

CALL TO ORDER AND ROLL CALL

Chair Targ called the Planning Commission regular meeting to order at 7:00 p.m. Planning & Building Director Russell called the roll.

Present: Planning Commissioners: Hasko and Kopf-Sill; Chair Targ
Absent: Commissioner Taylor and Vice Chair Goulden
Town Staff: Laura Russell, Planning & Building Director; Cynthia Richardson, Planner; Arly Cassidy, Associate Planner

ORAL COMMUNICATIONS

None.

PUBLIC HEARING

- (1) **Architectural, Site Development Review for a New Residence, Removal of Significant Trees and Landscaping, and Variance Review for Uncovered Parking, File # 43-2017, 5588 Alpine Road, Ross Residence**

Associate Planner Cassidy described the project data, background, and discussion items regarding the proposed project, as detailed in the staff report. She reported that the applicants and architect resubmitted plans with modifications addressing all comments made by both the Planning Commission and ASCC. The ASCC completed a preliminary and final review of the project and recommended approval of the project as modified. Staff recommended approval of the project subject to the recommended conditions.

Chair Targ invited questions from the Commissioners.

Commissioner Hasko asked for clarification regarding the spring box. The applicant explained that a spring box is a 2'x5' redwood plank box sunk at grade level, basically a French drain that allows water to flow into the box, which is then pumped out. He said the water meets County potable requirements, but they will probably further treat it.

Commissioner Hasko asked for clarification regarding the statement "... did not allow for any improvements which would prevent use of the easement." Associate Planner Cassidy said because the easement is for a road and vehicular access, things that would prevent the road being used cannot be installed, but the fire truck turnaround and widening of the road is allowable because that does not prevent other use of the road as a path of travel.

Commissioner Kopf-Sill said she appreciated the lighting reduction but asked if the firefighters would need light. Associate Planner Cassidy said the ASCC commented that firefighters have their own lighting, including headlamps.

Chair Targ asked if the applicant would prefer to have their lights on a timer. The applicant said they thought it was reasonable to remove the lights because they don't anticipate using those stairs very often as their primary access will be from the parking and up the path. He said the stairs are only for intermittent use.

Chair Targ asked why excavation would be necessary to provide covered parking. The applicant said that because of the nature of the soil and the fact it is a slide area, extensive foundations would be required, which would be excessive for a parking area and not economically feasible.

Chair Targ asked staff why the Town requires covered parking areas. Associate Planner Cassidy said this topic has come up previously in other projects. She said her understanding is that it originates from the desire to feel rural and to not see other people's cars. Chair Targ asked if the ASCC could consider whether this is something that should be modified. Planning & Building Director Russell said there will be a meeting between the Mayor, the Vice Mayor, and the Chairs of the Planning Commission and ASCC, and she will agendize this issue for that meeting.

Chair Targ invited comment by the applicant. The applicant said it has been a pleasure working with Associate Planner Cassidy.

Chair Targ invited public comment. Hearing none, Chair Targ brought the item back to the Commissioners for discussion.

Commissioner Hasko said it has been obvious that the applicants have responded to all of the feedback provided by the Town. She was supportive of the project.

Commissioner Kopf-Sill was supportive of the project.

Chair Targ said he was supportive of this very bold project.

Commissioner Hasko reviewed the reasons the Commission was able to make each of findings required to grant the variance. Finding #1 – the steepness, heavy forestation, and remote location meet the requirement for special circumstances. Finding #2 – the site and soil quality would support the finding of a special circumstance, and the literal requirement of covered parking would cause the applicant to incur extraordinary expense not incurred in similar areas under identical zoning. Finding #3 – no special privilege is being granted as there will be the same number of parking spaces and parking is necessary to develop the site. Finding #4 – there is no obvious detriment to the public welfare and the neighbors have supported the project. Finding #5 – there is no use prohibited by zoning regulations. Finding #6 – the plans for development of the site reflect the General Plan priorities, respecting natural conditions on the site, and developing in a minimally invasive manner.

Commissioner Hasko moved to find the project categorically exempt per Section 15303, Class 3, of the State CEQA Guidelines. Seconded by Commissioner Kopf-Sill; the motion carried 3-0.

Commissioner Hasko moved to adopt Resolution 2018-10 approving the Variance for Uncovered Parking. Seconded by Commissioner Kopf-Sill; the motion carried 3-0.

Commissioner Kopf-Sill moved to approve the Architectural and Site Development Review, Removal of Significant Trees, and Landscaping, including the conditions of approval in the staff report. Seconded by Commissioner Hasko; the motion carried 3-0.

