



## REGULAR MEETING MINUTES

**Date:** 11/02/2020  
**Time:** 7:00 p.m.  
**GoToWebinar.com – ID #662-536-907**

### A. Call To Order

Chair Henry Riggs called the meeting to order at 7:00 p.m. He noted that Commissioner Camille Kennedy would be recused from item F1 and was not present at this time.

### B. Roll Call

Present: Andrew Barnes, Chris DeCardy, Michael Doran (Vice Chair), Larry Kahle, Henry Riggs (Chair), Michele Tate

Absent: Camille Kennedy

Staff: Matt Pruter, Associate Planner; Corinna Sandmeier, Senior Planner; Leo Tapia, Planning Technician

### C. Reports and Announcements

Senior Planner Corinna Sandmeier said staff had a correction to the minutes that she would announce when the consent calendar was considered.

### D. Public Comment

There was none.

### E. Consent Calendar

E1. Approval of minutes from the October 5, 2020, Planning Commission meeting. ([Attachment](#))

Planner Sandmeier referred to page 18 of the draft minutes from the October 5, 2020 Planning Commission meeting noting that the eighth line of Peter Edmonds' comments had a typo. She said it read "For heritage tree #1 that is removal" and should read "For heritage tree #1 that its removal..."

**ACTION:** Motion and second (Michael Doran/Larry Kahle) to approve the minutes from the October 5, 2020 Planning Commission meeting with the following modification; passes 5-1-1 with Commissioner Tate abstaining and Commissioner Kennedy absent.

- Page 18, eighth line, Peter Edmonds' comments, correct phrase to read: *For heritage tree #1 that is its removal...*

## F. Public Hearing

- F1. Use Permit/Harrisa FB, LLC/836 Harvard Avenue:  
Request for a use permit to demolish an existing one-story, single-family residence and construct a new two-story, single-family residence with an attached garage and basement on a substandard lot with regard to lot width in the R-1-U (Single Family Urban Residential) zoning district. ([Staff Report #20-046-PC](#))

Staff Comment: Associate Planner Matt Pruter said he had no additions to the written report.

Applicant Presentation: Joe Sabel, project designer, Aero 11 Design, said the main goals were to retain as much of the green yard space as possible, noting their narrower lot, and to be cognizant of neighbors' homes. He said that led to having the main body of the house toward the front and then a slender neck of massing moving toward the great room space of the living room and kitchen space in the rear. He said box trees would be added to the left and rear to mitigate the second-floor balcony on the rear elevation. He said they tried to maintain traditional massing for the roof forms and integrate with some of the characteristics of other homes in the neighborhood.

Commissioner Kahle said a neighbor asked why the building was designed more or less in two parts, which he thought Mr. Sabel explained. He said the neighbor also wondered if the project was intended as a rental as there seemed to be seven bedrooms and as many as seven bathrooms. He asked if it was a single-family residence or intended as a rental property. Mr. Sabel said it was a single-family residence. Commissioner Kahle said another comment related to the air conditioner units. He said he understood why they were located where they were but asked why three condensers were needed. Mr. Sabel said he would like the property owner, Phillip Kamangar, to speak to that.

Mr. Kamangar said the home was fully intended as a single-family residence and neither end of the home was designed to be its own unit. He said regarding the condenser units that every floor had its own thermostat to control its heating and cooling independently. Replying further to Commissioner Kahle, Mr. Kamangar said they were forced air units. Commissioner Kahle suggested they might not need air conditioning in the basement, and it could possibly be argued it would not be necessary on the first floor. He asked if two of the condensers might be moved to the left of the fireplace for noise reduction mitigation. Mr. Kamangar said they would be happy to do that. He said once those were moved the condenser units would be 16 to 18 feet from property line to property line and an additional five to six feet distance to the living space of the adjacent neighbor. Mr. Sabel said that move would gain another two feet of distance from the left side neighbor by moving the condensers against the main wall of the house.

Commissioner Kahle asked why the two heritage trees were being removed. Mr. Kamangar said the tree in front was where the driveway for the property would be located. He said the tree in the rear left was being removed due to its health and neighbor request as a family member was highly allergic to that particular tree. He said both trees had dropped limbs in the past that the neighbor asked them to address and mitigate. He said they were proposing 48-inch box trees to replace those being removed.

