



## PLANNING COMMISSION MEETING MINUTES

**City Council Chamber**  
200 Old Bernal Avenue, Pleasanton, CA 94566

**DRAFT**

**Wednesday, May 27, 2015**

### **CALL TO ORDER**

The Planning Commission Meeting of May 27, 2015, was called to order at 7:00 p.m. by Acting Chair Ritter.

### **PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Commissioner Piper.

#### **1. ROLL CALL**

Staff Members Present: Adam Weinstein, Planning Manager; Julie Harryman, Assistant City Attorney; Steve Otto, Senior Planner; Eric Luchini, Associate Planner; and Maria L. Hoey, Recording Secretary

Commissioners Present: Commissioners Jack Balch, David Nagler, Gina Piper, and Herb Ritter

Commissioners Absent: Commissioners Nancy Allen and Greg O'Connor

#### **2. APPROVAL OF MINUTES**

##### **a. May 13, 2015**

Commissioner Nagler indicated that he was not the speaker for the third, fifth, and seventh paragraphs on page 5 and requested that they be corrected. Commissioner Balch indicated that those were his statements.

**Commissioner Piper moved to approve the Minutes of the May 13, 2015 Meeting, as amended.**

**Commissioner Nagler seconded the motion.**

**ROLL CALL VOTE:**

**AYES:** Commissioners Balch, Nagler, and Piper  
**NOES:** None  
**ABSTAIN:** Commissioner Ritter  
**RECUSED:** None  
**ABSENT:** Commissioners Allen and O'Connor

The Minutes of the May 13, 2015 Meeting were approved, as amended.

**3. MEETING OPEN FOR ANY MEMBER OF THE AUDIENCE TO ADDRESS THE PLANNING COMMISSION ON ANY ITEM WHICH IS NOT ALREADY ON THE AGENDA**

There were no members of the audience wishing to address the Commission.

**4. REVISIONS TO THE AGENDA**

Adam Weinstein advised that there were no revisions to the Agenda. He indicated, however, that he would have to recuse himself for Item 6.a., P15-0037, Kursad and Zarina Kiziloglu, as he presided over the Zoning Administrator hearing.

**5. CONSENT CALENDAR**

*Consent Calendar items are considered routine and will be enacted, approved, or adopted by one motion unless a request for removal for discussion or explanation is received from the Planning Commission or a member of the public by submitting a speaker card for that item.*

**a. P15-0231, Tatiana Kubatina**

**Application for a Conditional Use Permit to operate a music school at 1024 Serpentine Lane, Suite 118. Zoning for the property is PUD-I (Planned Unit Development – Industrial) District.**

Commissioner Balch indicated that he would be recusing himself from any discussion on this item due to a conflict of interest.

**Commissioner Nagler moved to make the required Conditional Use Permit findings as listed in the staff report and to approve Case P15-0231, subject to the Conditions of Approval listed in Exhibit A of the staff report. Commissioner Piper seconded the motion.**

**ROLL CALL VOTE:**

**AYES:** Commissioners Nagler, Piper, and Ritter  
**NOES:** None  
**ABSTAIN:** None  
**RECUSED:** Commissioner Balch  
**ABSENT:** Commissioners Allen and O'Connor

Resolution No. PC-2015-13 approving Case P15-0231 was entered and adopted as motioned.

## **6. PUBLIC HEARING AND OTHER MATTERS**

*Continued from April 22, 2015:*

- a. **P15-0037, Kursad and Zarina Kiziloglu**  
**Appeal of the Zoning Administrator's approval of an application for Administrative Design Review at 5196 Hummingbird Road to:**  
**(1) construct an approximately 297-square-foot single-story addition with an open-sided second-floor balcony on the rear of the residence; (2) construct an approximately 558-square-foot second-floor addition above the garage on the east side of the residence; (3) install five new dormer windows; (4) install a new roof over the front porch; and (5) install new second-floor windows and doors. Zoning for the property is R-1-6,500 (One-Family Residential) District.**

Mr. Luchini presented the staff report and described the scope, layout, and key elements of the project.

### **THE PUBLIC HEARING WAS OPENED.**

Zarina Kiziloglu, Applicant, described her proposal using a PowerPoint presentation. She displayed "before" and "after" slides demonstrating different existing areas of the residence and how they would look with the proposed changes, including the second-floor balcony and the landscaping that would block the view to her neighbors.

