



PLANNING & TRANSPORTATION COMMISSION MINUTES

=====MEETINGS ARE CABLECAST LIVE ON GOVERNMENT ACCESS CHANNEL 26=====

1 *Wednesday, January 26, 2005*
2 *REGULAR MEETING at 7:00 PM*
3 *Council Chambers*
4 *Civic Center, 1st Floor*
5 *250 Hamilton Avenue*
6 *Palo Alto, California 94301*

7
8 **ROLL CALL: 7:00 PM**
9

10 **Commissioners:**

11 *Phyllis Cassel – Chair*
12 *Bonnie Packer – V-Chair*
13 *Lee I. Lippert*
14 *Karen Holman*
15 *Patrick Burt*
16 *Michael Griffin*
17 *Annette Bialson*

Staff:

Steve Emslie, Planning Director
Dan Sodergren, Spc. Counsel to City Attny's Ofc.
Lisa Grote, Chief Planning Official
Dave Dockter, Planning Arborist
Clare Campbell, Associate Planner
Zariah Betten, Executive Secretary

18
19
20 **AGENDIZED ITEMS:**
21

- 22 1. 5061 Skyline Blvd
23 2. 705 Ellsworth Place

24 **APPROVAL OF MINUTES:** November 10 and 17 and December 1, 8 and 15, 2004
25

26 Chair Cassel: I would like to call the meeting to order. I believe it is seven o'clock and the
27 Commissioners are all here. It looks like the Staff is here. So may I please call the meeting to
28 order for the meeting of January 26, 2005 a Regular Meeting at seven o'clock? Would the
29 Secretary please call the roll? Thank you.

30
31 The first item on the agenda is Oral Communications.

32
33 **ORAL COMMUNICATIONS.** Members of the public may speak to any item not on the agenda
34 with a limitation of three (3) minutes per speaker. Those who desire to speak must complete a
35 speaker request card available from the secretary of the Commission. The Planning and
36 Transportation Commission reserves the right to limit the oral communications period to 15
37 minutes.

38
39 Chair Cassel: I do not have any cards for Oral Communications so we will go on to the next
40 item.

1
2 **CONSENT CALENDAR.** Items will be voted on in one motion unless removed from the
3 calendar by a Commission Member.

4
5 Chair Cassel: We have no items for Consent Calendar.

6
7 **AGENDA CHANGES, ADDITIONS AND DELETIONS.** The agenda may have additional
8 items added to it up until 72 hours prior to meeting time.

9
10 Chair Cassel: We have no Agenda Changes, Additions and Deletions. That brings us to New
11 Business we also have no old business so that brings us to New Business. This is a public
12 hearing for 5061 Skyline Boulevard. It is a request by Harvey and Pamela Loucks for Site and
13 Design review for the construction of a new 5,569 square foot single family residence including
14 a 1,987 square foot unfinished basement and an attached 1,482 square foot three-car garage, on
15 an eleven-acre vacant lot in the OS Open Space district. Environmental Assessment says that
16 this is an initial study has been prepared, and a Mitigated Negative Declaration is proposed in
17 accordance with CEQA guidelines. Would Staff like to make a presentation?

18
19 **NEW BUSINESS:**
20 **Public Hearings.**

- 21
22 1. **5061 Skyline Blvd [02-D-12, 02-EIA-13]*:** Request by Harvey and Pamela Loucks for
23 Site and Design review for the construction of a new 5,569 square foot single family
24 residence (including a 1,987 square foot unfinished basement) and an attached 1,482
25 square foot three-car garage, on an eleven-acre vacant lot in the OS Open Space zone
26 district. Environmental Assessment: An initial study has been prepared, and a Mitigated
27 Negative Declaration is proposed in accordance with CEQA guidelines.

28 **SR Weblink:** <http://www.cityofpaloalto.org/cityagenda/publish/planning-transportation-meetings/4173.pdf>

29
30 Ms. Clare Campbell, Associate Planner: Good evening. I will start off by clarifying some
31 information in the Staff Report. There was a recent revision in the plans and that revision
32 reduced the impervious area to 0.9% and there may have been some references to the previous
33 impervious percentage of 1.67% in the Report or attachments and that is now incorrect. So 0.9%
34 is the impervious area.

35
36 Also, on sheet A-4 of the plans there was a typo referring to the paving as asphalt instead of
37 porous paving and the plans will be revised to be consistent throughout and will indicate that is
38 all porous paving that is being proposed for the driveway.

39
40 Also, the Record of Land Use Action some of the conditions of approval there was just a miss-
41 numbering of some of those conditions so I just want to make sure that I make those clear.

42
43 So the Site and Design project before you tonight is for a single-family residence, and accessory
44 structures on an 11-acre lot in the Open Space District. A Variance was requested for the project
45 to allow the garage and accessory structure and equipment to encroach in the 200-foot special
46 setback. This Variance was approved on January 5, 2005. The proposed project complies with
47 the Comprehensive Plan policies and meets the 13 criteria that are required for the development
48 in the Open Space District as described in Attachment B of the Report.

1
2 The proposed project will not be visible from Skyline Boulevard and is well screened by the
3 existing trees, vegetation and terrain of the site. The use of earth tone colors and natural building
4 materials will also minimize the visual impact of the home. I have the material sample board
5 right here for us to take a look at.
6

7 The proposed project includes the removal of 47 trees in the immediate project area. These trees
8 are listed on the plans. None of the tree species proposed for removal are considered protected.
9 According to the Open Space Development Criteria all trees regardless of species that have a
10 circumference equal to or greater than 37 and a half inches shall be maintained. The proposed
11 trees for removal are all smaller than this threshold. The Planning Landscape Specialist, Dave
12 Dockter, has reviewed the plans and supports the removal of the trees in conjunction with the
13 proposed project.
14

15 Staff recommends the Planning and Transportation Commission recommend that the City
16 Council approve the Mitigated Negative Declaration with the finding that the project will not
17 result in significant environmental impacts and approve the Site and Design Review application
18 for the new house in the Open Space District based upon the findings and conditions in the
19 Record of Land Use attached to the Report. This concludes Staff's report. The applicant,
20 Harvey Loucks, is present and will be ready to make a presentation for you.
21

22 Chair Cassel: If anyone wishes to speak they need to fill out a card and give that to the
23 Secretary. Give us your name and your address and that will help me know when to call which
24 person and will help them later on in keeping the record. Do we have any clarifying questions
25 for the Staff at this time? Then I presume Mr. Loucks is going to speak. You have 15 minutes.
26 Do I have a card for him? Mr. Loucks when you finish will you complete a card? Thank you.
27 You have 15 minutes to speak. You do not need to use all of it if you don't think you need to
28 and you will have three minutes to summarize at the end.
29

30 Mr. Harvey Loucks, Applicant: I will probably be speaking fairly quickly. I am Harvey Loucks
31 and I am delighted to be here tonight to speak with you folks regarding our proposed
32 development up in Palo Alto's Open Space on Skyline Boulevard. This is going to be a
33 retirement home for myself, my wife and my mother. It contains a lot of features that are much
34 more amenable to retirement than our existing home including a ground floor master bedroom
35 suite and also a much more handicap friendly layout and hardware. It also contains one more
36 bedroom for a total of four to accommodate some of our out-of-state family and their frequent
37 visits.
38

39 It is really a difficult challenging thing to build up in the Open Space area. It is very complex
40 with a lot of conflicting requirements. The environmental considerations I think are probably the
41 most important ones of all. I can't begin to touch in 15 minutes on all the facets of developing in
42 this area so I am actually going to just focus entirely on the environmental aspects in my
43 presentation here.
44

45 Pam and I realized early on when we bought this property 15 years ago that the successful
46 development of this site was going to hinge almost entirely on how well we managed the
47 environmental issues. We have been thinking and planning and scheming for 15 years now on
48 how to do it right and hopefully this is the sense that you will get tonight. Our project goes

1 environmentally related to the ones that I have listed on the chart there. Basically they are all
2 environmentally related. I think we have successfully achieved meeting these goals. Moving on
3 to the next slide you can see here that I am very proud that we have achieved a 0.91%
4 impervious coverage. This was a little earlier slide when I miscalculated a little bit on my
5 computer so correct that 0.95% to 0.91%. In any case it is below one percent. I presume this is a
6 very low impervious coverage for a Palo Alto development and proud of being able to achieve
7 that.

8
9 We have very minimal landscaping it is all native plants. Up in our area with the gofers and the
10 deer and the rabbits and the quail and the other things it doesn't pay much to put anything other
11 than native. Also with beautiful forest surrounding you really don't need much of anything else
12 in terms of landscaping. This is typical in the area. There are no fences on the property except
13 along Skyline Boulevard there is an existing woven wire fence at that point. When we first
14 moved in about 16 years ago there were about 1,500 feet of barbwire fence on the property.
15 Over the years I have slowly been removing all of that until it is finally all gone. There are no
16 other fences proposed in the rest of the property. We do have an individual well and septic
17 system on the property because we are not served by any utilities or services from Palo Alto
18 being so far out. This is actually a good thing environmentally in that you don't have any
19 demands on the municipal utility system and in essence you have 100% recycling because every
20 gallon of water you pull out of the aquifer you put right back into it with your leech fields and
21 your septic system. So it is a nice thing. In addition I have known for many years that I am
22 going to be doing this development and I have been collecting some materials and tools over the
23 years. I have from Driftwood Salvage in East Palo Alto and other places acquired all of the
24 framing lumber I need from recycled homes that have been demolished around the Bay Area.

25
26 Moving on here to the next slide. Energy consumption is always a big consideration in terms of
27 environmental impact and we have done a number of things here that I think are going to be a
28 good way to go. We are using radiant floor heating as well as ductless air conditioning. This
29 completely eliminates the normal forced air heating systems that are in most homes along with
30 all the ducting that requires the spaces between floors that don't exist in a timber frame home,
31 which I will discuss more later on. Radiant floor heating and ductless air conditioning are about
32 30% more efficient than forced air type HVAC systems. We are also of course using the high
33 performance windows that are standards. We have a fresh air heat exchanger so we aren't
34 blowing our hot air out of the house as we bring fresh air in and because of the timber frame
35 construction and the structural insulated panel enclosure system we achieve these really
36 phenomenal 'R' values for the walls and the roof. The walls are R-24 and this represents a six-
37 inch thick structurally insulated panel enclosure. We are using an eight inch thick not only roof
38 structural insulated panels that give us an R-33. So overall this home has qualified for the
39 government Energy Star rating for energy conservation and being 30% more efficient than
40 government standards and 15% more efficient than City standards it actually beats it by a pretty
41 good amount.

42
43 One of my main goals was also to minimize the tree removal. You have to remember this is a
44 forested site. It is 95% forested over that 11 acres it is only about a half acre of pasture land all
45 along the highway and it is all within that 200 foot setback that we discovered we had last
46 month. We have I think achieved a really low level of tree removal by doing basically one tree
47 and 187 or so is being removed from the property. The pump house tanks had to be placed up at
48 the top of the hill so that we would have gravity feed to the required fire hydrant that the Fire

1 Department requires for fire fighting. We located the pump house and the propane tank clustered
2 right together with these three water tanks that had to be put in this position. The house siting
3 itself was very carefully done to try and balance a lot of requirements. It ended up being in a
4 place that was mostly cleared by the previous owner for firewood. So it was fortunate that they
5 had done that there were fewer trees to remove. We placed a couple of retaining walls stepped
6 just uphill from the house and this was in order to step up to the original grade very quickly so
7 that we could retain a number of oaks and Douglas firs and Dave madrones that are uphill from
8 the house area there. Because of the way the house sits down the driveway has to be in front of
9 it. Most of the grading cut is in front of the house and by having these retaining walls stepped up
10 we have saved a number of trees. We have also placed all the trenching in the pasture area and
11 also the leech field. It was some trouble to find a good place for the leech field part of the septic
12 system. The leech field is 500 feet long with a two-foot wide trench and it is eight feet deep and
13 none of it encroaches on any below the drip line to cause damage to any roots and trees. It is
14 located out in the pasture right near the highway. So that really helped avoid some root damage.
15 Then we located the driveway in the shortest possible place and actually filed an easement on our
16 own property next door, our other lot, so that we could have just one driveway that fronted on
17 Skyline Boulevard rather than two for the two properties. This way it also made the driveway
18 invisible which we are happy to see.

