked if others were willing to consider a less restrictive solution to eliminating the square footage. Planner Chow said they had conferred with the City Attorney and applicant as how best to remove this usable space. She said having the concrete slab would make it practically impossible or difficult to remove the metal decking and that this was the compromise worked out with the applicant. Commissioner O'Malley said the Commission had discussed this extensively and given staff direction to work with the applicant on a solution. As the maker of the motion, he said he wanted to leave the recommendation as it was. Commissioner Riggs said as the maker of the second to the motion that he did not want to change the recommendation either.

Commission Action: M/S O'Malley/Riggs 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. Make 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.
4. Approve the Below Market Rate Housing In Lieu Fee Agreement, recommended by the Housing Commission on July 6, 2011.
5. 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 Hoover Associates, consisting of 28 plan sheets, and the GFA Review plans, consisting of seven sheets, dated received July 19, 2011, except as modified by the conditions contained herein subject to review and approval by the Planning Division.
 - b. Prior to building permit issuance, the applicants shall comply with all Sanitary District, Menlo Park Fire Protection District, Recology, 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 Group that are directly applicable to the project.
 - d. Prior to demolition permit and building permit issuance, the applicant shall comply with the requirements of Chapter 12.48 (Salvaging and Recycling of Construction and Demolition Debris) of the City of Menlo Park Municipal Code, and is subject to review and approval by the Engineering and Building Divisions.

- e. Prior to demolition permit issuance, the applicant shall submit a plan for 1) construction safety fences around the periphery of the construction area, 2) dust control, 3) erosion and sedimentation control, 4) tree protection fencing, and 5) construction vehicle parking. The plans shall be subject to review and approval by the Building and Engineering Divisions prior to issuance of a demolition permit. The fences and erosion and sedimentation control measures shall be installed according to the approved plan prior to commencing demolition.
- f. Prior to demolition permit issuance, the applicant shall submit a heritage tree preservation plan, detailing the location of and methods for all tree protection measures, as described in the arborist report. The project arborist shall submit a letter confirming adequate installation of the tree protection measures. The project sponsor shall retain an arborist throughout the term of the project, and the project arborist shall submit periodic inspection reports to the Building Division. The heritage tree preservation plan shall be subject to review and approval by the Planning Division.
- g. Prior to demolition permit issuance, the applicant shall submit a truck route plan and permit to be reviewed and approved by the Transportation Senior Engineer.
- h. Concurrent with the submittal of a complete building permit application, the applicant shall submit a plan for any new utility installations or upgrades for review and approval by 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, dimensions, and colors of all meters, transformers, junction boxes, relay boxes, and other equipment boxes. The utility plans shall also show backflow and Double Check Detector Assembly (DCDA) devices.
- i. Concurrent with the submittal of a complete building permit application, the applicant shall submit a Grading and Drainage Plan for review and approval by the Engineering Division. The Grading and Drainage Plan shall be prepared based on the City's Grading and Drainage Plan Guidelines and Checklist and the Project Applicant Checklist for the National Pollution Discharge Elimination System (NPDES) Permit Requirements. The erosion and sediment control plans shall be attached to the Grading and Drainage plans and may be similar to the erosion control plan provided for the demolition permit. The Grading and Drainage Plan shall be approved prior to or concurrent with the issuance of a building permit.
- j. Concurrent with the submittal of a complete building permit application, a design-level geotechnical investigation report shall be submitted the Building Division for review and confirmation that the proposed development fully complies with the California Building Code. The report shall determine the project site's surface geotechnical conditions and address potential seismic hazards. The report shall identify building techniques appropriate to minimize seismic damage.

