



PLANNING COMMISSION MINUTES

Regular Meeting
October 29, 2012 at 7:00 p.m.
City Council Chambers
701 Laurel Street, Menlo Park, CA 94025

CALL TO ORDER – 7:00 p.m.

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

INTRODUCTION OF STAFF – Momoko Ishijima, Planner; Jean Lin, Associate Planner; Kyle Perata, Assistant Planner, Thomas Rogers, Senior Planner

A. REPORTS AND ANNOUNCEMENTS

A1. Update on Pending Planning Items a. Housing Element

Planner Rogers said the City Council had accepted recommendations made by the Housing and Planning Commissions on the draft Housing Element and approved moving the draft Housing Element to the State for review and comment. He said the State would return the draft with comments in 2013 and the City would then need to prepare a Final Housing Element.

b. Facebook West Campus - City Council, October 30, 2012

Planner Rogers said the City Council at their upcoming October 30 meeting would review the Commission's recommendations on the development agreement for the Facebook West Campus project, and provide direction to the development agreement negotiations team.

c. 555 Glenwood Avenue - City Council, October 30, 2012

Planner Rogers said the City Council at their October 30 meeting would hold a study session to provide input to an applicant on key policy issues related to the potential change of use at 555 Glenwood Avenue from a senior living facility to a hotel. He said those policy matters included the use of Garwood Way for parking, determinations of public benefit and appropriate parking rate.

Commissioner Bressler asked if the input for the draft Housing Element included the new zoning and additional employees relative to the Facebook West Campus project.

Planner Rogers said it was his understanding that ABAG and the associated Regional Housing Needs Allocation developed by that entity did not look at projects on a project to project approval basis but looked at broader trends that affected housing regionally. He said regional housing needs thus determined were then allocated to local individual jurisdictions.

Commissioner Bressler said his understanding was that the state determined the number of housing units needed in the Bay Area and ABAG then apportioned that need to the various cities within the Bay area. He asked if the City had information in one place explaining how the determinations and allocations by the State and ABAG occurred. Planner Rogers said the City did not have that information in one document. Commissioner Bressler said it was impossible to plan without adequate information.

B. PUBLIC COMMENTS

Ms. Susan Connelly, Menlo Park, said she was concerned that the Housing Element was forced upon the community without residents having due representation. She said it appeared that ABAG set dictums. She said her request was for a citizens' task force to look at and establish what the actual requirement for housing was and what the City's recourse was. She said dependent upon how much increased housing would impact infrastructures, schools and services that it might be better just to pay the lawsuit fees, and preserve the quality of the community as it currently exists.

C. CONSENT

C1. Approval of minutes from the October 15, 2012 Planning Commission meeting

Chair Ferrick noted there had been changes emailed but she also had the following modification:

- Page 4, last paragraph, insert "2," to read: "She said since 2000 the District's enrollment increased by 40% and this year they have 2,798 K-8 students."

She then reviewed the changes emailed by Commissioners Riggs and Kadvany.

- Page 7, 2nd line from bottom, revise: "She said living ~~around~~ **with** those parameters she could not imagine what would occur if there was increased building in the community where Rural Lane is."
- Page 12, midway on the page, revise: "He said those were all within the Specific Plan which then ~~morphed into what was now~~ **became** Appendix A of the Housing Element, the available land inventory."
- Page 18, 2nd paragraph, 1st sentence, revise: "Commissioner Kadvany asked if the list was at a point to be deemed credible from the state's perspective, noting that some **sites** were definitely stronger than others."

- Page 19, last paragraph, insert “suppose” to read: “He said suppose a builder builds five \$1,000,000 purchase price condos and suppose each costs \$500,000 to construct (not counting the land).”
- Page 20, middle paragraph, second to last line, insert “gas lines and electrical” to read: “in approving amnesty of such a space looking toward what are the highest priorities for the community which were sanitary lines, gas lines and electrical and for the occupant, door and window security.
- Page 21, middle of 2nd paragraph, revise: “He said he was in favor of looking at these things broadly and not just as applying to the areas ~~circled~~ addressed in the Housing Element but potentially in the City as a whole.”
- Page 27, 4th paragraph, 2nd sentence, revise: “Commissioner Riggs said the City has that guidance and zoning ~~was available in zoning terms and~~ only in broad base terms such as by lot size and setbacks.”
- Page 29, last paragraph, 2nd sentence, revise: “He said that in decades past the building of 1,000 homes as the Element suggested would call for ~~equated to the need for a~~ new school.

Commission Action: M/S Riggs/Ferrick to approve as modified.

Motion carried 7-0.

D. REGULAR BUSINESS

- D1. Use Permit Revision/Camille Kennedy/68 Cornell Road:** Request for a use permit revision for an existing nonconforming residence (as a result of encroachments into the front and right side setbacks) to demolish an existing one-car detached garage, and construct a first-floor addition with a new attached carport in the R-1-U (Single Family Urban) zoning district.