NEW BUSINESS

- (2) **Preliminary Review of a Conditional Use Permit Modification and Variance Request to:**
- **Exceed the maximum allowable floor area to construct 2,910 sf 1,715 sf is allowed;**
 - **Allow a 7-foot-9-inch side setback where 20 feet is required; and,**
 - **Allow a 16-foot rear setback where 20 feet is required;**

For Pacific States Capital/John Hansen (Hallett Store) 844 Portola Road. File #1-2018 and X7D-178.

Planner Richardson described the background, project description, and discussion items regarding the proposed project, as detailed in the staff report. There was a field meeting at the site earlier today. Staff concluded that the findings for a variance could not be made and recommended that the Planning Commission direct the applicant to return with a conforming project by reducing the project to that portion of the structure that is conforming according to Section 18.58.020.3.c.

Chair Targ invited questions from the Commissioners.

Commissioner Hasko asked for clarification regarding Finding #3. Planner Richardson said that the analysis done for the Town Center area discusses other properties in the vicinity and the square footage as it relates to the floor area ratio. She said there are several other properties in the area that are smaller or have less intense coverage. She said this project, as it was approved, was a 22% floor area ratio and was compared to other Town Center properties. Planning & Building Director Russell said, from a staff perspective, one could go either way on making that finding. . Planning & Building Director Russell said staff could not make the findings for Finding #1 and #2, but were looking for the Planning Commissions interpretation and discretion regarding Findings #3 through #6.

Commissioner Kopf-Sill said this project brought up general questions regarding zoning, why there are rules about the 50% calculation, what other communities do, and how the Town has dealt with this type of problem in the past.

Chair Targ asked if there were other issues pertaining to the project other than the problematic variance issues. Planning & Building Director Russell said the remaining aspects of the project were all part of the package approved in 2017. She said the loss of the nonconforming status is what is at issue. She said if the Planning Commission finds it cannot approve the variance, then design work will be required.

Chair Targ asked, from an overall policy standpoint, if there were other striking inconsistencies with the General Plan, such as issues of lack of harmony to the surrounding community. Planning & Building Director Russell said that was not evaluated previously because of the nonconforming status, but the review of the variance now raises those questions.

Commissioner Hasko asked about the tree with multiple trunks, which was originally going to be preserved; was the tree trimming allowed? Planner Richardson said the tree was to remain per the last approval process. When the applicant dug around the tree to remove the existing foundation and create some new foundation, the on-site arborist discovered that the tree's root system was not adequate for the size of the tree. The applicant requested to be able to trim the tree. Staff met with the arborist and Mr. Carter Warr. The arborist wrote a letter to the effect that the root system was not adequate and there was a lot of weight at the top of the tree that needed to be reduced as a safety issue. Planner Richardson said the Town does not regulate trimming of trees.

Mr. Carter Warr said the desire to protect the tree was very clear from the beginning. He said that during the construction staging, the arborist was rescheduled to come out and map the roots so the pier locations could be arranged. During the probe for the roots, it was discovered there weren't many roots. They researched and reviewed the photographs with the company that did the sewer line work on the other side of the tree to identify if they had cut any significant roots. He said there was a significant pause because there wasn't enough supporting structure for a tree of that size. They worked with the arborist and staff to try to mitigate the danger associated with the tree while still preserving the majority of the effect the tree had from the Portola Road corridor. The owner said a backhoe operator

came and dug around the tree underneath the building site, and they could not find any root system. According to the arborist, 90% of a redwood tree's roots are within 5 feet from the surface, and the arborist could not identify where any support was coming from. The arborist concluded that it was a clearly dangerous situation, one that was not anticipated. He said the higher branches were trimmed to eliminate the sail effect.

Mr. Warr said they believe that allowing the front of the building within the 50-foot setback to be rebuilt is consistent with the intent of the ordinance writers to allow these kinds of buildings to remain and to encourage them to be rebuilt. He said it is a disconnect and unfair to not allow the building to be rebuilt, and he feels it is a hardship as a consequence of an error in the way the ordinance is constructed. He said other things outside of the front yard setback are governed by a separate section in the ordinance. He said the founders, if confronted with this same condition, would find that the balance of the building is as important as the amount of building that is in front of the front yard setback. He said, because of that, they believe they have extraordinary special circumstances and that they are being deprived of the ability to maintain that building as the founders intended. He said because of that, Findings #1 and #2 can be found affirmatively, as can the other findings. Mr. Warr said in 1951, the front yard was taken away from this building when Alpine Road was straightened out. He said the building survived because people considered it valuable. He said the intent is to rebuild a safe building that lasts longer than the original building. He said the Planning Commission and ASCC and Town Historian were happy the property was being rebuilt. He said there were no issues with any of the other subjective or objective elements of the ordinance or the General Plan, and they believe it is unfair that they cannot use the same set of approval processes. He said in the early part of this process, they were given permission to completely replace the toilet room portion of the building, which included the foundation. He said they are now only asking to replace a portion of the building above the foundation which is significantly less costly than it was for the toilet rooms. He said the planner and building official at the time found that to be compliant.