Commissioner Kahle asked about the window and trim materials. Mr. Kamangar said they would use an aluminum clad window product with wood in the interior and stucco trim on the exterior. Commissioner Kahle noted the amount of stucco on all the elevations and asked if there was any

accent material proposed. Mr. Kamangar said they believed with the numerous windows in a dark brown color, the accent of the garage door, and the trellis overhang of the guest bedroom window on the right side they were providing quite a bit of different colors and materials. Mr. Sabel said the goal was to focus on the window openings and have articulation in the main element of the front with the differentiation of color of the metal roof and window trim colors to create a balance and harmony when viewing the front façade.

Commissioner Kahle said the second-floor deck although 20 feet distant from the neighbor had a floor that was 12.5 feet from the ground. He said he was concerned with privacy into the neighbor's house as the deck aligned with the back notch of their house on the left side. He said a tree would be planted there but noted that trees could die. He asked if they would consider a solid wall on the left side of the deck rather than an open railing to address privacy. Mr. Kamangar said one of the trees they were planting was a mature 48-inch box tree and its canopy would probably be the height of the deck. He said he thought they could do a wall. Mr. Sabel confirmed that Commissioner Kahle wanted a solid half wall of some material on the left side of the second-story deck at three-and-a-half feet off the deck.

Chair Riggs opened the public hearing.

Public Comment:

- Lisa Shumway, adjacent neighbor, said the proposed development had seven-bedrooms and five baths and questioned how that was in scale with a primarily single-story neighborhood. She said the Menlo Park Police and Fire Department were aware that the developer poisoned the two heritage trees with a gasoline type solution and no mention was made of how the developer would clean up that toxic dump. She said the odor of the gasoline solution was noticeable for days. She said the project would have a balcony at the end that would impinge on their privacy. She said after the two trees were removed that the developer should install a real fence along the shared property line before development of the property began. She noted a development project across the street under construction for three years so far that had negatively impacted the property values of the adjacent homes. She said she did not want this project to do the same to her property.

Chair Riggs closed the public hearing.

Commission Comment: Commissioner Doran asked staff to address the allegation made by the public speaker that the police and fire departments were aware of tree poisoning, specifically if there was any record of that with the application, and if normally there would be such a record in the planning or permit application.

Planner Pruter said the City Arborist worked with the applicant to resolve the issue. He said he understood the applicant was required to pay a fine through the heritage tree removal permit process. He said those permits were issued with a subsequent appeal period where no appeal was filed. He said an appeal could have taken the issue for consideration by the Environmental Quality Commission. He said the issue was resolved between the City Arborist and the applicant team when the reporting of the incident was filed.

Chair Riggs asked about measures to abate the soil contamination. Planner Pruter said he was not aware of any discussions related to soils treatment as mediation or conditions of the soil.

Chair Riggs asked about the particularly deteriorated fence raised by the public speaker. Planner Pruter said prior to publication of the staff report he had spoken with tonight's commenter Ms. Shumway and the applicant regarding the matter. He said he understood that the situation was not completely resolved but the applicant team had indicated they were willing to work on improving the fence and potentially speeding up the process of repair, restoration and replacement of the fence.

Recognized by the Chair, Mr. Kamangar, the applicant, said they had no issue with replacing the entire length of fence on the left side of the property as well as the rear of the property. He said they just asked for the demolition permits to be issued to take care of this. He said before they excavated for the basement that he had no problem with replacing that length of fence. He said they had replaced a large portion of fence on the right side as a courtesy to the neighbors where it was possible to do so. He said on the left side they have a shrubbery area on the subject property, and they intended to preserve it. He said the left side neighbor had also shared interest in saving that shrub. He said they needed some time to be able to hand demolish the section of old brick fence behind the shrubbery.