- k. Prior to building permit issuance, the applicant shall enter into and record a "Stormwater Treatment Measures Operations and Maintenance (O&M) Agreement" with the City subject to review and approval by the Engineering Division. With the executed agreement, the property owner is responsible for the operation and maintenance of stormwater treatment measures for the project. The agreement shall run with the land and shall be recorded by the applicant with the San Mateo County Recorder's Office.
6. Approve the use permit and architectural control subject to the following **project-specific** conditions:
- a. Prior to issuance of a grading or building permit, the applicant shall obtain the necessary approvals to merge the two developable lots (Parcel One and Parcel Three) into a single lot subject to the review and approval of the Planning and Engineering Divisions, and submit documentation of recordation with the San Mateo County Recorder's Office to the Building Division.
 - b. Prior to issuance of a grading or building permit for Building 9, the applicant shall obtain the necessary approvals as well as final the permit associated with the elimination of GFA in Building 1 and the removal of GFA in Building 4, subject to the review and approval of the Planning and Building Divisions.
 - c. Concurrent with the submittal of a complete building permit application for the elimination of gross floor area in Building 1, the applicant shall update the plans to show a four-inch-thick concrete slab above the metal deck, subject to the review and approval of the Planning and Building Divisions.
 - d. Concurrent with the complete submittal of a demolition permit for Buildings 1 (2400 Sand Hill Road) and 4 (2460 Sand Hill Road), the applicant shall submit a deed restriction for review and approval by the Planning Division and City Attorney that indicates a portion of the basement in Building 1 shall be non-usable, non-occupiable space, and that conversion of this space into usable or occupiable space would be subject to review and approval of a use permit revision, and require the elimination of gross floor area elsewhere on the property. The applicant shall submit documentation of recordation with the San Mateo County Recorder's Office to the Building Division prior to issuance of a building permit for Building 9 (2484 Sand Hill Road).
 - e. Concurrent with the submittal of a complete building permit application, the applicant shall submit revised GFA calculation diagrams showing the inclusion of the circulation areas associated with the shower and mechanical/electrical rooms in the garage (approximately 135 square feet). If minor adjustments are needed as part of the construction of Building 9, the applicant has the flexibility to add square footage up to the maximum GFA for the site. The GFA calculation diagrams are subject to the review and approval of the Planning Division.

- f. Prior to or concurrent with the submittal of a complete building permit application, the applicant shall execute the Below Market Rate (BMR) Housing Agreement. Prior to building permit issuance, the applicant shall pay the in lieu fee of approximately \$129,180.50 (8,909 net new sf x \$14.50/sf) in accordance with the BMR Housing Agreement (as of July 1, 2011). The BMR fee rate is subject to change annually on July 1 and the final fee will be calculated at the time of fee payment.
- g. Prior to building permit issuance, the applicant shall pay a Traffic Impact Fee (TIF) at an office rate of \$3.94 per square foot of net new gross floor area (8,909 sf), subject to the Municipal Code Section 13.26. The fee rate is subject to change annually on July 1 and the final calculation will be based upon the rate at the time of fee payment. The TIF rate is adjusted each year based on the ENR Construction Cost Index percentage change for San Francisco.
- h. Prior to building permit issuance, the applicant shall pay the applicable Building Construction Street Impact Fee that is approximately \$31,900 (assuming an estimated construction value of \$5,500,000).
- i. The applicant shall maintain a minimum of 892 off-street parking spaces, of which 251 parking spaces are in landscape reserve. Should landscape reserve parking stalls be needed in the future, either the applicant or the City may make a request, subject to review and approval of the Planning Division. The conversion of landscape reserve parking will require confirmation that the minimum landscaping requirement of 30 percent is met, and may require additional stormwater treatment measures at the time of implementation.

Motion carried 7-0.

- 4. **Use Permit Revision/InVisage Technologies/998 Hamilton Avenue (formerly 978 Hamilton Avenue)**: Request for a revision to a use permit, previously approved in October 2008, for the indoor storage and use of hazardous materials for the research and development of novel semiconductor materials and devices in the M-2 (General Industrial) zoning district.

Staff Comment: Assistant Planner Perata said staff had no additional comments.

Public Comment: Mr. Jess Lee, CEO, InVisage Technologies, said his company has made a public announcement that they were using novel semiconductors to make cameras more effective and powerful for advanced uses. He said they had expanded their company to over 30 people and had received another round of funding. He said the request for a revision to their use permit was to support increasing their research and development operations.

