

Special Meeting
April 11, 2005

1. 2005 Architectural Review Board Design Awards3

2. Proclamation in Recognition of Earth Day3

3. Selection of Candidates to be Interviewed for Public Art Commission....3

ORAL COMMUNICATIONS3

APPROVAL OF MINUTES3

4. Preservation of Two Below Market Rate Units at 777-57 San Antonio Road and 444-1D San Antonio Road: 1) Approval of a Budget Amendment Ordinance in the amount of \$266,900 to Provide Additional Funds for Acquisition, Renovation and Resale Costs; 2) approval of the City’s Acquisition of Each Unit for the Purpose of Resale to a New BMR Buyer After Renovation; and 3) Approval of the Method for Setting the Resale Prices4

5. Resolution 8512 entitled “Resolution of the Council of the City of Palo Alto Approving and Adopting Changes in the City of Palo Alto’s Restricted Parking Zones Extending Free Three-Hour Parking in Downtown Parking Structures R, S/L, B and in California Avenue Area Parking Structures 3 and 5.....4

6. Resolution 8513 entitled “Resolution of the Council of the City of Palo Alto Supporting the Palo Alto Unified School District Parcel Tax”4

7. Ordinance 4868 entitled “Ordinance of the Council of the City of Palo Alto Amending Section 22.04.220 Pertaining to Parks and Recreations Building Use and Regulations to Deregulate the Operation of Skateboards, Roller Skates and Coasting Devices on the Renzel Trail and Other Paved Off-Road Multi-Use Open Space Trails”.....4

8. Approval of Amendment No. 1 to Agreement No. S05110214 with the Palo Alto Senior Housing Project, Inc. for Funds Allocated During the

| | |
|--|----|
| Fiscal Year 2004/05 Under the Community Development Block Grant Program to Increase the Amount of the Agreement from \$38,260 to \$83,260 | 5 |
| 9. Public Hearing | 5 |
| *10. Public Hearing: Consideration of a Request by Stoecker & Northway Architects, Inc. on Behalf of George Stern for a Variance in Conjunction with the Construction of a New Two-Story Residence Located at 705 Ellsworth Place to Allow: (1) Front Setback Encroachment; (2) Rear Setback Encroachment; and (3) Rear Daylight Plane Encroachment. Zone: R-1. Environmental Assessment: Exempt from the California Environmental Quality Act per Section 15301. [04-VAR-11] | 17 |
| 11. Colleagues Memo from Mayor Burch, Vice Mayor Kleinberg and Council Member Beecham regarding Formation of Auto Dealer Retention Task Force | 24 |
| COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS | 26 |
| ADJOURNMENT: The meeting adjourned at 10:34 p.m. in memory of Claire Dedrick, who passed away on April 18, 2005. She founded the Peninsula Conservation Center; spearheaded Proposition 20 in 1972 establishing the California Coastal Commission; was appointed Secretary of Resource Agency Conservation in 1977 over the departments of Conservation, Fish & Game, Parks & Recreation and the Energy Commission; and named to the Public Utilities Commission in 1975, who pushed for alternative energy. Also, that the meeting be adjourned in memory of seventh grader at Jordan Middle School, Michael Gourdin, who recently passed away..... | 26 |

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:45 p.m.

PRESENT: Beecham, Burch, Cordell, Freeman, Kishimoto (arrived at 6:50 p.m.), Kleinberg, Morton (arrived at 7 p.m.), Mossar, Ojakian

SPECIAL ORDERS OF THE DAY

1. 2005 Architectural Review Board Design Awards

No action required.

2. Proclamation in Recognition of Earth Day

No action required.

3. Selection of Candidates to be Interviewed for Public Art Commission

MOTION: Council Member Mossar moved, seconded by Ojakian, to interview all of the candidates.

MOTION PASSED 8-0, Morton absent.

ORAL COMMUNICATIONS

Lynn Krug spoke regarding SEIU.

Phil Plymale spoke regarding SEIU and negotiations.

Kevin Murray spoke regarding Sea Scouts.

Herb Borock, P.O. Box 632, spoke regarding Lucie Stern Maritime Center.

APPROVAL OF MINUTES

MOTION: Council Member Morton moved, seconded by Mossar, to approve the minutes of March 14, 2005, as submitted.

MOTION PASSED 9-0.

In response to the comments on the SEIU and negotiations, City Manager Frank Benest updated the Council and the community on the budget issues. He noted the City had received numerous suggestions from employees and he had met with the unions on three occasions.

CONSENT CALENDAR

Carrie Manley, 764 Marion Avenue, spoke regarding Item No. 6 and urged the Council to support Measure A.

Council Member Freeman stated she would not participate in Item No. 6 due to a conflict of interest because of Government Code Section 1090, as she was employed as a substitute teacher with the Palo Alto Unified School District (PAUSD).

MOTION: Council Member Morton moved, seconded by Mossar, to approve Consent Calendar Item Nos. 4-8.