Ms. Kiziloglu stated that the reason she is having the balcony is because she and both of her sons have asthma, and there are times when they are unable to breathe, even with the use of inhalers and nebulizers, because of allergies and asthma attacks. She added that what has helped them in the past is being outside in the cold air, sometimes at 2:00 and 3:00 in the morning, and when these incidents do occur, she would wrap her children in blankets and sit with them in the backyard. She noted that her sons have grown and she is no longer able to carry them outside, and the natural thing to do would be to have a balcony they can walk into easily to get fresh air. She pointed out that she did not want the balcony in front facing the street where people can pass by and see them, but in the back in their own private place. She indicated that she did not want her seven-year-old son to be out in the backyard when he has an asthma attack while she is upstairs sleeping. She stated that the balcony would provide a beautiful view of the mountains and add value to the property and to the neighborhood.

Ms. Kiziloglu stated that she believes her neighbors do not like her project and has put her project on hold for so many months. She indicated that she would like to get this moving so she can start her project and get it completed this month.

Jamison Cummings, Appellant, stated that his main focus is privacy. He agreed that the house could use an upgrade, and the proposed changes would make it look beautiful.

He indicated that he supports the remodel and has never objected to that. He noted that he is actually not fond of the fact that he is going to have to deal with dumpsters, out-houses, parking, construction, and dust for the better part of the year because it involves major structural rebuilding, but he would like to be a good neighbor and is willing to accept that. He indicated that the only compromise he wants to make and will not accept is the rear balcony.

Mr. Cummings stated that he went and surveyed about 80 houses, all the two-story houses that are on and around Hummingbird Road and in Pleasanton Valley, and he could not verify a rear-facing balcony on any of the Morrison-built homes. He pointed out that a mulberry tree is a deciduous tree, which becomes a skeleton in the winter time, as shown in a slide presented by staff. He noted that one can see right through that tree, and the privacy views are actually going to be more compromised. He added that the biggest issue with trying to provide organic screening is that organic screening is not like a fence: if a fence falls down, it can be remediated in one day; but if a tree breaks, it cannot be fixed overnight and will have to grow back. He pointed out that the trees grow one to two feet a year, and it would need another ten feet of growth to achieve full privacy screening from the proposed balcony. He stated that he owned a house with 21 Cypress trees and when they are spaced apart, they provide a space in between, through which one can see and which would compromise one's privacy.

Mr. Cummings stated that he has a household of three women, his two daughters and his wife, and they enjoy the backyard all the time. He noted that they have a really strong community, and his neighbors would potentially be affected by this if they come to his house and go in the backyard. He indicated that he canvassed the neighborhood and surveyed about 32 houses along the Sandpiper Way loop and received overwhelming support from them. He stated that some people could not make it to tonight's meeting, but most of those present tonight support him. He added that some of them sent emails.

On another issue, Mr. Cummings stated that he built a common fence between their properties and had requested Ms. Kisiloglu to treat her side of the fence. He indicated that instead of doing so, she planted these four trees against the fence which would deteriorate the fence.

Mr. Cummings stated that it comes down to a matter of whether they feel there is privacy or not, whether they feel good about being in their backyard. He indicated that if there is somebody lingering on the porch for some reason, he cannot ensure that his wife and daughters will feel comfortable in the pool or in the hot tub or just enjoy the backyard, as they will actually potentially be a direct view. He stated that when they bought this house, they wanted a house with a pool; they wanted a place where they can enjoy things and spend a lot of time out in their backyard. He noted that they have a sound system out there so they can enjoy the summer when the weather gets better and really try and feel comfortable. He added that they now have had very nice neighbors who have moved in and have never made them feel like their privacy is compromised; but now his wife feels like she is violated and is very uncomfortable all the time about the thought that something like this is going to happen.

Mr. Cummings stated that he understands it is unfortunate that Ms. Kiziloglu's family has asthma and can only imagine what having an asthma attack feels like. He indicated, however, that he cannot see the need to use asthma to justify having a backyard patio when one can simply open a window for fresh air. He then stated that the houses that do have patios all have them front-facing. He noted that part of Ms. Kiziloglu's dialogue is that she does not want a balcony in the front yard because she wants to have privacy, which is ironic because that is the same reason he does not want her to have a balcony in the backyard.

