

REGULAR PLANNING COMMISSION MEETING. TOWN OF PORTOLA VALLEY, MAY 17, 2006, TOWN CENTER, HISTORIC SCHOOLHOUSE, 765 PORTOLA ROAD, PORTOLA VALLEY, CA 94028

Chairman McIntosh called the meeting to order at 8:02 p.m. Ms. Lambert called the roll:

Present: Commissioners Elkind, McKitterick, Wengert and Zaffaroni, and Chairman McIntosh
Absent: None
Staff Present: George Mader, Town Planner
Tom Vlastic, Dep. Town Planner
Leslie Lambert, Planning Manager
Maryann Derwin, Council Liaison

ORAL COMMUNICATIONS: None.

REGULAR AGENDA

- (1) Public Hearing, Board of Adjustment: Exception X7F-63 for Reduction in Front Yard Setback for Detached Garage, 21 Deer Park Lane, Dailey

Mr. Vlastic reviewed the staff report of 5/11/06 and recommendation to conditionally approve an exception to permit a detached 3-car garage to be constructed within 20' of the front property line.

Referring to the staff report, Commissioner Zaffaroni said the Lunds had requested that no new trees be planted that could grow to block their distant views. She wanted to know how that would be enforced. Responding, Mr. Vlastic said the plan that would go before the ASCC would include final landscaping provisions. The ASCC could stipulate that there be no additional planting in that area. That requirement would run with the property. It could be added as a condition of approval, or the ASCC could be asked to include it in their action. Responding to Commissioner Wengert, he confirmed that the roofline of the main structure would not be increased more than 2 ½ feet, as requested by Mr. Lund; the current height from the Lund's side was about 21 feet and the proposal was for 23 ½ feet.

Responding to Chairman McIntosh, Mr. Vlastic said the CC&Rs for the Oak Hills homeowners' association had a 50 foot setback from all property boundaries. That differed from the Town's setbacks, which were 50' for the front setback and 20' on the sides. Applications had to adhere to their CC&R's unless the homeowners' association granted them relief from that requirement as they had in this case.

Chairman McIntosh opened the public hearing.

Laura Chase, architect, introduced the applicants. She described the panhandle shaped parcel, noting that a number of locations for the garage had been looked at. The proposed location had the least impact on the surrounding neighbors. The garage was also tucked into the hill which reduced the bulk. It would be low and single story. Chairman McIntosh said he thought it was well hidden.

There were no additional comments, and the public hearing was closed.

As articulated in the staff report, Commissioner Zaffaroni said the findings could be made to grant the exception. She moved to find the project categorically exempt pursuant to Section 15305(a) of the Town's CEQA guidelines. Commissioner Elkind seconded, and the motion carried 5-0. Commissioner Zaffaroni moved to approve the requested exception to permit construction of a detached garage maintaining a 20' setback from the front parcel line as shown on the plans dated 5/5/06, with revised garage plan dated 5/9/06, prepared by dz-B Design, subject to conditions "a" through "c" set forth in the staff report of 5/11/06, provided that the ASCC also address the landscaping issue of not planting trees that would grow to block the Lunds' distant views. Commissioner McKitterick seconded, and the motion carried 5-0.

(2) Preliminary Review, Board of Adjustment: Variance X7E-130 for Guest Unit Replacement, 163 Brookside Dr., Cocco

Mr. Vlasic reviewed the staff report of 5/11/06 on the request for a variance to allow for the replacement of an existing detached guest unit on the subject parcel of .71 acres. As indicated in the report, he said staff did not feel that the Planning Commission could make the required findings for the variance.

Commissioner Elkind said she was consistently concerned about the Commission making decisions that would set a precedent. She felt granting this variance would set a precedent and make it very difficult to uphold the zoning regulations in the future. She could not make the findings for the variance.

