



PLANNING COMMISSION MINUTES

December 12, 2011

7:00 p.m.

City Council Chambers

701 Laurel Street, Menlo Park, CA 94025

CALL TO ORDER – 7:00 p.m.

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

INTRODUCTION OF STAFF – Deanna Chow, Senior Planner; Justin Murphy, Development Services Manager; Kyle Perata, Assistant Planner

A. REPORTS AND ANNOUNCEMENTS

1. Update on Pending Planning Items

A. 3000 Sand Hill Road – December 13, 2011 City Council Meeting

Planner Chow reported that the City Council would consider a request for an amendment to the Conditional Development Permit for 3000 Sand Hill Road to allow for a restaurant at the site.

B. Budget Amendment for the El Camino Real Downtown Specific Plan – December 13, 2011 City Council Meeting

Commissioner Riggs noted that the three year process using Perkins + Will had occurred under an \$800,000 contract and there was a proposed amendment to the contract to increase the payment amount by another \$200,000.

B. PUBLIC COMMENTS

There was none.

C. CONSENT

Chair Bressler pulled Item 2 from the consent calendar.

1. Approval of minutes from the November 14, 2011 Planning Commission meeting.

Commission Action: Unanimous consent to approve the minutes as submitted.

Consensus action carried 7-0.

2. **Architectural Control and Sign Review/John Clarke for SusieCakes/642 Santa Cruz Avenue:** Request for approval of architectural control to repaint the exterior façade of a commercial building and for review of a new channel letter sign, containing a red exposed neon tube in the C-3 (Central Commercial) zoning district.

Staff Comment: Planner Perata said a color/materials board as well as a sign specific color and material rendering were being distributed to the Commission.

Public Comment: Mr. Mark Flegel, Menlo Park, said it was great having a new business come to the downtown but he had an issue with the color. He said the City had done extensive work to develop sign guidelines which in recent years seemed to be neglected. He said there was a wide range of different styles of buildings downtown and they had tried to keep colors of the buildings aesthetically similar in beige/brown colors and to allow for somewhat unique signage. He said there was a growing hodgepodge of building colors downtown with jarring colors next to each other, including a chartreuse and orange building next to a pink and turquoise building. He said there were guidelines for color. He said it was unfortunate if those guidelines had not been provided to the architect for SusieCakes.

Commissioner Riggs asked when the City had adopted the color guidelines. Mr. Flegel said that was in the early 1980s.

Mr. John Clarke, John Clarke Architects, said the proposed color palette for the SusieCakes' Santa Cruz Avenue front was a simple palette of three colors: "Susie blue," ecru and an accent of poppy red. He said this was SusieCakes' corporate branding. He said the most important color was the "Susie blue." He said the colors would complement the existing stone walls that would remain.

Commissioner Ferrick asked what percentage of the Santa Cruz Avenue façade would be poppy red. Mr. Clarke said there was an existing stone façade that covered multiple tenants and then there was the stucco portal for their building. He said just the metal flashing would be poppy red or about 5 percent.

Commissioner Kadvany asked about the applicant's conversations with staff about blue and red colors. Mr. Clarke said they had no conversation about complying with beige and brown color guidelines. He said the building right next to this location was stark white with bright green and purple. He said they were not told that the colors they were

proposing were unacceptable. He said the blue color would be a nice complement to the brown and the ecru was neutral.

Commissioner Riggs said the building was an L-shaped tenant space with glass exposure only on the tips of the “L” and glass along the breezeway. He said the layout showed equipment against the glass along the breezeway and that the glass would be glazed there. He said he was concerned with that. Mr. Clark said having a view into the office would be okay but they would prefer the glass be opaque to prevent a view into the mop sink and water heater area. Commissioner Riggs asked about moving those things. Mr. Clarke said they could locate the refrigerators there instead noting those were stainless steel. Commissioner Riggs said the blue in the front façade was the dominant color and asked how the diagonal paint would be applied. Mr. Clark said the diagonal would be done in ecru, which would break up the mass of the front elevation. Commissioner Riggs said the SusieCakes’ sign on the rendering looked paler than the blue on the materials board. Mr. Clark said the sign was open channel and the inside channels were the same color as the Susie blue and the outside face of the channel was the darker blue. Commissioner Riggs asked if the base would be blue. Mr. Clarke said there was an existing stucco base that they would paint. Commissioner Riggs said the neon was an exposed tube that floated. Mr. Clarke said that was correct.

Commissioner O’Malley asked if they had considered doing a display in the breezeway area so that glass would not have to be made opaque. Mr. Clarke said the products were baked fresh each day and whatever was not purchased was disposed. He said SusieCakes has an icon they like to put in their display window but they had found out the master sign requirements for the building would not allow that. He said they thought of ways to dress up the breezeway but had not considered displaying products.

Commissioner Riggs said he did not see exterior lighting indicated. Mr. Clarke said there were two exterior sconce lights installed by a previous tenant and recessed lighting about the storefront. He said the sconce lights would be removed and the recessed lighting retained.

Chair Bressler closed the public comment period.

Commission Comments: Commissioner Riggs asked about the City’s color guidelines. Planner Perata said staff was not familiar with any color guidelines adopted for Santa Cruz Avenue. He said he had consulted with the Development Director and Public Works. He said there had been a 1977 Santa Cruz Avenue Plan design for public right-of-way improvements. He said to staff’s knowledge there was no private property color palette approval.

Commissioner Riggs said since 1977 there had been at least one proposed downtown design guidelines developed. Development Services Manager Murphy said that was correct. Commissioner Riggs asked if there had been color guidelines in that document even though it had not been adopted. Development Services Manager Murphy said

there might have been comments on color but he did not recall guidelines. He said also the Center City Design Guidelines developed by Lindsay Buchanan were never adopted by the City.

Commissioner Riggs said he had not supported the remodel done by the previous tenant, but was supportive of the SusieCakes' look. He said the red was quite limited. He said he would move to approve with the contingency to see the blue paint in place on the façade. He said his concern was the intensity of the blue and that it might be even more intense when covering a larger area and when sunlight hit it. He said also he wanted the interior reconfigured so the glass in the breezeway area would not need to be opaque, noting that a view of refrigerators and stove would be fine. He said the blue should be subject to the approval of a subcommittee as suggested by Chair Bressler. Chair Bressler said that staff could send photographs for approval by the Commission.

Commissioner Yu said she pulled the streetscape view up on her phone and thought the blue was quite attractive and very Americana. She said she did not like there being a contingency on the preferred color scheme. Commissioner Riggs noted he does color consultancy and that the small color sample provided for them to look at could when painted over a large area look much more vibrant. He said if the resultant color was what was shown in the presentation board for the building that would be fine. He said having a second look at the actual color on the building would give the Commission comfort and respect Mr. Flegel's concerns as well.