LEGISLATIVE

4. Preservation of Two Below Market Rate Units at 777-57 San Antonio Road and 444-1D San Antonio Road: 1) Approval of a Budget Amendment Ordinance in the amount of \$266,900 to Provide Additional Funds for Acquisition, Renovation and Resale Costs; 2) approval of the City's Acquisition of Each Unit for the Purpose of Resale to a New BMR Buyer After Renovation; and 3) Approval of the Method for Setting the Resale Prices

Ordinance 4867 entitled "Ordinance of the Council of the City of Palo Alto Amending the Budget to Transfer Funds from the Residential Housing Fund to the BMR Emergency Fund for the Preservation of Two BMR Units"

5. Resolution 8512 entitled "Resolution of the Council of the City of Palo Alto Approving and Adopting Changes in the City of Palo Alto's Restricted Parking Zones Extending Free Three-Hour Parking in Downtown Parking Structures R, S/L, B and in California Avenue Area Parking Structures 3 and 5"
6. Resolution 8513 entitled "Resolution of the Council of the City of Palo Alto Supporting the Palo Alto Unified School District Parcel Tax"
7. Ordinance 4868 entitled "Ordinance of the Council of the City of Palo Alto Amending Section 22.04.220 Pertaining to Parks and Recreations Building Use and Regulations to Deregulate the Operation of Skateboards, Roller Skates and Coasting Devices on the Renzel Trail and Other Paved Off-Road Multi-Use Open Space Trails" *(1st Reading 03/14/05, Passed 8-9, Mossar Absent)*

ADMINISTRATIVE

8. Approval of Amendment No. 1 to Agreement No. S05110214 with the Palo Alto Senior Housing Project, Inc. for Funds Allocated During the Fiscal Year 2004/05 Under the Community Development Block Grant Program to Increase the Amount of the Agreement from \$38,260 to \$83,260

MOTION PASSED 9-0 for Item Nos. 4, 5, 7, and 8.

MOTION PASSED 8-0, for Item No. 6, Freeman not participating.

UNFINISHED BUSINESS



9. Public Hearing:

- a) Zoning Ordinance Update: Ordinance 1st Reading entitled "Ordinance for a Revised Single Family Residential (R-1) Chapter (18.12); and Chapter 18.04 and Home Improvement Exception Provisions in 18.76 and 18.77; and Incorporating R-1 Single-Story Height Combining District (S) Regulations in 18.13, Special Residential Building Site Combining District Regulations in Chapter 18.15, and R-1 Single Family Individual Review Provisions Contained in Chapter 18.14 into Chapters 18.12, 18.76 (Permits and Approvals) and 18.77 (Processing of Permits and Approvals) of Title 18 (Zoning Ordinance) of the Palo Alto Municipal Code and Amending Cross-References in Other Code Sections (18.08, 18.88)"
(Continued from 03/14/05-- PUBLIC TESTIMONY CLOSED)

Planning Manager John Lusardi reported that at the March 14, 2005, meeting the Council took oral testimony, closed the public hearing, and continued the item to the current meeting. Staff made revisions to the limits for small second units and second dwelling unit parking exceptions in the front setback in order to address concerns. Staff responded to the Council's written questions addressing issues in the R-1 ordinance. At the previous meeting, staff recommended allowing small second units on 7,000-square-foot lots or combining lots that would either be attached or detached. Staff recommended that small second dwelling units, up to 450 square feet, be allowed on R-1 lots having 7,000 square feet.

Council Member Morton asked for clarification as to whether the second housing units on lots of 7,000 square feet or greater would be a one-story second unit with a one-story house or a two-story second unit.

Mr. Lusardi responded if the house were one-story and not subject to the one-story overlay restrictions, a second unit could be added on a two-story, but the second unit would be subject to an individual review (IR) process.

Council Member Morton understood the City was in compliance with the State ordinance, and the proposal was not directed by any subsequent tightening of the State's position on second units.

Mr. Lusardi said compliance with State legislation did not change; however, the Housing Element directed the City to address minimum lot sizes and other issues to encourage second units. The Council had approved the Housing Element, which included Policy H7 that spoke directly to second units.

Director of Planning and Environment Steve Emslie said the units would be counted towards meeting the City's affordable housing goal.

Council Member Morton questioned why the City would not want to reclass all R-1 units.

Mr. Lusardi said the City averaged approximately two second dwelling units per year during the prior three years on lots over 8,100 square feet.

Planning and Transportation Commissioner Chair Phyllis Cassel said the City currently allowed the 250-square-foot second unit on smaller lots. The size of current units was small and difficult to implement or attract people.

Council Member Morton clarified that expanding the size to 450 square feet would comply with the Floor Area Ratio (FAR) requirement.

Ms. Cassel said that was correct. The FAR did not change, so people were not able to expand the mass of their buildings.

Council Member Morton said there would be review, but people had the right to apply for a second unit if the lot size were allowed.

Ms. Cassel said at the current time, residents were able to rent or sublet their houses.

Mr. Lusardi said when the first ordinance was enacted to meet State Legislation, the existing second unit ordinance was created as a holding place.

Council Member Morton said he was at a loss for what appeared to be a major change to the R-1 zoning.

City Manager Frank Benest said there were a number of strategies approved by the City Council in the Housing Element. The strategy worked if done correctly. Staff believed there was not a major change to the R-1 zoning regulations.

Council Member Morton said, based on emails, the community at large felt there would be a significant adjustment to the proposed changes.

Mr. Benest said the rationale for the cap was to ensure there was not a major reworking of R-1 and to closely monitor the few new unit requests each year.

Council Member Beecham recalled that staff estimated there would be four-to eight additional units per year and asked for the estimate under the current configuration.

Mr. Lusardi said the City averaged two to three units per year under the current regulations. If second units were expanded to 7,000 square-foot lots, the projection was eight per year.

Council Member Beecham clarified the projected two or three units per year were not required to meet the City's Housing Element goal.

Mr. Lusardi said that was correct and added the Association of Bay Area Governments (ABAG) had a projection of 340 moderate-income units of which the City had approved only 39 units.

Mr. Benest said when the Housing Element was approved by the State, it was due to a whole realm of proposed strategies. The State felt Palo Alto made a good faith effort with a series of strategies.

Council Member Beecham said he did not see much benefit from the ordinance.

MOTION: Council Member Mossar moved, seconded by Kleinberg, to approve the staff and Planning and Transportation Commission (P&TC) recommendation to introduce the proposed ordinance (Attachment A of CMR:211:05), including Exhibit A, comprising the revised Single Family Residential (R-1) Chapter (18.12) of the Zoning Ordinance.