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

Questions of Staff: Commissioner Kadvany said the report indicated the site has insufficient space for a second conforming parking space after the covered space was built, and asked if that was because another space would encroach into the front setback. Planner Lin said that was correct and the second parking space would encroach either into the front or the side setbacks and that would not be allowed. Commissioner Kadvany asked about options on parking conditions on a residential lot. He said there was no variance request. Planner Lin said the site had a nonconforming parking situation and provided one covered parking space and not two parking spaces,

one of which must be covered. She said the applicant was planning to replace the one existing covered parking space with another covered parking space and that did not require a variance. Commissioner Kadvany asked why the space in front of the existing garage did not count as a second parking space. Planner Lin said that two parking spaces have to be independently accessible spaces and cannot be tandem.

Public Comment: Ms. Nini Reyes-Bolinger, project designer, said the proposal was to demolish the existing one-car garage and then attach new covered carport to the addition. She said the addition was the construction of a family room with storage. She said its design and style would conform to the existing home, and some of the windows and skylights would be reused. She said the property owner had spoken talked with the neighbors and they supported the project.

Commissioner Onken questioned the three windows on the one side of the proposed addition as they were located high and would not provide a view.

Ms. Reyes-Bolinger said the property owners wanted a library with built-in cabinets and ample natural lighting so the windows were higher than usual to accommodate the cabinets.

Chair Ferrick closed the public hearing.

Commission Comment: Commissioner Riggs said other than the carport that this addition would hardly be noticed as the change was subtle. He said the parking would not be significantly degraded by replacing the garage with the carport noting in both instances there was space for a tandem parking place even it did not count toward the parking requirement. He said he did not think the windows in the family room would provide much light because they were small.

Commissioner Riggs moved to make the findings and approve the use permit revision. Commissioner Bressler seconded the motion.

Chair Ferrick said there were quite a few homes in Menlo Park on substandard lots and for which garages are used for other things, but she understood that there still needed to be one covered and one uncovered parking space and noted the Commission had reviewed a project, she thought on Hermosa Way, with a similar situation and had required both spaces.

Planner Rogers said the Planning Division counter staff regularly gets inquiries from homeowners about formally converting their garages for a different use. He said each proposal was considered on a site-by-site basis. He said the garage on this site is set back and in converting it to a family room, there was still space to add a garage or carport in front of it and still comply with the 20-foot front setback. He said that cannot occur for other properties when the existing garage door was already at or close to the 20-foot front setback. He noted that the nonconforming situation was not being increased by the proposed project either.

Commission Action: M/S Riggs/Bressler to approve the use permit revision 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 and variances subject to the following **standard** conditions:
 - a. Development of the project shall be substantially in conformance with the plans prepared by NRB Design Solutions, consisting of nine plan sheets, dated received October 18, 2012, and approved by the Planning Commission on October 29, 2012 except as modified by the conditions contained herein.
 - b. Prior to building permit issuance, the applicant shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies' regulations that are directly applicable to the project.
 - c. Prior to building permit issuance, the applicant shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
 - d. Prior to building permit issuance, the applicant shall submit a plan for any new utility installations or upgrades for review and approval of the Planning, Engineering and Building Divisions. All utility equipment that is installed outside of a building and that cannot be placed underground shall be properly screened by landscaping. The plan shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes.
 - e. Heritage trees in the vicinity of the construction project shall be protected pursuant to the Heritage Tree Ordinance and the tree protection plan included in the arborist report prepared by Deborah Ellis, dated September 11, 2012.

Motion carried 7-0.

D2. Use Permit/Javier Alvarez/207 Hedge Road: Request for a use permit for interior remodeling and the construction of first- and second-floor additions to an existing single-story, nonconforming single-family residence on a substandard lot (with regard to lot width and area) in the R-1-U (Single Family Urban) zoning district. The proposed additions would exceed 50 percent of the existing floor area, and the project is considered equivalent to a new structure. The project would also exceed 50 percent of the replacement value of the existing structure in a 12-month period.

Staff Comment: Planner Ishijima said staff had received two letters from neighbors that day and copies had been made available to the Commission. She said the right-side adjacent neighbor expressed concern that the project would impact light and privacy. She said another letter signed by a number of neighbors expressed concern that the property owner wanted to profit from the renovation of the home but that the existing home was affordable compared to other homes in Menlo Park. They also wrote that other development additions made to homes in the neighborhood were for need and not profit, and finally that the property owners were not responsive to neighbors' concerns and did not live in Menlo Park.