19
20 This really doesn't show up very well at all. I was hoping here. You see the three tanks are
21 actually clumped together here. The three water tanks are clumped together here with the pump
22 house and the propane tank with utility structures all in one place. The trenching for bringing the
23 power and phone in comes in like this. There is forest all along this area here it is a little thinner
24 around the house and coming out this way. There are actually no trees right in here and we are
25 taking the trenching in through here to the house. Gosh, I am amazed at how this came out so
26 poorly. The leech fields are out in this area. This is Skyline Boulevard and this is the pasture
27 area right out in through here. I can see that slide is not going to be that particularly helpful but
28 you can see the same thing I believe in the site plans that are in front of you.

29
30 This is probably one of the goals that I held onto most of all is to make sure that no aspect of this
31 development was visible to the general public for any public accessible area. In fact there is no
32 part of the project that is even visible from off the property. None of our neighbors will even be
33 able to see that it is there. That is because the home is placed down in an area as far as possible
34 away from Skyline Boulevard and it is surrounded by high trees. I believe some of the tallest
35 trees in Palo Alto are actually located on our property. I know we have at least two or three
36 Douglas firs that are over 200 feet high and about eight feet in diameter. None of those are near
37 the building site except if they fall. There are hills and trees to the south of the building site.
38 The trees are fairly thin going to the south towards the highway but there is a hill that is between
39 the house and highway that totally obscure the visibility of the house. It also obscures visibility
40 of the pump house and the tanks. I have illustrated that down below here with a true scale
41 sectional cut from the pump house through the hill out to Skyline Boulevard. This is the middle
42 of Skyline Boulevard and if you are hiking, biking, walking, driving along your eyeballs are
43 probably six feet or below and your line of sight doesn't all you to see the tank and the pump
44 house which are located behind the crest of the hill. It looks like they might be visible when you
45 are standing and walking around in this area because you can see the highway and the tanks but
46 the tanks actually sit down in the remains of an old foundation from an old stable that I removed
47 when we did a property line adjustment about three years ago. So this is a fairly important point

1 I think. The actual driveway going down to the house starts below these pumps and house. So
2 we did achieve 100% lack of visibility from off the property for the developments.
3

4 This is my passion, timber frame construction. I don't know if Palo Alto has ever built a timber
5 frame house before. It is a very different way of doing construction. It is a very environmentally
6 friendly way of doing it and very long lived. I have a sample of the actual materials here. This
7 is not an end table what I am showing here to my left is an actual section of the structural
8 insulated panels that will be used for the walls. The ones for the roof are actually thicker than
9 that by two inches. I have shown a section of Douglas fir dead standing post here that is the
10 actual size that will be used for the post. It is really quite interesting, as bulky and heavy as this
11 looks there is actually 30% less wood used in a typical timber frame home than in a six-inch stud
12 wall construction. That is because you have a big post like this placed every 12 or 15 feet rather
13 than a six-inch stud every 16 inches plus all of the extra studwork and framing that is done
14 around windows. In the timber frame construction all of the window and door cutouts are put
15 into the structural panels themselves and have no impact on the timber frame. It is a very
16 beautiful construction because you can see the entire timber frame structure from inside the
17 house. It has some nice features.
18

19 Chair Cassel: Mr. Loucks, you have about three minutes left.
20

21 Mr. Loucks: Time passes very, very quickly when you are having fun. This is a very energy
22 efficient house. You have the superior strength as you can see the structural insulated panels
23 have shear wall on both sides, which makes this home easy to pass the strength requirements in
24 earthquake country.
25

26 The impact to Palo Alto. There is no impact to Palo Alto. We get our gas by propane, our power
27 comes from PG&E, and we have our own water well. We manage to find someplace to take our
28 garbage a couple of times a month. Police and fire don't service that area. We are actually 14
29 miles from the nearest full time fire station with about a 40-minute response time. Our fire
30 station is the California Department of Forestry three miles down the road and the San Mateo
31 County Sheriff's Department provides police in that area. All our schools are in Saratoga and all
32 of our storm drainage is into the Pacific Ocean or the Steven's Creek Reservoir but none of it
33 enters the Palo Alto storm drain system. There is one impact on Palo Alto. We are adding a new
34 home to the tax rolls. It is basically a freebee for Palo Alto there are no associated expenses.
35 There is actually one other item. We will have the privilege of paying a \$16,000 development
36 impact fee to the City that also will add to the City's benefit.
37

38 One thing I would like to get straight, it is not a 5,569 square foot home. It is a 3,582 square foot
39 home. It is a four bedroom, two-story home that has this thing called a basement that is just a
40 deep crawl space. It is an area that has a dirt floor. It is unfinished, it is ventilated, it is fully
41 insulated from the rest of the living space and is just for putting our mechanical, HVAC stuff, the
42 boiler and pumps and water heaters and other sorts of things that we have plus some storage plus
43 hopefully some cats will be down there more often than not. The pump house and tanks that we
44 have are the same materials and colors as the house and I wanted make sure that that's known.
45 The little pump house is required for protection of the controls and the pumps and other things
46 that are inside the wellhead in the pump house area. We plan on putting a generator set in there
47 eventually. Our power is really not very reliable in this area. We can't really do that right now.
48

1 There are conflicting requirements in this area. There are a lot of them as I mentioned. The
2 thing that you have to do to make it work is somehow resolve all these. Our approach was to
3 make sure that we sited and bunched all the utility structures at the place that they had to be at
4 the top of the hill and also we pushed the garage and the house just as far away from the highway
5 as possible.

6
7 I wonder if I might have one more minute to conclude?

8
9 Chair Cassel: Yes sir, one minute.

10
11 Mr. Loucks: Thank you very much. So the house and the garage were pushed back just as far as
12 possible. If they were pushed any farther downhill it gets quite steep out there then the current
13 driveway grade would not be legal, we would not be able to have the gravity feed to the septic
14 system and there would be several other difficulties with parking spaces.

15
16 In summary, I think my wife and I have done about our best over the 15 years to try to figure out
17 how to develop this property as responsibly as possible. On behalf of my wife, my self, my
18 mother and my bother in Kansas, my sister in New Mexico, my other sister in Texas and my son
19 and daughter in this area I hope that you will find this is an appropriate way to develop the last
20 undeveloped property along Skyline Boulevard. Thank you very much.

21
22 Chair Cassel: Thank you. Do we have any questions for him? Lee, I see you nodding.

23
24 Commissioner Lippert: Do you have any sustainable features to the house?

25
26 Mr. Loucks: I am not sure what you mean. Where the structural insulated panels here are made
27 from a sustainable fast growing aspen trees that are harvested every 15 years. I am not sure what
28 you mean exactly, Lee.

29
30 Commissioner Lippert: Are there any recycled materials being used? Are there any salvaged
31 materials being used on your house?

32
33 Mr. Loucks: As I mentioned all of the interior walls are framed with recycled lumber that I have
34 already purchased. The garage and the pump house will be framed with recycled lumber. Also
35 the expanded polyethylene foam that is the rigid foam that is in the structural insulated panels is
36 about 15% recycled materials.

37
38 Commissioner Lippert: So that is not isocyanides in there?

39
40 Mr. Loucks: No it is not, there are no greenhouse gases being destroyed by the production of
41 these materials. It comes from the Intergreen Corporation in British Columbia. So no
42 halogenated gases are created in the formation of it. We do recycle at the Palo Alto dump if that
43 is helpful.

44
45 Commissioner Lippert: I have one follow up question on that.

46
47 Chair Cassel: Go ahead.

1 Commissioner Lippert: On the exterior are you using any noncombustible materials?
2

3 Mr. Loucks: We are using entirely noncombustible materials on the house. The exterior is the
4 hardy plank cement board siding because of the extreme fire hazard in our area we have used
5 asphalt fiberglass fire proof shingles on the roof, 40-year guarantee. We are using the hardy
6 plank cement board siding and our deck even is made with an [epay] hardwood, which has a
7 class A fire rating. So there are no materials on the exterior of the house that have any less than
8 a class A fire rating except for some timber frame accents that are in the gablings.
9

10 Chair Cassel: Could someone from the Staff bring us the sample board? Does anyone else have
11 any questions? Thank you.
12

13 Mr. Loucks: I might point out regarding the sample board we have decided to move to a little
14 darker color for the side of the house. What we are trying to do is match the foliage of the
15 Douglas fir trees for the roof and to match the bark of the Douglas fir trees for most of the trim
16 and a slightly lighter color but the same type of hue for the siding. So it would be a little darker
17 than the siding on the sample board.
18

19 Chair Cassel: Thank you Mr. Loucks. Do we have any questions of Staff?
20

21 Commissioner Lippert: I have a couple more questions for Mr. Loucks on his materials.
22

23 Chair Cassel: I'm sorry Mr. Loucks there are a couple more questions for you. Does anyone
24 else have questions of him? No one else has any.
25

26 Commissioner Lippert: On the roofing material did you look at any other sustainable alternative
27 besides asphalt shingle? Asphalt shingle has granulated copper in it, which leaches out and goes
28 down into streams.
29

30 Mr. Loucks: No we haven't at this point but if you feel that is important we would be very
31 happy to investigate it.
32

33 Chair Cassel: Thank you. I am passing that board down. Now do we have any questions of
34 Staff? Bonnie.
35

36 Vice Chair Packer: I have one. It is almost a technical kind of question having to do with the
37 Mitigated Negative Declaration. Because a Variance has been granted will the Mitigated
38 Negative Declaration be revised to reflect the granting of the Variance?
39

40 Ms. Lisa Grote, Chief Planning Official: The Variance itself was determined to be exempt from
41 the California Environmental Quality Act. The Site and Design application has the Mitigated
42 Negative Declaration completed for it so we would not be revising that Mitigated Negative
43 Declaration.
44

45 Vice Chair Packer: There is a place in the environmental analysis, which asks whether or not it
46 is in compliance with the zoning so the fact that the Variance is granted means that it is now in
47 compliance? I am talking about that aspect of it.
48

1 Ms. Grote: We can make that change and that will be made prior to the City Council meeting
2 and advertised as such.

3
4 Vice Chair Packer: Thank you.

5
6 Chair Cassel: Do we have any other questions of Staff? Pat.

7
8 Commissioner Burt: I just wanted to ask Staff to confirm the site line rendering from six feet
9 above the center line of Skyline that the pump house and the storage tanks are not visible from
10 that location on Skyline. Does Staff concur with that?

11
12 Ms. Grote: Yes we do based on a site visit and looking at the topographic map.

13
14 Chair Cassel: Karen.

15
16 Commissioner Holman: In common with Commissioner Packer's earlier comments Attachment
17 F and also the findings for the Variance, the findings for the Variance in particular, but the
18 zoning compliance table before it goes to Council, Attachment F says that the setbacks, the
19 parking, the accessory buildings all are conforming and they are asterisked indicating that there
20 were Variances attained. It seems that they are not in compliance and they are asterisked and
21 says that Variances, it seemed like that would be a clear way of describing them. Because it is
22 true they are not in compliance with the standards but there were Variances granted so shouldn't
23 the answer be no?

24
25 Ms. Grote: We can modify that and say no with the Variances granted and then reference the
26 attachment in the findings.

27
28 Commissioner Holman: Then the same thing would apply to number four finding for the
29 Variance. Could Staff clarify for me please? It seems like the language here is the project shall
30 be constructed to meet all the City's development regulations and it includes Planning, Building,
31 Fire, etc. and it seems like the statement that I just made and the statement that Bonnie made
32 earlier it seems like that wouldn't be appropriate language to use given that it is really not in
33 compliance and that is the purpose of the Variance. So it seems like it is in conflict with itself.

34
35 Ms. Grote: We can clarify that language and say yes the project would be built in compliance
36 with the exception of the front setback for which a Variance has been granted and again
37 reference those findings.

38
39 Commissioner Holman: I think that would be clarifying. Thank you very much. Madam Chair,
40 this is a quasi-judicial item.

