



PLANNING COMMISSION MEETING MINUTES

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

APPROVED

Wednesday, March 23, 2011

*(Staff has reviewed the proposed changes against the recorded proceedings
and confirms that these Minutes are accurate.)*

CALL TO ORDER

The Planning Commission Regular Meeting of March 23, 2011, was called to order at 7:10 p.m. by Chair Kathy Narum.

1. ROLL CALL

Staff Members Present: Janice Stern, Planning Manager; Julie Harryman, Assistant City Attorney; Shweta Bonn, Assistant Planner; and Maria L. Hoey, Recording Secretary

Commissioners Present: Chair Kathy Narum, and Commissioners Phil Blank, Arne Olson, Jennifer Pearce, and Jerry Pentin

Commissioners Absent: Commissioner Greg O'Connor

2. APPROVAL OF MINUTES

a. February 9, 2011

Commissioner Pentin requested that a note be added at the top of page 15 that Questions No. 1 No. 2 were considered at the same time.

Commissioner Blank requested that the last sentence of the eighth full paragraph on page 21 be modified to read as follows: "He noted that ~~there~~ they are either legally affordable housing or \$800,000 housing...."

Chair Narum advised that Commissioner O'Connor had informed her that he had no amendments to the Minutes.

Chair Narum complimented staff on an outstanding job on another long set of Minutes.

Commissioner Blank moved to approve the Minutes of February 9, 2011 meeting, as amended.

Commissioner Pentin seconded the motion.

ROLL CALL VOTE:

AYES: Commissioners Blank, Narum, Pearce, and Pentin.

NOES: None.

ABSTAIN: Commissioner Olson.

ABSENT: Commissioner O'Connor.

The Minutes of the February 9, 2011 meeting were approved, as amended.

b. March 9, 2011 Minutes

Chair Narum reported that the Commission would table the consideration of the March 9, 2011 Minutes to the next meeting.

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 Planning Commission.

4. REVISIONS AND OMISSIONS TO THE AGENDA

There were no revisions or omissions to the Agenda.

5. CONSENT CALENDAR

There were no Consent Calendar items.

6. PUBLIC HEARINGS AND OTHER MATTERS

a. PREV-806, Mark Kearns, Specialty Inspections

Work session to review and receive comments on a preliminary application to construct an approximately 1,752-square-foot, three-story dwelling unit with an attached two-car garage and an approximately 975-square-foot basement for commercial storage (Specialty Inspections) at the rear of the property located at 261 Spring Street. Zoning for the property is C-C (Central-Commercial), Downtown Revitalization, Core Area Overlay District.

Shweta Bonn presented the staff report and described the scope, layout, and key elements of the proposal. She noted that staff had also received a letter from Mr. Peter MacDonald this morning supporting the project as proposed and underscoring the positive potential impact of the project on vitality of the Downtown.

Chair Narum noted that the table on page 9 of the staff report states that the setback is five feet from the rear property line, and the second-floor deck is approximately five feet by ten feet. She inquired if this deck would be extending to the property line.

Ms. Bonn clarified that the five-foot setback is measured to the property line to the north, and both the second-floor and third-floor decks are proposed on the southern façade and face the middle of the lot.

Commissioner Pentin read a portion of the Downtown Specific Plan (DTSP) section quoted at the bottom of page 4 of the staff report: "This height establishes a scale of development which should be generally followed throughout the Downtown Commercial area." He inquired if this is something that needs to be adhered to or is a "*should*" vs. "*shall*" issue.

Ms. Stern replied that this is part of the DTSP and the Downtown Design Guidelines (DTDG) and as such, they are guidelines. She added that the Commission has the latitude to review this on a case-by-case basis.

Commissioner Pentin requested clarification that Criteria A and B do not conform to the guidelines but are not necessarily out of Code.

Ms. Stern said yes.

Commissioner Olson inquired what "*pedestrian scale*" means.

Ms. Stern replied that this is somewhat puzzling in this case due to the location of the building. She stated that she believed this section was written with Main Street in mind more than Spring Street or other side streets and backs of buildings.

THE PUBLIC HEARING WAS OPENED.

Mark Kearns, property owner, stated that he has a business, Specialty Inspections, which provides termite and home inspection as well as repair work. He indicated that in 1992, he came to Pleasanton and opened his own company in a leased space on Railroad Avenue. He stated that he has always wanted to be on Spring Street and found a very depressed building with its roof off of the building for 15 years and a tree growing through the middle. He noted that the building already had a demolition permit issued on it, and the City allowed him to bring in his business as a termite inspector. He added that he did some foundation work on the building and planned to rebuild it and bring it back to its original state even if a demolition permit had already been issued.

Mr. Kearns stated that he feels it is crucial and a great opportunity that he is in the Downtown; however, his business is growing and he is outgrowing his space. He described his proposed plan and explained that it will allow him to have some storage space at the back for his files as well as some materials he still stores in a partial space

on Railroad Avenue, utilize the basement and a bit of the garage space, and build a residential unit above the business so he can live and work in the Downtown area as he grows older.