Public Comment: Mr. Tim Peterson, project architect, said the property, a 50-foot wide substandard lot, was located in a residential neighborhood of one and two-story homes. He said the rear of the property was adjacent to the rail line. He said the one heritage tree on the lot, a 22-inch trunk diameter liquid amber, would be preserved and protected during construction. He said the existing home was a three-bedroom, one bathroom ranch home, with an existing nonconforming three foot side setback. He said the proposed residence would be a Craftsman-style home with four bedrooms and three and a half baths. He said they intended to keep the existing foundation intact as much as possible, maintain the existing non-conforming three foot side setback, create a great room, connect the indoor and out spaces, create an attractive entry and a more functional garage. He said they had done outreach with the adjacent neighbors. He said there was concern with privacy so they had raised window sill heights on the second floor. He said the east side neighbor had concern about second floor massing. He said they broke up the massing and raised the height of the windows. He said they had worked with staff, adjacent neighbors and tried to create something attractive and valuable.

Commissioner Onken asked about the front double garage door noting that was typically not encouraged and asked if they had thought about breaking up the two doors. Mr. Peterson said that was not considered and the idea was to keep the existing slab and expand the structure.

Chair Ferrick asked if they had considered articulating and setting back the second story. Mr. Peterson said the second story was setback on the left side. Chair Ferrick asked about the right side noting she was concerned about solar access for that neighbor. He said that was the eave side of the wall and the length of the second story I

was small compared to the length of building. He said they would articulate the wall using a belly band and variation of materials.

Chair Ferrick noted she was acquainted with the first public speaker, Mr. Patrick Feehan, and that she lived in the neighborhood but outside the 500 foot radius determined as the measurement for a potential conflict of interest.

Mr. Patrick Feehan, Menlo Park, said he represented the people who had signed the letter. He said the applicant had indicated the intent of the project was to modernize the home through making it a four bedroom and three and a half bath home. He said that his home was a three-bedroom and two-bath home and it felt quite modern, so he questioned "modernizing" as a reason to build a large home. He said this project was clearly motivated by profit, noting that the existing home had been listed for sale but then taken off the market. He said there have been issues with the landlord over the years regarding the property noting that several neighbors work at home and their concerns with noise had been ignored. He said having a massive home built in the neighborhood extended the pattern of not responding the neighbors concerns.

Chair Ferrick closed the public hearing.

Commission Comment: Chair Ferrick said she asked about articulation as there was neighbor concern with potential impacts to privacy, shade and solar access from the two-story project. She said a typical solution was to step back the second story away from the first floor and locate the window sills at a greater height.

Commissioner Eiref asked if the applicant had thought about making the second story longer rather than wider as he thought they would still be able to get the increased square footage. Mr. Peterson said that the indoor/outdoor living spaces relationship was important to the property owners and they did not want to move the house back into the open space at the rear of the property. He said they were trying to articulate the wall with exterior materials.

Chair Ferrick said the articulation was fine but her concern was massing. She said that they were at 19.9 feet already on the 20 foot minimum rear setback but the second floor did not extend completely to the back of the first floor and there were no neighbors at the rear. She said the second floor plan was wide. There was a master bedroom, a wide closet, and a second bedroom and bathroom. She said there was room to shift the floor plan. She said the side setback was existing at three feet and that was being continued and not being brought into conformance. She said that often with rebuilds of this extent in which a new structure was being built that non-conforming aspects were brought into conformance.

Mr. Peterson said saving the existing foundation and framing helped with the project budget. He said that they wanted to keep the nonconforming wall but were improving the materials. Chair Ferrick asked if the three foot setback nonconformance extended to the second story. Mr. Peterson said the second floor was setback to five feet on the left

side which has the nonconforming three foot setback on the first floor. He there was a seven-foot setback for the both the first and second stories on the right side. Chair Ferrick asked about the sill heights on the second story. Mr. Peterson said they were located at three feet.

Commissioner Riggs said the materials and style were good choices. He said the larger issue, besides the unresolved privacy issues, was the construction of a brand new 2,700 square feet home that was maintaining an existing non-conforming wall so as not to comply with a five foot setback. He asked if this was a slab on grade foundation. Mr. Peterson said it was a raised floor. Commissioner Riggs said with that the floor would have to be rebuilt, and new framing and floor sheathing would be required. He said this was a new house and he had a problem with a project maintaining just one wall for the owner to benefit with the extra two feet of house but which would disadvantage the neighbor.

Chair Ferrick asked the applicant since the flooring and foundation had to be rebuilt anyway if they were willing to redesign the project to make it conforming and address neighbors' concerns. Mr. Peterson said it was speculation that the floor would have to be rebuilt and noted that underpinning the foundation would not necessarily mean replacing the entire foundation. He said he would have to discuss any changes with the owner and builder.

Commissioner Riggs said since the architect wanted to speak with the owner and builder regarding the project that he would move to continue the item. He asked staff for input as to whether to continue or deny.