Responding to Commissioner Zaffaroni, Mr. Vlasic said staff had not looked at the existing structure. It might not be possible to repair it in such a way that it could be preserved. He noted that if a non-conforming use had been discontinued for a period of time, it could be argued that it could not be replaced. From the applicant's perspective, the structure was in disrepair and needed substantial improvement. It probably would not meet the 50% test, but staff was willing to consider that. Responding to Commissioner Zaffaroni, he said the neighboring parcel included a new, 359 sf detached studio; the Town had a separate policy statement that allowed for other kinds of buildings that could not be easily converted to second units. Responding to Chairman McIntosh, he said the existing detached unit was slightly within the required side yard area and would not meet the averaging provisions in its current location. If it was possible to rehab the structure without increasing the setback, that was an option. Responding to Chairman McIntosh, he said if it could be rehabbed, the living area could not be expanded beyond what was there now. Responding to Commissioner McKitterick, he said the project architect indicated that the new ownership had occurred during the middle of last year, and the structure had not been occupied since then. It would need to be established whether that fell within the required 1-year period.

Carter Warr, project architect, said the applicant understood that this would be a difficult decision. But, there was significant State and local interest in having towns provide alternative housing opportunities at lower cost in units that were very similar to this. This was an opportunity for the Town to do the right thing and try to maintain a housing stock of smaller units. The actual building itself would be decreased by 149 sf. While he understood there were alternatives for development of the floor area in compliance with the policy statement, those did not respond properly to the need for lower cost housing. The parcel was one of the largest in this area, and it was maintaining an existing use. The re-development of the property was very similar in character to the existing improvements and very similar to the property next door. The new home and guest unit would be a valuable addition to this property and the Town. He said there was no desire to go to the Council and change the ordinance. But, it was felt that this was a responsible way to improve this property.

Commissioner Elkind said she recalled a survey that indicated in Woodside, less than half the second units were used for the purpose of rental property. She was a strong proponent of housing and was pleased to hear Mr. Warr recognize the importance of that. But, there were opposing community needs here, and she wanted to maintain the current policy and not weaken it by making an exception.

Commissioner Wengert said she was also concerned about setting a precedent. Given all of the input from staff, it would be difficult to find that a unit of this type should be expanded on this .71-acre site. The unit was also not currently being used as a second unit. Any exception to the original intent of the ordinance would have to have very compelling reasons beyond those which she had heard. If the Town wanted to change the policy and provide additional housing, that should be applied across all categories as opposed to granting an exception.

Aside from precedence, Commissioner Zaffaroni said she could not make the findings for a variance. There might be supporting material, but it was not in the application. Referring to the ordinance requirements (Section 18.68.070), she said subsection B stated that if the facts did not establish that all of the six conditions set forth in subsection A applied to the subject case, the Board of Adjustment must deny the

application. Referring to finding #5, she said this was not an improvement that would be allowed in the district. Normal improvements in terms of second units had to occur in districts of 1 acre or more. With respect to finding #3, she said a second unit was not a property right that was possessed by other owners in the same district. With respect to finding #2, she said the standard for “practical difficulty” or “unnecessary hardship” was whether or not the requested improvement was something that could be made by other property owners in the same district, any special circumstances of the property caused this owner to be denied that right. This was a second unit which was not normally allowed within this district. Reading finding #1, she said the application did not describe and exceptional or extraordinary circumstances or conditions that applied to this property. Those normally related to topography, the shape of the parcel, or something physical about the parcel itself. In this case, the application indicated it was the second unit itself that made it unusual. That was circular reasoning and indicated that any time there was a non-conforming structure, you were automatically entitled to a variance. The code requirements were not satisfied in this particular case.

Commissioner McKitterick agreed the non-conforming use was not an exceptional circumstance. He also agreed with Commissioner Elkind’s comment about the number of guest houses that were actually rented. Additionally, he did not think this guest house would be used for housing due to the location; there was no driveway access. He was not convinced that this was an affordable housing issue.

Chairman McIntosh said the Commission had no wiggle room in this situation. While the plan fit in with the architecture of the whole house and would be more attractive than rebuilding the existing building, he did not think the Commission could grant this variance. The structure was also not being used as a guest house. Responding to Chairman McIntosh, Councilmember Merk said the existing house was built in 1927 by the Ernst family. A man named Charlie Frederickson lived in that little room and died in 1967 or 1969; it had been unoccupied since that time.