Charles Huff, applicant and project architect, stated that this project is a little different in that it has three stories as a single unit. He noted that there are similar projects, one on Vineyard Avenue and another on Railroad Avenue, both of which have two stories above the bottom floor. He indicated that this is not a new concept; it is also a single unit but located a little closer to Main Street.

Mr. Huff stated that he put up story poles to provide the neighbors the opportunity to see the scale of the proposed house, with the very top of the pole indicating where the ridge would be. He added that this would also help the applicant from having to come back before the Commission for a second work session.

Mr. Huff indicated that he had contacted the resident renters at the back of the proposed site, who expressed concern about the scale and mass of the project. Mr. Huff stated that they are flexible and can move the house away a bit from the back unit. He added, however, that reducing the proposed project to two stories would decrease the height only by four feet. He noted that the concept of building three-story structures on a case-by-case basis came through years ago, and that the third story of this proposed building would be encapsulated in the roof itself, similar to that at the Rose Hotel with dormers popping out of the roof. He added that they were following these guidelines in terms of developing along that concept; however, those same guidelines handcuff them to having a bottom structure that tapers in as it rises, which conflict somewhat with Spring Street's Mission Revival architecture of one story with a flat roof. He stated that following that concept would result in a two-story building with walls that go straight up, similar to those seen along Spring Street. He noted that because he did not think this was proper, he sorted out the items in terms of what he felt staff considered a Mission Revival structure and emulate everything on the one-story basis of the Spring Street homes which following the guidelines of three stories within the roof.

Mr. Huff noted that the proposed building meets all the criteria of height and Floor Area Ratio (FAR) within the Downtown zoning district. He stated that because the building is set far back from Spring Street, driving down Spring Street makes the house appear almost the same height as the one-story residences along the front of Spring Street. He added that from Main Street, the house would be among trees. He noted that they had set back the structure on the property to a point where its height could basically be diminished.

With respect to parking, Mr. Huff stated that because it is a smaller site, they are able to deal with parking in terms of some minor issues, such as taking out the one parking space that is difficult to get into, as they are far above the parking requirements on that site.

In conclusion, Mr. Huff stated that they are looking to the Commission to provide insight and direction in terms of how to deal with keeping the scale of Spring Street homes while keeping the criteria of a three-story residence set far back from Spring Street.

Commissioner Pentin noted that the houses on Spring Street look like Mission Revival and asked Mr. Huff to confirm that the small apartment building behind the unit located directly across the street is of the same Mission Revival type scale.

Mr. Huff said yes and added that ironically, he designed that Mission Revival apartment building 25 years ago. He stated that the project is an example of the inset panels seen in the elevations of the proposed unit, whose purpose is to diminish the scale of the house. He noted that the proposed residence is also basically Mission Revival but only taller.

Commissioner Pentin stated that he was interested in the inset panels and the appearance of the building from around the building. He noted that while the story poles can be seen from Main Street, they are not 3D renderings. He added that he can see from the drawings in the staff report, where the mass and the trees will fill in the spaces; however, the one story building from behind it will have a very large building set back five feet away. He indicated that he is unable to tell from the drawings just what designs these drawings are and how they will look on that space.

Mr. Huff inquired what would help the Commission along these terms.

Commissioner Pentin replied that he knows Spring Street very well as he had a business there about six years ago. He indicated that he is familiar with stucco, and he is trying to visualize the building, which is still part of Spring Street although set back farther and much taller, and not visible from Ray Street or Main Street. He indicated that seeing the building from all four sides is important, and the building drawings do not provide that.

Commissioner Blank stated that what would help him would be a shade study at some point, color renderings, and a high quality, accurate photo simulation where the proposed building, as actually built, would be placed with views as seen from the street, the neighbors, and other appropriate points.

Mr. Huff replied that this could be done. He indicated that one of the reasons for tonight's workshop is to get these comments so they can be integrated into the final proposal when the project comes back to the Planning Commission as a regular item.

Chair Narum noted that she is having a problem making the connection between the proposed project and its being part of or tied-in to the Mission Revival. She indicated that she understands that the applicant is not trying to necessarily duplicate the Mission Revival houses that front Spring Street; however, she would want to have some general tie-in.

Mr. Huff replied that he tried to employ all the elements in the one-story houses on Spring Street in the proposed building, such as one-over-one paired windows, hip roofs, and the stucco reliefs on the north, east, and south elevations, which architects employ basically to break up the big, flat, plain stucco and to soften the elevation views from the surrounding neighbors' views. He added that truly Mission Revival would not have those and can be removed if the Commission so desires.

Chair Narum asked Mr. Huff if he feels that from a professional architect's point of view, the proposed design has some tie-in to Mission Revival style.

Mr. Huff replied that he did the best he could. He added that he would be happy to employ any other logical suggestions from staff and the Commission.