Planner Ishijima said the one letter expressing concern with privacy and light impacts was from the adjacent neighbor on the conforming wall side of the proposed project. She said if the Commission wanted to address the neighbor's light, shade and privacy needs that they might condition more articulation on the right hand side, or to set the second story back more. Chair Ferrick said for the record that adjacent neighbors on the other side of the project and others across the street and several doors down had uniform objection to the project. Planner Rogers said that the multi-signatory letter presented a valid set of opinions and feelings but did not really specify what they wanted in terms of development. He said the Planning Commission could try to address their concerns with the use permit process, but should findings be made based on that letter's contents, he did not know if those would be defensible.

Chair Ferrick said that the Commission reviews regularly projects for which property owners want to do big, straight up construction to maximize square footage on the second floor, but even when there were no people objecting, the Commission asks for a second floor setback. She suggested either continuing the project or consult with the owner about how it's proposed and that the nonconformance was not being brought into conformity.

Commissioner O'Malley said he had a problem with the letter that had been signed by 15 neighbors as there was nothing expressed that was within the Planning Commission's jurisdiction. He asked if the nonconforming side was adjacent to the neighbor who had written or vice versa. It was confirmed that it was the neighbor on the conforming side, who had written. He said the architect had indicated he could speak with the property owner about the concerns. He said he could support a continuance.

Commissioner Bressler said this was complicated by the fact that neighbors didn't like the project. He said Commissioner Riggs made good points about the design being the way it is so as to keep the nonconforming setback. He said the proposal did not bear the hallmark of someone familiar with the City's use permit process but did bear the hallmark of someone who did not have a good relationship with the neighbors. He said as the Commission it was their job to try as much as they could within the rules to make sure neighbors get something built next to them that was of good quality, and obeyed the rules especially in terms of setbacks. He said there should be no apologies for expecting this builder to adhere to standards of decency that were required of other applicants.

Commissioner Onken said the project was of good quality and obeyed the rules except for the existing nonconformity. He said if they were going to disallow the project at this time they needed to give the applicant guidance as to what they would allow. He said if they kept the footprint with the three foot setback on the west side that there should be a gesture equivalent to reducing the setback on the second story on the east side, and that would possibly rebalance the mass.

Chair Ferrick said she thought that was fair and in light of housing discussions, the three foot setback was troubling as not approvable under new construction. She noted a portion of the first floor and gutter intruded into the daylight plane, which troubled her. She said it was troubling that the nonconformance should be proposed to continue with what seemed to be disregard for the neighbors' concerns. She said continuing the project was the best course to allow the architect time to discuss with the property owner alternative solutions.

Commissioner O'Malley seconded Commissioner Riggs' motion to continue the project.

Chair Ferrick said that the motion was not for a denial but a continuance. She said hopefully the applicant could return with ideas to address some of the neighbors' concerns, and address some of the Commission's concerns such as conformance, setbacks, moving the second floor in and not just using wooden trim band but actual massing reduction on the second floor.

Commissioner Riggs said he would not agree with negotiating about the nonconforming side setback as this was a new 2,700 square foot residential development. He said using the existing footprint meant the 50-foot wall would be braced temporarily by two by fours while construction occurred around it. He said it was fair guidance that a project of this scale would have to meet the setback requirements. He said regarding

the second floor setback that the Commission even when the setback was at five feet have requested additional setback on the second floor to be setback from the daylight plane or the first floor setback. He said that was a reduction in the width dimension of the second story on both sides. He said the Commission also requests placement of windows to address privacy concerns. He said that cannot always be done because of egress requirements but other options were the use of obscure glass and landscaping for screening. He said second story windows look into first floor windows and yards. He said his recommendation was that the structure be located completely within required setbacks and that the privacy concerns be addressed with landscape screening, window placement, higher sill heights, or glass type, or combination thereof.

Mr. Javier Alvarez, applicant, said they had worked with Planning staff for three months to arrive at this proposal that the Commission would hopefully approve. He said he went to both adjacent neighbors and they gave him their complaints and that was included in the letter to the Commission. He said he asked the applicant to address the neighbors' concern about privacy, He said regarding the nonconforming wall they had worked with staff and examined issues regarding the eaves, such as fire rating, and have done considerable work on the wall to keep it. He said it would be a new house but the first floor would remain with some underpinnings noting that all four walls would remain and would have to be temporarily braced. He said related to the nonconforming wall they had gone to Planning five times and at one point had thought about asking for a variance. He said staff indicated that a variance request would not work, so they designed the project proposal around the wall. He said the house looked good and would go with the neighborhood. He said they could use obscure glass. He said they would like to move forward with the project and asked if there were other things they could do to get it approved. He said they had taken the neighbors' concerns into consideration and had many discussions with staff about the nonconforming wall.