Chair Bressler closed the public hearing.

Commission Comment: Commissioner Riggs moved to make the findings and approve the use permit. He said he was doing this based on the five recommendations from Fire District, which were included by reference in the standard conditions of 3.a and 3.b. He said the increase in

change in chemical quantity and type was such that both the Building Department and Fire District had commented. He said staff had indicated the recommendations were tied to conditions 3.a. and 3.b. Commissioner O'Malley seconded the motion. He thanked staff for including comparisons of the requested revised changes to the types and quantities of chemicals with what was originally permitted. Commissioner Ferrick said the comparison was very helpful to understand what was being asked for in the revision.

Commission Action: M/S Riggs/O'Malley 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 provided by Dennis Kobza & Associates, consisting of six plan sheets, dated received July 13, 2011, and approved by the Planning Commission on July 25, 2011 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.

Motion carried 7-0.

5. Use Permit/City of East Palo Alto/Eastern terminus of Bay Road (Cooley Landing):

Request for a use permit to create a park and associated improvements on two parcels located in the FP (Flood Plain) district. The development of the park would be in conjunction with a comprehensive plan for improvements on the adjacent property located in the City of East Palo. The plan includes enhanced open space and a nature center, with associated improvements such as parking, picnic tables, outdoor amphitheater, improved pier, interpretative center, and boat launch for use by the Menlo Park Fire Protection District. The proposal includes the removal of eight existing heritage trees, varying in health from poor to good.

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

Questions of Staff: Commissioner Kadvany asked if the Fire District already owned a boat. Planner Chow said she did not know but the applicant was working closely with the Fire District.

Commissioner Eiref said the report referred to a boat launch for the Fire District and in the staff report it referred to public boating access. Planner Chow said there was more than one boat launching area being proposed.

Ms. Shannon Alford, City of East Palo Alto, Project Manager for the Cooley Landing Project, said this area was currently a contaminated dump site located behind a locked fence. She thanked the City for their collaborative support of the project.

Ms. Theresa Zaro, Callandar Associates, provided a PowerPoint presentation on the project. She said the site was surrounded by the Ravenswood Open Space Reserve and the Baylands Nature Reserve. She said Menlo Park was located both north and south of Cooley Landing. She said the project site was adjacent to six parcels three of which were in Menlo Park and owned by Mid-Peninsula Open Space District. She said the project process had begun in 2003 and ramped up in 2009. She said a final concept plan was developed in 2009-2010 and schematic designs for all phases of the project have now been prepared. She said much of the proposed multi-use trail was within the City of Menlo Park's jurisdiction as well as an emergency boat launch. She said site remediation would include installing a two foot soils cap. She said Phase I of the project would be cleaning up the site, building a trail and installing picnic tables. She said under multiple phases more features were intended such as an education center. She said the project was in the process of getting approval from the US Army Corps of Engineering and that BCDC was pending their approval upon local approval. She said their hope was to begin construction in the fall.

Commissioner Riggs said the staff report indicated some kayak and boating launch ramps and wondered when that might occur. Ms. Zaro said that would be in Phase 6 of the project. Commissioner Riggs asked about the need to remove the heritage trees, particularly Oaks. Ms. Zaro said the remediation recommended was to install two feet of soils and that the first foot would be highly compacted such as was done on landfills. Ms. Alford said remaining trees

would have to be fenced to prevent visitors from getting close to those soils because of the possibility of contamination from heavy metals.

Commissioner Ferrick asked how capping the soil prevented the contaminants from entering the Bay. Ms. Alford said there was no issue with groundwater impact and extensive testing done by the US EPA found there was shallow soil contamination and human health exposure only and that there was no ecological concern. She said the entire soils cap would be fortified by concrete riprap along the shore line.