41
42 Chair Cassel: Yes, does anyone want to indicate that they have seen the site or talked to anyone
43 in particular?

44
45 Commissioner Holman: I visited the site and I did speak with the owner. Basically he just
46 showed me the lay of the land when I was there.

47
48 Commissioner Bialson: I did not speak with anyone with regard to this.

1
2 Commissioner Griffin: I did visit the site and spoke with the owner.
3
4 Chair Cassel: I also visited the site and the owner explained what he was proposing.
5
6 Vice Chair Packer: I also visited the site and spoke with the owner in the same way that the
7 others have spoken with the owner, I believe.
8
9 Commissioner Burt: I did visit the site but I did not speak with anyone. Just for a point of
10 clarification site visits I don't think we have to declare those in quasi-judicial matters.
11
12 Commissioner Lippert: Just to make it complete I did visit the site and I just spoke to the owner
13 to get directions.
14
15 Chair Cassel: Thank you. Are there any other questions? Would someone like to make a
16 motion or do you want discussion first?
17
18 Commissioner Holman: What about the public?
19
20 Chair Cassel: I'm sorry. I don't have any cards at this time. Are there any cards for anyone else
21 to speak? Would the owner like to have three minutes to make any other comments?
22
23 Mr. Loucks: No I will wait on it. I feel like I have explained what is going on. No thank you
24 unless you folks have any other questions. I believe that I have said all I really need to say
25 tonight. Thank you very much.
26
27 Chair Cassel: Thank you. I am sorry, thank you for reminding me. Karen, do you have a
28 question?
29
30 Commissioner Holman: Yes. I have just a few. Unless I overlooked something, the pump
31 house, propane tanks all of this the Staff presentation indicated that the pump house I think
32 would be the same materials as the main house. What about the propane tank and the other
33 tanks? Will they be screened, will they be sheathed in the same materials or will they be
34 screened and I didn't see that indicated on the plans? Can you further explain that for me please?
35
36 Ms. Campbell: Yes. From the pump house all of the accessory equipment and the structure
37 itself will not be visible from the street. So there was no additional screening proposed to be
38 installed, a landscape screening around that area. The materials themselves are proposed to be
39 the same types of materials as the house. Maybe Harvey can expand more if that has changed. I
40 am not sure if that has changed since I wrote my report for that.
41
42 Chair Cassel: I believe he said in his testimony that it was the same.
43
44 Commissioner Holman: But it is not indicated on the plans unless I overlooked it. Is it there and
45 I just didn't see it?
46

1 Ms. Campbell: One of the details in the conditions of approval is to include additional detailed
2 plans when they resubmit for building permit to include additional information to show that
3 detail.

4
5 Commissioner Holman: Thank you. Clarification on a couple of things. There are an awful lot
6 of trees that are being removed and I didn't find, certainly it is possible that I overlooked it but
7 perhaps the Arborist could respond to this. If there are a lot of trees being removed isn't there a
8 mitigation program that goes on? I just did not find that in the conditions of approval and it is
9 certainly possible I overlooked it.

10
11 Mr. Dave Dockter, Planning Arborist: The majority of the trees that are proposed for removal
12 after evaluation are bay, madrones and actually on the plans there are many oaks listed. The
13 Tree Ordinance actually differentiates between several species of oaks and all of the oaks on this
14 property that are being removed are actually canyon live oaks and not the coast live oak that our
15 ordinance covers. So technically the Tree Ordinance would not mandate or require mitigation
16 replacement trees for those oaks. So virtually all of the trees that are being removed here are not
17 covered by the tree ordinance and are just a collection of bays and canyon live oaks and there are
18 a couple of Douglas firs being removed also. So we determined that it would not be in conflict
19 number one with the Tree Ordinance for this project and the forest that surrounds the project has
20 enough tree cover so we felt that it was not necessary to require mitigation planting per se. If the
21 Commission feels like they want extra planting to occur that could be considered but the Tree
22 Ordinance does not actually require that.

23
24 Commissioner Holman: Then another one. Condition number ten says that the grading plan will
25 be reviewed by Public Works and it talks about driveway and turnaround should be applied
26 above the tree roots of adjacent trees. It doesn't mention City Arborist. It seems like that would
27 be something that the Arborist should review as well as Public Works. Could Mr. Dockter
28 please respond to that?

29
30 Mr. Dockter: Yes, Staff will be reviewing that with Public Works. In addition there will be a
31 project arborist that will be attached to this whole grading operation also. So any grading that
32 occurs in and amongst trees would be reviewed by the applicant's arborist and the plans would
33 be reviewed also by Public Works and myself also in Planning.

34
35 Commissioner Holman: Okay. Then condition number 19 I was a little bit confused by that.
36 The silt fence barriers added to the Type I tree barriers along tree 14, 66 and those. Can you
37 clarify for my edification if you would, could you clarify that for me please?

38
39 Mr. Dockter: You are referring to condition 19?

40
41 Commissioner Holman: Condition 19, silt fence barriers.

42
43 Mr. Dockter: Yes, those trees were just down slope of some grading occurring so Staff felt that
44 it was necessary to have extra fencing, silt fencing that would protect the trees from migrating
45 soil and mud and that type of thing that would occur below graded operations. So it was an
46 added protection measure.

1 Commissioner Holman: Okay then I think just a quick two more. The monitoring program there
2 are three findings that refer to that 13, 18 and 24. Having been around several construction sites
3 as I am reading this it calls for a final Arborist report to be provided to the City and understand
4 that, then it talks about four week intervals if I am interpreting it correctly for the City Arborist
5 to do inspections. Knowing how fast construction can happen on site sometimes is Staff
6 comfortable with four-week interval inspections as opposed to maybe something more frequent?
7

8 Mr. Dockter: The four-week interval inspections are actually the construction project's arborist
9 and not City Staff that would be performing these. It is the applicant's responsibility to furnish
10 that arborist and inspection the same as any electrical inspection or grading inspection would
11 occur. The project arborist merely monitors the construction and makes sure all the tree fencing
12 is up and adequate.
13

14 Chair Cassel: Does anyone else have any questions? Pat.
15

16 Commissioner Burt: Dave, as a follow up to your comments on the indigenous trees that are not
17 protected under our tree ordinance aside from what looks like an ample retention of the forest
18 here your comments brought to mind a concern that our Tree Ordinance seems to have been
19 designed for the flatlands. It was designed to address the species that are of significance that are
20 native to the flats that we have here. Here we have canyon live oak that is a sister species to
21 interior and coast live oak and yet it is outside of it. We don't in this circumstance but we could
22 have a very significant tree there. We have indigenous Douglas fir, which are our second most
23 prominent conifer to this area and no protection for that in its area where it is a native species. It
24 would be something different if we have a Douglas fir down in the flats here where it never did
25 grow. I wanted to see as a follow up to this meeting would you be interested looking as part of
26 our Zoning Ordinance Update and the landscaping aspects on whether there should be
27 consideration of additional protected significant species in the Open Space areas where they are
28 native species? I just wanted to take this opportunity to ask that that be put in the parking lot of
29 considerations for the Open Space district.
30

31 Ms. Grote: We can put that in the parking lot for follow up actions of the Zoning Ordinance.
32 The Tree Protection Ordinance is actually in Title 8, which is a different part of the Municipal
33 Code than the Zoning Ordinance, but we can certainly look at it after we have completed the
34 Zoning Ordinance.
35

36 Commissioner Burt: And yet.
37

38 Chair Cassel: Is that related to this application before us?
39

40 Commissioner Burt: I will wrap this up real quickly. I will minimize my comments on this in
41 exchange. We do have significant native landscaping aspects to the ZOU in the Open Space area
42 and there would be very much a tie-in between native landscaping and tree protection and that is
43 the reason I wanted to look at the appropriateness of integrating those two.
44

45 Ms. Grote: As the Commission gets into the Open Space discussion we can revisit that.
46

47 Chair Cassel: Are there any other questions related to this project? Annette.
48

1 Commissioner Bialson: Is it time to make a motion yet?
2
3 Chair Cassel: It certainly is. We can make a motion and then make comments.
4
5 MOTION
6
7 Commissioner Bialson: I move the Staff Report, which recommends that we approve the Site
8 and Design, find the project will not result in significant environmental impacts and I believe that
9 is about it.
10
11 SECOND
12
13 Commissioner Burt: I will second.
14
15 Chair Cassel: Do you want to be sure that is with the Mitigated Negative Declaration?
16
17 Commissioner Bialson: I think I mentioned that.
18
19 Chair Cassel: Okay. Would you like to speak to that and then we will go down for comments?
20
21 Commissioner Bialson: I find that the applicant has done a rather good job of addressing all the
22 concerns that we have with regard to the Open Space area and I think it is a good project.
23
24 Chair Cassel: Pat.
25
26 Commissioner Burt: I would just like to concur. I think the applicant has done an admirable job
27 of complying with the guidelines that we have in our Open Space district. I hope that we see
28 future applications as sensitive to those guidelines as this applicant has been.
29
30 Chair Cassel: Lee, do you want to make comments?
31
32 Commissioner Lippert: I would also concur. I think it is an admirable project and the applicant
33 should be commended. I do have a couple of minor concerns that I would like to share with my
34 colleagues. One has to do with the porous asphalt driveway. It is not the material because that
35 has been redefined but the contour is going from 2235 down to 2215. I think that the driveway is
36 going to have a tendency over time to begin to tear and rip as the soil moves and begins to move
37 downhill. So it would I think be in the applicant's interest because it is in the Open Space to
38 look at either building some sort of retaining wall along the edge there or putting in ties across
39 the driveway that is almost like having it bound so that it is not going to start to slide downhill.
40 That would be one comment. The second comment is with regard to the roofing material. I am
41 not a big fan of asphalt composition shingle in the Open Space where the copper granules will
42 begin to leach out. This is a hilly site so the water is going to flow downhill and eventually that
43 copper is going to hit a stream and begin to affect the algae. I wouldn't say this except again it is
44 in the Open Space and so I think that some alternative material should be looked at maybe a
45 cementitious or fire free type shingle. I think it would also look a lot nicer. The fire free I am using
46 this as an example because they make rather large ones and they approximate cedar shakes.
47
48 Chair Cassel: Those are just comments?

1
2 Commissioner Lippert: Correct.
3
4 Chair Cassel: Pat, you had a question?
5
6 Commissioner Burt: Yes. Commissioner Lippert just raised an issue that I was unaware of. Are
7 these granular shingles copper containing?
8
9 Ms. Grote: We had not explored that. The applicant may have some information about that.
10
11 Commissioner Burt: Yes, and just before Commissioner Lippert does elaborate Staff may want
12 to be considering whether or architectural guidelines on architectural copper would apply if in
13 fact these are copper containing given that that is really one of our most toxic materials that we
14 might be using in construction if in fact that is the case.
15
16 Ms. Grote: The roof material being proposed is not prohibited. When we had done our study
17 with our water control quality staff the copper downspouts and gutters were prohibited but not
18 roof material that has minor amounts of copper in it. So this type of roof material is still
19 permitted within the City.
20
21 Commissioner Burt: Lisa, I have a pretty strong recollection of that whole discussion given that
22 I had a decade involvement in industrial pollutant protection. I don't recall ever any discussion
23 about presence of copper in those materials not that we had a conscious deliberation that said
24 well we have considered this and the amount of copper in there we made some determination
25 that that's environmentally benign but in fact I don't think there was any awareness on behalf of
26 the Commission that this was an issue. There may have been on the ARB but if it is an
27 implication that we approve those materials knowing that they contain toxic copper I don't think
28 that is the case.
29
30 Ms. Grote: It had not been identified as one of the materials that was potentially dangerous.
31 There may be amounts of copper in there it wasn't identified as being potentially dangerous. We
32 can look into that again as a follow up action at a future date if we want to amend our policy.
33
34 Chair Cassel: Again, I think what we are doing here is suggesting to the applicant since it is not
35 against our rules that he looks at these issues to see that he is not using, since he is being so
36 concerned about this. I know he has very specific requirements to meet fire codes also. Go
37 ahead Lee but I don't want t a long discussion on whether we should have these.
38
39 Commissioner Lippert: That is one of the reasons why I didn't ask to make an amendment or
40 additional conditions to the motion here. Just to be clear it really is more of a problem I think in
41 the urban area where we actually have water flowing into the storm sewers and then it goes out
42 into the Bay. This could potentially be a problem up in the hills.
43
44 Chair Cassel: Then we should deal with that in another format.
45
46 Bonnie, do you want to make comments?
47