Chair Ferrick asked what he meant when staff said a variance wouldn't work. Mr. Alvarez said the eave was in the setback and they had to cut that back for fire rating. He said they had proposed asking for a variance to keep the eave so it was the same as the eaves around the rest of the house but staff said that they most likely would not get the variance because of the nonconforming wall. Chair Ferrick said she found it upsetting in a number of ways that it was okay to get a use permit, and not a variance, to keep a nonconforming wall. She questioned that they were addressing neighbors' privacy concerns as they kept the upper story's sill heights at three feet. Mr. Alvarez said they had eight foot plates on the upper floor so the sill heights would be four feet off the floor. Chair Ferrick said it did not seem to indicate that on the drawings. Mr. Alvarez said they could raise the window sill heights as long as they maintain egress on one of the windows in the bedroom. Chair Ferrick said that would address neighbors' privacy concerns and even more would be to step back the second story more. Mr. Alvarez said there were three windows on the south side and they could raise those or even make it one window located up high with no view. He said regarding the wall on the conforming side that it was only 20-feet in length from the garage to the back of the house. Chair Ferrick said her suggestion was to move space to the end of the footprint to the rear so square footage was not lost and to setback the second story further on that side as well.

She said on sheet 8-4 the project intruded into the daylight plane even on the first floor and the second story was situated right against it. She said they wanted to see greater setback from the daylight plane especially on the second floor. Mr. Alvarez said they could shorten the eaves so the gutter was not into the daylight plane.

Chair Ferrick asked staff to address the variance versus the use permit for the nonconforming wall and how the eaves extending into the daylight plane was acceptable. Planner Rogers said regarding nonconforming structures that broadly the City's position was that they could remain, be improved and maintained but could not be demolished and reconstructed without a variance. He said the applicant's proposal was to keep the existing left side wall. He said initially the applicant was proposing to demolish and reconstruct the roof. He said per City practices if the wall foundation and framing were maintained it could be proposed they were retaining that but if the roof was to be demolished and replaced that would not be considered maintaining the nonconformity as that would exceed zoning ordinance standards for eaves and other architectural features to intrude up to 18-inches into the setback. He said there was a potential allowance to propose a variance to build a new taller roof into the setback but staff did not see that the findings for such a variance could be made. He said the applicant subsequently revised the proposal to maintain the roof framing in this area. He said it was never a question of a variance versus a use permit as a use permit had always been required. He said there were many examples of the Commission allowing nonconforming elements to be retained and improved. He said this was approvable but would not necessarily be approved. He said regarding intrusion into the daylight plane of eaves and gutter that the daylight plane was only the element above 19-feet six-inches or the 45 degree angle. He said the only allowable intrusions into the daylight plane were chimneys and solar collectors, vents and flues. He said the area under 19-feet six-inches was governed by the encroachments and architectural sections of the ordinance so eaves and other elements such as gutters could intrude up to 18-inches. He said on the right side the majority of eave was not within that architectural feature zone, just the gutter was.

Commissioner Riggs asked about the percentage of intrusion into a setback with a variance. Planner Rogers said it was 50% of whatever the standard in question was. He said for 18-inches that would equate to another nine-inches or 27 inches into the setback. Commissioner Riggs noted that would be for a five-foot setback and this was only three-feet so it would be less. Planner Rogers said that was correct. Commissioner Riggs said also there were regulations related to flammable construction within certain distances thus the one-hour rating which also applied to windows. He said the existing wall would now need to support a second story and that would have to be rebuilt to meet current standards.

Chair Ferrick said there was a motion on the floor to continue the item and she encouraged the applicant to actively work with the neighbors to resolve concerns related to planning items. She said that the Commission regularly considers projects on lots this size that build so the second story was not massive and intrusive. She said

related to reusing parts of the existing structure that she had doubts about the integrity of that but she would leave that as there might be some value in reusing portions.

Commissioner Kadvany said he was unconvinced that the changes being proposed were going to be significant. He said the setback was three-feet on one side and seven-foot on the other side so that could be used. He said it was not clear what could be done on the second story and although he desired setback on the second floor on both sides it was a 50-foot wide lot. He said the applicant had brought the second story nonconforming wall in; he questioned whether the wall on the conforming side was that much of an issue as it was not as long as the other wall and they were using articulation such as a band to mitigate. He said this proposal was not a terrible model for the future if the neighborhood in the long term was upgrading. He said people reused walls all the time and that was how they made projects financially feasible. He said he was concerned about making architectural decisions motivated by non-architectural motivations. He said he also wanted a cohesive neighborhood. He was concerned whether they would get something significantly better.

Chair Ferrick said she agreed that the proposal was not horrible and thought changes could be made to improve it. Mr. Alvarez said the entire second story was within the required setbacks. Chair Ferrick said there was concern on the right side with the straight up and down wall for both stories. Commissioner Kadvany said they were talking about the massing and aesthetics of the second floor.

Commissioner O'Malley said he had read the letter signed by numerous neighbors several times and he had not found anything in the letter that was actionable by the Commission, and he wanted to state that for the record. He said others had contradicted that and if there was something in the letter actionable by the Commission, he would like it pointed out to him.