Commissioner Eiref said it would be fantastic to have water access sooner than later. Ms. Alford said the project at just enough grant funding at this point to get the soil remediated and the trail constructed. She said they were actively seeking private and public funders. She said they were primarily getting grant funding and that it would take about \$10 million to do the entire project. Commissioner Eiref asked about the history of the site. Ms. Zaro said from 1930 to 1950 the area was used as a landfill. She said later it became a boat repair facility, the owner of which had imported soil to the site which proved to be contaminated.

Commissioner Yu asked what kind of partnerships they had for the educational center. Ms. Alford said the center was conceptual at this time.

Commissioner Kadvany asked why the Fire District needed access to the Bay. Ms. Zaro said the Fire District has a hydroplaning boat that takes off from mud, which they launch from another site at this time but they would also like to have another place for emergencies and to provide training. Commissioner Kadvany asked if the project was exempt from flood plain requirements. Ms. Zaro said the project has gotten flood plain elevation certification for the building and eventually would get a FEMA map revision that would redraw the flood plain.

Mr. William Byron Webster, 37 year resident of East Palo Alto, said he has served as the acting Chair over the past four and half years of the Jane M. Beech Advisory Committee, which group has been actively promoting the development of the Cooley Landing. He urged the Commission to support the application as it was very important not only to the mental health needs of East Palo Alto but also for the enjoyment for the larger regional area.

Chair Bressler closed the public hearing.

Commission Comment: Commissioner Ferrick said she was very pleased to see this proposal and hoped the funding would emerge. She moved to approve the use permit as recommended in the staff report. Commissioner Yu seconded the motion.

Commissioner Yu suggested the applicant reach out to schools, families and seniors for partnerships once the outdoor education center was funded. She was pleased this outdoor project was a collaborative effort.

Commissioner Eiref said he hoped that they would get the funding for this project.

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

1. Make a finding that based on the Mitigated Negative Declaration prepared for the project, and certified by the City of East Palo Alto on February 15, 2011, there is no

substantial evidence that the proposed project will have a significant effect on the environment.

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 Callandar Associates, consisting of nine plan sheets, dated July 20, 2011 and recommended by the Planning Commission on July 25, 2011, except as modified by the conditions contained herein, subject to review and approval of the Planning Division.
4. Approve the use permit subject to the following **project-specific** conditions:
 - a. Prior to any demolition, grading or construction activity at the site located within the jurisdiction of Menlo Park, the Joint Permitting Agreement shall be executed by all parties involved.

Motion carried 7-0.

E. REGULAR BUSINESS

1. **Appeal of Staff Determination/Bradley W. Lancaster for Comerica Bank/800 Oak Grove Avenue:** Appeal of a staff determination that the proposed replacement roof-mounted equipment would be an increase in the height from the existing roof-mounted equipment, and would require screening to an existing building located in the C-3 (Central Commercial) zoning district.

Staff Comment: Assistant Planner Perata said photographs of the vicinity and maps of the area were being distributed.

Questions of Staff: Commissioner Kadvany asked if the equipment was standard enough for how it could be screened. Assistant Planner Perata said there were many different types of screening and one type they saw commonly was built on top of the roof. Commissioner Kadvany said the applicant had indicated this would cost \$50,000. Assistant Planner Perata suggested that question be asked of the applicant. Commissioner Kadvany asked about the photos. Assistant Planner Perata said the photo was of the existing condition.

Public Comment: Mr. Bradley Lancaster, C.V. Richard Ellis, the real estate services and project management company for Comerica Bank, and he was the project manager and was representing Comerica. He said the bank was doing preventive maintenance to replace six of the mechanical units and was replacing with more energy efficient units. He said this was a like to like replacement as the existing units and replacement units were the same tonnage, same cfm, and same configuration. He said the only difference was the units were more efficient and

slightly taller than the existing units. He said he did not believe the new units would create a visual impact as the units were now set back 12 to 14 feet from the edge. He said to see the units one had to be almost 90 feet away and an additional four inches of height would not produce a true visual impact. He said he had researched the ordinance and found evidence that it was intended to apply to new buildings and not to existing buildings. He said the estimate to do the roof screening was \$50,000 to \$60,000 and if there was a need to do structural reinforcement the cost would go higher. He said the new units would not be the tallest equipment and there were other elements taller. He said the cost was a significant impact to the project. He said his offer to paint the units to mitigate visual impact still stood and that that the visual impact of this project would certainly be less than that of other nearby buildings in the plaza.