Mr. Cummings stated that the long and short of it is whether they feel there is privacy there. He noted that the applicant could stand on her balcony and claim privacy, but the neighbors down at sea level would feel like people are sitting over them and potentially looking. He indicated that he does not have any problems with the Kiziloglus' character; he believes they are great neighbors, nice people who are generally fairly quiet. He noted, however, that the problem is he cannot guarantee that she is actually going to live there forever. He pointed out that things change and people sometimes have to move; but the balcony in the backyard will stay, and there could someday be somebody creepy or strange living there and staring in the backyard at his wife and daughters and their friends.

Mr. Cummings stated that it all comes down to a privacy issue. He indicated that he does not feel that under any circumstances, any balcony back there will provide any remediation with screening and privacy and would make them feel absolutely comfortable.

Commissioner Balch stated that looking at the slide with the view of the mulberry tree taken from the applicant's window, noting that going down the road, that heritage tree could be diseased and changed out or trimmed or thinned, it appears that there would be a pretty significant view of the Cummings' backyard, with or without the balcony. He asked Mr. Cummings if he would agree.

Mr. Cummings agreed.

Commissioner Balch then asked Mr. Cummings if the balcony presents a problem because it extends out a little farther.

Mr. Cummings replied that that was part of the problem. He stated that having a balcony facilitates the ease of privacy violation by having a comfortable place where one could sit and just be there, but nobody would sit at a window to peak into the neighbor's backyard. He noted that whether that tree is there or not, there would be a place that facilitates that type of activity, and it would make them feel way more violated.

Commissioner Nagler commented that obviously a lot of work on everybody's part, including staff, has gone into trying to solve this problem, with a lot of good will on both sides: the appellant would like to see the house remodeled to have the neighbors get what they want, and the applicants are trying to mitigate the neighbor's issues and would like be able to do construction as they want. He noted that everyone has come up with a number of ideas from putting a wall on the side of the balcony to screen the

view to some sort of lattice work screen to these trees. He asked Mr. Cummings if, in the course of all of that, none of those came close to solving his privacy issue.

Mr. Cummings replied that none of them worked because, if for some reason, he missed something, the balcony cannot be undone. He stated that it is really a matter of avoiding this problem altogether. He noted that it sets a bad precedent for other neighbors to have the ability to build a rear-facing balcony on another house and create an additional amount of City workload to solve this problem for somebody else. He added that it would not be consistent with what the residents are used to in the Birdland neighborhood.

Commissioner Nagler stated that it is possible to say in theory that something may be unanticipated and, therefore, what was intended to have happen does not in fact happen; and major buildings are engineered on paper with calculations, and one could say the calculation could be wrong but the building gets built. He added that he does not candidly know, from his perspective, if simply saying "*it may not be what it looks to be or what it is intended to be is the sole objection*" is reasonable, as opposed to saying it is not adequate for these specific reasons.

Mr. Cummings replied that engineering is an exact science and is typically black and white with calculations that can be compensated; but this is about trees that are organic and do what they want. He reiterated that a fence can be fixed in one day but a tree cannot be fixed.

Commissioner Nagler agreed that not all proposed solutions are trees, and that was why he was asking if there is no solution, no matter how; that from his point of view, a solid stucco wall is not a solution.

Mr. Cummings replied that he does not feel comfortable with any kind of architecture that facilitates people lingering in their backyards where they can look into his backyard.

Acting Chair Ritter noted that in one of the slides, the windows of the house are changing slightly, although they would result in views similar to existing ones.

Mr. Cummings stated that he is uneasy with the whole construction but he is making a compromise with that. He added that he feels he is being reasonable by objecting to just this one balcony.

Gustavo Francken, neighbor, stated that he and his wife received the letter a month or two ago, and they came down and took a look at the plans. He indicated that they do not really have any issues with all the upgrades and thinks it will be really good in general. He noted that they also did a remodel about a year-and-a-half ago on their house and took about five months to complete. He further noted that it is extremely expensive to remodel and wanted to know how long and how intrusive on the neighborhood that would be.

Mr. Francken stated that he has no real issues at all with the plans except for the balcony in the back. He indicated that they have a two-story Monterey-style house and have two neighbors: one is a two-story Monterey style and the other is a single story.

He expressed concern that the balcony sets a precedent where none of the other original Morrison Homes have ever had any kind of balcony. He noted that if his neighbor decided to do the exact same thing and build a balcony on the back of his house, that neighbor would have a clear view in their backyard, and he would be very concerned about that and probably do the same thing the Cummings are doing. He added that there is nothing permanent about trees and no real guarantee that the family doing this addition will be there five years from now. He indicated that this is a great neighborhood and that they do not have any issues with any of the neighbors, but once that line is crossed, there is no going back.