The owner said he became involved with the project in 2015. He said in 2016, the lot line adjustment was approved by the Town, and the encroachment into the rear yard was taken into consideration and considered acceptable in order to preserve that building. He said it took a year to get the building permit, and they negotiated moving part of the building from the redwood tree to the other side. He said at that time, he thought the Planning Commission was supportive about the materials, design, and the building exactly with all the potential flaws in terms of the setback and coverage. He said it does not seem consistent that now the Town is considering changing that support or tearing it down. He acknowledged that a procedural mistake was made. He said he has dealt with the builder for 20 years and found him to be upstanding, working in Santa Clara Valley and San Mateo County for a long time, and did not think he was doing anything inappropriate. The owner said he would like to keep the building the way it is because it's in better shape, will fit better with what is wanted in the back, and is more visually aesthetic from the front. He said the ordinance is in conflict with the State codes in terms of requirements for a structure.

Mr. Warr said he studied the drawings for 808 Portola, and it was clear that more than 50% of that building was taken down, and it was allowed to preserve the non-compliant setback. He said the planners and the community were happy that building was preserved. He said if pushed, they will study the history of every one of the buildings and find out how they were reconstructed and how much they were reconstructed. He said the community will be disappointed if the Town does not allow this building to be reconstructed.

Chair Targ said the Commission is dealing with the reality and perception of fair play and equal treatment. He said Ms. Bennicas wrote a letter expressing that she will feel aggrieved because she was not able to obtain a variance for an addition to her property which had to be removed because of

its location with the setback. He said the Commission will need to differentiate Ms. Bennicas' situation from the applicant's situation.

Mr. Warr said in their situation a building exists. In Ms. Bennicas' situation, it was a new construction that was built within the setback. It was not the preservation or reconstruction of an existing building.

Chair Targ asked the applicant to explain the special circumstance or hardship, given the tension between Title 24 and the ordinance. Mr. Warr said the building code requires that the building, foundation, electrical, plumbing, mechanical systems, access, and fire protection system be completely brought up to the current code when you exceed 50% of the building. He said the blue part [referring to the graphic in the staff report] is more than 50 percent of the building, and they're attached. He said there was no way to keep it without disconnecting it. He said the building permit drawings approved for the building do not match the building that is currently constructed. He said they would have had to take it apart stick by stick. He said the assertion in the staff report is that the contractor should have known how bad it was, but a lot of the damage was behind finishes and structures. He said if it was broken apart they would have voided the existing nonconforming condition so they had to go completely through the process to preserve the building before they could take it apart. He said the framing contractor was taking it apart and putting it together repeatedly to do the individual repairs and asked the general contractor to ask if they could do it like they did the bathroom, and the general contractor made the mistake of authorizing it without getting Town permission. Mr. Warr said he thinks there is some retribution being placed upon them for that error. He said he believes if they would have asked, it would have been allowed. Chair Targ said that is an after-the-fact variance request. Mr. Warr asked the Commission to consider whether, in the absence of the misbehavior and the conditions as they exist, the Planning Commission would have approved the complete replacement of the buildings. Mr. Warr said he thought they would have approved it.

Chair Targ said his concern is about granting a do-over kind of variance. He said a variance is based upon specific findings and is an adjudication. He said relative equities can be taken into consideration, to which he is personally very sympathetic. He said he does not disagree that the Planning Commission, the ASCC, and staff gave a lot of thought to the applicant's project and voted unanimously for it. He said he is also concerned regarding potential precedential effects and said the basis of a do-over doesn't fit with the findings of a variance. He said there could be an argument made of a tension between Title 24, the building code, and the requirements of the nonconforming use. He said if the Commission is going to contemplate granting a variance, they need to understand the long-term effect and also make sure they can address Ms. Bennicas' concerns and differentiate her property from the applicant's. Chair Targ said he would like to know if the applicant can provide a better basis for a variance as a matter of law or as a matter of the property.