1 Vice Chair Packer: In the interest of moving this along I will support the motion. I appreciate
2 the respect for the environment that the applicant has shown in designing this project and taking
3 into consideration all the aspects of the area. So I will support the motion.
4

5 Chair Cassel: Michael.
6

7 Commissioner Griffin: I too will support the motion. I think it is by and large an excellent
8 example of planning a home in the Open Space district.
9

10 Chair Cassel: Karen.
11

12 Commissioner Holman: It is really a pleasure to review a project where an applicant has such
13 sensitivities to the environment in the Open Space district. It is really a pleasure so I will
14 certainly be supporting the motion.
15

16 I have three small amendments to propose. One of them is consistent with an action we have
17 taken previously and that is with condition number 15. Previously this Commission I do believe
18 has added that the staging, storage and parking area be reviewed and approved by the City
19 Arborist. I would like to add that as a condition consistent with our previous actions. That
20 would be one friendly amendment.
21

22 Chair Cassel: Say that again.
23

24 Commissioner Holman: That condition number 15 the stage, storage and parking areas should
25 be reviewed and approved by the City Arborist, the Planning Arborist. We have done this
26 before.
27

28 Chair Cassel: But my understanding is, and we have also not done it one time, that the Planning
29 Arborist does look at that.
30

31 Commissioner Holman: If it is a condition of approval it is assured.
32

33 Commissioner Bialson: I am not willing to accept that amendment so let's talk about another if
34 you wish.
35

36 Commissioner Holman: The second one is that the tree-monitoring program be additionally
37 monitored by the City Arborist at a periodic review period deemed appropriate by the City
38 Arborist. That was the second friendly amendment.
39

40 Commissioner Bialson: Let's hear your third.
41

42 Commissioner Holman: The third one is that the grading plan, condition number 10, be
43 reviewed and approved by the City Arborist as well as Public Works.
44

45 Commissioner Bialson: I appreciate all your concerns and I think the City Staff will handle this
46 in an appropriate manner. I think we are getting into too much detail. This is a policy-making
47 organization that we are to be part of and I think they have heard our interests in this area and are
48 concern. I don't feel it is appropriate to add to the motion at this time.

1
2 MOTION PASSED (7-0-0-0)
3

4 Chair Cassel: Is there any discussion? Then I will call the motion. All those in favor please say
5 aye. (ayes) All those opposed? Anyone abstaining? The motion passes then seven to nothing
6 and that is to support the proposal at 5061 Skyline Boulevard, a request by Harvey and Pam
7 Loucks for Site and Design Review.
8

9 When does this go to City Council?

10
11 Ms. Campbell: This is tentatively scheduled for March 14.
12

13 Commissioner Holman: Madam Chair?
14

15 Chair Cassel: Thank you.
16

17 Commissioner Holman: Since my amendments were not approved by the maker of the motion I
18 would like to try them as separate motions to add those three conditions if I could get a second.
19

20 Chair Cassel: I think that should have taken place before we had the motion to vote.
21

22 Commissioner Holman: It is a separate motion.
23

24 Chair Cassel: Okay, go ahead.
25

26 MOTION
27

28 Commissioner Holman: I would move to add to condition number 15 to add that the Planning
29 Arborist review the staging, storage and parking area, that a tree monitoring program by the City
30 Arborist be added at periods deemed appropriate by the City Arborist and that grading plan,
31 condition number 10, be reviewed and approved by the City Arborist as well as Public Works.
32 That would be my motion.
33

34 Chair Cassel: Is there a second. There is no second. That motion dies for lack of a second.
35 Thank you very much for your presentation Mr. Loucks. Thank you everyone for a good
36 discussion and thank you for coming Staff.
37

38 We will now go on to item number two.
39

40 I think we better take a five-minute break. We have a couple of members who have expressed
41 by walking out that they need a little bit of a break. We will be back in five minutes.
42

43 Let's come back. Okay, I am calling this meeting to order. The next item on our agenda under
44 New Business is an application at 705 Ellsworth Place. It is a request by Stoecker & Northway
45 Architects, Inc. on behalf of George Stern for a Variance in conjunction with the construction of
46 a new two-story residence to allow front setback encroachment: Instead of 20 feet minimum, the
47 project is proposing 10 feet. The existing condition is 10 feet. A Rear setback encroachment:
48 instead of 20 feet minimum, the project is proposing a 5-foot 6-inch rear setback. The existing

1 condition is 2 feet 11 inches. The Rear Daylight Plane encroachment, the proposed second floor
2 would encroach into the rear daylight plane for a length of 40 feet 10 inches. This is in an R-1
3 zone and the environmental assessment says that this exempt from the California Environmental
4 Quality Act. Staff is recommending that the Planning Commission recommend that the City
5 Council uphold Director of Planning and Community Environment's decision to approve the
6 Variance. This was done as a Variance under the new procedures and a request for a hearing is
7 now in place. Would the Staff like to give us report?
8

9 **2. 705 Ellsworth Place [04-VAR-11]*:** Request by Stoecker & Northway Architects, Inc. on
10 behalf of George Stern for a Variance in conjunction with the construction of a new two-
11 story residence to allow: (1) Front setback encroachment: Instead of 20 feet minimum,
12 the project is proposing 10 feet. The existing condition is 10 feet. (2) Rear setback
13 encroachment: instead of 20 feet minimum, the project is proposing a 5-foot 6-inch rear
14 setback. The existing condition is 2 feet 11 inches. (3) Rear Daylight Plane
15 encroachment: The proposed second floor would encroach into the rear daylight plane for
16 a length of 40 feet 10 inches. Zone: R-1. Environmental Assessment: Exempt from the
17 California Environmental Quality Act per section 15301.

18 **SR Weblink:** <http://www.cityofpaloalto.org/cityagenda/publish/planning-transportation-meetings/4175.pdf>
19

20 Ms. Campbell: Thank you. I will start by clarifying the Staff Report. One of the attachments,
21 Attachment F, was missing the second page. That is complete now and has been put at places
22 and also on the public table.
23

24 The proposed project is for a new two-story house in the R-1 zone. An Individual Review
25 application was filed in conjunction with this Variance. The Individual Review project was
26 tentatively approved on December 20, 2004 and is scheduled for the Director's Hearing on
27 February 3, 2005 because a public hearing was requested. Tonight the Planning and
28 Transportation Commission is reviewing the Variance portion of this project, which was
29 tentatively approved on December 7, 2004. This Variance has been processed using the new
30 findings that were codified in July 2004. Part of the change in this process is that your
31 recommendation to Council will be placed on the Consent Calendar and will require three votes
32 to be heard.
33

34 The proposed project requires a Variance for the front left side and rear setback as well as the
35 rear daylight plane. The issues raised by the neighbors in the adjacent apartments and the
36 property owner relate to shadow impacts, privacy and noise.
37

38 The shadow impacts are illustrated in Attachment G of the Staff Report. These illustrations
39 show that there is an increased shadowing at certain times of the year but it is not significant or
40 worse than the existing shadow conditions of the mature Monterey Pine.
41

42 The project has three windows directly facing the rear apartment building. The bathroom and
43 staircase landing windows are approximately 24 feet away from the apartment building and the
44 sitting room window is approximately 35 and a half feet away from the building. The issue of
45 privacy is specifically addressed in the Individual Review process and it was determined that this
46 proposed project meets this guideline.
47

1 The noise issue raised cannot be regulated by this review but is regulated by Noise Ordinance,
2 which is enforced by the Police Department.

3
4 Staff recommends the Planning and Transportation Commission recommend that the City
5 Council uphold the Director's decision to approve the Variance based upon the findings and
6 conditions in the Record of Land Use Action attached to the Staff Report. This concludes Staff's
7 report. The applicant is present and prepared to make a presentation. Thank you.

8
9 Chair Cassel: Are there any clarifying questions before I go to the public hearing? The
10 applicant is George Stern and he is listed as the first person to speak. You have 15 minutes to
11 make your presentation and that includes your comments by your staff person, Mr. Northway.

12
13 Mr. George Stern, 705 Ellsworth Place, Palo Alto: Good evening Commissioners. I would like
14 to tell you briefly about the existing house, why I want to replace it and what I have tried to do to
15 make it consistent with and a benefit to the neighborhood. Then the architects will go into more
16 of the specific information you may need to consider this request for a Variance.

17
18 I bought the present house about ten years ago primarily as a residence for my son Gary. We
19 think it is about 70 years old. Although it was and is charming and quaint in many ways it was
20 and is dilapidated and out of date. For example it has no central heating. It has many structural
21 problems for example serious cracks in the foundation and bearing walls and needs other
22 upgrading. For various personal reasons only tweaking has been done so far. However, in May
23 2002 at the age of 47 Gary had a cerebral hemorrhage causing severe brain injury. After the
24 initial acute period he remains paralyzed on the right side of his body, has severe speech and
25 memory disability and other serious medical problems. However, he has a normal life
26 expectancy, probably another 25 or 30 years, and has a continuing desire and capability for
27 independent living. He does need about seven or eight hours a day of personal care of various
28 kinds and is largely confined to a wheelchair. The present house has steps inside and out, narrow
29 openings and corridors, a four by seven bathroom, a six by ten kitchen and many other features
30 that make it inaccessible. Ramps and interior remodeling cannot make it either an accessible or
31 conforming house. At present he is living in the garage because he can get in, out and around it
32 and because considering all the living alternatives it is actually the best situation for him now on
33 a short-term basis. Obviously that can't go on.

34
35 I am providing the majority of his personal care myself with assistance from medical therapy
36 personnel, several part-time helpers and the incredible support and assistance of many Ellsworth
37 Place neighbors. Their contribution to making Gary feel welcome and at home is very generous
38 and greatly appreciated and I want to thank them publicly now for being the wonderful warm-
39 hearted people they are.

40
41 The neighborhood is modest and entry level for the Palo Alto market and it houses families,
42 single people and retirees. It is perfect for Gary not only because of the neighbors themselves
43 but because it is within rolling distance of Midtown Center, which has a wealth of stores,
44 services and diversions that Gary uses every day. He is used to the neighborhood and the
45 neighborhood is used to him. So I want to build a modest house that he can live in and enjoy as
46 a severely disabled and later on elderly person who needs a satisfied and responsible full-time
47 live-in caregiver and can also retain as much independence and dignity as possible.

1 A couple of years ago, as soon as I knew the house would have to change I began to raise the
2 question with as many of the neighbors as possible and we discussed it at length over time.
3 Ellsworth Place has a distinct and cohesive neighborhood character, which I knew we could
4 compliment. It became clear that many of the Ellsworth neighbors welcomed an upgrading of
5 the house and thought it would be good for them as well as for Gary especially because it would
6 reduce the concern of some of us that the entire street was ripe for purchase by a developer.
7 However, as you know one side of the lot is bordered by a large two-story 30-foot high
8 apartment complex in the RM-15 zone. The rear is bordered by single story apartments in the
9 RM-15 zone, which are older and legally zoned to permit new two story apartments 30 feet high.
10 I am aware that these residences are part of the larger neighborhood and that their needs must be
11 taken into serious consideration which I have tried to do. The 705 lot is not substandard so after
12 a great deal of alternative planning with both the architects, the City Staff and many of the
13 neighbors we decided to propose a partially two story 23 foot high design which is allowed by
14 the zoning code. I think this proposal benefits all the neighbors in the following ways. At 1,504
15 square feet of lot coverage the proposed house covers only 120 more square feet than the current
16 house and all the gain comes from the area of the internal patio of the current house. This
17 compact structure prevents the removal of mature but non-protected trees and reduces the
18 structures mass. The current garage is removed in the proposed house and is replaced by a
19 garage at the opposite end, which is part of the 1,504 square feet coverage. This step
20 accomplishes at least three goals. First it increases the open space directly on Ellsworth Place.
21 The side yard length increases from 28 to 39 feet. The lots on Ellsworth are small and this
22 relatively large undeveloped area provides a green relief from what could be wall-to-wall houses.
23 In addition it gives Gary a yard to enjoy and continue his rolling gardening. Second it removes
24 all structures from behind two of the four single story apartments, 716 and 718 Sutter. Third, it
25 corrects the current condition of the garage which currently actually protrudes over the apartment
26 owner's property line and backs up to the apartment sidewalk in front 716.