Michael Smith stated that he has a very similar backyard with a pool, and a heritage tree that needs pruning. He noted that the house plans are beautiful but was concerned about the balcony as well because of the view into the neighbor's backyard. He also expressed concern about setting a precedent, because no one knows what can happen after this first one is allowed to go through. He agreed with Mr. Cummings that it is not really about this family but about whoever comes in later.

Elizabeth Cummings, Appellant, reiterated the point of privacy. She stated that this is a pretty sensitive and emotional subject for her, and the reason is that as she stands in her master bedroom and looks straight out through a very large sliding door, she can already see right into their neighbor's backyard. She indicated that for about six months, the mulberry tree is dormant with no leaves, and if she can see what is going in the neighbor's upstairs bedroom, taller people on the other side of the fence can see what is going on in her bedroom.

Ms. Cummings stated that when they bought their house, it was beautifully designed in the backyard so they could actually enjoy the views of the backyard and the greenery back there; and now all she thinks about is that she cannot even open her drapes to get dressed in the morning; she cannot open her drapes when her daughters are taking a shower in their bathroom. She indicated that her daughters are getting older, and she is really concerned about her family's privacy and that of their friends who come over.

Ms. Cummings stated that she grew up in Pleasanton Valley in a Monterey-style home, where she always felt safe and secure and comfortable in her backyard because there were no balconies on the backs of the other houses. She noted that they have felt that way for the last three years in their current home, and it makes her pretty emotional as she starts to envision this balcony and think that there could be somebody looking in. She concurred with what some have said that it is going to be the current neighbors, but this sets a precedent for who may move in, and there is no guarantee that this is not going to continue on.

Todd Merrill followed up with Mr. Smith's comments that the improvements to the house are great considering the condition that the house is in and the previous owners that had it, and they are all excited to see improvements to the house. He indicated that he also has two little girls who are friends of the Cummings kids and who could potentially be at that pool as well. He voiced his support for the Cummings' request for some privacy and agreed with them that the balcony does sort of add to the concern.

Mr. Merrill stated that he lives in a two-story house that has a balcony on the front, but this was a planned balcony from the beginning. He indicated that he has had additions put to the backyard, but they are single-story and a great format for that style of house, which is very similar to the applicants' house.

Julene Henning stated that the applicant's house is not in great condition and thinks what the applicant is doing is fantastic. She noted, however that every two-story house, either the Heritage or the Monterey that has a balcony has it on the front. She noted that the bushes the applicant planted will not get high enough for privacy from a balcony on the second floor. She stated that this is not the right thing to do and will not be right to the people next door.

Don Henning stated that he and his wife moved to the area and watched their house being built, and it was always set on the idea of what was good for the community and what was good for the individual people on both sides. He noted that this water shortage is going to lengthen the time it will take for trees to grow and provide a privacy screen. He mentioned that the applicant remarked that she wanted to sit on her back yard deck and see the mountains, but building a fence or a screen would block off the very thing she wants. He indicated that he understands how it is with sick children, but could not see what difference there would be with having cold air from the second-story balcony versus a backyard on the first-story. He agreed with the earlier comments regarding setting a precedent, indicating that they were fortunate because they face onto Valley Avenue, but there are those others who may want to put a deck on their backyard as well. He noted that this precedent would cause people to lose control of their privacy, and it is not a good idea for the community.

Steven Meyers stated that like what most of the people have said, he has no objections to the plan itself but to the back balcony. He agreed that there is no real guarantee that one's neighbor will be there for life. He indicated that pools are a focal point for the neighborhood, and on any given day, there can be up to ten children ranging from pre-school age to 4<sup>th</sup> Grade playing together, and on a Friday evening, there would probably be up to 12 children. He noted that it would be a place where people are going to gather, and their privacy would be infringed upon by the ability of someone to sit on a second-floor balcony next door and basically have direct and unfettered access and view into the neighbor's backyard and to these children playing. He reiterated that one cannot control one's long-term neighbors, so privacy is definitely an issue and concern for the neighbors.