Commissioner Kadvany said his first reaction to the color samples was that the building would look garish. He said the question he posed was whether he would want to see more of this color scheme downtown. He said he would generally not like the red highlighting around buildings. He said the question was how buildings downtown looked in combination.

Development Services Manager Murphy asked if there was a motion or second. Chair Bressler said there was a motion to approve with a modification to not glaze windows and some follow up regarding the color. He said there was not a second and he wanted to give Commissioners a chance to comment.

Commissioner Ferrick said she concurred with Commissioner Yu that the proposed color scheme was fresh and clean. She said she had gone to the SusieCakes website and the color scheme did not appear garish but looked modern. She said importantly the City wanted to attract businesses downtown. She said as Commissioner Yu had noted the amount of stone around the front was extensive and the area that would be blue was much less of an area than that covered with stone. She said she did not want a requirement in the motion that might add expense and make the planned improvements risky to do. Commissioner Riggs said he was only talking about surface paint on the front of the building. Commissioner Ferrick said she would prefer they approve the item. She said if there was a problem an appeal could be made. Chair

Bressler said Commissioner Riggs had indicated the choice of blue would be fine if it really looked like it did on the presentation board. He suggested that determination be made through administrative review. Commissioner Ferrick said administrative review would be fine. Chair Bressler said if the color was found to be unsatisfactory then it could be brought back to the Commission for consideration.

Commissioner Eiref said there were half tones and asked how the Commission felt about asking the applicant to lower the intensity of the color a half tone. He said some people might like the consistent brown color downtown but he knew quite a few people who thought it looked drab, dull and outdated. He said this façade could possibly brighten up the downtown.

Commissioner O'Malley said he agreed with Commissioners Ferrick and Yu that the colors were attractive and could support Commissioner Riggs' idea to make sure the color was the same as shown on the presentation board. He said regarding glass in the breezeway area that he would prefer some to remain clear and open to a clean attractive area of the business or to have a display window.

Commissioner Riggs noted the Commission had acknowledged that the corporate color for an Arco station was a Chinese red but had asked them to tone it down a bit and they were willing to do that.

Commissioner Kadvany seconded Commissioner Riggs' motion to approve with a friendly amendment to have a different color for the light that was not red. Commissioner Riggs said he could not accept that. He said if the entire sign face was red he might be willing to accept that change. He said it was just a tube within a light blue channel that he thought would appear more as a lime color. Commissioner Kadvany withdrew his second.

Chair Bressler said Commissioner Riggs' motion was to approve with modifications to required that the blue on the façade be the same intensity of blue as shown on the presentation board and that determination was subject to administrative review. Commissioner Ferrick said she would second the motion. Commissioner Eiref asked if the motion included the component about the glass remaining clear along the breezeway. Chair Bressler said it did and asked Commissioner Riggs to clarify that portion of the motion. Commissioner Riggs said the glass along the breezeway was to remain clear and the mop sink area would be reconfigured so it was not in the exposed area.

Planner Perata said the motion made by Commissioner Riggs and seconded by Commissioner Ferrick was to approve as recommended in the staff report subject to a modification of the project so the glass along the breezeway would not need to be opaque and that the color was subject to administrative review for conformance with the rendering sample and not the chip sample. Commissioner Riggs said the goal was to have a very similar color and not something more intense.

Commissioner Kadvany asked if that applied to the red on the neon as well and thought that should be specific. He asked if the interior was white. Mr. Clarke said the interior palette was the same as the façade palette. He said there would be a blue wall in the rear and the ceiling and sidewalls would be decorator white with ecru below that. Chair Bressler said the final result should conform to the aesthetic spirit of what was in the rendering and that should include the neon. Commissioner Riggs said they could add that the red neon not be out of range with other examples around downtown and El Camino Real. Commissioner Kadvany said red neon would stand out and he did not support its use.

Commissioner Kadvany said he was not sure his packet had been complete as the staff report indicated the sign would not comply with items B7 to B12 sections of the guidelines addressing the use of bright signage in neon tubes noting attachment C with the relevant guidelines. He said he did not get that information. Planner Perata said it was Attachment D, noting a typographical error in the staff report. Commissioner Kadvany said that indicated neon tubes was not encouraged in signage.

Chair Bressler asked for clarification of the wording for the motion. Planner Perata said the second half of the motion was unclear to him but what he understood the motion to be was to approve per the staff report subject to rearrangement of the interior or modification of the project so the glass would not need to be opaque. He said he was unsure of the color modification. Commissioner Riggs said the concern was that the blue in actuality should be of similar intensity to that represented in the rendering. Chair Bressler said there was also the complete appearance including the neon light. Commissioner Riggs said he did not want to challenge the use of ecru and the red.

Planner Perata asked if the motion in the first part was to keep the glass clear or was that dependent upon the rearrangement of the interior. Commissioner Riggs said that there would need to be modification to the layout if the glass was kept clear and that should be subject to administrative review.

Commissioner Yu said there were concerns about the neon red and asked if it would be better to require it painted in a pantone color rather than in a neon sign. She said she was concerned about putting too many contingencies in the approval.

Chair Bressler said the motion was to not make the glass opaque and make sure the blue was the same kind of contrast as shown on the rendering. He said there was no mention of the neon in the motion and asked Commissioner Ferrick if she still seconded the motion. Commissioner Ferrick said she did.

Commissioner Kadvany said it was the combination of materials and color and that a painted red would be totally different for him.

Commission Action: M/S Bressler/Ferrick to approve the item as recommended in the staff report with the following modifications:

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 a finding that the sign is appropriate and compatible with the businesses and signage in the downtown area, and is consistent with the Design Guidelines for Signs.
4. Approve the architectural control and sign review request subject to the following **standard** conditions of approval:
 - a. Development of the project shall be substantially in conformance with the plans prepared by John Clarke Architects, dated received December 1, 2011, consisting of four plan sheets and approved by the Planning Commission on December 12, 2011, except as modified by the conditions contained herein, subject to review and approval of the Planning Division.
 - b. The applicant shall comply with all West Bay 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.
5. ***Approve the architectural control and sign review request subject to the following specific conditions of approval:***

- a. Applicant to modify project interior layout to keep windows clear along the breezeway with an attractive interior visible subject to administrative review.***
- b. The actual painted blue façade shall conform substantially in intensity and contrast with the colors shown on the project rendering subject to administrative review.***

Motion carried 4 to 3 with Commissioners Eiref, Ferrick, O'Malley and Riggs assenting and Commissioners Bressler, Kadvany, and Yu dissenting.