Chair Narum asked Mr. Huff if the trade-off to getting more of a Mission Revival design, for example, by removing the recessed panels on the east elevation, would be having a big mass of flat, stucco wall.

Mr. Huff confirmed that would be the case. He stated that when he designed the one-unit apartment house across the street 25 years ago, the then Planning Commission wanted to see some recesses on the wall. He added that he thought this is the way to go; however, these could be taken out as well.

Chair Narum noted that that would not be necessary and that she was simply trying to understand the tie-in. She then inquired if there was another alternative to the parking design such as having parking up against one side of the property line instead of a double row.

Mr. Huff replied that they would love to do this and that it would make it easier; however, a 19-foot parking strip with a back-up space of 25 feet would go beyond the lots 38 feet. He indicated that he would be happy to work with staff on a variance for the back-up distance.

Chair Narum inquired if the project would get more spaces in if that is done.

Mr. Huff said yes. He added that they can also move the building forward towards Spring Street.

Commissioner Pentin inquired if this would result in a Fire Code issue and if there would be a problem getting cars out in case of an emergency.

Mr. Huff said no. He noted that it works right now. He added that putting all the parking on the easterly property line would be a win-win situation.

Commissioner Olson inquired if eliminating the garage would challenge the parking requirement for the project.

Ms. Stern said no. She noted that on page 6 of the staff report, staff suggests that if the first-floor garage is eliminated and the existing uncovered parking was used on site, the building could be reduced by one story, which would create something less awkward in terms of the parking.

Mr. Huff stated that the proposed parking is not only to comply with parking requirements but also to accommodate the truck fleet which would need that space to park.

Jerry Hodnefield, property owner on Spring Street, stated that he reviewed the proposed plan, studied staff's recommendations, and read the comments submitted by the Pleasanton Heritage Association (PHA), and indicated that he believes the adjacent property owners should have the most input with respect to any decision to be made regarding the project as they are the ones who are most affected by the project. He stated that he supported the project as proposed and hoped that other adjacent property owners step up and support the project as well. He stated that he supported the height of the building and that Mr. Huff has done a good job of introducing elements such as recessed panels to mitigate the perceived height of the building. He noted that the project meets all the design criteria and will be constructed at the rear of the property, approximately 150 feet from the street, adequately screened by a period building which was completely rehabilitated.

Steve Grimes, property owner on Spring Street, stated that he has been before the Commission years ago when he built his shop on Spring Street. He indicated that he remembers the building that Mr. Kearns purchased and did a great job at renovating. He mentioned that he saw the story poles and walked to the property. He added that he has no problem with what Mr. Kearns is trying to do, whether it be three stories at 32 feet high or two stories at 28 feet high. He noted that a 32-foot high building similar to the proposed project, is located on Division Street across from the Firehouse Art. He added that Mr. Kearns has done a good job at renovating his building in the front of the property and thinks that the proposed design is very well done.

Colleen Schwartz, property owner on Spring Street, agreed with Mr. Hodnefield's statement that the next-door neighbors should have a lot of input into the design for this project. She stated that she is the neighbor who owns the single-story Pilates studio on Spring Street. She indicated that leaving the architectural schematic in the hands of Mr. Huff is good and that what Mr. Kearns has done with his property speaks for everything.

Ms. Schwartz stated that based on the architectural renderings, it is a great project that looks much like a Santa Barbara style. She noted that the building seems tall from her Pilates studio; however four feet does not make a lot of difference. She indicated that she drove down Ray Street and could not see the story poles, even with the bare trees. She stated that once the trees fill in, the building will not be visible at all. She noted that driving along Spring Street, one can hardly see her business, and the proposed project at the back of the lot will not be visible from the street as well, except from her business.

She thanked Mr. Kearns for coming down to the Downtown and added that given the economic climate, projects coming to the Downtown should be welcomed and fully supported.

Chair Narum asked Ms. Schwartz if she owns the Pilates studio to the west of the project site.

Ms. Schwartz replied that she is a 15-year Pleasanton resident and that she opened her Pilates studio four years ago.

Commissioner Olson asked Ms. Schwartz how she would characterize the architecture of her building.

Ms. Schwartz replied that her studio was a renovated Valley Humane Society building, whose architectural style is more her of a "California/Yosemite type tucked in the woods." She stated that the building is lovely but quite different from the Spring Street buildings, which has a somewhat odd and funky architectural style. She indicated that this style has to stop at one point and that a large Mission Revival building will have a big impact on the character of the area.

Linda Garbarino, representing Pleasanton Heritage Association (PHA) as its President, stated that she agreed with the staff report and comments made by the Commissioners. She expressed concern that she would like to see more dimensionality, as story poles do not tell a full story. She suggested that the project be reduced by one level, noting that someone living there would have an issue with not being able to see the view of the hills over the existing house. She stated that she felt allowing a three-story building in the Downtown would set a precedent.