Ordinance 1st Reading entitled "Ordinance of the Council of the City of Palo Alto Updating the R-1 Zone District Regulations, the R-1 Individual Review Process, and the Home Improvement Exception Process of Title 18 [Zoning] of the Palo Alto Municipal Code by Amending Chapters 18.04, 18.08, 18.12, 18.13, 18.14,

18.15, 18.77, 18.88 and Amending Cross-References in Various Other Code Sections”

Council Member Mossar said she watched the video from the prior Council meeting, read letters and emails, and spoke to people on the phone. A discussion was held at the last Regional Planning Committee meeting with representatives from the Governor’s office. The State was moving in the direction of some draconian measures to prevent communities from saying “no” to housing. The community made a commitment to small-scale additional housing.

Council Member Kleinberg said she would like to have seen an expanded approach whereby illegal units were grandfathered in and an amnesty program proposed to bring those units up to code. Hearing public comment against huge houses and public sentiment about little houses was interesting. Small houses helped the City meet its affordable housing goals and helped meet a value in the community to encourage diversity of all types, including economic diversity.

Council Member Kishimoto said staff, after listening to the response from the public, made a number of significant changes. The change from 6,000 square feet as a minimum for the second unit to 7,000 minimum was huge. The predominant size of lots in Palo Alto was less than 7,000 square feet. Under the original Housing Element, the goal for the second unit was to “evaluate provisions for second dwelling units and single family homes.” The text indicated, “The goal is second units can provide additional rental housing, which is both desirable and unobtrusive.” The Council had the difficult challenge of allowing diversity in households while maintaining control. The idea of no roll over for 15 units per year was favored. Second stories on second units and second stories on substandard lots were not favored, and Home Improvement Exceptions (HIE) language in item (13) on page 25 of attachment A of the staff report (CMR:211:05) should be removed.

Council Member Ojakian was torn between competing factors and was sensitive to what the public brought up about the concern of second dwelling units in R-1 neighborhoods. Staff was asked whether a unit was allowed under the current ordinance, if it were attached by some means, such as a walkway.

Mr. Lusardi said the current ordinance allowed a 900-square-foot detached second unit or a 250-square-foot attached second unit. A second unit was not allowed on a lot less than 8,100 square feet.

Council Member Ojakian clarified the difference between garages, carports, and porte-cocheres were the number of walls.

Contract Planner Curtis Williams said a porte-cochere tended to be attached to a house, where a carport tended to be detached. The port-cochere was open on three sides. The Planning and Transportation Commission (P&TC) felt port-cocheres should be addressed the same as carports, and neither should be counted as floor area because they were open on three sides.

Council Member Ojakian clarified the port-cochere and carports did not count against the FAR and a single-family dwelling unit could have a garage, carport, or port-cochere to accommodate parking requirements, but only the garage counted toward the FAR. He asked what was the advantage of having something other than a garage.

Mr. Williams said a garage offered privacy and security.

Council Member Ojakian asked about the type of porch that applied toward floor area ratio (FAR).

Mr. Williams said a porch typically did not count toward the FAR. Porches were covered but open on three sides. The vaulted entry feature counted toward the FAR.

Council Member Ojakian said the height limit of a porch was 10 feet, and the vaulted entryway feature was 12 feet.

Mr. Williams said under 12 feet would not count as a porch. The 10 feet referred to areas where there was an indentation of the house where the porch was covered but open on the outside.

Chief Planning Officer Lisa Grote said the 10 feet was a dimension for a recessed porch.

Council Member Ojakian said with regard to the second dwelling units, he was comfortable voting for something that did not have a roll over feature, was limited to 50 units, and showed how the units were geographically spread. Second stories on substandard lots were a concern. Second units on a series of structures similarly designed were a detriment.

Council Member Cordell said the Council received a document at the beginning of the meeting that questioned whether or not there was sufficient notice given about the subject. The San Jose Mercury listed the meeting as being Tuesday rather than Monday.

Senior Assistant City Attorney Nellie Ancel said she had a conversation with the City Clerk, who assured her the agenda was posted in accordance with the Brown Act and published as required by City ordinance.

Council Member Cordell said the recommendation was that the large air conditioning units be insulated and fully housed. There was an issue as to whether or not the equipment needed ventilation. A change was proposed.

Mr. Emslie said there would be a discretionary review subject to the Director's review, as provided for in the Zoning Ordinance.

Council Member Cordell clarified the Planning Director could be persuaded that the equipment did not have to be fully housed or insulated.

Mr. Emslie said that was correct. Staff had concerns about meeting the technical requirements of housing needs. Staff knew there were issues and was aware that as technology continued to be improved, structures might be enclosed in the future. Staff's concern was that the size of the housing of the units was sufficiently large, which created other impacts to adjoining properties, as well as the development on the site itself.

Council Member Cordell said she agreed with Council Member Kishimoto regarding the second stories and was not in favor of what was recommended. Palo Alto had many places for rent. There was no crisis or urgency for the ordinance.

Council Member Freeman asked about the mandated second unit law, Section 65852.

Senior Deputy City Attorney Don Larkin said the State of California required that all cities adopt an ordinance providing for how second units were developed or the State standards would prevail if cities did not adopt such an ordinance by the time an application came in. Palo Alto adopted standards for second units in 2003.

Council Member Freeman clarified Palo Alto had something that allowed the City to abide by the law.

Mr. Larkin said an ordinance was implemented prior to the cut off date that allowed the City's requirements to be effective.

Council Member Freeman said she had asked how much additional housing inventory was built during the prior five years. Information received

mentioned 343 moderate-income units. She queried what was potentially coming in the development area to cover the 343 units.