D. PUBLIC HEARING

- 1. Use Permit/Dan Rhoads/1030 Pine Street:** Request for a use permit to demolish a single-story, single family residence and to construct two, single-family dwelling units and associated site improvements, on a lot that is substandard with regard to lot width, located in the R-3 (Apartment) zoning district.

Staff Comment: Planner Perata said staff received an email earlier in the day from the property manager of the neighboring property concerning construction paths. He said that gentleman had opened communication with the applicant to discuss his concerns. He said copies of the email were distributed to the Commissioner and were available to the public on the table in the rear of the room.

Public Comment: Mr. Dan Rhoads, Young and Borlik Architects, said each single-family home would be 2,200 square feet. He said the R-3 District Zone encouraged higher density. He said they were required to get a use permit because of the lot width. He said the project met all setback requirements. He said a two-story apartment building to the left of the project site was located at three feet from the property line so their unit would be 16 to 17 feet from the property line to establish the 20-foot minimum between buildings on adjacent lots. He said he had spoken with the next door project manager who had concerns about the construction phase but not with the project itself.

Commissioner Kadvany asked about the mix of pervious pavers on A-3. Mr. Rhoads said that A-1 was a better representation. He said all of the paving would be pervious for drainage and to protect the Oak trees as they replaced the driveway.

Commissioner O'Malley confirmed that the location of the new driveway would be the same as the existing driveway.

Chair Bressler closed the public hearing.

Commission Comment: Commissioner Riggs said the design was attractive and complementary to the neighborhood. He moved to make the findings and approve as recommended in the staff report. Commissioner O'Malley seconded the motion. Commissioner Ferrick said she would concur and was pleased the applicant created the 20-foot distance between buildings. Commissioner Yu said the design was efficient in terms of space and they also created a beautiful façade with good curb appeal. Chair Bressler said the façade was well above average aesthetically for similar designs.

COMMISSION ACTION: M/S Riggs/O'Malley to approve the item as recommended in the staff report.

1. Adopt a finding that the project is categorically exempt under Class 3 (Section 15303, "New Construction or Conversion of Small Structures") of the current State CEQA Guidelines.
2. Make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be detrimental to property and improvements in the neighborhood or the general welfare of the City.
3. Approve the use permit request subject to the following **standard** conditions:
 - a. Development of the project shall be substantially in conformance with the plans prepared by Young and Borlik Architects, consisting of 16 plan sheets, dated received November 29, 2011 and approved by the Planning Commission on December 12, 2011, except as modified by the conditions contained herein.
 - b. Prior to building permit issuance, the applicants shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies' regulations that are directly applicable to the project.
 - c. Prior to building permit issuance, the applicants shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
 - d. Prior to building permit issuance, the applicant shall submit a plan for any new utility installations or upgrades for review and approval of the Planning, Engineering and Building Divisions. Landscaping shall properly screen all utility equipment that is installed outside of a building and that cannot be placed underground. 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.

Motion carried 7-0.

2. **Use Permit/Hoover Associates/3760 Haven Avenue:** Request for a use permit for an existing building that would include structural alterations that affect more than 10,000 square feet of gross floor area, a change in use to primarily office and warehouse uses, and an increase in the number of striped parking spaces. The applicant is also proposing outdoor storage of work vehicles, such as service vans and bucket trucks, in a new parking lot, which is currently a separate vacant parcel located adjacent to 3760 Haven Avenue. In addition, the applicant is requesting to remove eight heritage trees, mostly eucalyptus trees and generally located along the western perimeter of the site, to accommodate the expanded parking area.

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

Questions of Staff: Commissioner Riggs asked about the recommendation to put vinyl slats in the chain link fence noting this was located primarily along Marsh Road and the entrance ramp. Planner Perata said the requirement related to the new chain link fence that would be next to the FedEx property between the front parking area and the rear parking area. He said the condition did not apply to the existing chain link fence along Marsh Road.

Commissioner Ferrick asked how many people the tenant would employ. Planner Perata suggested the applicant could better answer that question. Commissioner Ferrick asked about the financial impact of losing manufacturing in this zoning district. Development Services Manager Murphy said the previous tenant had been an R&D company but he did not recall that they had been a large generator of sales tax. He said Comcast would be the tenant for half of this building and would not generate any

sales tax revenue for the City so the main benefit was the reinvestment in the building and the site.

Public Comment: Mr. Richard Campbell, Hoover Associates, Palo Alto, noted they were the architects for the project. He said also present were the property owner, Mr. Jerry Spielman, SAS Commercial Real Estate Services; Mr. Robert Vanderlipp, Director of Real Estate for Comcast; Ms. Jian Monroe, the interior designer; and Mr. Chris Hayes, Kieran Wright Civil Engineers. He said the project was an existing building of about 32,000 square feet, a partial two-story on the corner of Marsh Road and Haven Avenue, that was vacated earlier in the year. He said the owner was leasing about 15,000 square feet to Comcast as a service center. He said the main change was a large parking lot in the rear for Comcast's service vehicles.

Commissioner Kadvany said that the parking would be increased 46 spaces more than what was required. Mr. Campbell said the building was 32,636 square feet and the parking requirement was 109 spaces on the front parking lot and they were doing 119 spaces. He said Comcast required 80 spaces for vans and bucket trucks and other vehicles. Commissioner Kadvany asked if Comcast would fill all the spaces.

Planner Perata said the outside storage of vehicles would not replace required parking for the site. He said 109 spaces was the required parking for the 32,636 square foot building and could not be used for the outside storage of vans and bucket trucks. Commissioner Kadvany asked if the number of vans and bucket trucks were the same amount as the number of additional parking spaces being requested. Planner Perata said that Mr. Campbell might better answer that question. Commissioner Kadvany said the staff report indicated there might be some parking in landscape reserve. Planner Perata said that equated to about 10 spaces in the front area.

Chair Bressler asked if this would create much more parking than was needed. Mr. Campbell said the parking was for the storage of the service vehicles. Chair Bressler said those trucks would be out during the day. He said this might cause parking issues for a future tenant.

Development Services Manager Murphy said there was 1 parking space per 300 square feet provided for the future tenant. He said for this part of the site there was parking for all of the service vehicles and parking for employees and customers. He said within that there might be a number of excess spaces and staff would try to determine what that was within the space of the meeting. Chair Bressler asked if this was an appropriate parking level for what the tenant would be using. Development Services Manager Murphy said it was. He said there were other examples where there was not parking both for the service vehicles and employees, which created offsite impacts.