Chair Ferrick said that had been acknowledged and it was the letter from the adjacent neighbor at 211 Hedge who had concerns with impacts to light and privacy.

Commissioner O'Malley said he did not want the Commission to start acting on emotional statements and only on matters pertinent to the Commission's charge. He said he understood the concerns expressed but they were not actionable by the Commission.

Commissioner Bressler said he agreed with Commissioner O'Malley but was concerned with how they would get from where they were now to what was the answer as he sensed a degree of obstinacy that might make the next time they met on this project very difficult. He said that he did not think the Commission was asking for anything more than what they usually expected and noted that usually the Commission need not have to ask for such things.

Commissioner Eiref said there were many instances in which people brought forth projects with nonconforming elements that were fixed as part of the proposal or at least

not amplified by doubling something in terms of height. He said they have been very efficient in having people return in two weeks with the revised project. He said there was nothing in the petition letter of relevance. He said however he thought that they would still be having the discussion about the second story without receipt of that letter as there was a three foot setback and the height was being doubled.

Commissioner Riggs said as the maker of the motion he wanted to confirm what Commissioner O'Malley had observed. He said his motion had nothing to do with the petition letter as the concerns expressed in it were not actionable by the Commission. He said also it did not seem clear to the applicant that the design should return with a different decreased width on the second floor. He said it was consistent with the Commission's history for several years to request certain elements to address neighbors' privacy whether the current or future neighbor.

Commission Action: M/S Riggs/O'Malley to continue the project for redesign to address light and privacy concerns through redesign of the second floor element.

Motion carried 6-1 with Commissioner Kadvany opposed.

D3. Use Permit/Silvia Weinberger and Ariel Hendel/531 Pope Street: Request for a use permit to construct a new two-story, single-family residence on a vacant lot that is substandard with regard to lot width in the R-1-U (Single-Family Urban) zoning district.

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

Public Comment: Mr. Ariel Hendel, applicant and property owner, said that they were developing this property with their friends, the Weinbergers. He introduced the project architect.

Mr. Eugene Sakai, project architect, said he would characterize the Weinbergers and Hendels as truly enlightened developer clients, noting that this would be a spec home. He said his firm was a small one and tended to not do development projects. He said they had considered not taking this project but what made these clients unique from a lot of developer clients was their strong interest in developing a really quality design. He said from the outset the property owners were concerned about breaking up the garage into two separate one car garages to give a more friendly street presence, expressed interest in using high quality materials, and conducted a pretty extensive survey of the neighborhood. He said they had a fairly strong sense of what style they were interested in and it was to do something different from developer Craftsman cottage, and something more European. He said through numerous iterations their clients presented them with a style that was modern with glass elements to establish an indoor/outdoor connection. He said they designed a contemporary home which their clients embraced and provided feedback to make it even better and more neighborhood friendly. He said there were left and rear side neighbors to the subject property. He said

they pulled back the second story on those sides and kept a very low roof profile retaining the split garage façade.

Commissioner Onken said that the proposal was just one square foot short of the total allowed and asked how comfortable they were with that, asking if the home was prefabricated. Mr. Sakai said it would be field built and would have standard surveyors certifications for the foundation and setbacks. He said they were confident in the accuracy.

Commissioner Eiref said there was a juxtaposition of roof slopes and he thought it looked dissonant. Mr. Sakai said all the roofs were sloping with two prominent shed roofs with sloping fascias. He said the shed roof was over the second floor hallway and it was a gesture to bring more drama to the stairwell and second floor hallway. He said it would be innocuous from the street but dramatic in the interior.

Chair Ferrick closed the public hearing.

Commission Comment: Commissioner Onken said that there should be no apology for doing a modern building. He said the only issue although it was within setbacks was that it was 12 feet out further in the front from any home along the street and that people would notice the garage sticking forward. He said he would prefer if the home could be moved back about six feet.

Commissioner Riggs moved to make the findings and approve the use permit.
Commissioner Bressler seconded the motion.

Chair Ferrick said she appreciated the second story setbacks and that it was great to see modern architecture.

Commission Action: M/S Riggs/Bressler to make the findings and approve the use permit as recommended in the staff report.

1. Make a finding that the project is categorically exempt under Class 3 (Section 15303, "New Construction or Conversion of Small Structures") of the current CEQA guidelines.
2. Make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be detrimental to property and improvements in the neighborhood or the general welfare of the City.
3. Approve the use permit subject to the following **standard** conditions:

- a. Development of the project shall be substantially in conformance with the plans prepared by Studio S Squared, consisting of 19 plan sheets, dated received October 11, 2012, and approved by the Planning Commission on October 29, 2012, 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, 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 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 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 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 the issuance of grading, demolition or building permits.
- g. Heritage trees in the vicinity of the construction project shall be protected pursuant to the Heritage Tree Ordinance.

Motion carried 7-0.