Commissioner Kahle said the project in general was approvable. He said the overall massing especially from the street side elevation worked well. He said he appreciated that the applicants were willing to put a solid half wall on the second-floor deck on the left side for privacy. He said the home was described as a modern transitional hybrid. He said the massing and the roof forms were traditional and the materials were actually very modern. He said he was not sure if they worked together as well as they could. He said the amount of stucco and also stucco for the window trim concerned him. He said it was a kind of severe modern approach with the stucco as the material but working with more traditional forms. He said he would like to see an accent material or something to warm up the project. He suggested that the applicant rethink the roof forms> He said looking at the side elevations the second-floor roof had a slope to it and from the front and rear it had gable roof forms. He questioned how well it would look from the street when passing by the property. He said if there was an opportunity to revisit the roof forms that he had noticed a number of offsets on the second floor especially, and perhaps those roof forms should reflect those some way so there were not large soffits. He said these were only comments though. He said he thought the project was approvable with one condition for a solid half wall on the second-floor deck.

Chair Riggs said he shared Commissioner Kahle's concerns about the condensers and appreciated the applicants' willingness to relocate those and to replace the fencing. He moved to approve the use permit per the staff report with two conditions. He said those were to relocate the condensers closer to the interior of the court and to replace the 140-feet of fence as indicated by the developer prior to the excavation for the basement. Commissioner Kahle said he would second if Chair Riggs was willing to add a condition for a solid half wall on the side of the second-floor deck. Chair Riggs indicated he was. Commissioner Kahle seconded the motion with the added condition.

**ACTION:** Motion and second (Riggs/Kahle) to approve the item with the following modifications; passes 6-0-1 with Commissioner Kennedy recused and absent.

1. Make a finding that the project is categorically exempt under Class 3 (Section 15303, "New Construction or Conversion of Small Structures") of the current California Environmental Quality Act (CEQA) Guidelines.

2. 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. The applicant shall be required to apply for a building permit within one year from the date of approval (by November 2, 2021) for the use permit to remain in effect.
  - b. Development of the project shall be substantially in conformance with the plans prepared by Aero 11 Design, consisting of 18 plan sheets, dated received October 20, 2020, and approved by the Planning Commission on November 2, 2020, except as modified by the conditions contained herein, subject to review and approval of the Planning Division.
  - c. 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.
  - d. 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.
  - e. 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.
  - f. 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.
  - g. All applicable public right-of-way improvements, including frontage improvements and the dedication of easements and public right-of-way, shall be completed to the satisfaction of the Engineering Division prior to building permit final inspection.
  - h. 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.
  - i. Post-construction runoff into the storm drain shall not exceed pre-construction runoff levels. The applicant's design professional shall evaluate the Project's impact to the City's storm drainage system and shall substantiate their conclusions with drainage calculations to the satisfaction of the City Engineer prior to building permit issuance.

- j. Simultaneous with the submittal of a complete building permit application, the applicant shall provide documentation indicating the amount of irrigated landscaping. If the project proposes more than 500 square feet of irrigated landscaping, it is subject to the City's Water Efficient Landscaping Ordinance (Municipal Code Chapter 12.44). Submittal of a detailed landscape plan would be required concurrently with the submittal of a complete building permit application.
- k. Heritage trees in the vicinity of the construction project shall be protected pursuant to the Heritage Tree Ordinance and the arborist report prepared by Kielty Arborist Services, LLC, dated received August 5, 2020.
- l. If construction is not complete by the start of the wet season (October 1 through April 30), the Applicant shall implement a winterization program to minimize the potential for erosion and sedimentation.
- m. Prior to building permit issuance, the applicant shall pay all applicable City fees. Refer to City of Menlo Park Master Fee Schedule.

**4. Approve the architectural control subject to the following project-specific conditions:**

- a. Simultaneous with the submittal of a complete building permit application, the applicant shall submit revised plans showing all air conditioning condensers along the left side elevation to be positioned along the wall of the residence and not the chimney, to increase the separation distance between the condensers and the left property line. The revised plans shall be subject to review and approval of the Planning Division, to be fully approved prior to issuance of the overall building permit.**
- b. Simultaneous with the submittal of a complete building permit application, the applicant shall submit a revised site plan noting the replacement of all necessary fencing along the left property line prior to basement excavation, subject to review and approval of the Planning Division, and to be fully approved prior to issuance of the overall building permit.**
- c. Simultaneous with the submittal of a complete building permit application, the applicant shall submit revised plans showing a solid wall for the required guardrail along the left side of the second floor balcony. The revised plans shall be subject to review and approval of the Planning Division, to be fully approved prior to issuance of the overall building permit.**

**G. Regular Business**

**G1. ADU Subcommittee Report**

Commissioner Doran referred to a report by Planner Ori Paz to the Housing Commission that Commissioner Tate and he had seen. He said they wanted to invite Planner Paz to present that report to the Planning Commission as they thought it was very informative and would help the Commission as it considered ADU issues going forward.