Commissioner Kadvany asked if the spaces in the rear parking lot were larger than normal spaces. Mr. Campbell said the van spaces were 10 by 20 feet and the bucket truck spaces were 12 by 24 feet.

Commissioner Ferrick asked about the impacts to drainage that might be created by the new surface parking. Mr. Chris Hayes, Kieran Wright Civil Engineers, said there were two bio-retention areas with planters. He said the north watershed would drain to the long, linear planter. He said this would give the minimum treatment for water quality required for storm water. Commissioner Ferrick confirmed with Mr. Hayes that the storm water would basically stay onsite. She asked about other environmental concerns from covering the area in pavement. Mr. Hayes said it was a vacant undeveloped parcel and they could not use pervious pavement materials as the vehicle wheels would churn it. Commissioner Ferrick asked if there would be impacts from nearby freeways and ramps that would cause water to drain to this site. Mr. Hayes said there was a Caltrans ditch along Marsh Road and the freeway ramp to Hwy. 101 that drained along the perimeter of the project. He said it all eventually went into the same drainage system but they were not related.

Chair Bressler closed the public hearing.

Commission Comment: Commissioner Kadvany said putting in the parking lot was a big change for this property and there might be a different need in the future. He asked how much of the parking could be landscaping in the rear lot. Mr. Campbell said they expanded the front parking lot some. He said if Comcast were to vacate the property then he would expect that the owner might put another building on the rear parcel. Commissioner Kadvany asked about landscaping in the front parcel. Mr. Campbell said there was landscaping along the front. Commissioner Kadvany said he would like landscaping to break up what would otherwise be a solid wall of cars to make it more attractive. Mr. Campbell said the parking in the front was currently straight across and they would just add some additional spaces.

Commissioner Ferrick asked about changes to the building. Mr. Campbell said there would be a very minor change. He said two projections at the rear of the building would be demolished; he said those two small rooms had been installed for the previous tenant and were no longer needed. He said they would remove some rollup doors and would replace them with storefront. Commissioner Ferrick asked if the building would be repainted. Mr. Campbell said it would be repainted using the existing color scheme. He said the roof was extremely cluttered with equipment that had been added over the years and all of that equipment would be removed and replaced with new equipment behind the roof screens. Commissioner Ferrick asked about outdoor signage. Mr. Campbell said there would be a monument sign. Commissioner Ferrick asked how many employees would work at this site. Mr. Campbell consulted with the Comcast representative, who indicated there were 95 employees but not all of them were at this site. Commissioner Ferrick asked if this was relocation or were these new employees at a new site. Mr. Robert Vanderlipp, Director of Real Estate for Comcast, San Ramon, said Comcast currently was located on Chrysler Drive and staff would relocate to the project site. He said there would probably be a small number of new employees added, about 20 maximum.

Commissioner Riggs said it was suggested by staff that some of the parking lot be in landscape reserve and asked if Comcast was open to the idea of less paving. Mr. Campbell said it would depend upon the operations of Comcast but his architectural firm supported less paving. Mr. Vanderlipp said their preference was to have dedicated parking spaces for the company vehicles and not have employees park their private vehicles in the same lot. He said it was the most efficient way for them to run their operation.

Development Services Manager Murphy said that the applicant had indicated there would be 60 employees but tonight they had indicated 95 employees. He said the plans showed 78 vehicles. He said he would like to get the applicant's intent for the number of vehicles for the record.

Mr. Campbell said Comcast would occupy 15,000 square feet and per the formula they needed to provide 50 parking stalls. He said the parking being provided on the rear parcel was comprised of regular parking spaces, van spaces and bucket truck spaces.

Chair Bressler said the number of employees indicated in the staff report did not agree with what was stated this evening. Development Services Manager Murphy said that was one concern but the other part was that Comcast intended to have 78 service vehicles stored at the site and no more than that. He said staff evaluated the proposal based on the expected 78 service vehicles. He said if their operations included having more than 78 service vehicles and more than 95 employees there would be much different impacts than what had been evaluated in the staff report.

Mr. Vanderlipp said the number of service vehicles they intended to have at the site was about 78. He said regarding the number of employees that the confusion was they potentially have 95 people reporting to this site but because they work different shifts, or report at different times or only occasionally to the building a different number was derived. Development Services Manager Murphy said he could understand some of the variants for the employees but confirmed with Mr. Vanderlipp that there would be 78 Comcast service vehicle spaces needed.

Commissioner Riggs said it appeared that 197 parking spaces would fit the needs both functionally per Comcast's needs for their service vehicles and per the ordinance requirements. Development Services Manager Murphy said that was the math he was working from until Comcast had indicated they could have up to 95 employees which would only leave a surplus of seven spaces.

Recognized by the Chair, Mr. Vanderlipp said that field technicians work 4/10 schedules and those schedules were over different days. He said employees have assigned vehicles. Commissioner Riggs asked if on some days there might be 45 rather than 35 technicians taking out their service vehicles. Mr. Vanderlipp said there was one day a week when all the technicians report to the office and take out service vehicles. He said

that was on Wednesday. Development Services Manager Murphy said there were then seven spaces that could be put in landscape reserve.

Commission Action: M/S Bressler/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. Approve the use permit request 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 26 plan sheets, dated December 7, 2011 and approved by the Planning Commission on December 12, 2011, except as modified by the conditions contained herein.
 - b. Prior to building permit issuance, the applicants shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies' regulations that are directly applicable to the project.
 - c. Prior to building permit issuance, the applicants shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
 - d. Prior to building permit issuance, the applicant shall submit a plan for any new utility installations or upgrades for review and approval of the Planning, Engineering and Building Divisions. Landscaping shall properly screen all utility equipment that is installed outside of a building and that cannot be placed underground. 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. Prior to building permit issuance, the applicant shall submit proposed landscape and irrigation documentation as required by Chapter 12.44 (Water-Efficient Landscaping) of the City of Menlo Park Municipal Code. If required, the applicant shall submit all parts of the landscape project application as listed in section 12.44.040 of the City of Menlo Park Municipal Code. This plan shall be subject to review and approval by the Planning and Engineering Divisions. The landscaping shall be installed and inspected prior to final inspection of the building.
4. Approve the use permit request subject to the following ***project-specific*** conditions:
- a. Simultaneous with the submittal of a complete building permit application, the applicant shall submit deed restrictions and/or easements for access, parking, and stormwater runoff, subject to review and approval of the Planning and Engineering Divisions. Prior to issuance of a building permit, the applicant shall submit proof that the documents have been recorded with the County of San Mateo Recorder's Office.
 - b. All service vehicles and employees associated with Comcast (or successor) are required to enter and exit the site from the entrance along Haven Court, at all times.
 - c. Prior to issuance of the building permit, the applicant shall enter into a Deferred Frontage Improvement Agreement (DFIA) with the City, which requires posting cash or check payment in the amount equal to 100% of the cost of the design, construction, and construction management for the frontage improvements along Haven Avenue. The frontage improvements shall include, but not be limited to, the following: vertical curb and gutter, 5-foot sidewalk, 4 street trees, curb and gutter pavement patch, and associated grading. Prior to execution of the DFIA, the applicant shall submit a cost estimate for review and approval by the Public Works Director. The DFIA shall stipulate that the funds shall be used solely for improvements along this project's Haven Avenue frontage. Furthermore, the DFIA shall stipulate that the applicant is responsible for obtaining