Bill Foley stated that his concern is not only privacy but that it is out of character for the whole development. He stated that he has seen new construction within the development which had an additional space either on the second story or first story, but all facing the front, and those facing the rear are windows, not balconies. He noted that the balconies on the homes in the area were constructed originally, but this would be different. He stated that this is not necessarily bad, but it is different and poses concerns that have been raised by the homeowners and neighbors as to privacy within their own properties. He pointed out that the neighbors are not asking for the project to stop but to move ahead with the exception of the balcony. He added that he has traveled throughout the area on foot and on bicycle, and he did not see any rear-facing



decks. He asked the Commission to consider that in any decisions it will make this evening.

Ms. Kiziloglu stated that she had an 18-year-old niece, whose mother died of cancer a year ago, who was driving up Fallon Road to get on the freeway and her car suddenly turned and was hit by an on-coming car, and she died on the spot. She stated that one never knows what will happen, how long one is going to live, so one cannot say what will happen to one's neighbor or who will be one's neighbor; whether she will be staying in that house for 20 years or one year or longer than the Cummings.

With respect to the mulberry tree, Ms. Kiziloglu stated that she knew that the tree was going to drop all of its leaves, and in order to have more leaves so both the neighbors and they will have privacy, she left all of the branches in there, and that is how she likes to keep it.

Ms. Kiziloglu stated that if she were a sex offender or somebody creepy, her bedroom would be so perfect because she can just put her chair there with the air conditioning and her food next to her; she would be sitting there and watching bikinis all day long, and the neighbors will never know that she is sitting there. She indicated, however, that she does not do that sort of thing and hopes that whoever moves in there, whenever that happens, will not do that to the neighbors because that is not the right thing to do. She stated that people have to trust in a higher power and in themselves.

Ms. Kiziloglu stated that they are doing what they can to give the neighbor privacy, and she is really sorry that Mrs. Cummings feels like she does not have privacy right now and cannot get dressed in her own bedroom. She indicated that she has two kids, 7 and 14 years of age, and that her 14-year-old son is a straight-A student who is on the basketball team, plays the saxophone, and swims five days a week. She noted that he does not have time and does not want to be out there by the pool because he has to practice five days a week. She added that her seven-year-old son feels the same way and just goes and plays in the morning and then comes back up. She indicated that her sons have no reason to be looking at the neighbors' bedroom. She stated that it is sad that her neighbor already feels uncomfortable in her own house. She indicated that they have been living in their house for only eight months, and they have not even done any construction yet. She stated that their house backs onto Valley Avenue, and there is no house behind them, so if she had a balcony, she would just be looking at the view and not at the neighbors.

Finally, Ms. Kiziloglu stated that if she is to spend hundreds of thousands of dollars on improvements on her house, it would be for her children's health first, so they can be as healthy and as normal as possible; and if they are sick, they should have a way of alleviating their pain when they have an asthma attack. She indicated that if she cannot have a balcony on the house, then the house can stay the way it is because it does not make sense to her to spend that money if her children cannot have a comfortable house when they are sick. She added that they moved to the area for the good school and the good neighborhood, and they expected that they would have good neighbors and a good support system. She asked the Commissioners to make the right decision and thanked them for their time.

## **THE PUBLIC HEARING WAS CLOSED.**

Acting Chair Ritter stated that it sounds like this is a great neighborhood, and the residents are very cordial with one another. He indicated that he liked hearing people on both sides say they liked this and did not like that, and thanked them for keeping it that way.

Acting Chair Ritter stated that the Commission's job is to ensure that the Zoning Code and other codes and laws are followed and that the proposal fits into the neighborhoods properly. He indicated that he has been on the Commission longer than most of the other Commissioners and noted that neighborhood issues are the most difficult cases that the Commission has to deal with, and the Commission wants to do what is best for Pleasanton and the neighborhoods.

Commissioner Nagler stated that what is tough about this is that it is all about everybody's children, and every family is in the conversation because of the concern over children's health and privacy. He noted that what causes neighbors and groups of people to get along to the extent possible is compromise, and there has been no ability to compromise in any way on this project, given that everyone's concern is exactly the same heartfelt concern for their children, and the Commission will have to make a decision and choose the concern of one child over that of another. He added that it is a complete shame because the Commission is just not in a position to decide whether the totally legitimate concern of a family that their teenage daughter's privacy be properly maintained is more or less important than where the cool air is acquired for a child in the middle of an asthma attack. He stated that it is not a pleasant task and that does not think that it should be an appropriate task for the Commission when the people who are directly impacted should themselves be able to come up with a compromise.