27
28 The second story which is about half of the 1,504 square foot footprint is not at the allowed 30
29 foot height but is at 23 feet, two inches. It is placed in an L-shape in a position that has at least
30 three distinct advantages. First it casts now shadows on any property on Ellsworth or the street
31 itself besides mine with a slight exception for a small shadow during midwinter mornings on part
32 of the side yard of the duplex next door. There are trees there, which cast much larger shadows
33 at this time. It casts minimal shadows on either the two story or one story apartment buildings
34 except for winter mornings when there is a shadow on a portion of 714 Sutter and smaller
35 portions of 712 and 716 Sutter and on Equinox mornings when there was a small shadow on a
36 portion of the 714 patio. It happens that a large Monterrey Pine in the patio of 714 Sutter
37 currently casts larger shadows on the same and other areas at those times and other times and
38 seasons. That tree and another one, a tall acacia at the corner of the 30-foot apartment's lot, and
39 the 30-foot apartment itself cast constant shadows at all times and seasons on 705 Ellsworth
40 Place as would a new two-story apartment behind. My take on that is that it is a minor
41 inconvenience maybe even a benefit of city living and I am not planning to demand the removal
42 of the trees, the apartment house or any new apartment that may be built there.

43
44 Second, the current situation in which the 30 foot high two story apartment building is about 30
45 feet away from the current living room and its 14 foot peaked roof would improve. There would
46 instead be 60 feet from the 30-foot tall apartment to the 23-foot high new second story. None of
47 the windows of the proposed second story face into any other window and the lines of sight do
48 not promote the loss of privacy. Instead of being near the tall living room of the old house the

1 two story apartments would be near the new shorter one story garage and laundry room where
2 hopefully less activity will take place than at the living room at the other end of the new house.
3

4 Third, the two-story design permits the new house to be less massive and present than a one-
5 story design would be. One story would have to cover much more of the lot. Because of the
6 long narrow dimensions of the lot a one story design would stretch from one end of the lot to the
7 other occupying much more frontage on Ellsworth and be closer to 716 and 718 Ellsworth which
8 have no structures behind them in the two story design. A one story design for architectural
9 reasons would probably have up to 17 foot peaks which would create much larger and longer
10 shadows at more times and in more seasons of the year. A one story design would also require
11 the removal of several mature but non-protected trees now on the lot and would fill most of the
12 present open space side yard instead of enlarging it as in the proposed design. Probably most
13 disturbing the one story design would look out of place on the street because of its length and
14 bulk. In addition the one story design does not achieve the goal of creating some privacy for the
15 live-in caregiver who I would like to have a good life too.
16

17 To summarize before the architects give you some more specific information about this proposal
18 this house is a beneficial design that meets Gary's needs, benefits the neighbors and the
19 neighborhood and harms very little and much less than the alternatives including the alternative
20 of doing nothing. Now I would like to ask the architects to give you more details. Thank you.
21

22 Mr. John Northway, 437 Lytton Avenue, Palo Alto: Thanks, George. In the brevity of time, I
23 think we have about five minutes left, I will just go through a few things and then we are
24 available for questions and we have lots of backup material and overheads if you want to get into
25 some of the details.
26

27 This is primarily a land use hearing although this is kind of a chicken and egg situation because
28 there is a specific design in front of you that is the result of why we are asking for the Variances.
29 The existing lot is 44 feet deep and it is unfortunately the long 115 length of it that is the front of
30 the lot. If you did a 20 foot front yard and a 20-foot rear yard we would end up with four and a
31 half feet to build in. That is the unusual circumstance that triggers the need for the variance.
32 How did we come up with the dimensions that we are requesting for the Variance? Essentially
33 on Ellsworth there is a very steady and consistent front yard of around ten feet that is what we
34 are asking to maintain. Currently, the lots are very irregular in their rears. Many of the homes
35 are built directly on the rear property line. The existing house is about two and a half feet off the
36 rear property line. We designed the house and then decided what to ask in terms of the rear.
37 There were two factors that came into play. The overriding factor is to create a structure that
38 works for an individual in a wheelchair. The way the layout worked Gary's bedroom and master
39 bath are in the rear portion of the house to keep away from street noise and it is very important
40 that the handicap access for the bathroom is maintained and also for the bedroom. This worked
41 out to design, we brought the lower floor, and that is important, the lower floor goes to five foot,
42 six to the property line. Please note that the second floor is set three feet further back. It is back
43 eight foot, six. You say well, can you lose six inches? In a normal house you probably could
44 lose six inches. In a house that is handling handicap wheelchair access six inches actually is the
45 difference between the bathroom working or not working.
46

47 The other critical dimension is the garage. We wanted to provide 18 feet in front of the garage
48 and then garage itself is 21 feet leaving again five and a half feet. This five and a half feet for

1 the rear setback is only on the ground floor. The second floor is set back eight and a half here
2 and I think it is over 19 feet here. It is 19 feet, six inches to this point. So essentially this rear
3 window is setback the same as it would be if it was a normal rear yard. These windows are
4 setback eight and a half feet, one is in the bathroom above the bathtub and the other window is a
5 window at a stair landing. So the invasion of privacy aspect really isn't there.

6
7 We did figure out shadows and Alena Campagna who is the project architect did it. She is a
8 graduate of MIT and a master's from Cal and if you want to know how they were cast and you
9 want a short tutorial in shadow casting Alena can give it to you.

10
11 We did look at alternatives because that is usually a question you ask. Did you look at any other
12 way to do it? We looked, as George said, at using the existing floor plan and layout and putting
13 a second story on it. For numerous technical reasons, irregular floors, bad footings that was a
14 bad idea. Another thing that would have happened if we had stayed with the 20-foot setback of
15 the daylight plane we could still do a second floor. A second floor is granted because this is a
16 conforming lot. What would have been created would have been one of your most favorite
17 buildings, Pat, the one at the corner of Parkinson and Newell which goes straight up two floors
18 and is very narrow and runs the length of the property. We really wanted to do something that
19 was much more articulated, worked with the cottage feel of the street and broke up the massing
20 of the second floor. So to make a long story short we said we have to go for these Variances so
21 we can do an appropriate design for the street, for the area and something that will work for
22 Gary. I will stop because I am probably out of time anyway.

23
24 Chair Cassel: You have one minute.

25
26 Commissioner Lippert: Can you pass the model around, John?

27
28 Chair Cassel: Do any of us have questions for the applicant? Bonnie.

29
30 Vice Chair Packer: I have a question for you, John. How high is the existing structure?

31
32 Mr. Northway: The existing structure is 13 feet, ten inches.

33
34 Vice Chair Packer: Thanks.

35
36 Chair Cassel: Anyone else have a question at this time? Thank you. We do have people who
37 would like to speak to this item. If anyone else would like to speak will you please complete the
38 card and turn it in to Zariah, our Secretary. You each have five minutes and you don't have to
39 use the whole five minutes. The first person to speak is Kathleen Dal Bon.

40
41 Ms. Kathleen Dal Bon, 741 Ellsworth Place, Palo Alto: Myself, my husband and our two
42 children live at 741 Ellsworth and we would like to speak in support of the Variance. Our street
43 is a group of moderate income and retired homeowners. We have gone to a lot of lengths to try
44 and improve the street which when we moved there had a lot of problems. We would even have
45 people come visit and say is it safe to park on your street. It was very substandard in many ways.
46 We have done a lot of effort. It used to be you couldn't get through the street because cars were
47 parked on the street and it is very narrow. We have gotten the cooperation of our neighbors even
48 though it is quite difficult on our small lots everybody parks off street now. We have worked to

1 paint house fronts. My kids and I with some of the older homeowners on our street have actually
2 done some of this and cleaned up yards. There has been a lot of tree pruning. The canary palm
3 that is at the front of our street has been cleaned up very well and looks quite nice. New fences
4 have been put up. Our big effort was to pave the road. We are moderate income or on fixed
5 incomes on the street and we had a window of opportunity which is what we see this project
6 being to improve. We had three days to take advantage of a low cost paving opportunity and
7 managed to get everybody on the street together and do that. We are concerned about this highly
8 visible entry onto the street. It has always been an eyesore frankly and we see this as an
9 opportunity to upgrade the whole street by having this done. I have heard from many of our
10 neighbors concerns that unless we can accomplish this it does make our entry-level type homes
11 vulnerable as a target for development for real monster homes or apartment houses. Our retirees
12 and young families want it the way it is if we can. So we are welcoming the new structure when
13 this thing that you are seeing is going around. We actually walked through the neighborhood
14 and chatted with neighbors about it and they were very excited about it especially the use where
15 we had this little relief from the endless row of cottages with some open space.

16
17 The one concern I had is Vladim across the street from me although may be moving in with his
18 fiancé wasn't around and I didn't hear what he thought of it but I noticed in the packet that he
19 has come out supporting this effort.

20
21 We are not sure not why a much higher apartment building and on my side of the street
22 apartment buildings look down into our yards would be so concerned about a small two story
23 extension on this house. We see it as supportive of our neighbors and necessary for what we are
24 doing. So at any rate we just see this as unique window of opportunity and would like to support
25 it. Thank you.

26
27 Chair Cassel: Thank you. The next person to speak is Stephen Pahl and the person after that is
28 Nirmal Iyengar. I am sorry if I pronounced that wrong.

29
30 Mr. Stephen Pahl, 160 Santa Clara Street, San Jose: Good evening. I am attorney and I
31 represent the property owner northwest of this property. The Ellsworth property as you have
32 read in your Staff Report is generally substandard lots however this is a standard lot but what
33 Ellsworth has more importantly is all single story height homes. This will be a major
34 modification to the streetscape. All of Staff's recommendations in support of the Variance go to
35 the second story aspect and while the project is desirable the concept is desirable, admirable you
36 can't take an applicant's personal needs under California law and specifically the government
37 code into account. You must look at this as a separate zoning application.

38
39 If you look at items three and four of Staff's recommendation both of them argue to the validity
40 of the Variance, it is not. The difficulty that you have is the second story is not comparable to
41 the neighborhood. It will be injurious to the adjacent property both in loss of privacy as well as
42 the fact that it actually encroaches even deeper because of the height. Perhaps a Variance
43 covering one of the questions you will ask among yourselves is is there an alternative. There is,
44 you can get this same amount of square footage on this property without going to a second story.
45 You can clearly do that. So if square footage is the desire it can be handled on this property.
46 Yes, it will take up some yarded space but it is the only yarded space that is currently on the
47 property. The strict application of the your Zoning Ordinance it will provide a privilege not
48 otherwise available to the community and that is a second story.