Mr. Emslie said many projects were in the preliminary or pre-application stages. A minimum of 50 units in the Mayfield development agreement was considered low to moderate-income units. Any project in the conversion of Rickey's Hyatt site, required 20 percent of the units to be in the Below Market Rate (BMR) program. The Campus for Jewish Life, Bridge site, which was a combination of affordable senior units and market rates, required 20 percent of the units to be in the BMR program.

Council Member Freeman estimated 150 units would be developed. There was a substantial amount of "affordable" housing. The notion of adding 450 square feet as affordable was a stretch in Palo Alto. The fact there were not more restrictions on a 450-square-foot unit was a concern. If the goal were truly affordable housing, housing should be restricted to BMR rental situations.

Mr. Emslie said for Housing Element purposes, the units were categorically considered to be moderate units for purposes of determining compliance with the State and Association of Bay Area Governments (ABAG) housing numbers.

Council Member Freeman said she did not believe that square footage could be used as a guideline for insuring that something was going to be affordable. Placing a stairway to a second unit was allowed to be within three feet of the six-foot setback was questioned.

Mr. Williams said the requirement was that the stairway not be oriented toward the street but rather inwards toward the rear or side of the property. The setback was six feet.

Ms. Grote said if the stairway were uncovered, it could encroach two feet into the side setback. Staff would look at that in terms of privacy concerns as part of the Individual Review (IR).

Council Member Freeman said effort might be necessary to disapprove something that could go two feet into a side setback.

Ms. Grote said the stairway would be subject to IR. There were ways to evaluate the project.

Council Member Freeman said parking was allowed in the side setback all the way to the property line.

Ms. Grote said an uncovered parking space was allowed in a side setback.

Council Member Freeman asked whether parking in the front setback was new or currently allowed.

Mr. Lusardi said the restriction was new, only applied to a second unit parking space, and was subject to the Planning Director's approval if it were demonstrated that there was no other location for the parking space. Tandem parking was currently allowed in the R-1 district, and parking in the side setback was allowed in the current ordinance.

Council Member Freeman said most of the people she spoke with in Palo Alto, who lived in R-1 areas, bought there because they desired to live in a single-family home area. That did not preclude the need for affordable housing or granny units. There was a desire for that type of housing, which also provided the City with a sense of definition of a community. The City had opportunity for higher density locations, looking at transit corridors and near train stations. Palo Alto was well on the way with over 130 proposed affordable units. The second floor on substandard lots was an issue. The issue of noise and higher density was a concern. Higher density created more noise, and more restrictions were needed on noise producing equipment rather than fewer restrictions. The noise ordinance, historically, was not a priority for enforcement. Increasing the levels of noise in residential neighborhoods was a concern.

Council Member Morton said he took representative government very seriously. Palo Alto was in compliance with State Law. Omitting the change to second unit provisions was not a vote against affordable housing. There was nothing in the Housing Element he voted for that required the R-1 zoning to be modified.

AMENDMENT: Council Member Morton moved, seconded by Cordell, to omit second dwelling unit revisions to the Zoning Ordinance.

Council Member Morton said modifications were made in order to appear to be sensitive to the fact that Palo Alto was an expensive community to live in. Undermining what was historically an understanding that R-1 meant one unit per lot did not solve the problems.

AMENDMENT PASSED 5-4, Burch, Kishimoto, Kleinberg, Mossar no.

Mr. Larkin reminded the Council that in amending the section, the Council needed to amend the findings in the ordinance itself.

AMENDMENT: Council Member Kishimoto moved, seconded by Freeman, to eliminate the clause in the Ordinance that allows second stories on substandard lots without a variance.

Vice Mayor Kleinberg said she could not vote until she found out what the current law was.

Mr. Lusardi said there could be an application for a second story with a new house or second story addition on a substandard lot. A variance needed to be approved, which required specific findings. Staff and the P&TC proposed that an IR rather than variance be required. Second story additions on substandard lots 30 feet or wider were limited.

Vice Mayor Kleinberg said staff and the P&TC recommended something that was smaller in the outcome and a more streamlined process.

Mr. Lusardi said the variance application was replaced with the IR process, which gave neighbors an opportunity for input. The height on substandard lots was eliminated.

Ms. Cassel said the daylight plane severely limited heights of buildings because the usable space was small. Only the larger lots were allowed to do anything.

Council Member Freeman asked whether a hearing was allowed when a variance was requested.

Mr. Lusardi said there was a hearing only when requested by a member of the community.

Council Member Freeman clarified neighbors or having a variance rather than an IR did not eliminate others in the community.

Mr. Lusardi said that was correct.

Council Member Mossar said the IR process was adopted as a result of serious problems and demands from the public for the City to come up with a better way to look at residential development. Council Members talked about the IR process as though it were a problem.

Ms. Cassel said the P&TC had a request to develop the ordinance in such a way that variance requests were not made.

Council Member Kishimoto said the variance process was supposed to be a higher threshold and not set expectations that residents were entitled to a second story.

AMENDMENT PASSED 6-3, Burch, Kleinberg, Mossar no.

Council Member Beecham said the City Attorney indicated the Council needed to address the findings. The ordinance, Attachment A of the staff report (CMR:211:05), Sections g-k, referred specifically and only to the changes proposed for second units. Deleting g-k took care of the finding's consistency.

Mr. Larkin said it was appropriate for the Council to leave in finding "i" with modification since the Council was rejecting a recommendation of the P&TC.

Vice Mayor Kleinberg questioned whether section 2(b) in the ordinance was valid. The section was no longer relevant or being accomplished.

Mr. Lusardi said the issue was whether the Council felt the current ordinance providing for two, second units was an implementation of the Comprehensive Plan (Comp Plan), or the changes proposed by the P&TC and staff were, in fact, the implementation of the Comp Plan.

Council Member Mossar said she could not support the Council eliminating years of decision-making.