Commission Comment: Commissioner Ferrick asked when the building was approved for new construction whether there was screening required for the mechanical equipment. Assistant Planner Perata said staff's understanding was that the units were installed before the effective date of the 1991 ordinance for screening. Commissioner Riggs said there was mention of the history of the ordinance and asked staff to address. Assistant Planner Perata said he did not have access to those minutes at this time.

Commissioner Riggs said when an ordinance was interpreted it was important that the intent align with the enforcement. He said he would have difficulty making a decision on this project if there was a discussion contrary to the enforcement of the ordinance. He said it was indicated this was intended for new buildings but he had seen it required of renovations when the only change was the upgrading of mechanical equipment.

Chair Bressler said the applicant indicated he had minutes from the meeting at which this ordinance was approved. Mr. Lancaster read from the February 12, 1991 City Council meeting minutes that City Attorney Cosgrove stated the ordinance would only apply to new buildings and not existing buildings.

Commissioner Yu asked if this was the first time this type of appeal was made and if an exemption had been made before. Assistant Planner Perata said to his knowledge this was the first appeal of the requirement for roof screening. Commissioner Yu asked if it was true that the original intent was for this to apply to new buildings why it was being applied here. Assistant Planner Perata said staff had discussed with the current City Attorney the applicability of this ordinance for this project and determined that the increase of height on the mechanical equipment would require roof screening. Commissioner Yu asked what the reasoning was. Assistant Planner Perata said the existing mechanical equipment units predated the 1991 ordinance and were considered legally nonconforming. He said the increase in the height of the equipment increased the nonconformity, which triggered the requirement for roof screening.

Commissioner Kadvany said there was no precedence for this type of appeal. Commissioner Riggs said the ordinance had been applied similarly many times but not appealed. Commissioner Kadvany asked if there were any intermediate solutions beyond painting the units. Mr. Lancaster said the units could be moved further back from the roof edge but it was a busy space and it would be hard to do that. He said their contention was this was a like to like replacement. Commissioner Kadvany verified that this statement was not referred to in the ordinance. He asked if the units could be painted out to match the building. Assistant Planner Perata said one of the options was to paint the units. Planner Chow said staff's

recommendation was to do roof screening on at least two sides of the roof with the option of painting out the units.

Commissioner Eiref said he visited the parking lot and he was hardly able to see the units from about a block away.

Commissioner Ferrick said her dilemma was whether the original intent was to apply only to new construction or not. She said she did not like placing a financial burden on a small business when they were attempting to increase energy efficiency, but she did not want to upset others who had upgraded mechanical equipment and had to do roof screening. She said painting the top part of the units would be one approach. She said she would prefer screening but given the size and age of the building, she would support painting the units.

Commissioner Riggs said he would like a review of the staff report and minutes from 1991 and have the intent verified. He asked if the Commission would continue the project to get staff's response. Chair Bressler said he would like the matter to be resolved now. Commissioner Yu said she agreed with Commissioner Riggs that it was important to understand the spirit of the law noting that while the applicant's arguments were cogent the requirement had been upheld numerous times for roof screening when there was equipment upgrades.

Planner Chow said this rule has been applied consistently with discretion. She said they have required roof screening when roof mounted equipment was increased and have allowed swap out of roof mounted equipment when those were truly the same or smaller size equipment. She said they have allowed painting but mostly in the M-2 district. Commissioner Kadvany asked if the equipment was painted to blend with the building rather than the environment. Planner Chow said that was generally the case.