Commissioner Piper agreed that this is a difficult decision to make. She indicated that these are the Planning Commission meetings that she does not like to come to and prefers making decisions on what is being built Downtown on Main Street. She stated that she knows the Birdland area well and is quite intimately familiar with it because she grew up there. She indicated that they had a pool and all the children were in the pool, and privacy was not an issue for them back then. She added that they had second stories and people looked down, and all the children were friends and knew one another. She stated that she cannot resonate with the issues at hand relating to the children, because if the child has asthma and the proper solution is to go outside, there are many different ways to go outside other than through a balcony. She added that she will need to put the matter of children aside and lean toward consistency in the neighborhood. She stated that she believes there has been a compromise since the neighbors are accepting all the different aspects of the additions with the exception of this balcony that happens to be not consistent with the other homes in the neighborhood. She indicated that at this point, she is a little bit more in favor of the appellant.

Commissioner Balch agreed with respect to the children and their specific concerns. He stated that he has a child and they have a pool, and they we have a neighbor who has a balcony into their backyard, although he was not a homeowner there at the time the

balcony was added and does not know in hindsight what he would have done in this regard.

Commissioner Balch stated that one of his elements is that people should not be making rules that are not known at the forefront, so they should not be putting in restrictions that are not already known when they come into the game. He added that that is a hard thing to reconcile when people actually get to a point like this. He indicated that he is generally opposed to balconies that look in either direction other than one's own property contour: front or back, but not sides. He noted that the Commission has considered several additions recently and has been able to get the neighbors to work things out or minimize or reduce the impacts. He further noted that one in particular went forward because it was on the side but in front of the neighboring house looking up at the mountains. He added that the Commission has allowed a second-story balcony in an area where there were mostly single-story homes and, in fact, it was inconsistent with the neighborhood, but the Commission felt it met the conditions in terms of the strictest letter of the law. He pointed out that he was coming to this one a little differently, and there are unique concerns and issues.

Commissioner Balch stated that his biggest thing and what he has not reconciled in terms of getting over the hump is that he does not see how privacy is not already hampered by this view in front of the Commission. He added that it appears privacy is already compromised and asked how much more compromised it becomes with an addition of a balcony that is pretty minimal and does not protrude out to the full first-floor distance. He stated that he does not see it as much more intrusive than what can be seen through this window right now. He indicated that this is where he is at this point and is a little bit on the opposite side of Commissioner Piper.

Acting Chair Ritter stated that the Commission has seen a lot of plans come before it in apartments and houses, and it is always looking at who gets what view and someone claiming that a second-story addition is taking away that view. He indicated that that is kind of a challenge because no one can own a view; one can just own a plot of land.

Acting Chair Ritter stated that first of all, he believes that this proposal meets all the requirements set by the code, and that is the reason it was approved by the Zoning Administrator. He indicated that, on the flipside, he does not personally know how many people in Pleasanton have a balcony out their backyard, but he has seen a lot of balconies on the front, which seems to be the norm in Pleasanton. He noted that in this case, it does not appear like there is more surface area of windows to look out and that the balcony is out a little farther. He added that something he would propose is that windows be a little higher more for lighting during the day, instead of a lower window that looks down. He stated that he is not certain he likes the balcony and noted that the appellant has agreed on just about everything on the additions except the balcony. He added that the additions will make the square footage larger, and the value of the property is going to go up which will help the neighborhood. He indicated that he is leaning more with Commissioner Piper and would like to approve the additions but without the balcony in the back. He added the applicant could maybe have a balcony on the front of the same story so they could go out and have air upstairs.

Commissioner Balch referred to the plans and noted the master bedroom/retreat with the laundry room to the left and a bathroom in the middle. He indicated that he is familiar with several homes in Pleasanton that have a balcony off of the master bedroom of some size, although not of this size which appears to be a coffee-table type sitting area where there is an area for the master bedroom to exit out. He stated that he sees this as a reasonable design and a great way to keep an eye on the pool, and that is why he could support the balcony and deny the appellant. He indicated that he is more comfortable with the balcony on the back because it goes to Valley Avenue, a road that is never going to change other than being a road, and there are no further homes beyond. He added that he does not think this is too encroaching on the neighbor's privacy, given that the privacy issue was already answered from the view existing from the windows.