Council Member Beecham said the main decision was whether or not the Council accepted the changes to the second units. Relative to Item 2(b), under the presumption that the item had already been in the ordinance, second units were allowed on lots larger than 135 percent of a standard lot. That related to low-density residential areas. There were other programs in the Comp Plan related to R-1's that were implemented.

AMENDMENT: Council Member Beecham moved, seconded by Morton, to delete the findings in Section 1, subsections G, H, and K with modifications to I to incorporate the 135 percent of the standard lot site of the 8,100 square feet.

AMENDMENT PASSED 7-2, Kleinberg, Mossar no.

Council Member Morton clarified with respect to the issue of size, under the current law for 135 percent of standard lot site, if staff wanted to reconsider the size of a non-detached unit, staff would return to the Council.

Mr. Emslie said the hearing provided the Council the forum to make decisions. Staff preferred that the Council reached finality at the current time.

AMENDMENT: Council Member Morton moved, seconded by Beecham, to allow attached second units under existing law to be increased from 250 square feet to 450 square feet.

Council Member Mossar clarified since the Council action reverted to the existing ordinance, the Council was not able to make changes to the ordinance.

Mr. Larkin said the amendments could be made because the Council was considering a modification of the current ordinance.

Council Member Mossar said the lack of clarity and ability to track changes was troublesome.

Mayor Burch was concerned the public hearing was closed, and the Council was discussing things the public did not have an opportunity to speak to.

Council Member Morton said he was not unsympathetic to the need for a larger attached second unit.

Mr. Lusardi said when the staff held the five community meetings, staff clarified the fact the ordinance was being changed to allow for 450-square-foot attached units on lots of 135 percent or greater.

AMENDMENT PASSED 7-2, Kleinberg, Mossar no.

Vice Mayor Kleinberg said she found the entire exercise disappointing. The Council had decided five years prior that affordable housing and attainable housing were one of the City's goals. The Council worked through hundreds of hours of debate and discussion, received public input, and different opinions were heard.

Council Member Beecham said the Council went through many years of work, which started with the Comp Plan. Many changes were made to the Comp Plan and to the Zoning Ordinance. Changes were made on the number of affordable housing units and BMR units. Progress was made in evaluating and approving specific proposals on affordable units. The Council and community worked hard on affordable housing. The City had a Housing Element that was approved by the State. The current issue was a small portion of the Housing Element.

Council Member Kishimoto agreed that housing was aggressively added throughout the City. More changes were expected because the Council had not reviewed the Village Residential zoning.

Council Member Morton said the majority of the community supported affordable housing. The Council had not diminished the number of applications but simply had not modified the R-1 zoning.

Council Member Freeman reassured everyone that staff mentioned there were at least 220 affordable units that would come to the Council. Progress in the right direction was being made.

MAIN MOTION WITHDRAWN BY MAKER AND SECONDER

MOTION: Council Member Beecham moved, seconded by Morton, to approve the staff and Planning and Transportation Commission (P&TC) recommendation to introduce the proposed ordinance (Attachment A of CMR:211:05), including Exhibit A, comprising the revised Single Family Residential (R-1) Chapter (18.12) of the Zoning Ordinance. Further, to include the four amendments as passed.

Ordinance 1st Reading entitled "Ordinance of the Council of the City of Palo Alto Updating the R-1 Zone District Regulations, the R-1 Individual Review Process, and the Home Improvement Exception Process of Title 18 [Zoning] of the Palo Alto Municipal Code by Amending Chapters 18.04, 18.08, 18.12, 18.13, 18.14, 18.15, 18.77, 18.88 and Amending Cross-References in Various Other Code Sections"

MOTION WITH AMENDMENTS PASSED 7-2, Kleinberg, Mossar no.

b) Zoning Ordinance Update: Low-Density Residential. Revisions to Low Density (RE, R-2, and RMD) Zoning Districts, Including the Neighborhood Preservation (NP) Combining District. Approval of the Low Density Residential Chapter (18.10) of Title 18 (Zoning Ordinance) of the Palo Alto Municipal Code. Council Direction to Staff to Prepare Final Low Density-Residential Ordinance for Planning and Transportation Commission Review and Recommendation to City Council.
(Continued from 03/14/05-- PUBLIC TESTIMONY CLOSED)

Mr. Lusardi said staff would make the changes in the low-density ordinance that were reflected in the Council's action on the single-family ordinance, take it to the P&TC, and return back to Council for final adoption.

MOTION: Council Member Morton moved, seconded by Cordell, to approve the staff recommendation to accept the Planning and Transportation Commission's (P&TC) preliminary recommendations to approve the revisions (CMRF:212:05) to the current RE, R-2 and RMD zoning districts, and to incorporate the revisions into the Zoning Ordinance Update (ZOU) as a single chapter (18.10) comprising all three districts and the Neighborhood Preservation (NP) Combining Districts with amendments reflected in this zoning, as previously approved by Council in the R-1 Zoning.

MOTION PASSED 7-2 Kleinberg, Mossar no.

PUBLIC HEARINGS

- *10. Public Hearing: Consideration of a Request by Stoecker & Northway Architects, Inc. on Behalf of George Stern for a Variance in Conjunction with the Construction of a New Two-Story Residence Located at 705 Ellsworth Place to Allow: (1) Front Setback Encroachment; (2) Rear Setback Encroachment; and (3) Rear Daylight Plane Encroachment. Zone: R-1. Environmental Assessment: Exempt from the California Environmental Quality Act per Section 15301. [04-VAR-11].