Chair Bressler said he would like the applicant to be given permission to swap out the units and paint them and to have photographs of how those looked come back to the Commission for review. Commissioner Eiref suggested spray painting the existing units to see how it looked. He asked if the applicant could just screen the two units close to the edge. Mr. Lancaster said they had not considered an abbreviated screening but expressed his concern that might bring more attention to the rooftop. He said the proposed new units would not be the tallest units on the roof and there were other elements higher that did not require screening.

Commissioner Yu asked if it would make sense to make a decision but get clarification for future situations as she did not want to invite future appeals.

Commissioner O'Malley said it appeared that Commissioners did not support the existing ordinance which required roof screening. He said a number of buildings have had to put roof screening when changes were made to roof mounted equipment. He said he could not support upholding the applicant's appeal.

Commissioner Kadvany said he thought painting was an option but requiring a structure for roof screening was quite a demanding process with considerations having to be made about architectural compatibility and structural load capacity.

Commissioner Ferrick said she supported roof screening for buildings when buildings redeveloped but in many instances ordinances grandfathered in what has become a

nonconformity by the adoption of those ordinances and where requiring something else could place a financial hardship on the property owner.

Chair Bressler moved to allow the applicant to paint the new equipment to match the existing building to be reviewed by the Commission at which time they would make a decision about roof screening. He said they should also review the intent of the ordinance when there was not redevelopment.

Commissioner Riggs said the Commission was in an adjudicatory role in this matter and thought it should be researched before any decision was made. He was concerned with requiring the applicant to paint the equipment and then to get later information that roof screening would be required.

Chair Bressler asked if the applicant had the replacement equipment. Mr. Lancaster said he did. Chair Bressler asked if he was willing to install the units and paint then with the Commission's further consideration. Mr. Lancaster said he probably would need that with his client.

Commissioner Kadvany asked if Chair Bressler's motion was clear enough to proceed. Chair Bressler said his motion was to approve the installation of the new equipment to be painted to match the color of the building. He said separately he would like a meeting to review this ordinance and policy. Commissioner Kadvany seconded the motion to approve the applicant to install the new equipment to be painted to match the color of the building. He asked staff if that should include the CEQA findings. Staff indicated that was correct.

Commissioner Kadvany said that this proposal was close enough to the margins to be reasonable to approve.

Commissioner Eiref asked if the applicant had to have roof screening whether they would have to have a design process and review of structural integrity. Assistant Planner Perata said they would need a building permit for the project and the design would be processed through Planning staff.

Commission Action: M/S Bressler/Kadvany to uphold the applicant's appeal 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. Uphold staff's determination and deny the appeal subject to the following **standard** conditions:~~
 - ~~a. Simultaneous with the submittal of a complete building permit application, the applicant shall submit revised plans that provide screening along the Oak Grove Avenue and Crane Street elevations that fully screen the new roof-mounted equipment to the top of the tallest proposed unit.~~
- 4. Approve the project subject to the following project specific conditions.**
 - a. Prior to building permit issuance, the applicant shall revise the current building permit for the new roof-mounted equipment to identify that the**

applicant shall paint all of the new equipment to match the color of the building, subject to the review and approval of the Planning Division.

Motion carried 5-2 with Commissioners O'Malley and Riggs opposed.

Chair Bressler asked that staff review the intent and background of the screening for roof-mounted equipment ordinance and present it to the Planning Commission at a future meeting. Commissioner Riggs said he would like to be specific that the Commission was presented with an applicant's assertion that the minutes of the Council meeting when the ordinance was adopted indicated that the roof screening ordinance was to apply only to new building. Planner Chow said that staff would need to review the originating documentation and ensuing application and documentation related to staff's application of the ordinance. Commissioner Kadvany asked if they could get copies of the minutes approving the ordinance. Chair Bressler said he would also like the Commission to review the policy and consider if it needed to be changed.

ADJOURNMENT

Then meeting adjourned at 9:38 a.m.

Staff Liaison: Deanna Chow, Senior Planner

Recording Secretary: Brenda Bennett

Approved by Planning Commission on August 22, 2011