necessary permits and constructing said improvements at such time as separate modifications to the curb return and traffic signal pole at the adjacent corner of the Haven Avenue and Marsh Road intersection are constructed as determined by the Public Works Director. If the applicant constructs the frontage improvements consistent with intersection modifications as determined by the Public Works Director, the City shall refund the money to the applicant. In addition, the DFIA shall stipulate that the City may utilize the funds to construct the frontage improvements or provide a reimbursement of the funds to a third party to construct the frontage improvements as determined by the Public Works Director.

- d. Prior to building permit issuance, the applicant shall pay a Traffic Impact Fee (TIF) in the amount of \$10,754.72, 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.
- e. Simultaneous with the submittal of a complete building permit application, the applicant shall revise the chain link fencing to include vinyl slats or equivalent materials for screening of outside storage.

Motion carried 7-0:

E. REGULAR BUSINESS

1. **Appeal of Staff Determination/Shannon Thoke/116 O'Connor Street:** Appeal of a staff determination regarding 1) the use of a portion of an existing accessory structure as a secondary dwelling unit, 2) the need to obtain a building permit for a previously constructed addition to the accessory structure, 3) the use of a portion of an existing one-car garage for cooking facilities and 4) the legal non-conforming status of the main structure with regard to the front setback for a property located in the R-1-U (Single-Family Urban Residential) zoning district.

Staff Comment: Planner Chow said that the item before the Commission was an appeal of staff's determination of four items that could be categorized into two main topics. She said staff had worked with the City's Attorney on a review of these items and the City Attorney had met with the appellant and Council Member **Cohen** to discuss these items, staff's position and to explore options. She said the first topic was whether the main structure was considered a conforming or legal nonconforming structure depending on the front setback measurement. She said staff had determined that it was a legal nonconforming structure due to the noncompliance with the 20-foot front setback requirement measured from the current front property line. She said the Zoning Ordinance was clear on the definition of a front property line and neither the Planning Commission nor City Council had the ability to implement development standards

differently on an ad hoc basis. She said there was no discretion on this topic in the Zoning Ordinance. She said the second, third and fourth items of appeal related to whether the existing detached garage/accessory structure contained a legal nonconforming secondary dwelling unit. She said staff had determined that the existing structure was legal nonconforming. She said although the right and rear setbacks were nonconforming, the structure could be maintained as a one-car garage and for use ancillary to the main structure but not for the purpose of a secondary dwelling unit. She said by definition of an accessory structure/accessory building, the space could not be used for living or sleeping quarters. She said unfortunately the existing encroachment of the right and rear setbacks of the detached garage/accessory structure were greater than 50 percent of the required setbacks and the variance to convert the accessory structure into a secondary dwelling unit was not possible without modifications to the existing footprint of the building or a Zoning Ordinance amendment. She said the requirements for a secondary dwelling unit and the criteria for a variance request were clearly stated in the Zoning Ordinance. She said neither the Planning Commission nor the City Council had the discretion to grant a variance in excess of 50% of the requirement regardless of the age of the structure. She said prior to 1993 when the City adopted its secondary dwelling unit ordinance, secondary dwelling units were not permitted in single family residential zoning districts and that a non-permitted conversion was not considered legal nonconforming. She said reversing staff's determination on the legality of a secondary dwelling unit absent any new substantial evidence would open the door for other interpretations where there was clearly no ambiguity in the Zoning Ordinance. She said staff recommended that the Planning Commission uphold the determination that staff had outlined in the staff report.

Commissioner O'Malley said the City Attorney had indicated that there was no legal basis to grant the appeal but yet the Commission was being asked to consider the appeal. He said Commissioners did not have legal training so he questioned them being asked to make such a determination. Planner Chow said it was complex. She said the City Attorney had indicated the appellant could make an appeal of staff's decision but there was not a legal basis for the Planning Commission to overturn staff's decision noting the comments she had made previously on the Zoning Ordinance. Commissioner O'Malley asked if the Commission denied the appeal whether the appellant could take it to the City Council. Planner Chow said that was correct but restated that there would be no legal basis for the City Council to uphold the appeal as it was not possible to change the Zoning Ordinance on an ad hoc basis.

Commissioner Yu asked what the impact had been on the appellant that was driving her to appeal and what could be done to resolve. Planner Chow said she was not sure what Commissioner Yu meant by the impact on the applicant. Commissioner Yu said there were a number of rules coming into play for the appellant. She asked if those rules prohibited the applicant from being able to remodel her residence, prevented her renting out the other space, or subjected her to fines. Planner Chow said there were a couple of issues that the appellant had been dealing with in that there were several potential issues related to the proposed remodel and expansion of the existing

residence. She said the first was an attic that had been converted into second floor living space, which would need to be remedied either through building permits, if permissible under current building code, or through a use permit process for the second story expansion remodel. She said the planned expansion would trigger a use permit review because it would exceed the 50% threshold for a nonconforming structure, which nonconformity was encroachment into the front setback. She said the next question was whether there was a secondary dwelling unit or an accessory building/one car garage. She said staff did not think there was a secondary dwelling unit. She said the structure might have been used for living purposes, but historical use did not set precedent for legally converting a use from a one car garage. Commissioner Yu said that meant the applicant would lose her rental income ability for the garage. Planner Chow said the space could be used as an extra room

Commissioner Riggs asked what the extent of the non-permitted modifications to the attic was. Planner Chow said she had seen photos that showed it was a bedroom space with a stair well. Commissioner Riggs asked what the City's objection was to using the attic space. Planner Chow said staff had determined through the review of records and appraisals that this has been a two-bedroom single-story house.

Development Services Manager Murphy said the modified attic became an issue because of the use permit requirements. He said the applicant's submittals were showing the attic as existing improved space. He said when it came to staff's attention that the second story improvements had been made without a building permit it was staff's duty to the City and the public it serves to put the applicant on notice that she would need to go through the proper process for approval. He said the preferred approach to resolving the issue would be for the applicant to decide to go through the use permit process. .