1
2 I did not see anywhere in the Staff's analysis where they evaluated other 45 foot deep properties.
3 Is this the only 45-foot deep property with R-1 zoning in the City of Palo Alto? I trust it isn't. It
4 must be unlike any other property under government code 65906.
5

6 Finally, other nonconforming uses such as the apartments being utilized as an excuse to grant a
7 Variance cannot be included also in your analysis. I didn't want to use up all five minutes
8 because I know you have a lot of other speakers. Do you have any questions? Thank you.
9

10 Chair Cassel: Thank you. Mr. Nirmal Iyengar to be followed by Mary Navarro
11

12 Mr. Nirmal Iyengar, 712 Ellsworth Place, Palo Alto: Good evening. I live at 712 Ellsworth
13 Place with my wife and daughter. We moved in there in early 1998 and over the years we have
14 seen Gary's house in various states some desirable some not very desirable. For many years we
15 have wished that something would be done about that lot. Now there is an opportunity and we
16 would hate to see this go by without any changes taking place.
17

18 Over the years, like I said I have a 14 year old daughter, and we have always contemplated
19 remodeling. We have taken a hard look at some of the rules that govern such substandard lots
20 and as you are well aware there are not many options and there is really no incentive to remodel.
21 I think that is why those houses that were built in the 1940s are still in the same state they were
22 when they were built. From a community standpoint once there is an opportunity to change
23 something for the betterment of all concerned there is an incentive right now and we must fully
24 make use of this opportunity.
25

26 It is really interesting how the zoning laws have been written. This is not a criticism of the
27 people in general but just the way things are. When I walked around the property just recently
28 and walked around that area I noticed that the apartments can look into the single family homes
29 but the people don't want the reverse to take place. They are concerned about single-family
30 home residents looking into their apartments or looking down into their places. So I don't
31 understand how they have such conflicting requirements.
32

33 In general like Kathleen mentioned earlier we spent quite a bit of time and the community feels
34 that we can improve that area by repaving the road. One of the things we did when repaving the
35 road was to get the cars off the street. That really changed the look of that area because now it
36 suddenly looks wider. One of the things that we can do is if you allow two story houses to be
37 built it will allow the cars to be taken off the street and improve the general outlook of that
38 community. For that reason I fully support the idea of going ahead with the Variance. Thank
39 you very much.
40

41 Chair Cassel: Thank you. Mary Navarro to be followed by Corrine Shelly Arlis.
42

43 Ms. Mary Navarro, 706 Ellsworth Place, Palo Alto: Good evening members of the Planning
44 Commission. My name is Mary G. Navarro the G stands for Good Girl. I am now a semi-retired
45 educator with the Palo Alto School District where I have taught English.
46

47 Chair Cassel: Mary, before you get started can you tell us where you live?
48

1 Ms. Navarro: I live across the street from 705 Ellsworth. I live at 706 Ellsworth, I'm sorry. I
2 was getting to that. I am now a semi-retired educator in the Palo Alto School District where I
3 have taught English at all levels for almost 40 years. It is hard to believe but I did and I still
4 enjoy it. My cottage at 706 Ellsworth Place is across the street from 705. I am in favor of the
5 new structure at 705 for three reasons. My first reason is Mr. Stern's son, Gary, has had to live
6 in the adjacent garage because the cottage is not wheelchair accessible. As a result his living
7 space is so limited that when I play dominoes with Gary we must go to a nearby café, which is
8 often crowded. I enjoy playing games and so does Gary. By the way he has become such a
9 challenging opponent we now often end our games as a tie, which I am proud of. Good for him.
10 The second reason, the new structure would greatly benefit Gary's living conditions as well as
11 contribute to an improvement in his health. This may or may not be a valid reason according to
12 the regulations but it is important to us. The third reason is the new structure would fit in with
13 the character of the neighborhood and add to its value. In addition it would also add to the value
14 of my property. If the new structure would consist of only one level it would not be as attractive
15 or fit into the neighborhood as well. In addition the length would greatly limit the space for a
16 yard. Gary, by the way, loves to garden. Nor would it fit in with the character of our
17 neighborhood. Thank you very much for listening.
18

19 Chair Cassel: Thank you. Corrine Shelly Allis. You can come up and speak. I can move yours
20 to the end. The next person to speak is Edward Barri to be followed by Glenda Bennett.
21

22 Mr. Edward Barri, 19927 Villa Drive, Sonora: Good evening council. I am Edward Barri. I am
23 the owner of the property, the 12 units located at 2901 Middlefield Road and the eight units that
24 are behind 705 Ellsworth. These eight units are most of our concern. There are four on the front
25 that face Sutter Avenue and there are four in the rear that border the back property line of 705
26 Ellsworth.
27

28 First of all I just got wind of this thing from the City's mailing back in September and George
29 had mentioned that he had talked to the neighbors for a couple of years prior to that. Well, I was
30 never approached. We have known each other for years. He has had the property I think he
31 mentioned ten or 12 years. I have owned these properties for 30 years and 18 years respectively.
32 We are good neighbors. We have a lovely neighborhood. I want to say first of all that I am not
33 at all opposed to redevelopment of this property and I think that all of the people that live in our
34 buildings are not opposed to that. We feel that it could be done better. Mary and the other
35 woman they both referred to the houses they live in on Ellsworth as cottages. These are small
36 homes. I think probably the largest one is close to 1,500 square. Mr. Stern is proposing almost a
37 structure that is 2,300. That is not in keeping with the neighborhood not when it is two stories.
38 When I first got wind of this I called George up and we met. I actually went over the drawings
39 with him. We walked the site. We walked back to my properties. We walked the back building
40 of the Middlefield Road property. I said check out the antenna up there, this is how high it is
41 going to be. We walked the back sidewalk along our shared property line. I explained my
42 concerns.
43

44 It probably wouldn't be such an issue except these apartments are very unique. I don't know
45 how many there are in Palo Alto, maybe 40. They are Eichler style. They have individual yards.
46 They are one bedroom. They have fireplaces with yards you can garden in. So where do you
47 find a one bedroom with a fireplace and a yard? They are not common. So people love these
48 apartments in a sensitive market like we have now with apartments. It is not too much of a

1 problem renting them compared to other properties just because of their uniqueness. A two-story
2 house is really going to affect these. Regardless of the studies and these windows looking
3 straight, I read it, people are going to look around they are going to look down, they are going to
4 want to see what is in that yard down there. There is going to be a shadow there. It says Winter
5 Solstice, nine o'clock in the morning to one o'clock on the longest day of the year that is going
6 to be in shadow. That is a lot. These apartments face east so one of the joys is they get that
7 morning sun on a cold winter day. Now existing, I just checked it out, we are a month later from
8 the Winter Solstice but the sun is hitting those walls now at approximately nine in the morning.
9 So we are talking about a four-hour difference. Winter Solstice we are probably talking about
10 probably half the day, four hours, that that's going to be in shadow. I don't know what kind of
11 science was behind that study but if you go to the site, and that is the thing, every site is unique
12 and needs to be looked at individually. As I say, I think there are alternatives to this.

13
14 When I met with George I had a little cutout on the drawings and I took the 750 square foot
15 proposed second floor and I had the cutout and I said look you could put it over here. Yes, you
16 are going to be cutting out some yard. I don't want that I want it to be nice for them. Yard is
17 important for all of us but I think it could be reconfigured. I also suggested instead of taking that
18 750 square cutout and just putting it on the side which would pretty much take up the whole lot
19 but you could turn it and you could actually build a smaller second floor more in the front. That
20 way it would cause less of a visual impact, your view shed is going to be cut down. We talk
21 about that Monterrey Pine well pine trees are 90% air. That is ambient light that goes through
22 there it is not like a wall. You are seeing the setbacks currently are 2.6 odd feet that is only for a
23 12-foot length of that building. So you think about this 40-foot plus encroachment into the rear
24 daylight plane. It is going to be a big wall. Thank you for your time.

25
26 Chair Cassel: Thank you. The next person to speak will be Glenda Bennett to be followed by
27 Terence Billings.

28
29 Ms. Glenda Bennett, 714 Sutter Avenue, Palo Alto: Good evening council. I currently reside at
30 714 Sutter Avenue and I am one of the apartments that will be mostly affected by this two-story
31 building. I currently do have, it is mentioned in there and it is also in the drawing, there is a
32 Monterrey Pine on my patio, which I get filtered light all of the time through. It is not a shade.
33 It does partially shade my patio area I would say mid morning to late afternoon but I as of right
34 now enjoy a lot of morning sun. Also my living room sliding glass windows face the outside
35 patio, which will now face this two-story building. My bedroom window which I can mostly
36 leave open now because the patio is so private I have quite an arrangement of orchids that grow
37 because I receive the filtered sunlight. I mainly chose this apartment because of its privacy,
38 because I was able to have an area to garden in and I do really believe that this two-story
39 building will affect the vegetation and the plants that I grow now and that I enjoy. I do believe
40 that my privacy will be invaded. I have an outdoor fireplace on the patio that on nice evenings I
41 can either barbeque or use to build a small fire and have visitors over and it is quite. Everyone
42 comments on how private and how quiet. How did you find this place? I think that will be gone
43 once this two story building is up. Thank you.

44
45 Chair Cassel: Thank you. Terence Billings to be followed by Denis Johnston.

46
47 Mr. Terence Billings, 2901 Middlefield Road, Palo Alto: Good evening. I live at 2901
48 Middlefield, number six, which is an apartment that overlooks kind of kitty-corner in the back

1 about 50 feet from the proposed site. The single story – fine. Like the last person said I actually
2 rented that apartment for an outside deck that I have. It is a really unique apartment. The deck is
3 actually almost bigger than the apartment. That is definitely why I rented it for privacy. Two
4 stories that close by, window angles I don't about all that science but it definitely will be a
5 privacy issue. Upgrading that lot, all that would great for him I know, the two story aspect of it
6 would look right down on my deck which is the reason I rented that apartment. Thank you.

7
8 Chair Cassel: Thank you. The next person to speak is Denis Johnston to be followed by Vera
9 M. Shadle.

10
11 Mr. Denis Johnston, 716 Sutter Avenue, Palo Alto: Good evening. I have a couple of concerns.
12 I live at 716 Sutter Avenue and my apartment patio and my bedroom window will face directly
13 into the back of this home. I applaud Gary and his family for taking consideration for his son to
14 provide a better living situation. As I understand it as the house sits now it is quite old and
15 dilapidated and really substandard to say the least. However, I have concerns about a second
16 story being there. I don't think it fits into the pattern or the footprint of the street of Ellsworth. I
17 have concerns that this will open a Pandora's box if you will and set precedents for the other
18 neighbors on Ellsworth to potentially build as well not that it is not within their right but it is a
19 concern of mine. The footprint of the shadow line is a concern as well and I just wanted to voice
20 this. Thank you very much.

21
22 Chair Cassel: Thank you. The last person to speak is Corrine Shelly and you will help me with
23 the last part of your name please. Come on up and speak into the mike and state your name and
24 your address please.

25
26 Ms. Corrine Shelly Arlis, 720-7738 Sutter Avenue, Palo Alto: I wanted to hear some of the other
27 comments before I spoke. We have the property at 720 to 738 Sutter so we are behind Ellsworth.
28 You see on there it says 718 Sutter so we are a little bit to the east of that.

29
30 Chair Cassel: When you say 'we' who do you mean?

31
32 Ms. Arlis: My husband and I have the properties on Sutter.

33
34 Chair Cassel: Where do you live?

35
36 Ms. Arlis: The properties that we have are 720 to 738 Sutter.

37
38 Chair Cassel: Pardon me, those are the properties you own but as part of the record we need to
39 know where you actually live.

40
41 Ms. Arlis: Okay, I'm sorry. 648 Maybell in Palo Alto. I think the idea of the renovation and
42 improvement of that home and that property on Ellsworth would be really desirable for our
43 neighborhood. My concern is the height. I went and looked at the street on Ellsworth and I
44 looked at it from several angles and I see that it is a very long lot. There is a large yard or garden
45 area. I am concerned about the height because it does in fact overlook into people's private
46 patios. As far as I know they have glass patio doors there.

1 In regard to someone saying that they were apartments behind that were tall it is about 100 feet
2 from the property line and there are no windows that face toward Ellsworth on the properties that
3 are on Sutter. Say 720 to probably 750 Sutter there are no windows facing that way although
4 there are some two-story buildings. I feel that having suddenly on that little small street if you
5 have been there and you look at the lot there is plenty of room to have a different configuration
6 where you are not so close to the property line. That would be my concern. I am opposed to
7 having the second story so close to the property line. In fact I really don't like the second story
8 there. Thank you.

9
10 Chair Cassel: Thank you. Could you come forward and tell us your name and your address. I
11 don't know how I could have missed your card but we can just fill out another one.

12
13 Ms. Vera M. Shadle, 2901 Middlefield Road, Palo Alto: I live in apartment 11, I lived there
14 since July of 1997.

15
16 Commissioner Griffin: Would you please speak more directly into the microphone, please?