****This item is quasi-judicial and subject to Council's Disclosure Policy***

Associate Planner Clare Campbell said the proposed project was for a new two-story house in the R-1 zone. An individual review (IR) application was filed and approved in conjunction with the variance application. The variance was processed using the new findings adopted in July 2004. The proposed project required a variance for the front left side rear setback as well as the rear daylight plane. Neighbors' concerns related to shadow impacts, privacy, and noise. The variance was not for a second story, and the project site was not a substandard lot, which allowed for a second floor. The shadow impacts were illustrated in Attachment H to the staff report (CMR:191:05). The illustrations showed there was an increased shadowing at certain times during the year but they were not significant or worse than the existing conditions created by the mature Monterey Pine. The project had three windows that directly faced the rear apartment building. The issue of privacy was specifically addressed in the IR process, and it was determined the proposed project met the guidelines. The noise issue raised could not be regulated by the review but was regulated by the Noise Ordinance, which was enforced by the Police Department. Staff recommended the City Council support the P&TC recommendation to uphold the Planning Director's decision to approve the variance.

Council Member Morton said he visited the site but received no information that was not part of the public record.

Planning and Transportation Commission Chair Phyllis Cassel said the P&TC supported the staff recommendation to grant a variance request for the building of a three-bedroom, two-bathroom, two-story house, with two bedrooms and a bathroom on the second story. The P&TC had no issues with the discussion of the front and rear setback variances. The P&TC had an extensive discussion about the variance for the daylight plane, and agreed the house was within the daylight plane.

Mayor Burch declared the Public Hearing open at 9:20 p.m.

George Stern, Applicant, 705 Ellsworth Place, said the lines between the application under the variance ordinance, made in July 2004, and the application made on May 5, 2004, under the IR ordinance, were blurred. The proposed house had a partial second story, which was allowed by law under the R-2 zoning ordinance because the lot was not substandard. The design respected the neighbors. The Ellsworth Place neighbors were happy with the proposal; however, some of the apartment neighbors did not agree. During the IR process, the important and complicated concerns relating to privacy, mass, scale, and neighborhood character, which were raised by the apartment neighbors, were painstakingly and objectively evaluated. In the end, the Planning Department determined the details and spirit of the plans met all the standards and guidelines in the City's IR ordinance. The application was first approved on December 20, 2004, and after a thorough Director of Planning and Community Environment's public hearing on February 23, 2005, requested by the apartment neighbors, the Director of Planning and Community Environment heard the facts again and upheld the approval on February 24, 2005. On December 7, 2004, the Director of Planning and Community Environment, after a tremendous amount of community input and long consultation with the City Attorney, made the four required land use findings and recommended approving a variance that allowed front and rear setbacks and a rear daylight plane protrusion. At every step of the revised variance process, the same arguments that were decided in the IR had been raised repeatedly in connection with the variance application. The relevant facts and issues were decided in the variance context, brought up by the neighbors. At a public hearing on July 26, 2004, which was requested and attended by the neighbors, the P&TC completely reviewed the variance application, heard the same points, endorsed the Director of Planning and Community Environment and City Attorney's findings, and recommended the Council approve the variance on its Consent Calendar. The neighbor's concerns were debated and resolved in four impartial forums. The Council was requested to decide there had been a complete, fair, and conclusive deliberation of all the concerns and issues, and approve the variance application.

John Northway, 437 Lytton Avenue, said the house was designed to meet the criteria of the IR. There was a 10-foot contextual setback along Ellsworth Place. The current house was only two and one half feet back from the property line, and the garage was slightly over the property line. The design was approved, and the variance was needed in order to execute the design that was approved. The context of the neighborhood, from a land use standpoint, was two stories.

Council Member Cordell asked for clarification on Mr. Northway's comments made at the February 3, 2004, P&TC IR hearing, "Leaping ahead, if that becomes an overwhelming problem, it is not a problem because it is a bathroom window. They can have frosted glass. And it is a stairwell and we really put it there to provide light to the landing of the stair. It is not a place anyone is going to stand and look, but if anyone is concerned about it, putting in obscure glass is not a problem at all." With regard to the third window, Mr. Northway's comments indicated, "Again, that is more of a bedroom, kind of a habitation room. One of those sets of windows, either the window that looks at the Sutter side or the Middlefield side has to be the size that it is because of the egress requirements, but one of the windows could change in size and become a clear story window too if there was a major overriding concern." The only concern she saw was the issue of privacy with the windows and asked whether the owner was willing to say he would frost the windows.

Mr. Northway said the issue came up at the IR hearing. The high windows in the bathroom were above a bathtub and not a visual problem. The window in the stairwell was only to provide light to the stairway. The window in the bedroom was 19 feet back from the property line.

Council Member Cordell asked whether there was a willingness to do something about the bedroom window if there were a privacy issue.

Mr. Northway said the standard way of handling second story windows was to drape the windows or use window coverings rather than a permanent frosting of the glass.

Council Member Morton clarified the garage went back to the property line.

Mr. Northway said that was correct. The garage was actually six inches over the property line. The garage would move to the left side.

Council Member Morton mentioned the fence and walkway and asked about the width of the walkway.

Mr. Northway said the fence was approximately six feet.

Stephen Pahl, 160 W. Santa Clara St. 14th Floor, San Jose, representing the property owner behind the subject property, said comments made by Mr. Stern related to the front and rear yard setback did not address the daylight plane. Under Palo Alto Municipal Code (PAMC) Section 18.76.030, four findings needed to be made. All properties on Ellsworth were substandard except one. The subject property was the only standard lot. The adjacent properties on Middlefield Road and on Sutter were also standard. Denying the second story did not deprive the applicant of his homeowner rights. The square footage that the applicant sought, could be put on the first floor. Self-induced hardships did not qualify under California law to support a variance request. The property was not inconsistent with the neighborhood. The house would be a 2,285 two-story home in a community of 800 to 1,000-square-foot bungalows.