Commissioner Kadvany said the 1976 subdivision map showed a bumpout. Planner Chow said the appellant had photos to show the Commission. She said page B9 showed a garage on a 1952 appraiser's report that did not show a bumpout and the tentative map excerpt on B17 did not show a bumpout. Commissioner Kadvany said there was a letter from the previous owner indicating they had not made any substantial improvements like that so either they were mistaken or the site map was wrong about the bumpout. He asked how it was proven that the accessory structure was not a secondary dwelling unit. Development Services Manager Murphy said part of that was there would have been an increase in in-lieu park and recreation fees per residential unit. He noted a subdivision on Fremont Street that resulted in four townhomes and other locations in the City where people had to go through a process to provide evidence that accessory structures were considered legally established secondary dwelling units. He said staff went through that process with this applicant and reviewed carefully to make the case for the applicant but ultimately staff's determination was that this was not a legally established use. Commissioner Kadvany asked what a real estate agent might tell a client about such a property. Development Services Manager Murphy

said this was beyond the City staff's expertise but there were definitely stricter disclosure requirements for real estate transactions.

Public Comment: Ms. Shannon Thoke, property owner, said in May 2011 she began the process to add to her house. She said she visited the Planning Division on four different occasions to ensure she would be ready to apply for a building permit. She said Planning staff found no issues with her plans for an addition. She said however her designer was told on her second visit that the finished attic would not be included in the existing square footage as per Ms. Thoke's original conversation with staff. She said since that reduced her existing square footage she was then required to apply for a use permit and was told by staff it would sail through the process. She said on her next visit she was told she would not be able to apply for a use permit as there was an existing violation on file in regards to a detached rental property. She said that situation had been brought to her attention in October 2010 and she had worked with Code Enforcement and Planning staff to alleviate any concerns. She said that despite satisfactorily resolving staff's concerns, the closure was never noted in the file. She said during the subdivision in 1976, the City had produced several documents that indicated the garage was to remain. She said at that time the 15 by 42 foot garage with bedroom, bathroom, and covered porch existed as it does today. She said on page B-8 there was a letter from the property owner in 1976 indicating that the structure had been rented for living space and had in the 1920s been used for farm workers when this property was a chicken farm. She said a photo from 2004 showed a stove in the garage area which she had distributed to the Commission. She said the photo showed what the garage looked like when she purchased the property in 2004. She said the fixtures in the bathroom were common in the 1950s. She said she had a toilet expert look at the photo and he had written the attached note that the fixtures for the toilet and sink were from the 1950s or the 1960s at the latest, which would suggest that the bathroom existed during that time frame. She said the Planning Division approved the structure as it exists today in 1976 as part of the subdivision process. She said Planning would only accept evidence from the County's Assessor's Office dated in 1952 showing the garage at 14 by 22 feet with the bedroom area attached. She said the Assessor's report was labeled B9. She said Planning staff's argument was that this structure had never been labeled other than a garage or accessory structure. She said the law governing secondary dwelling units did not become enacted until 1993 and that definition did not yet exist to describe the structure other than as a garage or accessory structure. She said Planning staff had determined that the kitchenette that shared space with her office and the covered parking space was not sufficient as it did not have an oven. She said however in 2004 when she purchased the property it had had an oven and parquet floors. She said in the Zoning Ordinance there was no mention as to what the requirement was for a cooking facility. She said now she has a hot plate and a microwave which for her was the definition of a cooking facility. She said the City Attorney had indicated that this could be interpreted either way as this was not strictly prohibited by ordinance. She said her garage was 14 by 22 feet and only 10 by 20 feet was required for a parking spot so she used the remaining space for whatever she deemed necessary. She said Planning had indicated that if there was a legal kitchen

the garage would not meet the legal requirement for size and she would not be able to add to the main residence as she would not have the required one parking space. She said Planning's determination that the kitchen facilities were inadequate was arbitrary and capricious as they changed definitions depending upon what they wanted to do and prove. She said she researched her options and tried to convert the structure into a secondary dwelling unit. She said while she met most of the secondary dwelling unit classifications there were two things noted in the classification process related to setbacks and the kitchen that prevented that classification. She said the required setback on the right hand side was 6.5-feet and 10 feet in the rear. She said she has a 2.5-foot rear setback which includes a covered porch of 7-foot 8-inches that most likely was constructed in the 1950s. She said in 1976 the rear setback was established by the subdivision process of the City and therefore Planning created the setback issue for the rear structure. She said the structure would meet the setback requirement without the covered porch. She said all of the City and County documents lacked any description or drawings of the covered porches even on the main house and it had a covered porch in 1921. She said there was a 2-foot right hand side setback which everyone agreed was established in 1921 prior to the house being annexed into Menlo Park. She said the County's Assessor's Office told her that these drawings were not accurate representations of the property and were only rough sketches as shown by the lack of covered porches and the buildings being drawn in the wrong location. She said the Planning Division was depending upon historical data that was not intended to be taken verbatim but ignored witnesses to the property as existed in 1976. She said they were arguing about a setback issue that occurred 60 to 90 years ago. She said in 1976 10 feet of her property was deeded to the City for a public right of way in the front of the house. She said this created a nonconforming structure on a conforming lot whereas previously it was a conforming structure on a conforming lot. She said on her first visit to Planning, staff had indicated that a variance should have been granted in 1976 to alleviate this issue. She said if she were to convert the garage into a secondary dwelling unit the staff report indicated it would exceed the maximum square footage allowed by ordinance. She said she found two relevant examples in Menlo Park where secondary dwelling units exceeded the maximum square footage allowed and that supported her statements that the Planning Division has various issues of interpreting the Zoning Ordinance in the past. She said she could distribute that information to the Commission.

Ms. Thoke said the application process had been very frustrating but hoped it would be resolved by the Planning Commission. She said the key issue was to grandfather setbacks that were established between 60 to 90 years ago and front and rear setbacks that had been determined by Planning in 1976. She said Planning was trying to apply modern laws to a historical situation. She said she had also highlighted cases in which the Planning Commission and City Council had changed rules in the past. She said she was hopeful that the Commission could rule similarly in this issue while taking into account her unique situation based on historical circumstances. She said the City Attorney had indicated that if the structure had always been used as a secondary dwelling unit then it could be converted to such.