17
18 Ms. Likens: Okay, is this better? I lived in that apartment for about seven and a half years. My
19 first concern has to do with the characteristics of the neighborhood on Ellsworth Place. This
20 would be the first two-story home there. This is a significant break from the current
21 neighborhood appearance and as a matter of public policy I actually disapprove of that. We have
22 had lots of controversy the last several years in Palo Alto about people building monster homes
23 out to their property lines and intruding upon their neighbors. I believe in the greatest good for
24 the greatest number, worldwide democracy not by plutocracy and that is what that represents to
25 me.

26
27 My bedroom window overlooks the side yard and left side of the house at 705 Ellsworth. I
28 deeply concerned by the prospect of a two story house looming over my apartment and
29 furthermore contrary to what Mr. Stern has said this evening it appears that the caregiver's sitting
30 room windows will look directly into my bedroom window. Now the issues are that my
31 apartment is what called a junior one bedroom, it is essentially an overgrown studio. There is
32 literally nowhere to go to get away from windows and the only doors that close are my walk-in
33 closet and my bathroom so there is nowhere for me to go if somebody is intruding upon my
34 privacy.

35
36 The third point that I want to make actually has to do with my experience of living there over the
37 last seven years. Because of the various parties and other tenants who have been in and out at a
38 great rate at the 705 Ellsworth Place property I have already summoned the police innumerable
39 times over the last seven and a half years to deal with party noise, complaints and other late night
40 and early morning disruptions of my sleep and privacy. Whatever goodwill the tenants of this
41 property possessed was exhausted early and often many years ago from where I sit. I should add
42 also that there are other occasions in which I attempted to solve the problem on my own and
43 asked to cease the disturbance and have been greeted either by being ignored or by verbal abuse.
44 I really just don't have any reason to trust that in my opinion the people at this house have never
45 taken into consideration the privacy or the needs. They have been dreadful neighbors and I
46 really don't want to see that a second story be added to this home because it would add to the
47 noise problems I've had and then be a visual intrusion into my bedroom and further disturbance
48 of my privacy. It is not that I don't sympathize with the need to redevelop the property I just

1 joint with my landlord, Mr. Barri and our other neighbors who ask that it be done in a one story
2 format. Thank you.

3
4 Chair Cassel: Pat. Could you clarify, I think you are alluding to on I guess the rear part of the
5 property you reside at which faces the backyard of this proposed property.

6
7 Ms. Shadle: It faces the side yard.

8
9 Commissioner Burt: How much open glass space were you saying exists in your apartment?

10
11 Ms. Shadle: Open glass space?

12
13 Commissioner Burt: Yes, if I understood you correctly you were alluding to transparency of
14 your apartment from a second story view. Is that because there is a great deal of open glass?

15
16 Ms. Shadle: Yes, there are two bedroom windows in my very small bedroom and one of them
17 looks out directly onto the side yard at 705 Ellsworth. That has been a big problem because
18 people have, various tenants of that house at various times have not only partied well into the
19 morning hours usually 2:00 AM at least sometimes later and other times during the summertime
20 people have chosen to take cell phone conversations out into the side yard and wake me up or
21 disrupt my sleep, hammering late at night, you name it, anything goes.

22
23 Chair Cassel: I have one more card from Kathy Bilbow. Would you please come forward and
24 speak?

25
26 Ms. Kathy Bilbow, 2901 Middlefield Road, Palo Alto: I used to occupy the space that Terry
27 now occupies at 2901 Middlefield Road, the apartment sits kitty-corner to the property.

28
29 Chair Cassel: For the record could you please tell us where you now live please?

30
31 Ms. Bilbow: I now live in apartment four just across the hall. I initially rented this apartment
32 because of the uniqueness and because of the privacy. I lived there with my daughter who was
33 able to utilize the deck area that overlooks that property that would now if a two-story structure
34 was built would invade some of the privacy. She was able to have private birthday parties, bring
35 her friends over. We were able to have nice barbeques out there. I do believe that this second
36 story would impact that privacy. I was aware of this house on Ellsworth because of the noise
37 and since moved because of the banging and some of the loud screaming and things that took
38 place over there. So we since moved from that area to across the hall to get a little bit more
39 privacy. I think with the second structure it would impact the niceness and the privacy of the
40 deck area. Thanks.

41
42 Chair Cassel: Thank you. That is the last card I have so I will bring this back to the
43 Commissioners.

44
45 Commissioner Griffin: I have a question for the applicant.

46
47 Chair Cassel: Fine and then he gets three minutes to make comments if he wishes to. We have a
48 question for the applicant. Which person would you like to speak to Mr. Stern?

1
2 Commissioner Griffin: I really don't care whether George or his architect responds. I am
3 wondering if you could perhaps reiterate the rationale for not going with the alternative of
4 building on all one level. You did make reference to that previously but you might want to
5 elaborate a little bit more on why you elected not to choose the all on one floor alternative.
6

7 Mr. Northway: The all on one floor alternative was looked at the problem with it is that it
8 became a very long kind of homogenous building, 17 feet high and it basically severely
9 diminished this really nice 40 foot wide pocket of open space that the community of Ellsworth
10 Place enjoys and is very critical to the gardening activity that Gary needs and enjoys.
11

12 I don't know if you want to see it or not but we actually in part of the shadow studies we did a
13 study of what a single story 17 foot high building that fills up most of the building envelop which
14 it would, what kind of shadow it casts. We found essentially it casts a much bigger shadow over
15 the backyards of the Sutter apartments on December 21st which is of course the worst day of the
16 year and in most cases there is no sun. We kind of laughed at, didn't show it and we kind of in
17 the office called it the "be careful what you wish for drawing," because it really had a worse
18 shadow pattern than the two story house.
19

20 Chair Cassel: Lee had a question for you.
21

22 Commissioner Lippert: I have a couple of questions actually. Have you done any [helidon]
23 studies?
24

25 Mr. Northway: Any what?
26

27 Commissioner Lippert: [Helidon] type studies.
28

29 Mr. Northway: I don't know what those are, Lee, enlighten me.
30

31 Commissioner Lippert: Put the light on the table at the PG&E energy center and you sort of
32 crank it up to the right date, December 21, and then you do the summer solstice as well.
33

34 Mr. Northway: No, we didn't do those. The photos you have in the packet Alena can explain
35 the data were taken and we actually did orient them properly.
36

37 Commissioner Lippert: So those aren't just pictures of the model those were solar studies.
38

39 Mr. Northway: That's right.
40

41 Commissioner Lippert: Okay, I got it. Then the second question I had is did you look at
42 shorting the plate line along the backside of the house?
43

44 Mr. Northway: The plate line is only eight feet high so we didn't want to make it any shorter.
45

46 Commissioner Lippert: Hear me out. Did you look at all at shorting the plate line and coming
47 up with an average ceiling height of seven-six by cathedralizing some of the spaces? What I am

1 looking at particularly is on the second level the closet area and the area over the tub and then
2 possibly dormorizing the landing at the top of the stairs to make it appear shorter in the back.
3

4 Mr. Northway: We actually didn't because we felt that eight-foot plates were marginal, we
5 usually work at higher ones. And we also felt that an overall building height of 23 feet two
6 inches was very modest in a zone that allows a 30-foot height.
7

8 Commissioner Holman: Okay, thank you.
9

10 Chair Cassel: Is there anyone else that has a question of the applicant? Karen.
11

12 Commissioner Holman: I can hear where you are going in terms of a single story house being 17
13 foot high but when I went and visited the court it seems like there are other single story homes
14 there that look to be more like 12 or so feet high and there are different pitches and different
15 plate heights and stuff that could be considered. So why specifically a 17 foot height for single
16 story as opposed to some of the other pitches?
17

18 Mr. Northway: Because if you can work with a 17-foot height you can actually open up the
19 ceilings and have the spaces be much nicer inside. If you go to Ellsworth and about two doors
20 down from George's property on the opposite side of the street there is a house that clearly has
21 done some kind of entry atrium and that has a roof that has been popped up to 17 feet.
22

23 Chair Cassel: Any other questions of the applicant? Pat.
24

25 Commissioner Burt: John, clearly we have a couple of issues. One is some of the things that
26 might be able to be addressed by the IR review process and others are daylight plane issues that
27 probably are most appropriate here. So when I look at your model I keep looking at is there
28 some way to reduce this section of the second floor and thereby reduce the daylight plane either
29 with some modest extension out into the other area not making it necessarily a single story or
30 you have this rear patio which I am sure is very desirable for the resident but we are dealing with
31 the trade-offs between this resident and the adjacent residents. So can you comment on the
32 feasibility of either of those mechanisms to reduce the daylight plane impact on adjacent
33 properties?
34

35 Mr. Northway: First of all the second floor is really relatively small. It is about 700 feet and it is
36 really setup for the caregiver. So it has a bedroom, a bathroom and there has to be a stair getting
37 up and then there is a sitting room. The sitting room is what is the furthest pushed back and the
38 bathroom and the stair is what are most forward. What we did was we located the functional
39 parts of the second floor so that again working with the privacy aspect of IR so that any windows
40 that were generated wouldn't be windows that people would stand at and look out of. As I said
41 on the second story part that is closest to the property line one window is a bathroom window
42 above a bathtub so you would have to stand in the bathtub to look out of it. The other is a
43 window that provides light to the stair landing. We looked at an awful lot of things and making
44 the second floor work for someone who was going to live in it was obviously the challenge. If
45 you look at the leg part of the L, the narrowest part, we have it on an overhead, which Alena will
46 put there. Essentially the daylight plane if you don't grant the Variance for the daylight plane is
47 absolutely flush with the face of the sitting room wall. I think it is important to note we are not
48 asking for permission to do a second floor. The second floor is part of the granted uses under the

1 zoning for this site. We are really talking about how to configure the second floor so that
2 actually it looks the best for the site and for the neighborhood. What would happen if we took
3 off the closet, the bathroom and reconfigured the stair is the second floor would just get longer
4 and pulled more down the face of the property creating a much less well composed and less well
5 massed second floor. So the Variance for moving the daylight plane really helps to create a
6 better design and the windows that are on that part of the design that intrudes into the daylight
7 plane are not windows that anyone is going to stand at and look. I think it is also important to
8 note that on that drawing to the right and down on the other side of the property is a two-story
9 apartment and to the left is a two-story apartment. The apartments that people are worried about
10 their privacy are actually 67 feet away from that one window that looks in that direction which is
11 a greater distance than occurs in most of our regular R-1 zones where you have 20-foot rear
12 setback lines.

13
14 Not to go into too much history but when we did the IR, and you all know about it, privacy is a
15 very relative word in a town that has small lots and permits second stories. There is no absolute
16 privacy. If you want to stand at your window and look at somebody you can. Most people
17 don't.

18
19 Chair Cassel: John, when I looked at the plans if you take what would normally be a side lot line
20 and the daylight plane for a side lot line if it was six feet and you draw it up as high as you are
21 supposed to and angle it in the way you are supposed to does this second floor meet a standard
22 side line daylight plane?

23
24 Mr. Northway: Yes. I can do it from here. This is some kind of laser. We actually drew it and
25 it is in your packet. This is the property line and the daylight plane would come up and go over
26 just like that. It does touch the eave. It is this line right there. That is a normal side yard
27 daylight plane. So if this lot weren't so screwy if the front yard was on the side and rear yard
28 was on the side and the two that are now fronts were the sides this absolutely would hit the R-1
29 zoning for the daylight plane. This is the worst-case scenario. We have the cross section for the
30 other one too.

31
32 Chair Cassel: You had a question, Michael?

33
34 Commissioner Griffin: John, I am wondering in the course of the IR review did any of you
35 discuss the possibility of addressing privacy by using frosted glass or partial window coverings
36 with film for example? I am trying to get at some of these concerns raised by the nearby
37 neighbors.

38
39 Mr. Northway: Leaping ahead to the February 3 hearing for IR if that becomes an overwhelming
40 problem it is not a problem because it is a bathroom window they can have frosted glass and it is
41 a stairwell and we really put it there to provide light to the landing of the stair. It is not a place
42 anyone is going to stand and look but if anyone is concerned about it putting an obscure glass is
43 not a problem at all.

44
45 Chair Cassel: That will be reviewed at the IR process hearing.