Edward Barry said he was in favor of the project but was at issue with the daylight plane. The side daylight plane encroachment was applied to the rear. An e-mail he sent to the Council in March 2004, addressed the placement of the second-story windows and the suggestions of various window coverings and/or landscape screening to address privacy concerns. The overriding issue was the second-story and subsequent loss of sunlight. Privacy loss was secondary and became a non-issue with a compromised design sensitive to the concerns brought by the City's attention. The Council was urged to consider an alternative design.

Kathleen DalBon, 741 Ellsworth Place, said the homeowners on Ellsworth Place wholeheartedly favored going forward with the construction of the new cottage. The small, 23-foot second-story extension allowed the Ellsworth neighborhood to retain the current green area on the lot. The yard provided much needed visual relief. The cottage would replace a dilapidated old building that degraded the neighborhood. The new cottage was a definitive improvement in the neighborhood. None of the opponents of the project lived on Ellsworth. The Ellsworth neighbors were concerned that construction of the important improvement was held up and threatened by nonresidents.

Glenda Bennett, 714 Sutter Avenue, objected to the two-story building because it would invade her privacy. The three windows looked into her courtyard. Filtered light came through the Monterey Pine tree. With a little creativity from the architect, the house could be built on one level.

Corrine Aulgur, 648 Maybell Avenue, owner of property on 720-738 Sutter, opposed the proposed variance allowing a second-story to be built on the narrow street. A single-story expansion was supported. The proposal was 5

feet, 6 inches from the property line with a walkway approximately 4 feet wide. Renters had rights, and the quality of the rental home and desirability of living in small units was diminished by having a tall wall.

Bhanu Iyengar, 712 Ellsworth Place, supported the request for a variance. The majority of neighbors on Ellsworth supported the new construction. The neighbors were opposed to a one-story barrack that took away the only green that the street had. The street was a small, private street, and the neighbors had to pitch in to make road improvements. The neighbors wanted to see improvement and change and not be blocked by apartment buildings that could look down into their privacy.

Mary Navarro, 706 Ellsworth Place, said she was in favor of the proposed house with a partial second-story because the house would contribute to the ambience of the neighborhood and would provide a comfortable living space for the homeowners.

Kathy Bilbro, 2901 Middlefield Road #4, said her apartment, which was kitty-corner to the new structure, had a large balcony. The second-story structure was not favored but there were welcome improvements. Her concern was that her privacy would be taken away. The Council was urged to consider the privacy issue.

Vera Shadle, 2901 Middlefield Road, #6, was opposed to the imposition of a second-story, which, by virtue of the configuration of the lot and the angle of the sun, affected neighbors who did not have an Ellsworth Place address. Renter's rights needed to be considered. The angle of the sun needed to be looked at as well as the adjacency issues and the incursions on the privacy of the renters.

Joy Ogawa, Yale Street, said the impacts of the daylight plane variance were ignored by the findings drafted by staff. In order to grant a variance, a finding must be made that the granting of the application would not be detrimental or injurious to property or improvements in the vicinity. The findings that staff drafted stated the streetscape was not negatively impacted, as though only the properties on Ellsworth Place mattered. The adjacent rear property on Sutter Avenue was mostly impacted by the variances. The adjacent property to the rear and its residents were dismissed by staff's finding as being zoned RM-15. Staff felt that the owners and residents of RM-15 property were not entitled to the protections of the PAMC. The preferences of R-1 property owners overrode the property rights of RM residents. The Council was urged not to endorse the position that staff wrote into the findings. Variances should not be given out based on who the applicants were but on the merits of the application. Reasonable alternatives

were available to the applicants to build the size of house they wanted without violating the daylight plane. The variance should not be approved.

Mayor Burch said the transcript of the P&TC meeting was clear that the project rather than the occupants was to be reviewed.

City Manager Frank Benest encouraged all residents who spoke to not disparage staff or others.

Mr. Northway said the lot was approved, and a second-story could be added. The Zoning Ordinance was clear that the rear daylight plane was measured from the rear setback. That was used in the design of the building. A variance was not required for the second floor; the variance allowed the design to be better. The second floor setback was eight and a half feet, which was three feet more than what the setback showed. The shadow study was done to cooperate with staff and was no longer a part of the IR design review. The tree cast the largest shadow.

Vice Mayor Kleinberg said there was concern about the daylight plane and the shadow. Some of the residents said they were concerned about blockage of sunlight and asked whether the shadow study found the problem to be seasonal.

Mr. Northway said the shadow study was done for the summer solstice and the winter solstice. The only time there was a problem was in the winter.

Vice Mayor Kleinberg clarified the problem was for a two- or three-month period and was only in the morning during that two- to three-month period.

Mr. Northway said that was correct.

Council Member Freeman said she wanted to hear more about the creativity that could occur to rectify the daylight plane issue. Clarification was needed regarding the side daylight plane, which was applied to the rear instead of the rear daylight plane.

Mr. Northway said the side yard daylight plane was not used to design the house. The rear daylight plane was moved to the proposed rear setback. In checking how the design worked for the IR, the side yard setback was applied to the structure.

Council Member Freeman asked whether there was any way to create a lovely architectural design for the second-story that reduced the daylight plane action.

Mayor Burch said the Council could not redesign the project; the Council had to make a decision on what was presented.

Mayor Burch declared the Public Hearing closed at 10:07 p.m.

Council Member Morton said in the future, the configuration could be different from what currently existed.

MOTION: Council Member Morton moved, seconded by Ojakian, to approve the staff and Planning and Transportation Commission (P&TC) to uphold the Director of Planning and Community Environment's decision to approve Variance 04-VAR-11 for 705 Ellsworth Place based upon the findings and conditions in the draft Record of Land Use Action (Attachment B of CMR:191:04).