In response to Commissioner Kopf-Sill's question, Planning & Building Director Russell said the percentage rule for reconstructing a non-conforming structure is very common and is a reflection of State law and case law that says that cities and towns are required to have zoning and that zoning should be enforced. She said one of the ways they do that is through nonconforming sections and codes, which have a lot of similarities. She said Portola Valley has the valuation provision while some other cities have physical provisions such as 50% of exterior walls or 50% of the nonconforming wall. She said how much definition is around the nonconforming section varies by community. She said there is inherent tension with the building code and Title 24 in rebuilding legal nonconforming structures. She said, in general, the intention of zoning codes is to bring projects into compliance with today's code. She said in Portola Valley, they have an exception in the setback area that specifically allows something to be rebuilt in that area. In staff's interpretation, that is an expressed value of the decisionmakers in saying we value those structures in that setback area and maintaining that historic fabric along that section.

Commissioner Kopf-Sill asked if requests to rebuild nonconforming structures comes up very often. She asked how many projects in the last 10 years have had to comply with the 50% calculation. Planning & Building Director Russell said staff discussed this at length and have found this is not a common occurrence. She said most of the projects are single family homes which usually include a demolition and rebuild to current standards. She said the nonconforming situation is sometimes seen in additions to smaller single-family homes on smaller lots. She said those would not even get to the level of ASCC or Planning Commission but are approved at the building permit level. She said staff would receive the valuations for those and ensure they are less than 50 percent in order to maintain their nonconforming status. She said for larger projects, there have been perhaps three that today's staff can remember that would have come before the ASCC or Planning Commission. She said she could not speak to whether the contractors in the community are very familiar with this issue. She said although the issue does not come up in Portola Valley very often, it does come up in other communities fairly regularly.

Commissioner Kopf-Sill asked if there were any other instances in town where someone was approved for a project as long as they kept a certain percentage of walls or foundation and then accidentally removed too much or had to make a different decision once they got into the tear down. Planning & Building Director Russell said she reviewed the file that Mr. Warr referenced at 808 Portola, doing a cursory review of the last two building permits, including the tenant improvement and the investigative demolition that preceded it. She said there was nothing in the record that said they went beyond the scope of what was approved in the plans and also did not find the analysis of the 50% evaluation. She said that doesn't mean it wasn't done, it just means it is not currently in the file. She said they did not research other properties on the corridor alluded to by Mr. Warr.

Commissioner Hasko said this project has been pursued incrementally for quite a while. She said she personally would like to see this area of the corridor be robust. She noted that the Commissioners read every word in the staff packet, and the order of any documents in the staff report should not be taken as a diminution of their importance. She said in this situation, there is a balance between the 50% valuation rule triggering allowing the retention of floor area not otherwise enjoyed and Title 24. She said she would want Title 24 explained in a future packet. She would be interested in the intent behind the applicant being allowed to completely tear down and rebuild within the front portion. She said there is a balance in the 50% rule and trying to move zoning toward being more conforming, drawing a line at which point the benefit of additional nonconforming floor area is lost, and perhaps an intent to allow preservation and rebuilding of the front area in order to have a continual similar treatment of the façade of the buildings in the front. She said these imperfect rules are causing tension, but it is the Planning Commission's job to apply the facts as they see them to make variance findings they can support, particularly, in this case, Findings #1 and #2. She said she is also not clear on Finding #3. Commissioner Hasko was also concerned regarding the precedential value. She said there may well be the new construction distinction regarding Ms. Bennicas' property, but the Commission needs to be aware of how this might play out and how they can fairly apply the findings for other properties. She said she understood that mistakes happen in life, but this 50% rule is well known. She said it is part of what new applicants have to adhere to, and it's difficult to just disregard that and grant a redo because there was a mistake made. She said the Town is trying to encourage people to gradually come into conformance and allowing do-overs is not going to achieve that. She said there's a policy issue that should be examined in future discussions. She said she would like to understand the toilet room replacement at a more granular level in a future discussion. She said knowing a little more about the history and the intent of these two tension-filled provisions in the code will be important. She said the Commission must do their best to apply these principles fairly. She said she is willing to hear that there are special circumstances. She said when an old building is taken apart, dry rot and termite infestation is predictable and part of what one should expect to find. She said the fact that remodeling is less efficient than building new is not the point. She said the point is more what these rules are trying to achieve and how to most fairly achieve a balance. She said she understands the applicant is making

efforts to bring the building to something that's really usable and valuable to the community. She said she would love to hear more and be more educated and see if there is a way to make the findings.