Mr. Warr reiterated that he knew this would be difficult. He had tried to appeal to what he thought the Town’s desire was in terms of providing housing. Whether or not it was used for housing, it would have the potential to be used for that. He noted that driveway access was not allowed to the second unit. He felt the “extraordinary circumstance” was that it existed. He was not trying to set a precedent for new guest houses in this district. The intent was to provide for improved lifestyle in a one-bedroom unit that was far below the 750 sf limit for units that existed elsewhere and in this zoning district. The Planning Commission needed to look for ways to allow this kind of housing. The smallest unit at The Sequoias, which did not include a kitchen, was 350 sf; the existing 237 sf was far below any contemporary living space and would not provide adequate housing even if rebuilt.

Bill Henderson, Brookside Dr., said the neighborhood was slowly deteriorating because a lot of big houses had been allowed. He suggested that the Planning Commission and ASCC have a seminar of some kind to look at the issues on Brookside. It was a nice area with historic roots in the valley. Perhaps a new zoning ordinance that protected these neighborhoods could be discussed. This project was a big house for the neighborhood, and they wanted an additional guest house. There was another one going up down the street, and there was a lot of traffic on the street during construction that the people who lived there had to put up with and endure. The issue here wasn’t housing; the issue was profit. These people bought these houses and paid a lot for them. The only way they could get the profit they needed was to put in bigger houses with nice guest houses. These people didn’t have roots in this community and would leave the problems when they left. He described what had happened to the Roosevelt Ave. area in Redwood City after developers were allowed to put in big apartment houses. He urged that this request be denied.

Mr. Warr asked if the Planning Commission thought it would be valuable to study the ordinance to see if second units should be allowed in some of the smaller neighborhoods. He said a number of them already existed. While he realized the findings could not be made for this variance, he said variances throughout the State were often granted if they made sense. This one tended to make sense. He said the literal hardship was that it couldn’t be used as a residence. A threshold for acreage to allow guest units/second living units made sense, but his concern was about those units that already existed.

Commissioner McKitterick noted that the Town's residents rejected the housing approved for Nathhorst Triangle and that was on a major corridor. The housing problem should be addressed in some of the major traffic corridors in Town rather than in areas with less than 1-acre parcels. Mr. Warr reiterated that his concern was about maintaining the existing units. The environmental impacts associated with maintaining an existing 237 sf or 500 sf unit were not significant in terms of traffic, bulk, energy use, etc.

Mr. Vlastic said doubling the size of a unit, how it was used and its potential for use would have effects. If the Town wanted to get into grandfathering in units and allowing them to be larger, a lot of issues would have to be faced. Town Planner Mader added that this would be a very major topic because there were a lot of lots that were less than an acre in Town; a number of them had illegal second units. A fundamental question was whether you wanted to treat existing units differentially from lots that might have a good spot for one. Responding to Commissioner Zaffaroni, Mr. Vlastic said there were a number of structures that were designed as garages or out buildings and converted into living units at some point. Trying to establish when that happened was a challenge. Town Planner Mader said opening up small lots raised a lot of questions. He noted that there had been some discussion about smaller lots when second units were discussed. The feeling was that that would be putting too much pressure on those areas. Responding to Commissioner Zaffaroni, he said it could be brought up in the context of the Housing Element.

(3) Discussion of Planning Program and Budget for FY 06-07

Town Planner Mader reviewed the staff memo of 5/4/06 on the planning program and budget for FY 06-07 and recommendation to transfer \$5,000 from the Special Requests line item to begin work on the biological resources map. He said that would be a place holder to look at some of the Town's resources (e.g., aerial photos and base maps) and talk to some of the firms that did this kind of work. Responding to Commissioner Zaffaroni, he said he would need to speak with Thomas Reid Associates to see if their estimate of \$15,000 was still accurate.