Approval No. 2005-02

Record of the Council of the City of Palo Alto Land Use Action 705 Ellsworth Place: Variance 04-VAR-11 (Stoecker and Northway Architects on Behalf of George Stern, Applicant)

Council Member Ojakian said the situation was unique, given the particular lot. The lot buttressed an R-15 zone with duplexes on one side and apartments on another side. The architect designed the house with the second-story situated in a way that caused the least amount of detriment to anyone.

Council Member Cordell said the Council had to determine whether or not all four findings for the application could be made. The fourth finding said, "The granting of the application will not be detrimental or injurious to property or improvements in the vicinity and will not be detrimental to the public health, safety, general welfare or convenience." People voiced opposition because of privacy. The question was asked why, if the variance were granted, the project was not detrimental to general welfare or convenience.

Mr. Northway said there was nothing unique about the request for land use that was not repeated throughout the City. There was nothing about granting the variance that was unusual or caused any more hardship or nonhardship than occurred in other locations in the City.

Council Member Kishimoto said she did not support the motion. Privacy was not an issue. The rear daylight plane was an issue. The rear setback protected the resident's back yard, and the rear daylight plane protected the neighbor's access to light and air. The shadow of a tree was different than a

shadow of a building in that a tree's shadow was filtered. The length of the daylight intrusion was significant, increasing from 12 feet to 40 feet.

Council Member Ojakian said legal staff provided the Council with findings and asked whether legal staff was comfortable with the information provided.

Mr. Larkin said it was the Council's decision whether or not to adopt the findings.

Mr. Emslie said the Council's decision had to be based on the presentation of the facts, and if the Council felt the facts supported the findings that staff directed, the Council could accept them or modify the findings.

MOTION PASSED 6-3, Cordell, Freeman, Kishimoto no.

COUNCIL MATTERS

11. Colleagues Memo from Mayor Burch, Vice Mayor Kleinberg and Council Member Beecham regarding Formation of Auto Dealer Retention Task Force

Council Member Beecham said the Council needed to do whatever was necessary to bring back options to find a way to ensure that the dealers in the City stayed in the City. The Colleagues Memo asked that the Council direct the City Manager to form a multi-department team to look at the issues and come back to the Council.

MOTION: Council Member Beecham moved, seconded by Kleinberg, to direct the City Manager to form a multi-department team to investigate any and all feasible options for alternate sites for relocation of Palo Alto's auto dealers. This direction includes authorization to restructure existing work plans to accommodate the addition of the project.

Vice Mayor Kleinberg said the Council was mindful of the fact that there were other things that staff worked on, and the Council counted on staff to recommend appropriate adjustments as necessary.

Council Member Mossar suggested modifying language. Staff should not spend time identifying sites where the back yard was the Baylands but should focus on areas that had a buffer between the Baylands. There were locations on the eastside that could be considered

Council Member Beecham said there was consideration by staff about sites on the west side. A number of the sites that had been available were no longer available.

Council Member Mossar said giving staff direction was important.

INCORPORATED INTO MOTION WITH THE CONSENT OF MAKER AND SECONDER to request the Committee to take into account proximities to the Baylands with the hope that sites identified would provide suitable buffers between the auto dealerships and the Baylands.

Council Member Morton asked whether the Council envisioned when staff investigated feasible options, the redevelopment district along San Antonio Road might be considered or whether there were limitations on what the Council asked staff to do.

Council Member Beecham said if staff thought a redevelopment district might work, the Council would be advised.

Council Member Morton said the Council needed to do a strategic financial plan that covered future revenue sources or the erosion of revenue sources. The Council piecemealed something that staff should look at in a broader view. His concern was with the auto dealers, hotels, and internal revenue sources.

Council Member Freeman asked whether there were any stipulations about the size of signs along the freeway frontage.

Mr. Emslie said there were ordinances for everything, including signs.

Council Member Freeman wanted to be cognizant of the delicate balance between signage that attracted people to Palo Alto and overpowering signage.

Council Member Kishimoto asked whether staff knew what work plans would be moved to accommodate the project.

Mr. Benest said staff would look at the work plans, and he would report back to the Council. Given the budget situation, the Council had to look at the revenue side. The issue was of highest priority.

Council Member Beecham clarified the task force was made up of City staff in contrast to the ongoing committee on retail attraction.

Council Member Kleinberg said she received calls from several people who were in contact with automobile dealers and developers, who were interested in the possibility for auto dealer sites. Some people felt the idea was a welcome opportunity.

MOTION PASSED 9-0.

COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Mayor Burch adjourned the meeting in memory of Claire Dedrick, who passed away on April 8, 2004, and was an influential environmental advocate who held the State's top environmental post.

Council Member Freeman requested the meeting be adjourned with the acknowledgement for the life of seventh grader Michael Gourdin at Jordan Middle School, who recently passed away.

ADJOURNMENT: The meeting adjourned at 10:34 p.m. in memory of Claire Dedrick, who passed away on April 18, 2005. She founded the Peninsula Conservation Center; spearheaded Proposition 20 in 1972 establishing the California Coastal Commission; was appointed Secretary of Resource Agency Conservation in 1977 over the departments of Conservation, Fish & Game, Parks & Recreation and the Energy Commission; and named to the Public Utilities Commission in 1975, who pushed for alternative energy. Also, that the meeting be adjourned in memory of Jordan Middle School seventh grader, Michael Gourdin, who recently passed away.

ATTEST:

APPROVED:

City Clerk

Mayor

NOTE: Sense minutes (synopsis) are prepared in accordance with Palo Alto Municipal Code Sections 2.04.180(a) and (b). The City Council and Standing Committee meeting tapes are made solely for the purpose of facilitating the preparation of the minutes of the meetings. City Council and Standing Committee meeting tapes are recycled 90 days from the date of the meeting. The tapes are available for members of the public to listen to during regular office hours.