Ms. Garbarino indicated that she worked for an architect for three to four years and that she does not recognize the style of the proposed building. She stated that she has difficulty seeing Mission Revival architecture in the renderings. She added that three to four months ago, a historical archives person did a review of the Downtown to determine if homes in the area have redeeming qualities, and he noted this neighborhood as one that could have a national historic architecture status. She asked the Commissioners to bear that in mind when they discuss and make their decision on this proposal.

Ms. Garbarino stated that she believes the height, massing, and overall scale of the proposal are not in keeping with the Downtown Design Guidelines, which, while not regulations, are design guidelines nonetheless that are followed closely. She noted that this is a residential rather than a commercial building, and it is important to ask what the goal of the building is. She added that the job Mr. Kearns did on the commercial building is fabulous, and the PHA would like to see the beauty and quality of that architecture of Spring Street reflected in anything that is built at the back.

Jon Harvey, Downtown property owner, stated that he checked out the story poles and did not think the proposed building was out of scale. He noted that the building is set far back from the street, and residential homes in R-1 neighborhoods are allowed to and exist as 32-foot high buildings and higher. He indicated that he believed if the house were existing today, it would not be noticed, and if it were described, a person would have a problem figuring out which building was being referred to.

With respect to staff's findings based on the Downtown Specific Plan guidelines mentioned on pages 4 and 5 of the staff report, Mr. Harvey noted that:

- Item 1A is not applicable to this type of building or location. As earlier explained by Ms. Stern, this section may refer to buildings on Main Street.
- Item 1B, regarding the use of dormer windows, the elevations have three dormer windows in at least two of the elevations.

Mr. Harvey stated that he was also delighted that the project has important green aspects to it. He noted that the project has siting priorities for green building, a true infill project which has achieved parking on-site without outside mitigation and which has furthermore incorporated parking within the building footprint. He indicated that the project contributes to Downtown vitality and that investing and bringing projects to the Downtown should be embraced as best as possible. He added that setting aside the code, zoning, and design guidelines, the project is a quasi residential-commercial project, not fully one or the other, located right at that edge of the commercial-Downtown residential area. He indicated that for projects within these gray areas, some discretion for creativity should be permitted to get the project through the approval process.

THE PUBLIC HEARING WAS CLOSED.

The Commission then proceeded to discuss the questions in Exhibit A.

Questions 1 and 2 were considered together:

1. *Does the project meet the criteria in the Downtown Specific Plan for three-story structures?*
2. *Is a three-story structure appropriate for the subject site?*

Commissioner Olson said yes.

Commissioner Pentin agreed with Mr. Harvey that because of where the building is located, Criterion A is not applicable. He expressed concern with the mass and size, especially since it backs up to the rear neighbors, and would like to see more of how the project will look. He noted that overall, he believes the project meets the necessary criteria where applicable.

Commissioner Blank generally agreed with Commissioner Pentin's comments. He stated that he also has questions about massing; hence, he would like to have good visual representation, including a shade study and colored photo montages seen from all the views. He noted that he has had a long-standing position on the Commission regarding denying three-story homes which are actually shorter in height than two-story homes in areas where only two-story homes are allowed, which does not make sense because the reason houses have been limited to two stories is to have less massing. He indicated that he thinks a three-story building should be permitted if it can be done in the same manner as a two-story building with appropriate mass, accurate shade study, and good visual simulations. He noted that the proposed building is well within the realm of possibility but that he would need more data.

Commissioner Pearce agreed with Commissioner Blank, stating that her primary concern is massing as it relates to the rear neighbors. She agreed that the building need not be pedestrian in scale, and that while she has some concerns with the view from Spring Street, her sense is that because the building is so far back, it will not be a major issue. She stated that she drove around the area and noted that down Ray Street, the story poles look large; she did not want the building to loom over the rear neighbors, whether they be renters or owners. She indicated that she loves what Mr. Kearns has done with the current building and knows the right thing will be done here as everyone has the best interest of this area at heart; however, in order to understand the project better, she would like to see very detailed visuals and streetscapes primarily from Ray Street but also from both Spring Street and Main Street.

Chair Narum agreed with the Commissioners' comments. She expressed concern about the view from Ray Street, stating that as she drove down Ray Street and parked her car by the sidewalk, she could see the story poles, which felt imposing. She reiterated her earlier suggestion about the feasibility of parking on the east side and being able to bring the building more forward towards Spring Street to get it off more from the property line in the rear and reduce the mass from Ray Street. She indicated that she believes three stories can work but would like to discuss the design.

3. Is the building design appropriate for the subject site?

Commissioner Olson stated that he and his wife walk Spring Street a lot and had watched the front building's renovation. He noted that early on, they had doubts because the building was deplorable, but Mr. Kearns did a terrific job. He stated that the reason he asked about the Pilates studio was because it is not in keeping with the architecture on Spring Street. He added that it is also difficult to notice it while walking Spring Street, and he believes putting the proposed structure farther back on the property mitigates the concern that the architecture might not be similar to what is right on Spring Street. He indicated that he would like to see the massing and agrees that the Commission might want to visit whether or not rear setback should be expanded.