Commissioner Nagler stated that he does not know if what he is about to suggest is common since he is new to these controversies, but as far as giving some indication of where the Commission is, it is pretty clear this is a split vote, and if it would be appropriate for the Commission to finish the discussion for now and ask the applicant and appellant to see one more time if there is a compromise that can be worked out strictly about the balcony since nobody objects to the rest of the enterprise, and then reschedule this for a future meeting. He continued that if a compromise has been worked out, the Commission can consider it and hopefully endorse it; and if there is no compromise, the Commission can decide with it being clear that at least three or four of the Commissioners present are pretty clearly where they stand.

Acting Chair Ritter commented that the Commission has done that before.

Ms. Harryman stated that there is that option; however, the Commissioner's Handbook actually discusses tie votes in this particular situation where there are four Commissioners present and other Commissioners are absent, and what is required when there is a tie vote is that the item be carried forward to the next meeting in which a quorum of Commissioners are present.

Commissioner Balch stated that he has seen one of these before and, for lack of a better characterization, the parties try to persuade the other side, and if that does not work, the Commission calls it and just moves on. He added that he has stated his opinion, but he does not know if it is a tie or not.

Commissioner Piper stated that the neighborhoods she is familiar with that may have balconies in the back seem to sit on larger-sized lots than those typically in Birdland, which are typically around  $\frac{1}{4}$  of an acre or less. She indicated that she is not saying that balconies are not appropriate for the back side of a house, but she still holds strongly to the fact and appropriateness of this particular balcony and feels that it is not the best for this specific neighborhood.

Acting Chair Ritter asked Commissioner Piper if she grew up in this neighborhood and knows the neighborhood well.

Commissioner Piper replied that she is quite familiar with the neighborhood and added that she knows their floor plan and has lived in a house with the same floor plan.

Commissioner Balch stated that that is a very valid concern and it is definitely something to consider. He indicated that he gives credit that the balcony does not extend to the full edge of the first floor so there will be some setback. He asked the Commissioners if reducing the balcony in any size would get them there or not.

Commissioner Piper replied that she thinks the applicant is 100 percent on the balcony issue.

Acting Chair Ritter stated that he is struggling because it is all up to code, but he also thinks it is the Commission's job to make decisions that are appropriate to neighborhoods. He added that this is a tough decision on the Commission and appreciates someone who has lived in the neighborhood. He indicated that in his opinion, he still feels the backyard balcony does not seem appropriate in that area.

Commissioner Balch suggested that Acting Chair Ritter make a motion since he wishes to uphold the appellant, Commissioner Piper second the motion, and the Commission takes a vote; and the Commission will know if it is a tie vote, the Commission will know what to do next.

Commissioner Nagler commented that if the Commission does that, which is a totally reasonable thing to do, then it eliminates the possibility that the neighbors could still work this out.

Commissioner Balch stated that any of the Commissioners could continue the item right now, but until the Commission knows where it is at, it will need to vote to indicate where it is, or it could just do a straw poll.

Commissioner Nagler stated that his point is that not knowing gives both sides a motivation to try and work it out.

Commissioner Piper stated that if the Commission wants to go to the direction of having the neighbors work it out, it should ask the applicant and the appellant if that is agreeable to them because based on everything she has read, she did not think there is any room for that.

Acting Chair Ritter agreed that he gets that idea too. He asked if making the room a little bigger and getting rid of the balcony is something that can be worked out.

Commissioner Balch stated that he has gone down this road before, and the Commission can go a long way and get to the same exact spot. He recommended that the Commission either immediately continue the item or immediately make a motion and vote or informally say where each one sits so the Commission knows where it stands.

**Acting Chair Ritter moved to deny the appeal and uphold the Zoning Administrator's approval of Case P15-0037.**

Commissioners Piper and Balch stated that they did understand the motion since Acting Chair Ritter had indicated earlier that he did not want the balcony.

Ms. Harryman asked Acting Chair Ritter if he is in favor of the balcony.

Acting Chair Ritter said no, and **moved to uphold the appeal of Case P15-0037, thereby overturning the Zoning Administrator's approval.**

Commissioner Piper inquired if that allows the applicant to build everything minus the balcony.

Acting Chair Ritter indicated that he wants the applicant to be able to build everything minus the balcony. He asked Ms. Harryman how he could make that motion.

Ms. Harryman explained that the appeal is to overturn the Zoning Administrator's decision, but the Commission is looking at it fresh now. She indicated that the Commission can uphold the Zoning Administrator's decision, or it can reject the Zoning Administrator's decision, or it can modify the Zoning Administrator's decision. She stated that what she is hearing in Acting Chair Ritter's motion is that he is fine with everything except the balcony.