Commissioner Doran said the subcommittee discussed legalization of nonconforming units. He said as discussed previously as a Planning Commission state law required the City to legalize preexisting nonconforming ADUs unless they presented health and safety violations. He said owners of nonconforming ADUs were greatly concerned about what would be deemed health and safety violations. He said other cities in the area, notably East Palo Alto, had established programs to help homeowners through that process.

Commissioner Michelle Tate said East Palo Alto was working with several organizations including Rebuilding Together, City Systems, and EPA Can Do. She said Rebuilding Together was looking at units that were not permitted to see whether or not they could be permitted and within what cost range so homeowners understood what they would be facing. She said the organization was also doing some repairs to help that process along. She said City Systems looked at what could be done on individual lots noting container use for ADUs and thought that organization was working in Menlo Park now too. She said EPA Can Do tried to help homeowners with either getting ADUs legitimized or understanding what they could do to put an ADU in backyards. She said she planned to meet with each of the organizations to get information to see if Menlo Park could do something similar. She said the effort for this work in East Palo Alto had been completely financed and she did not know if that would apply to Menlo Park or what expense would be involved.

Commissioner Doran said they did not have a recommendation on that for the Commission as of yet, but they would continue working on it. He said the next topic that the Commission had previously discussed was the idea of having preapproved plans for ADUs. He said this was happening in some parts of the state. He said one reason was that the City needed to have the most transparency as possible to minimize upfront costs to encourage people to build ADUs. He said another reason was the state's mandate for the nondiscretionary ADUs that the Planning Division had only 60 days in which to approve. He said having preapproved plans would make that deadline easier to meet. He said for ADUs subject to discretionary approval which the Planning Commission would see there was no state imposed deadline. He said one avenue to get preapproved ADU plans for Menlo Park was a program through HEART of San Mateo County (Housing Endowment and Regional Trust of San Mateo County) that had plans, which were available for six cities within San Mateo County already. He said HEART intended to release the plans to the general public by end of January. He said they thought it was a good starting place and wanted to invite Planning Division and HEART to meet about those plans that would not have any cost.

Commissioner Kahle said the County of San Mateo did not have a program in place for preapproved ADU plans and had just approved their ADU program about a month ago. He said he had found three places that provided preapproved ADU plans, which were the cities of Danville and San Jose, and the County of San Diego. He said he had contacted all three entities and had not heard back from Danville or San Jose but had spoken with a San Diego County planner. He said that county's first approach was to provide a fee waiver for all of the plan check and permit fees for anyone in the county to build an ADU. He said the idea for the preapproved ADU plans was almost an afterthought. He said those plans were available. He said San Diego County had considered whether to pay someone to do the plans or whether to do them inhouse. He said a county-contracted architect provided some plans and the county's Engineering Department did engineered, AutoCAD drawings. He said the county held open houses to explain the fee waivers. He said a negative comment from the architect community was that the plans were not completely build ready. He said the county intended that to allow people to customize. He said that county's Planning and Building Departments had more or less a template by which to approve such submittals quickly and the program started in August 2019.

Commissioner Kahle said the City of San Jose had online preapproved ADU plans. He said people could apply to that city to be a vendor if they wanted to provide plans that were also considered preapproved with interested parties contacting the vendors to get the plans from them. He said if the City wanted to do preapproved plans that HEART might be the way to go or through San Diego County. He said input on how to do that would be useful. He said also a good topic for the Commission was if they wanted to provide a recommendation or not about fee waivers or permits. He said he also was curious about impact fees as he believed any unit larger than 750 square feet could be charged impact fees by the respective jurisdiction. He said units under 750 square feet were not subject to impact fees. He asked if staff could look at what costs for those were typically.