Commissioner Pentin stated that he would need to see the designs as he cannot tell from the drawings what the building will look like. He noted that the building would be far enough off of Spring Street. He expressed concern about the design fitting the area; however, knowing Mr. Huff's experience in Pleasanton, he would be surprised if anything did not fit. He indicated that he was fine at this time and would wait for the application to come before the Commission.

Commissioner Blank stated that the building design is all right at this time but that it is difficult to see without having the actual design on hand. He noted that Spring Street is an eclectic street in terms of design, and he thinks that what is there now is within the ballpark. He reiterated that he would like to see colored visualizations to determine what the building really looks like.

Commissioner Pearce stated that she was intrigued that Mr. Huff could walk the Commissioners down Spring Street and see on a modified Mission Revival house the different elements popping up in different houses. She suggested that for the Commissioners' edification on the elements, in lieu of a walking tour, pictures of the houses be included in the staff report so everybody could see the different kinds of elements and interpretation that match the site, and that the heritage of the site is being respected. She acknowledged Commissioner Olson's comments about the Pilates studio, but noted that the studio is a low-line one-story building, while what is being proposed is bigger. She indicated that if the Commissioners are amenable, she would like to see the different elements in the houses to make sure the elements are included in the proposed home, even if it might not be as easily seen as if they were on Spring Street.

Chair Narum agreed that it is a great idea to request Mr. Huff to provide a "cheat sheet" to provide the elements of the Mission Revival. She commented that there must be a way of scaling back and reducing the massing on the third floor, perhaps by inserting the dormers versus having them sticking out from the roof. She indicated that she does not think Item 1a of the DTSP really applies to this building since it will be located at the rear of property and pedestrians will not be walking by this building. She noted that this may be one of the items that need to be updated to clarify that section a bit more. She stated that she is generally fine with the design and that it falls within what Margene Rivara explained at a previous meeting regarding being flexible and allowing new design to tie back to these architectural characteristics.

4. Are the proposed modifications to the site plan and parking appropriate?

Commissioner Pearce commented that the different discussions on parking were intriguing. She indicated that she would like to see the different ways that parking can work on the site. She noted that Mr. Huff had mentioned his concern regarding the awkward nature of one of the spaces.

Chair Narum inquired how the Commissioners felt about modifying the parking by locating the spaces on the east side of the property.

Commissioner Blank stated that this is an architectural decision and that he cannot provide an opinion or make a decision on a variance until he sees what the design would actually look like.

5. Is the proposed size of the residential unit acceptable?

Commissioner Pentin stated that he thinks the proposed size of the unit goes back to what the mass is. He noted that the size of the residence is what the applicant needs, and he does not have a problem with that. He indicated that looking in from the outside, his concern is what the massing looks like and how it would impact the neighborhood.

Commissioner Blank agreed and stated that he was not concerned about the size of the residence as long as the massing is under control.

6. Should the proposed setbacks be increased?

Commissioner Blank stated that the setbacks, just like the massing and compatibility with other structures would depend on the project details and visuals.

Commissioner Olson stated that he thinks 1,752 square feet is very reasonable and not outlandish.

7. Is the proposed building compatible with adjacent structures?

Commissioner Pentin noted that the structure is situated that far off of Spring Street and is a stand-alone, and that he is fine with it if the neighbors are; however, he wanted to see details of the design first.

The Commissioners concurred.

8. Does it appear too tall or massive from adjoining properties or adjacent streets?

The Commissioners agreed that they need to see the detailed design before they can answer this question.

Commissioner Pearce stated that she appreciated the story poles because they provided a basis for this conversation.

Chair Narum expressed concern that it was too tall and too close to Ray St.

Commissioner Blank thanked the owner and the applicant for installing the story poles as it took great effort on their part and was helpful to the Commission.

Chair Narum asked staff if sufficient direction has been provided.

Ms. Stern summarized that the Commission would like the applicant to provide more details about the architecture and photo simulations viewed from a number of perspectives.

THE PUBLIC HEARING WAS RE-OPENED.

Mr. Huff stated that it was good to have the discussion with the Commission and that they will provide a photo montage of the building from the various streets. He indicated that they will work with staff with respect to whether or not they will have all the parking spaces on the east side, which might give them the opportunity to move the building up towards Spring Street. He added that he would address the concerns about Ray Street.

Mr. Huff stated that they will maintain the three stories to accommodate Mr. Kearns' needs and that they will work with staff to look at ways to mitigate the height and the design.

Mr. Kearns reiterated that he needs to provide for his business, he needs a third story to have living space, and he needs the garage space. He stated that taking one level out would turn the building into a two-bedroom apartment and that it would be very difficult to look forward. He indicated that he will work at mitigating the height and do whatever he can to make the Commission happy with the project.

No action was taken.