Acting Chair Ritter confirmed that was correct.

Commissioner Balch clarified that it is to approve the building without a balcony.

Ms. Harryman confirmed that interpretation.

**Commissioner Piper seconded the motion.**

Commissioner Nagler asked if, technically and theoretically, the applicant has the ability to redesign the house in a way that there is no balcony, but another 500 square feet is added onto the building.

Commissioner Piper noted that it could not be done because of the Floor Area Ratio (FAR).

Commissioner Nagler asked staff if the applicant could add another 1.7 percent or 1.3 percent of square footage.

Mr. Otto said yes.

Commissioner Nagler further inquired, if there were a majority in support of this motion, if that action would give the applicant the ability to add whatever the percentage is and come back again to get the plans approved.

Mr. Otto explained that if the applicant comes back with a changed plan that did not include the balcony, that would not be consistent with the motion that is being made at this point, which is to approve the project as shown, except without the balcony; it does not add square footage.

Acting Chair Ritter stated that he would not be opposed to letting the applicant have square footage.

Commissioner Nagler stated that he would support the motion but he does not know if it would be appropriate for the Commission to say to just lop off a deck. He indicated that he thinks the Commission ought to allow the applicant instead to redesign the house up to what is allowed in the code, without the second-story balcony, and to resubmit those plans to Planning for final approval.

Commissioner Piper stated that that she thinks an amendment is not necessary as the applicant could come back and do that at any time.

Ms. Harryman said that was correct. She indicated that the applicant can either appeal the Planning Commission decision to the Council or go back to the drawing board and resubmit.

Commissioner Nagler stated that the applicant could submit a plan that complies to code and come up with exactly this because this complies to code. He indicated that he just wants to make sure that her hands are not tied so she can do what she wants as long as it does not contain a second-story balcony.

After some discussion, the motion was re-stated for clarity.

**Commissioner Ritter moved to uphold the appeal, thereby overturning a portion of the Zoning Administrator's approval of Case P15-0037 relating to the rear balcony.**

**Commissioner Piper seconded the motion.**

**ROLL CALL VOTE:**

**AYES: Commissioners Ritter, Nagler, and Piper.**

**NOES: Commissioner Balch**

**ABSTAIN: None**

**RECUSED: None**

**ABSENT: Commissioners Allen and O'Connor**

Resolution No. PC-2015-14 upholding the appeal and overturning a portion of the Zoning Administrator's approval of Case P15-0037 was entered and adopted as motioned.

Acting Chair Ritter thanked the applicant, the appellant, and the neighbors for coming and hearing the process.

**7. MATTERS INITIATED BY COMMISSION MEMBERS**

No discussion was held or action taken.

## **8. MATTERS FOR COMMISSION'S REVIEW/ACTION/INFORMATION**

### **a. Future Planning Calendar**

Acting Chair Ritter stated that he will not be at the June 24<sup>th</sup>, July 22<sup>nd</sup>, and October 28<sup>th</sup> meetings due to business or family vacation. He asked the Commissioners if they know your calendar out that far.

Commissioner Balch stated that he has already provided staff with his various dates. He then asked staff if a date has already been set to hear the Lund Ranch II application.

Mr. Weinstein replied that it is likely coming back on June 10<sup>th</sup>, but that could change because there are still some things being worked out for that project such as the Development Agreement and the Affordable Housing Agreement.

Mr. Weinstein then stated that with summer coming around, staff will be sending out an email to the Commissioners to ask when they expect to be gone so staff can plan accordingly for future Commission meetings.

### **b. Actions of the City Council**

#### East Pleasanton Specific Plan

Mr. Weinstein advised that at the next City Council meeting, the Council will be discussing the text of a Measure that will go on the ballot regarding the future of the East Pleasanton Specific Plan.

Acting Chair Ritter stated that he did speak at the last meeting on behalf of the East Pleasanton Specific Plan Task Force, indicating that the members were working very hard and that the Planning Commission has not seen any recommendations from the Task Force, so it has not even gone through the process of planned progress.

### **c. Actions of the Zoning Administrator**

No discussion was held or action taken.

### **d. Matters for Commission's Information**

No discussion was held or action taken.

## **9. ADJOURNMENT**

Acting Chair Ritter adjourned the meeting at 8:33 p.m.