Commissioner Riggs asked if there was historical basis for the second floor use. Ms. Thoke said in talking with the previous owner it was indicated that the second floor did not go back as far and that conversion she understood occurred sometime in the 1970s. She said she was trying to get a permit to fix that issue. She said she originally thought it was existing square footage which was why it was included. She said if her structure was conforming, which it would have been if the City had not taken the 10 foot in the 1970s, then she would not need a use permit as she could count the main house and the secondary dwelling unit as existing square footage and just need a building permit. She said she understood that the attic bedroom probably was not permitted and she would like to rectify that.

Commissioner Eiref said it sounded like she wanted to modify the main house. Ms. Thoke said she wanted to do two things: she wanted to legally rent the secondary space and she wanted an addition to her main house. She was told she could not do that because there was a zoning issue. She said the City Attorney had indicated yesterday they would have to allow it but she was unclear as to whether she could get a permit. She said staff said the attic was an issue but she could not get a permit to fix the attic. She said she was open to legalizing the secondary unit and the only option given was to pick the structure up and move it. She said staff gave her options that were not viable.

Commissioner Kadvany asked if the applicant had done any improvements to either structure. Ms. Thoke said she had done what she thought were cosmetic improvements to the bathroom in the garage. She said she had spoken with Building staff that day and was told she could get the improvements in the bathroom permitted. Commissioner Kadvany asked about improvements made by the previous owners. He said his concern was that the improvements in the rear building were made without permitting prior to her owning the property. He said it appeared that she thought the property should be found to be historically as a rental. Ms. Thoke said the City Attorney had indicated that if she could prove the structure had been historically a rental that it could be found to be so. Commissioner Kadvany asked about the bumpout and whether she thought there was an error on the map. Ms. Thoke said she definitely thought there was an error on the map. She said in 1976 there was no law regarding secondary dwelling units. She said the previous owner was willing to speak about the property by phone.

Planner Chow said regarding the grandfathering of secondary dwelling units that prior to 1993 when the City adopted the secondary dwelling unit ordinance secondary dwelling units had been prohibited. Development Services Manager Murphy said zoning was permissive and if something was not specifically allowed it was prohibited and that was consistent with City and San Mateo County ordinances. He said the County had not allowed secondary dwelling units before 1959. Chair Bressler asked about the City Attorney's comments. Development Services Manager Murphy said the City Attorney had said that if the applicant could provide evidence that the accessory structure had been in use as a rental since 1921 than a finding could be made that there had been a

use and it had legally been created. Ms. Thoke said there was no way for the structure to be legalized but the space had been used continuously for living space since 1921.

Commissioner Ferrick said she had visited the property. She asked about the picture provided which indicated Ms. Thoke had made some improvements to the bathroom in the garage. Ms. Thoke said she had made improvements and if those were considered more than cosmetic then she was willing to get a permit. Commissioner Ferrick asked if the property would have paid property taxes for multiple residential units. Ms. Thoke deferred to staff. Planner Chow indicated that the property taxes would be higher as a secondary dwelling unit would increase the property value. Commissioner Ferrick asked her about the review process when she bought the property. Ms. Thoke said she wanted to live in Menlo Park and had a certain budget so she might have had to accept some things with the property because of the price.

Commissioner Ferrick asked what the best way was for Ms. Thoke to legalize her property. Development Services Manager Murphy said the best path to accomplish most of what Ms. Thoke was seeking would be to apply for a use permit for the main structure. He said the Planning Commission reviews use permits on a regular basis. He said the stair issue could be dealt with through the use permit process. He said the property owner was indicating she was looking to legalize the bathroom in the garage. He said not resolved were the issues of the cooking facilities in the garage and the question of it being a secondary dwelling unit. He said through the use permit process for the main residence, staff would look for compliance to maintain the minimum requirement for one covered off street parking space and the conflict was having cooking facilities and a garage in the same location because of functionality. He said the secondary dwelling unit was most problematic. He said there was possibility of moving the structure or reconfiguring the space which would take a great amount of work and that with variances could accomplish this designation for the accessory structure. He said the least desirable path would be a Zoning Ordinance amendment to address the conversion of accessory buildings to secondary dwelling units where the setbacks do not meet the requirements to allow that to happen through a use permit. He said if the applicant would need to pay all costs if she proposed the Zoning Ordinance amendment.

Commissioner Ferrick asked if the applicant could just remodel the main residence and put aside the potential to legalize the accessory building as a secondary dwelling unit. Development Services Manager Murphy said things could be broken into smaller steps. He said with the use permit process that the cooking facilities in the accessory structure would need to be removed so the space met the parking requirement. He said action could be taken to legalize the bathroom could be legalized and efforts to create a secondary dwelling unit could occur on a completely different track.

Commissioner Ferrick asked if Ms. Thoke pursued the secondary dwelling unit what the owner should have done in 1993 to get the structure established as a secondary dwelling unit. Development Services Manager Murphy said in 1993 when the

secondary dwelling unit ordinance was established the secondary unit had to be part of the main residence. He said it was not until about 2004 that the City changed its requirements to allow detached separate structures as secondary dwelling units. Chair Bressler said it was also possible the applicant could prove that the structure had been used in this capacity since 1921 but that seemed arbitrary. Ms. Thoke said that was the year the property structures were built. Chair Bressler asked how far back the applicant would have to go to provide evidence that the accessory structure had been used as a residence. Development Services Manager Murphy said they would need documentation for the years between 1921 and the 1950s.

Commissioner Eiref asked if the City knew that this was a secondary dwelling unit in 1958 the year before it was annexed to the City whether that was sufficient. Development Services Manager Murphy said it was not. He said another data point mentioned in the staff report was the Sanborn maps. He said the Sanborn maps were created for insurance purposes and were comparable to the Assessor's drawings. He said looking at that map and other comparable properties in the neighborhood there was evidenced a slight popout of six feet. He said staff had not been able to piece anything together to corroborate the applicant's case but they tried. Commissioner Eiref asked whether there was a way to allow the applicant to make improvements to the main house and do the rear work separately. Development Services Manager Murphy said a fundamental item of the use permit was maintaining the required covered parking space and the cooking facilities interfered with that. Ms. Thoke said the City Attorney had said the day before that she did not have a secondary dwelling unit but had a garage and there should be no issue for her to get a use permit. She said she would build a carport in front if the City would allow her the secondary dwelling unit.

Commissioner Yu said the appellant had said that staff had indicated a variance should have been granted for the 10-foot of space taken by the City in 1976 for a public right of way. She asked if the City could now grant that variance and remove the nonconformity. Development Services Manager Murphy said the basic way to clear the property was through a use permit. He said the applicant could apply for a variance but the findings for a variance were more difficult than those for a use permit. He said the Planning Commission could not just avoid that requirement. He said none of them had been involved with this property in 1976. He said the best option was to apply for a use permit. Commissioner Yu asked about the cost of applying for a variance. Development Services Manager Murphy said the deposit for a use permit application was \$1,500 and for a variance application was \$3,000. Commissioner Yu said the appellant had indicated the garage was 14 by 22 feet and the code required a space of 10 by 20 feet for a one car garage. She asked if the appellant could put a wall between the garage and the kitchen and legalize the bathroom. Development Services Manager Murphy said that was what he had explained but variances would have to be requested for that work.