Chair Narum called for a break at 8:07 p.m. Thereafter, the Commission reconvened the regular meeting at 8:15 p.m.

b. PADR-2163, C.S. Pangali

Application for Administrative Design Review approval to retain an approximately 150-square-foot second-floor loft addition within the vaulted ceiling area above the dining room and to relocate an existing second-floor window on the east (right) elevation of the existing residence located at 6333 Paseo Santa Maria. Zoning for the property is PUD-MDR (Planned Unit Development – Medium Density Residential) District.

Janice Stern presented the staff report and described the scope, layout, and key elements of the proposal. Ms. Stern indicated that staff has conditioned the project to have the applicant install a non-operable second-story window with view-obscuring glass, to be covered by a restrictive covenant against the property to ensure that it is maintained as long as loft remains. She noted, however, that the applicant would like to revise that condition by installing a clear glass window instead and landscaping on his side of fence, the type and amount to be determined by the Director of Community Development, still covered by the restrictive covenant. Ms. Stern continued that just

before the meeting, the neighbor informed staff that the revised condition is not acceptable to the neighbor.

Commissioner Olson inquired if staff has been able to come up with any acceptable alternatives.

Ms. Stern replied that the alternative included in the Conditions of Approval is to install a non-operable, view-obscured glass window to be covered by a restrictive covenant, which is acceptable to the neighbor at this time.

Commissioner Blank inquired if the existing loft is approved.

Ms. Stern said no. She noted that the loft was installed without a permit and without the Administrative Design Review process. She added that the Commission could approve it at this time if it so desires.

Commissioner Blank inquired what the process is around that.

Ms. Stern replied that the project generally goes through an Administrative Design Review process which is done at the Zoning Administrator level. She noted that this house model has a space over the dining room, and in several cases, this space has been converted to a loft area. She added that the window is usually moved as a result of this conversion because it would otherwise remain at floor level.

Commissioner Blank inquired what administrative processes the City is pursuing with respect to the loft.

Ms. Stern replied that because this has become a controversial issue in that no agreement was reached between the applicant and neighbor, staff has brought it up to the Planning Commission.

Chair Narum inquired if staff is asking the Commission to take action on the loft and the window.

Ms. Stern said yes.

Commissioner Blank requested clarification that the approval is based on the loft passing City inspection.

Ms. Stern replied that is true; the applicant would need to get permits.

Commissioner Blank requested further clarification that the applicant would have to pull permits, potential deficiencies corrected, inspected, and approved.

Ms. Stern replied that is correct.

Commissioner Pentin noted that the Commission was told that the owner did not know the loft was not permitted, but the Commission was provided photographs of the loft under construction. He inquired if this was correct.

Ms. Stern replied that was correct.

THE PUBLIC HEARING WAS OPENED.

Commissioner Pearce disclosed that she visited the subject property and met with the neighbors but was unable to speak with the applicant.

Charanjit Pangali, applicant, stated that he has lived in the property since 1994 and was very amicable with the neighbors. He indicated that the loft was installed in 2005, and for the next five years, they never heard a complaint from the neighbors that their privacy had been invaded or compromised in some way.

Mr. Pangali continued that when they decided to put their house on the market in April of 2010, their realtor did a background check and discovered that there was no permit for the loft addition. He indicated that they met with City staff in May of 2010 to begin the process of getting the loft permitted. He noted that City Building staff visited their home and advised them that the window needs to be relocated because it did not have enough clearance in the loft area. He added that this was the first time they were made aware that the windows needed to be moved and were advised to retain a licensed contractor to draw proper designs for the window.

Mr. Pangali noted that the details of the Background section of the staff report looked like a big disconnect from what had actually occurred. He indicated that they had put a lot of hard work over the past eight to nine months. He stated that his purpose is not to rehash history because he wants to move forward and solve this problem; however, in fairness to his wife who did all the leg work, he would like the record to be clear. He emphasized that he did not just show up at the City offices on February 1st and asked for a permit to relocate window without disclosing the loft because that would not solve their problem of getting the loft permitted. He indicated that he explained to City staff that he needed a permit for the loft area and to relocate the window. He stated that City staff told him go ahead and relocate the window while staff took care of the loft permit because a loft permit cannot be issue if the window is not in its proper place. He added that he had actually proposed a smaller window in the loft area but that this was rejected because he was told it would be easier to permit him to relocate the existing window if he did not create new space and that as long as he used the same window, he could proceed in relocating it. He indicated that he also informed staff at that time about the objections of his neighbor, and he was told that he needed to go through the Administrative Design Review process to have the project permitted.

Mr. Pangali continued that they made both oral and written approaches to his neighbors to get input as to how their privacy was being impacted. He indicated that the neighbor visited their house and looked at his property from the existing window and from the

new window location. He added that the neighbors commented that they were not concerned about him but about what might happen in the event the house is sold and the future owners create a nuisance from the window.