D4. Use Permit Revision/Tony Kim for Metro PCS/300 Constitution Drive: Request for a modification to an existing wireless telecommunications facility located on the roof of an existing building in the M-2 (General Industrial) zoning district. The applicant is proposing to add one microwave dish to improve communications between existing wireless sites in the vicinity. The existing antennas and equipment are proposed to remain and would not be modified as part of this proposal.

Staff Comment: Planner Perata said that color copies of the photo simulations were being distributed to the Commission.

Questions of Staff: Commissioner Kadvany asked what the diameter of the dish was and the size of the backing plate. Planner Perata said that the dish was 15-inches in diameter.

Public Comment: Mr. Tony Kim, Metro PCS, said the company was working to improve the communication capacities of their sites. He said the hubs, none of which were located in Menlo Park, would have several dishes that would align with the dishes at this site and that would improve data transmission. He said this dish would be pole mounted and painted to match.

Chair Ferrick closed the public hearing.

Commission Action: M/S Onken/Ferrick to approve the use permit revision 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 necessary findings, pursuant to section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will not be detrimental to the safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of the proposed use, and will not be detrimental to property and improvements in the neighborhood or general welfare of the City. *(Due to the Federal Communications Commission (FCC) preemption over local law regarding concerns over health where the proposed facility meets FCC requirements, staff has eliminated the standard finding for "health" with respect to the subject use permit.)*
3. Approve the use permit subject to the following **standard** conditions:
 - a. Development of the project shall be substantially in conformance with the plans prepared by MBH dated received October 18, 2012, consisting of seven plan sheets and approved by the Planning Commission on October 29, 2012 except as modified by the conditions contained herein.
 - b. Prior to building permit issuance, the applicant shall comply with all County, State, and Federal regulations that are directly applicable to the project.
 - c. Prior to building permit issuance, the applicant shall comply with all requirements of the Building Division that are directly applicable to the new construction.

- d. If the antennas or any portion of the antennas and associated mechanical equipment discontinue operation at the site, the antennas and associated equipment shall be removed from the site within 30 days.

Motion carried 7-0.

D5. Use Permit Revision/Sand Hill Foods/1140 O'Brien Drive, Suite B: Request for a revision to a use permit, previously approved in November 2011, to modify the types and quantities of hazardous materials used and stored at the site. The subject property is located in the M-2 (General Industrial) zoning district and the hazardous materials are used in association with the research and development of new ingredients and food formulations. All hazardous materials would be stored and used within the building.

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

Public Comment: Mr. John Tarlton, Tarlton Properties, said they were pleased their tenant, Sand Hill Foods, was requesting to expand their operations. He said Ms. Ellen Ackerman, the environmental consultant, and Ms. Jen Shiu, Sand Hill Foods, were present.

Chair Ferrick closed the public hearing.

Commission Comment: Commissioner Eiref said it appeared that the amount of hazardous chemicals was doubling but the waste was only increasing by a factor of five.

Ms. Ellen Ackerman, Green Environment, San Carlos, said Sand Hill Foods had moved more quickly than they originally thought when the use permit was approved. She said they were now into a mini-pilot study and would be using materials and generating liquid waste from that mini-pilot study. She said that was the increase source and their research had advanced to the point of testing some processes.

Commissioner Eiref said there was not an even ratio of materials used and waste. Ms. Ackerman said that the waste was diluted in water.

Commission Action: M/S O'Malley/Ferrick to approve 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 DES, consisting of six plan sheets, dated received October 12, 2012, and approved by the Planning Commission on October 29, 2012, 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.

D6. Use Permit and Architectural Control/Ron Krietemeyer for O'Brien Drive Portfolio, LLC/1035 O'Brien Drive: Request for a use permit and architectural control for the demolition of an existing 36,632 square foot manufacturing and warehousing building, with ancillary office uses located at 1035 O'Brien Drive (currently addressed 1025-1055 O'Brien Drive), and for the construction of a new approximately 36,000 square foot office/R&D and manufacturing/warehouse building, and associated site improvements located in the M-2 (General Industrial) zoning district. As part of the project, the applicant is requesting to apply the use-

based parking guidelines for office/ (R&D), and warehouse/manufacturing uses in the M-2 (General Industrial) zoning district. A total of 82 parking spaces would be provided, where 120 parking spaces would be required by the M-2 square-footage-based parking requirements, and 72 spaces are recommended with the use-based parking guidelines. A heritage size Modesto ash street tree (18-inch diameter) located in the rear left corner along O'Brien Drive, in poor condition, and a heritage size Mexican fan palm (19-inch diameter) located adjacent to the front left corner of the existing building, in good condition are proposed to be removed as part of the project. In addition, the applicant is requesting approval of a Below Market Rate (BMR) Housing Agreement for this project.

Staff Comment: Planner Perata said there were no additions to the written report. He said a colors and materials board was being distributed to the Commission.