Commissioner Doran said at a minimum the last point raised by Commissioner Kahle should be investigated and he thought they should try to make the permit structure more transparent for potential builders. He said the subcommittee talked about meeting with the Planning Division and suggested as a first step scheduling that to get more information. He said after that perhaps the subcommittee would be able to come back to the Commission with a recommendation about whether to pursue fee waivers.

Commissioner Doran said the subcommittee had also discussed guidelines for Planning Commission use noting an application they had seen recently for an ADU over a garage that exceeded height limits in a multi-family neighborhood. He said it would be helpful to think over such issues in advance so when the Commission reviewed such things it could be consistent in its approach.

Commissioner Doran suggested inviting Planner Paz to do his presentation for the Planning Commission, that the subcommittee follow up on the preapproved plans and various possibilities for that and speak with Planning Division on that. He said they wanted to investigate the fee waivers and in more general all the costs associated with building an ADU including permit fees, impact fees, and tax assessments.

Commissioner DeCardy said he found the presentation very helpful. He said to hear Planner Paz' presentation and to pursue learning more about the multiple areas mentioned made sense. He said his general feedback was positive support for the directions they wanted to pursue.

Chair Riggs said he agreed and that it would be beneficial to the City, for both property owners and renters, and potentially to the Planning Division. He fully supported Planner Paz making his presentation and asked staff if that could move forward. Planner Sandmeier said she would check with Planning management and get back to the Commission.

Commissioner Kahle noted that Planner Paz' presentation was already prepared. Commissioner Tate said she believed Planner Paz would be able to better explain the impact fees as she recalled some slides on fees in that presentation. Chair Riggs said that would provide perspective on how fee waivers might work.

Chair Riggs said the subcommittee was looking at what constituted health and safety issues in terms of legalizing nonconforming ADUs. He said he expected that was an assessment made by the City's Building Official and asked if the subcommittee had considered meeting with that official to get some sense of what he considered negotiable and nonnegotiable. Commissioner Tate said the subcommittee had not and their approach had been to look at what their neighbor was doing as they



had been doing this for a while. Commissioner Doran said it made sense to get input from the Building Department. He said the subcommittee had looked at involving a neutral third party in the process, early on in the process, so people who were looking to get their ADUs legalized got an idea of what would be involved before they actually got involved in the formal process.

Commissioner Tate said a big issue was that people did not want to come forward to make their units legal because they were afraid they would not be able to afford whatever upgrades were needed to make the units legal and if they called someone from the City to take a look that they could get shut down. She said Commissioner Doran was very conscientious about seeing how the programs were running in East Palo Alto where they were using third parties to try to mitigate and that helped the property owner in having a buffer in between them and the city.

Chair Riggs said ultimately it would revolve around the assessment made by the Building Official and what stance he would take to the concept. He said he currently has a project being reviewed for compliance, which was a shed converted to a residence but for which there was no record. He said a code violation had been reported so the ADU was before the Building Official. He said he might be able to work with the Building Official to identify the official's priorities around this and asked if any of the subcommittee members were interested in joining him for that meeting. Commissioner Kahle said he would like to attend.

Commissioner Tate said she hoped the Building Official and Planning Division were open and receptive to what was going on around them because if they shut it down that was the end of it for Menlo Park and trying to get conforming ADUs. Chair Riggs said that was his concern noting they could do a lot of work and discover a roadblock in terms of things like liability. Commissioner Tate said to clarify that she hoped they as the City would not be so stringent that something like this was not allowed to move forward noting it was a state law. She said that would be unfortunate and hopefully that would not be what they got to. Chair Riggs said he fully agreed, and he saw that as the big point. Commissioner Tate said she was not just saying that to Chair Riggs but to be on record.

## **H. Informational Items**

### **H1. Future Planning Commission Meeting Schedule**

- Regular Meeting: November 16, 2020

Planner Sandmeier said the agenda for the November 16 would have three single-family residential homes and an architectural control review.

- Regular Meeting: December 7, 2020
- Regular Meeting: December 14, 2020

## **I. Adjournment**

Chair Riggs adjourned the meeting at 8:09 p.m.

Staff Liaison: Corinna Sandmeier, Senior Planner

Recording Secretary: Brenda Bennett

Approved by the Planning Commission on December 7, 2020