Mr. Pangali stated that the loft comprises only five percent of the area of the entire house and that 95 percent of the time, his family would be elsewhere in the house and not in the loft looking out the window at the neighbors' property. He noted that they looked at seven other properties that have undergone the same renovation, whose neighbors had the same privacy issues as theirs, and they were all approved; some had smaller windows, larger windows, sliding windows, and windows that can be opened. He indicated that they designed their window to conform to what was existing and already approved by the City, as recommended by City staff, rather than try something new and unique and set a precedent. He stated that in the interest of coming up with a solution, they are willing to accept the restrictive covenant, provided that the covenant expires when the neighbors move or sell their property. He pointed out that they would not want to restrict all successive owners of their property to that covenant because doing so does not make sense.

Mr. Pangali then stated that they also met with the Les Lyons, City Senior Building Inspector, and explained to him that one of the ways they could render the window opaque is by applying a film. He noted that Mr. Lyons indicated that he knows the film is permanent, but many people do not know this and have an issue with it. He added that Mr. Lyons mentioned that he has successfully been able to argue that applying an opaque film to the glass is just as effective as putting in an opaque glass. He asked the Commission, if it decides not to grant them the option of having clear glass and remediation through vegetation, to consider the alternative of rendering the glass window opaque or etched because there are beautiful designs available which would enhance the value of their house and look very attractive, rather than their trying to find an affordable opaque glass that would make it look like a big shower door.

Mr. Pangali stated that they are reasonable people who never received a complaint for 16 years. He indicated that it would be a travesty if the official record reflected that he just showed up on February 1, 2011 with the intention of concealing that the loft was constructed without a permit. He stated that was never the case and reiterated that he wanted to be in full disclosure and to have the loft area permitted, as anything less than that does not make sense. He emphasized that he would like to revisit and fix the factual record because this report goes on the Internet, and he does not want anybody googling his name and discovering that he tried to hoodwink the Planning Commission.

Chair Narum asked Mr. Pangali what his first choice was to address this problem.

Mr. Pangali replied that he would like a Building Inspector to come to his home; the carpet has been removed and the floor has been exposed to show the beams that were laid and the construction that has been performed. He indicated that Mr. Lyons has seen that, had looked at his submittals and drawings, and had said there would be no problem.

Mr. Pangali stated that his priority would be to have clear, non-operable glass windows and a tree planted on his side of the property. He indicated that he has vertical blinds in the window which are constantly drawn at some angle. He noted that privacy is a two-way thing and that he wants his privacy too. He added that he would like an option to use a film applied to the glass that renders the window opaque, and they will attest and certify that the opaqueness achieved in this way is permanent and comparable to that achieved by using opaque glass.

Chair Narum asked Mr. Pangali if he wanted to use the same window but relocated.

Mr. Pangali said that was correct but that the window has actually been relocated. He noted that construction was started two weeks after they were granted the permit, and they received a "stop work" order due to the neighbors' complaint.

Commissioner Blank noted that Mr. Pangali had mentioned the use of etched glass as an alternative. He clarified with Mr. Pangali that he really did not want to use that.

Mr. Pangali replied that it was an option that was presented by staff but that he did not want to use it. He indicated that they could get the same look and feel of etched glass by using film.

Commissioner Blank inquired what loft is used for.

Mr. Pangali replied that it is a retreat that is currently being used for meditation in the mornings. He added that his wife also uses it in the evening to check her email.

Commissioner Blank requested verification that it was not an office.

Mr. Pangali confirmed that it was no longer an office. He indicated that he used it as an office for several years and sat at his desk with his back to the window.

George Tiu, neighbor, stated that the staff person who approved the window was Natalie Amos, who also made the assessment in the staff report regarding what transpired and the conversation that took place at that time. He indicated that he totally disagreed with Mr. Pangali that the report was fabricated and questioned how the applicant was able to receive approval to move his window without having the neighbor contacted. He stated that he believed Ms. Amos stated the facts that are basically in the report that Mr. Pangali did not mention the neighbor's objection to the window and that the loft did not have a permit.

Mr. Tiu stated that Mr. Pangali's wife had approached him about moving the window and signing an agreement to that effect. He indicated that he informed the applicants that he did not have any privacy issue with respect to the original location of the window but that he objected that it had been moved. He added that the applicant did not talk to him regarding privacy issues when the loft was constructed in 2005; and although the

applicant was aware of the privacy issue at this time, he went ahead to get a permit and start construction in total disregard of the neighbor's concern for privacy.

Mr. Tiu then distributed pictures demonstrating that the sideyard setback of the applicant's two-story home is far greater than that of his one-story home, which is the basis for his privacy issue. He stated that raising the window by two feet is intrusive and looks into his bedroom window. He added that he does not trust this proposal and does not feel secure about what any future homeowner might do with the window. He indicated that he would rather not have the loft there in the first place, but if the loft remains, then he does not want the window there. He stated that he was willing to compromise but the applicant gives him no choice to trust him at all, even though they are neighbors.

Chair Narum asked Mr. Tiu what he thinks the best scenario would be in terms of how the window privacy issue could be addressed.