Questions of Staff: Commissioner Kadvany asked if the Clean Air Vehicle spaces meant there were charging stations there. Planner Perata suggested asking the question of the applicant.

Public Comment: Mr. John Tarlton, Tarlton Properties, said the Clean Air Vehicle spaces would not necessarily have an electrical charging station but there would be electrical charging stations on site.

Ms. Elka McGregor, DES Architects and Engineers, said the existing structure had been demolished. She said the proposed building had features similar to some façade upgrades they had done previously on the same street. She said they were seeking LEED silver and the project was intended to bring in tenants similar to others in the area such as life sciences and biotech startup companies. She said the project would keep the street trees and some deciduous trees would be planted for shade at the corners. She said they would add drought tolerant and native grasses around the perimeter, capture all the rain water from the roof and run it through a planting area to percolate. She said they would use low flow fixtures and LED lighting for parking area access. She said all of the materials from the existing building would be recycled and used for the base of the new building. She said the roof would be light colored and reflective and they would use solar high-efficiency glass.

Commissioner Onken asked what they would need to get LEED gold. Ms. Christine Avalo, DES, said that they could achieve a mid range for LEED silver and that was in a sustainable category.

Commissioner Eiref asked if tenants would pay more to be in a LEED certified building. Mr. Tarlton said they had some experience with monetizing LEED in office spaces but not in industrial properties. He said in discussions with their investor they felt they should go for LEED silver. He said that sustainable practices reaped benefit over time and there was a return on the investment.

Commissioner Eiref asked how much the electrical charging stations were being used. Mr. Tarlton said that they were being used but the manufacturers of those stations needed to be pressure into reducing the costs of those.

Commissioner Kadvany asked about the mix of uses chosen and the parking requirements.

Mr. Tarlton said that the proposal was the best estimate of the company and architect teams and their firm's 20 years of experience of trying to attract and house medical device, bio-pharmaceutical, clean tech, and green tech companies.

Commissioner Riggs asked if they had chosen corrugated metal for the roof screen. Ms. McGregor said it was a metal roof screen with a slight corrugation at the seams. Commissioner Riggs said it was more of a panel. Ms. McGregor said it had a smoother surface than would be anticipated. Commissioner Riggs confirmed that it had a manufacturer's designed cap.

Commissioner Onken asked if they had thought about subdivision of the space. Mr. Tarlton said they were in discussions with a potential single tenant but they were also marketing the space as if the building was multi-tenant capable and multi-packaging units.

Chair Ferrick closed the public hearing.

Commission Comment: Commissioner Onken said that with buildings such as this it was important that there be an ability to reorganize the space to meet changing use needs. He noted another project that could not be used for anything but what it was.

Commissioner Riggs said the staff report indicated the one tree that was being removed was in poor condition but the arborist had noted it was in fair condition. He said however there were other nice street trees and the removal of this one tree would provide access to the project. He said the staff report referred to concrete curb stops; he said that they might want to advance the sidewalk under the car for the parking lot sweeper.

Commissioner Riggs moved to approve as recommended in the staff report. Chair Ferrick seconded the motion.

Commissioner Kadvany asked if there was more parking than needed if some could be put into landscape reserve.

Ms. McGregor said she thought the parking was close to the right number based on other properties in the area and the tenants they were trying to attract.

Chair Ferrick thanked the applicant for bringing the existing development items of nonconformance into conformance including the front setback, floor area ratio and

parking. She said she was glad they were adding trees and the best green feature was the rainwater capture from the roof.

Commission Action: M/S Riggs/Ferrick as approve as recommended in the staff report.

1. Make a finding that the project is categorically exempt under Class 32 (Section 15301, "In-fill Development Project") 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 September 5, 2012.
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 DES Architects and Engineers, consisting of 26 plan sheets, dated received October 16, 2012, and approved by the Planning Commission on October 29, 2012, 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. 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.
- f. 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.
- g. 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.
- h. 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.
- i. Heritage trees in the vicinity of the construction project shall be protected

pursuant to the Heritage Tree Ordinance.

6. Approve the use permit and architectural control subject to the following **project-specific** conditions:
 - a. 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 \$53,763.38 in accordance with the BMR Housing Agreement (as of July 1, 2012). The BMR Housing Agreement shall be subject to review and approval of the Planning Division. 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.
 - b. Prior to building permit issuance, the applicant shall pay a Traffic Impact Fee (TIF) at an office rate of \$4.13 per square foot of net new gross floor area and a manufacturing rate of \$2.03 per square foot of net new gross floor area, for a total estimated TIF of \$29,370.80, 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.
 - c. The gross floor area of the building occupied by non-medical office/R&D uses shall be limited to 14,432 square feet.

Motion carried 7-0.

E. COMMISSION BUSINESS

There was none.

ADJOURNMENT

The meeting adjourned at 9:22 p.m.

Staff Liaison: Thomas Rogers, Senior Planner

Recording Secretary: Brenda Bennett