Mr. Jason Watson said he was a resident of the subject property. He said there was no ordinance stating you could not have a garage with cooking facilities. He said regarding

the structures from 1921 that this had been a farm and these had been residences on the farm.

Chair Bressler closed the public hearing.

Commission Comment: Commissioner O'Malley said it seemed all were trying to help the appellant solve the issue but there was no legal basis to grant the appeal. He moved to deny the appeal and uphold staff's determination. Commissioner Kadvany seconded the motion.

Commissioner Ferrick said there were several choices for the appellant to make. She said the garage was currently a garage/accessory structure. She said if the appellant was to pursue a use permit for the main residence that choice was to find the accessory structure as a garage and not as a secondary dwelling unit. She said the Commission did not have right to overturn the rules despite having sympathy for the appellant.

Commissioner Kadvany said he was supportive of the modifications to the main residence but the issue of the accessory building was a separate consideration. He said he thought staff had provided the appellant with the best options.

Commissioner Riggs said there was a great deal of information to review. He noted regarding the question about whether the tax rate would have been different because there were two buildings rather than one building that property tax was based on the sales price. He said he agreed if it was appropriate to detach the presumably illegal accessory structure from the use permit process. He said people avoid permitting because of the process. He said although it was all circumstantial evidence the appellant had made a good case that the secondary unit had been occupied since at least the 1950s and possibly the 1920s. He said the City's process was based on the presumption of illegal use. He said it was difficult to find lease receipts back to the 1920s. He said continuous use in civil law did establish rights. He said the secondary dwelling was relieved by not having a tenant and the nonconforming setbacks for the accessory structure were not in conflict with the Assessor's maps. He said that was another reason to separate the issues. He said much as the City Attorney had noted this was not a secondary dwelling unit because there was not a legal kitchen neither was this a two story home as it did not have a second floor that was legal or illegal just a finished attic. He said the appeal item numbered 1 was simply a matter of law and that this was a decision the property owner willingly made in 1976 and altered the lot description.

Commissioner Riggs said he would make a friendly amendment for the Commission to ask staff to separate the concerns between the secondary dwelling unit question, which was a code enforcement issue from the application for a use permit for improvements and addition for a second floor. Commissioner Kadvany said these appeared to be separate. Commissioner Riggs said staff did not want to begin the process for a use permit while there was someone living in the accessory structure. Planner Chow said

there was an open Code Enforcement case on this property but she understood there was no tenant in the accessory structure now. She said that the appellant could apply for a use permit now that there had been a determination about the garage space. She said it sounded like these two could be separated by identifying the accessory structure as a garage and removing the kitchen facilities. Commissioner Riggs said there seemed to be concern having a microwave and a mini-refrigerator in the garage. He said he knows other people who have similar appliances in their garages or family rooms and did not have to remove them. He said there had to be permanent cooking facilities to establish a kitchen. Planner Chow said it could be stated that there was not a secondary dwelling unit.

Commissioner Yu said this was a very complex issue and noted that many who lived in Menlo Park lived in older houses. She said the appellant wanted to make a life in Menlo Park and wanted to make the accessory structure legal for extra income and to upgrade her residence. She said she was concerned about all the different elements and was not comfortable refusing the appellant and noted Chair Bressler had suggested a study session to look at appropriate solutions, with which she agreed.

Responding to Commissioner Eiref's request for clarification as to how the deficiencies on the property had come to staff's notice, Planner Chow said there had been a code violation case on this property in October 2010 and the file had not been closed out when the applicant came in to apply for a building permit in June 2011. Commissioner Eiref asked how the code violation had arisen. Ms. Thoke said that for three years the County of San Mateo had inspected the property as an apartment to see if there was smoke detector and fire extinguisher but after the three years the County indicated they were turning the inspection over to the City of Menlo Park. Commissioner Eiref said he agreed that the two projects should be separated and that Ms. Thoke had the right to improve the main house and not be encumbered with the questions related to the accessory structure.

Commissioner Riggs asked for confirmation that the use permit could proceed for the main structure. Planner Chow said that if the accessory building was a garage with an ancillary room the use permit process could move forward for the main residence. Commissioner Riggs retracted his friendly amendment.

Recognized by the Chair, Ms. Thoke said she wanted to make the improvements legally and earn rent from the rear structure and the process had been made extremely difficult for her. She said she would continue to appeal as she thought there was a legal basis to find the accessory structure as a secondary dwelling unit. She said the two should be separated. She said she asked the City Attorney whether the Commission could approve a secondary dwelling unit and he said he did not know. She said she was willing to add a carport to meet the covered space requirement and to add a stove to the garage and convert the entire space to a secondary dwelling unit and permit the bathroom.

Commissioner Riggs noted that the City Attorney was not present and had not written a report. He said what was clear was the 1976 voluntary subdivision. Commissioner O'Malley said the City Attorney had written that there was no legal basis to uphold the appeal. He called for the vote. Commissioner Riggs said a use permit would cover the attic modifications but wanted to confirm that a building permit for the bathroom in the spare room with the garage would only apply to the work done by the appellant and not for work previously done.

Development Services Manager Murphy said staff had not gotten to that level of specificity and there was clearly work done after the appellant had bought the property. He said most likely that would be the focus but he did not know that for sure. He said the Commission could make an advisory statement about that.

Commissioner Kadvany said it was clear a large lot in the 1976 subdivision had been separated into four lots and if there was to have been a secondary dwelling unit there should have been space made for it. He said this was a very constrained site and there was not sufficient evidence to grandfather in the use for a secondary dwelling unit.

Commission Action: M/S O'Malley/Kadvany to deny the appeal and uphold staff's determination.

Motion carried 6-1 with Commissioner Yu opposed.

Commission Action: M/S Riggs/Bressler to encourage staff to require building permits for the bathroom limited to the appellant's bathroom improvements and not the entire bathroom.

Development Services Manager Murphy said staff was not disputing whether the bathroom existed but whether it was legal.

Motion carried 7-0.

F. COMMISSION BUSINESS

There was none.

ADJOURNMENT

The meeting adjourned at 10:21 p.m.

Staff Liaison: Deanna Chow, Senior Planner

Recording Secretary: Brenda Bennett

Approved by the Planning Commission on February 27, 2012