Chair Targ said it is well-stated that the project was previously approved with a lot of support from the ASCC and Planning Commission. He said he is not hearing any objection in principle to the project. He said they are trying to achieve harmony to the existing laws to be able to document the variance findings in an adjudicative manner; trying to apply the facts and the hardship that can be imposed by the law. He said the hardship does not need to be imposed by an outcropping or a tree, but it can be a conflict that becomes unworkable for one reason or another into the facts that would support the findings and in a way that can reflect parity to the neighbors. He said they can have a robust conversation when this project is brought back and dig deeper into that. He said, given the nature of the decision being made, although it is not required, it would be helpful to have the full complement of Commissioners.

Mr. Warr asked for a continuation date. Chair Targ suggested that a specific date be schedule at the earliest opportunity.

Planning & Building Director Russell asked if the Commission was asking for an additional preliminary review or a full package for final review. She said staff's position up to this time is that the findings cannot be made, and they would presumably be preparing findings for denial and the applicant would be preparing more in-depth findings of approval for consideration.

Mr. Warr said building has been stopped for three months now. He said when they found they needed to apply for a variance, they expected that the existing documents would be accepted but were confronted with a lot of rework of the documents and another application and fee. He said they believe what they're asking for is fair. He said he understands that is it is their responsibility to do a better job of helping the Planning Commission find a path to those findings. He said they appreciate the Planning staff's difficulty with the project, the process, and making the findings.

In response to Chair Targ's question, Mr. Warr said they would like to schedule a decision on the variance.

Commissioner Kopf-Sill said it would be very simple for a town to only require a nonconforming structure to be rebuilt to the same footprint in the same building envelope without regard to the how much of it is torn down. She said all towns and cities have implemented a percentage rule because they want the building stock to drift to the new zoning rules. She said she wants to know what is special about this building that would allow for an exception. She said it can't be allowed just because somebody made a mistake or that the conditions of the building were poor, which would be true of every old building.

Mr. Warr said the difference here is that this project is subject to the special Portola Road requirements. If that were not the case, he said this building would have received minor remodeling, would not have needed the use permit process, would not have required a variance to exchange square footage, and would not have asked for a tree removal permit in order to repair the building, and they would have done it one stick at a time over several years, never to exceed the 50%, and the existing building would still be there but the tree wouldn't. He said the special exception for the Portola Road area was because the Town wants to preserve these beloved buildings, vestiges of where the Town came from. He cited the building at 808 Portola, which was completely rebuilt and far exceeded the 50% rule, but was accepted by the Town and required no evaluation. He said the architectural integrity of their project is far better than what it would be if made compliant. He said it would be more strip mall like with parking in front instead of hidden along the side and in back. He said he believes in

and supports the 50% rule but does not think it is fair to impose it on this project because 70% to 80% of the building is exempted because the Town wants it to be rebuilt there.

Commissioner Kopf-Sill asked why, if the Town's intention was to preserve buildings along Portola Road, they would not allow old buildings close to Portola Road to be grandfathered in. Mr. Warr said he thinks that was the intention. He said the issues here are not regarding compliance but are because of the odd side yard and rear yard setback that was created as a consequence of the lot line adjustment. Commissioner Kopf-Sill said the big nonconformance is the AP designation. Mr. Warr said the Planning Commission has accepted that nonconformance. He said in the CUP that was previously approved for the five homes in the rear, Sausal Creek Associates got approval to rebuild the entire building further over from the tree with the access easement in the same place.

Planning & Building Director Russell said staff understands the Planning Commission's request for additional information, and they will do their best to provide as much as possible. She said they look forward to receiving the applicant's revised findings, and staff will reanalyze it. She said, based on what was heard this evening, as well as additional information provided, they will revisit their own analysis and confirm whether or not they think the findings can be made and will present that to the Planning Commission for consideration. She said if the Planning Commission wants to approve it, they will have to work on the fly a bit, but will anticipate that as a possible step in the process.

COMMISSION, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

(3) News Digest: Planning Issues of the Day

Planning & Building Director Russell shared articles of interest with the Commissioners – “The Fair Housing Act, CRT, Department of Justice” and “HUD Files Housing Discrimination Complaint Against Facebook.”

APPROVAL OF MINUTES:

(4) Planning Commission Meeting of July 18, 2018

(5) Planning Commission Meeting of August 1, 2018

Commissioners preferred to abstain from voting on minutes from meetings when they were not present, so the Commission agreed by consensus that the minutes should be brought back to a future meeting.

ADJOURNMENT [8:40 p.m.]