Mr. Tiu replied that at this time, his trust for Mr. Pangali has been shattered. He stated that Ms. Amos' assessment proves that the applicant cannot be trusted. He indicated that he agrees with Ms. Amos' proposal and is the compromise he is willing to deal with.

Chair Narum asked Mr. Tiu if that compromise was the non-operable window with view-obscuring glass.

Mr. Tiu said yes. He disagreed with the applicant that film is the same as glass. He indicated that film is not permanent; it is glued together and can be removed. He added that the applicant has all the controls in his property; for example, the tree can die and not be replaced, and the window film can be removed. He reiterated that he cannot trust the applicant to comply with these requirements.

Chair Narum asked Mr. Tiu if he wanted the tree planted on his property.

Mr. Tiu said no, because that is the applicant's responsibility. He indicated that he would prefer permanent, opaque window that is not filmed. He added that Ms. Amos had informed him that the City would not approve the film.

Commissioner Blank asked Mr. Tiu when he first became aware that the loft was there.

Mr. Tiu replied that he knew of the loft when it was constructed in 2005.

Commissioner Blank asked Mr. Tiu if his goal is to have the glass be permanently obscured, whether by film or some other method. He indicated that the method of obscuration does not really matter if the Director of Community Development confirms that a certain method is a permanent way of obscuring glass and cannot be undone. He asked Mr. Tiu if his intention is to dictate the method of obscuration or to get results..

Mr. Tiu replied that his intention is that the obscuration be permanent.

Referring to the separation between the two properties that was brought up by Mr. Tiu, Mr. Pangali stated that he has two bedrooms on that side of the house that has the same distance of separation from Mr. Tiu's property. He indicated that he thinks putting a loft that does not extend beyond the existing external walls of the other rooms does not create a new boundary or creep closer to Mr. Tiu's house. He stated that he tried to be straight, open, and flexible, and he did not understand Mr. Tiu's reasoning. He told the Commissioners that they have heard both sides and that he trusted their judgment. He then thanked them for their time.

THE PUBLIC HEARING WAS CLOSED.

Commissioner Pentin asked staff if the three items mentioned in the second paragraph on page 3 of the staff report, as written by Ms. Amos, did or did not happen.

Ms. Stern replied that this is staff's record of events. She noted that Mr. Pangali had mentioned coming to the Planning Department and talking about the loft, but no application for Administrative Design Review on the loft was received by staff.

Commissioner Pentin inquired if there is no record of any application in 2010.

Ms. Stern confirmed that there is no record of any application for an Administrative Design Review in 2010.

Commissioner Pearce inquired if it was typical that restrictive covenants run with the land.

Ms. Harryman confirmed that restrictive covenants run with the land.

Commissioner Pearce inquired if this is the usual means by which a restrictive covenant is applied as opposed to making it sunset when specific people leave the property.

Ms. Harryman replied that while this is rare, it is something that can be done, in which case something would be recorded that extinguishes whatever was initially recorded.

Commissioner Blank stated that he sees a problem with doing this without disadvantaging one land owner or the other because when the property owners sell their house and buyers come in and see that the window is permanently obscured, then it would have to be disclosed that the window can be opened once they own the property. He indicated that he likes the idea of the covenant remaining permanent. Commissioner Blank further stated that it sounds like the non-operable obscuring view glass is as good as can be. He recommended that the method of permanent obscuration be determined by the Director of Community Development. He indicated that he has full confidence that the Director will make the right decision.

Commissioner Pearce indicated that was a good idea.

Commissioner Olson agreed with Commissioner Blank's comments.

Commissioner Blank moved to approve PADR-2163 subject to the Conditions of Approval in Exhibit A of the staff report, with the modification that the applicant shall install a non-operable, view obscuring window, whose permanent obscuration method shall be determined by the Director of Community Development.

Commissioner Pentin seconded the motion.

ROLL CALL VOTE:

AYES: Commissioners Blank, Narum, Olson, Pearce, and Pentin.

NOES: None.

ABSTAIN: None.

ABSENT: Commissioner O'Connor.

Resolution No. PC-2011-07 approving Case PADR-2163 was entered and adopted as motioned.

7. MATTERS INITIATED BY COMMISSION MEMBERS

No discussion was held or action taken.

8. MATTERS FOR COMMISSION'S REVIEW/ACTION

a. Future Planning Calendar

No discussion was held or action taken.

b. Actions of the City Council

Chair Narum noted that the City Council had continued the window appeal.

c. Actions of the Zoning Administrator

No discussion was held or action taken.

9. COMMUNICATIONS

No discussion was held or action taken.

10. REFERRALS

No discussion was held or action taken.

11. MATTERS FOR COMMISSION'S INFORMATION

Commissioner Pearce advised that the next Housing Element Update Task Force meeting will be held on March 30, 2011.

12. ADJOURNMENT

Chair Narum adjourned the Planning Commission meeting at 8:56 p.m.

Respectfully,

JANICE STERN
Secretary