Commissioner Zaffaroni said this proposal went back to 1996. It was particularly critical to have a biological resource map for those properties that were of significant size. To have an assessment or inventory of biologically sensitive areas or important biological resources would be very helpful and also assist the Town in preparing Initial Studies—even for more minor projects. This was something that needed to be done before possible developments. If it wasn't done soon, it would not have much utility. Because Thomas Reed had estimated \$15,000 to complete the project, she suggested some of the money allocated to other items be transferred—particularly other items that might not be pursued in the first half of the fiscal year.

Commissioner Elkind said she had been asking every year for biological resource information. That information needed to be in place well before the Town looked at the Safety Element. During the fire management for Blue Oaks, a species of shrub that grew only in the Santa Cruz Mountains, leather wood, had a number of specimens destroyed. There had been warnings from the Conservation Committee and native plant specialists, but the damage had still occurred. If the resource map had been available, there would have been a lot more leverage brought to bear to protect those species. She felt it could happen in any number of situations in Town as projects came through. She wanted to see at least \$10,000 budgeted.

Town Planner Mader noted that the estimates for the major items such as the riparian corridor regulations were rough. Commissioner Zaffaroni said there had not been a consensus among the Commission that that would move forward rapidly. She suggested allocating some of the \$40,000 to the biological resources map.

Commissioner McKitterick noted that he was still not comfortable with the Special Requests budget. He did not want the budget to be greater than it was last year—even if it was only \$2,000 greater.

Town Planner Mader suggested earmarking \$5,000, getting some additional information on the cost of doing the work, and then bringing it back to the Commission for adjustments within the budget. The Commission would also need to talk about the strategy for the riparian corridor regulations; that would need to be done

early in the fiscal year. Responding to Commissioner Wengert, he said the Town Administrator asked that 2-3 items be listed that were well funded that could be accomplished during the year. Last year, two of those made good progress. The third was back this year. The emphasis was on the top items, but the lesser items should not be ignored. Commissioner Wengert said Resolution 500 (item #4) and basements (#5) were significantly close to being complete. Town Planner Mader agreed noting that basements would go to the ASCC in the next month; Resolution 500 would come back to the Commission and then on to the Geologic Safety Committee. Some of the others took some lead time such as the riparian corridor regulations. The Noise Element could be started relatively quickly. He discussed the status of the "Other Items."

Commissioner Zaffaroni said she did not feel the biological resource map would be time consuming for the Commission. But, it was a high priority item and should be funded.

Responding to Commissioner Elkind, Town Planner Mader said the Noise Element was the oldest Element of the General Plan. There was considerable pressure to keep the General Plan up to date, and it had not been modified in some time. Staff and Commissioners discussed noise in Town. Mr. Vlasic said the Town often received requests for evaluation of noise. The Noise Element was a policy document without any numerical standards other than those in the appendix which was not adopted as policy of the General Plan. The Town's noise ordinance dealt with construction activities. Town Planner Mader added that the Town did not have noise measurements that met the State guidelines. Some standards would need to be developed that were appropriate for this environment, which the Commission would discuss.

Commissioner Elkind noted that the riparian corridor regulations had been in process for 4-5 years. She thought it was conceivable that it could take another 2-3 years because of the complexity. She wanted to move forward this year and not duck this sensitive issue. Chairman McIntosh noted that the strategy would probably be different than in the past. Town Planner Mader suggested the Commission first hold a discussion session to go over the history, current status, and options/approaches. When the program was decided, residents could be involved.

After discussion, Town Planner Mader said he would bring back some figures for the biological resources map.

COMMISSION, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS: None.

APPROVAL OF MINUTES

Ms. Lambert said the minutes of the April 19, 2006, meeting had been pulled from the last agenda so that she could listen to the tape and correct the vote shown for the FY 06/07 planning budget [*sic*]. By motion and second, the minutes of the April 19, 2006, meeting were approved as amended by a vote of 5-0.

Commissioners Elkind and Wengert submitted changes to the minutes of the May 5, 2006, meeting. By motion and second, the minutes were approved as amended by a vote of 5-0.

ADJOURNMENT: 9:30 p.m.

Chip McIntosh, Chair
Planning Commission

Leslie Lambert
Planning Manager