46
47 Commissioner Griffin: That likewise could apply to the sitting room I think is the third window
48 that is at issue here.

1
2 Mr. Northway: It could. Again, that is more of a bedroom kind of a habitation room. It
3 certainly can. One of those sets of windows either the window that looks at the Sutter side or the
4 Middlefield side has to be the size that it is because of the egress requirements but one of those
5 windows could change in size and become a clearstory window too if that is a major overriding
6 concern.

7
8 Commissioner Griffin: Also, you say something to the effect that your client would be willing to
9 provide some landscaping in the back some tall trees or something of that nature.

10
11 Mr. Northway: Absolutely, George would be happy to. We didn't want to get super specific
12 with that because there are sort of conflicting complaints. One is a complaint about privacy,
13 which the landscaping certainly does help. Another complaint is about real or imagined shadows
14 and obviously landscaping grows. Quite frankly the most dominant shadows there are cast by
15 the trees but if landscaping used to obscure the view of the second floor is desirable that is
16 absolutely not a problem.

17
18 Chair Cassel: That would be discussed I believe at the IR.

19
20 Mr. Northway: I assume that would be out of another union over at the IR group.

21
22 Chair Cassel: Are there any other questions we have for the applicant? Karen.

23
24 Commissioner Holman: I have a couple. John, can you clarify something for me because on
25 sheet five of the plans that we have it indicates that the side daylight plane, I need help with this,
26 it indicates that the side daylight plane is measured up ten feet and then at a 45 degree angle?

27
28 Mr. Northway: This is back to Phyllis's question. That is not the daylight plane that is in play.
29 That we put on that drawing to show that if this were a side yard the side yard daylight plane
30 goes up ten feet and over at 45. The rear yard daylight plane, which is what you are considering
31 tonight as part of the Variance, it goes up 15 and then at a 60-degree angle.

32
33 Commissioner Holman: Understood, but my confusion is that if I heard correctly I think the
34 question from Chair Cassel was that if this were a side yard as opposed to a rear yard would it be
35 within the daylight plane?

36
37 Mr. Northway: The answer is yes.

38
39 Chair Cassel: Sheet five doesn't deal with that.

40
41 Commissioner Holman: I understand. I am very clear on that. What I am saying is that it seems
42 to me that a side yard daylight plane that would be applied, which it isn't your side yard it is your
43 rear yard.

44
45 Mr. Northway: Correct.

46
47 Commissioner Holman: But it would appear to me that if you were going to do it that way to
48 give a clear answer it seems like there should be a line drawn up ten feet and at a 45 degree angle

1 to determine whether it would be compliant or not and what we have here is a line up 16 feet and
2 at a 60 degree angle.
3
4 Mr. Northway: That is because that is the rear yard daylight plane.
5
6 Commissioner Holman: I understand but the question....
7
8 Mr. Northway: We did.....
9
10 Chair Cassel: Wait a minute both of you. I think we can find the drawing for your that shows
11 that.
12
13 Commissioner Lippert: It is sheet four, Attachment G.
14
15 Mr. Northway: That just projects on there what the side yard daylight plane would look at if this
16 was a side yard but of course it is not a side yard it is a rear yard.
17
18 Commissioner Holman: How does sheet four deal with daylight plane?
19
20 Chair Cassel: You have to look at Attachment G, sheet four.
21
22 Commissioner Lippert: It is in the Staff Report, Attachment G.
23
24 Mr. Northway: It is up on the screen.
25
26 Commissioner Griffin: It is just not very clear.
27
28 Ms. Grote: On that sheet the daylight planes are shown in dashed lines. They are lighter than
29 the lines of the house but they are shown in dashed lines. It shows the measurement going up ten
30 feet and then angled back at 45 degrees.
31
32 Commissioner Holman: I see it now. I was looking at the plan drawings. I have it now. Thanks
33 for the clarification on that. Then the other question is in considering this all being a single story
34 house was there consideration given to, I don't want to design it for you but at the same time I
35 did have when I was reviewing this if you will there was some space that could be eliminated in
36 the main portion of the house like the family room. There is a family room and a living room for
37 instance and the courtyard could be the open space could them be to the side and there could be a
38 connector so that the caregivers unit could still be nearby with open space in between and that
39 would break up the mass of a single story house too. Was that a consideration?
40
41 Mr. Northway: The general different layouts that we did and again looking at the function and it
42 was really to give a private place for the caregiver and a private place for Gary and to preserve
43 quite frankly the aim was preserve and enlarge the open space that serve both the house and the
44 street. It just didn't work very well with a single story scheme.
45
46 Commissioner Holman: Thank you.
47

1 Chair Cassel: Okay, the applicant has three minutes to summarize and answer any comments
2 that have been made or respond to any comments that have been made. Do you wish to use that?
3

4 Mr. Northway: No.
5

6 Chair Cassel: Okay, they don't wish to do that so let me close the public hearing and bring the
7 item back to us. Do you have any other questions of Staff? Annette.
8

9 Commissioner Bialson: I want to clarify exactly what we are deciding tonight. I assume in that
10 regard we should be looking at the December 7 letter and the Variances that are set forth there,
11 the three items, and our discussion should be to that. Is that correct?
12

13 Ms. Grote: That is correct.
14

15 Commissioner Bialson: Any assistance other than bringing our attention to that as to how we
16 should formulate our discussion or narrow our discussion?
17

18 Chair Cassel: I have a couple of things I think we need to think about. One is that we cannot
19 make a decision here either for or against the applicant based upon the situation in which the
20 members of the household of the applicant find themselves. Discrimination either for or against
21 would be very bad either way. You can say something to that if want Dan but we are not making
22 this decision based on the particular tenants that are in it but rather upon the plans that are
23 presented before us.
24

25 Mr. Dan Sodergren, Special Counsel to City Attorneys: I just want to point out that this is the
26 first Variance before the Planning Commission that is being processed under the newly adopted
27 Variance procedures you have. As you remember those findings for making a Variance were
28 slightly modified and the point that you just raised was actually incorporated into the very
29 language of the findings. If I can find them here just briefly. It really relates to the special
30 circumstances that you have to find in making a Variance. As you know, we explicitly put in the
31 ordinance that special circumstances that are expressly excluded from consideration are the
32 personal circumstances of the property owner and any changes in the size, shape of the subject
33 property made by the property owner or his predecessors and interests while the property was
34 subject to the same zoning designation. So that is explicitly in the ordinance now. When we are
35 talking about special circumstances we are talking about special circumstances dealing only with
36 the property such as shape, size, topography, location and surroundings. So it has to deal with
37 specific real property considerations. It may be helpful to focus on those findings in the Record
38 of Land Use Action that is attached to your Staff Report. As you know there are four of those
39 findings for a Variance.
40

41 Ms. Grote: The other thing that I did want to point out is that the Variance findings are
42 addressed as a whole, as a package, so the requests for Variance you won't see pulled out
43 specifically or individually in the findings. The findings are made to address all three requests
44 together. So they are not specifically pulled out.
45

46 Chair Cassel: Pat.
47

1 Commissioner Burt: Perhaps Staff could review not only for the Commission but for the benefit
2 of the public who may not be so familiar with it how the IR review process would be attempting
3 to address the privacy concerns.
4

5 Ms. Grote: The IR process looks at a variety of guidelines or standards there are now nine of
6 them, three of which relate to privacy. It has to do with window placement and balcony location
7 and other types of orientation of buildings to one another. In this particular case it was reviewed
8 by our Planning Staff as well as our consulting architect. The findings were made or the
9 determination was made that those guidelines or those standards had been met. At that point
10 neighbors and/or occupants are notified that live adjacent to and across the street from the
11 subject site and they can request a Director's Hearing should they want to discuss any of those
12 aspects, any of the guidelines or the standards. In this case that was requested particularly
13 around the fact that there are three windows that face adjacent properties. As the applicant's
14 architect mentioned tonight two of those windows are in areas that are less used in a traditional
15 sense. One is over a bathtub, one is on a stair landing and it is unlikely that there is going to be a
16 lot of activity there that would lead to someone viewing somebody's backyard or into their
17 private space. The third is a window that is in a sitting area again the way it is located it is not
18 directly across from an existing window in the apartments adjacent to it and it is quite a distance
19 from those existing windows. So it was determined not to be an encroachment on that
20 neighbor's privacy. That will be further discussed again as the applicant's architect mentioned
21 tonight that can be further discussed at the Director's Hearing. There may be some options for
22 clearstory windows or obscure glass in that window as well. But that was what was looked at as
23 part of the IR or Individual Review process, window placement, adjacency to neighboring
24 buildings and balconies.
25

26 Commissioner Burt: Lisa, when you say there may be opportunities to look at different types of
27 glass materials that would provide greater privacy we are kind of in a dilemma here because the
28 IR review process is intended to take on those kinds of issues. On the other hand within the
29 Variance in finding number three we are talking about having to have a finding that it would not
30 conflict with comfort, convenience and general welfare of the neighbors. So in the absence of
31 having adequately addressed those privacy concerns we have a dilemma on how we can grant a
32 Variance. So we kind of have a chicken and egg problem in that regard in my mind.
33

34 Ms. Grote: The Staff recommendation as approved by the Director would be that there is not an
35 encroachment into privacy or a negative adverse impact on the use of adjacent properties. That
36 is why we had approved the Variance. So we were making that finding in the negative so to
37 speak that there is no negative impact or no adverse impact on a neighboring property due to
38 those window placements or other aspects of the Variance request.
39

40 Commissioner Burt: But you had stated that at the appeal, if I understood you correctly, the
41 request for a public hearing on the IR that I thought you had said that Staff may be open to
42 looking at those types of window materials.
43

44 Ms. Grote: I said there may be some opportunity. I don't know that Staff would be making that
45 request. In fact Staff would not be making that request. If there is a discussion between the
46 concerned neighbors and the applicant and the applicant would like to make those changes then
47 that is certainly an opportunity for them to do so. It would not be a required condition that Staff
48 would place on the IR approval.

1
2 Chair Cassel: Dan, I would like to ask you a question. There isn't in the process that we are
3 facing an absolute guarantee that there will be no shadows in your backyard under any
4 circumstances when we build a project first or second story, is that correct?
5

6 Mr. Sodergren: That is correct. In just getting back a little bit to the discussion as far as the
7 overlap between the IR and the Variance process there is that finding number four that the
8 granting of the application will not have any detrimental effects properties in the vicinity. If you
9 do find that there is substantial evidence that there would be a detrimental effect you can suggest
10 conditions to mitigate that effect to the Council as part of the Variance. They are not mutually
11 exclusive the IR and the Variance process and there may be some overlap.
12

13 Chair Cassel: Looking at questions. Bonnie, do you have a question?
14

15 Vice Chair Packer: Yes, I have a question. I want to ask if this is a way to approach this in order
16 to separate out the IR from the Variance request. There are three Variance requests that are very
17 physical in terms of distance from property lines, the setbacks. Two of them are the setbacks and
18 the third one is the daylight plane, which affects the physical shape of the roofline. None of the
19 Variances in my mind if I am correct relate to where the windows are. So is an appropriate way
20 to look at this as just look at this building shape and envelope and its footprint because those are
21 what the three Variances are addressing? That way we don't need to in our discussion look into
22 the placement of windows because there is nothing in the Variance that talks about windows.
23

24 Mr. Sodergren: You are correct. The detrimental effects would have to be related to the
25 requested Variances. So in other words the setbacks and the daylight planes. If those
26 considerations cause concerns and you feel that you can't make that fourth finding simply
27 limited to those considerations then you could suggest conditions.
28

29 Chair Cassel: The next person is Annette.
30

31 Commissioner Bialson: I assume that the apartments located at 704 to 718 Sutter the zoning
32 requirements allow those apartments to be rebuilt at some point in the future to two stories, is
33 that correct? I assume there would be no regulations that we could impose on them if zoning
34 allows that as to window placement, etc. for the apartments. Is that correct?
35

36 Ms. Grote: That is correct. They could build to two stories. They would go through an
37 Architectural Review with our Architectural Review Board but they could be built to two stories.
38

39 Commissioner Bialson: And in that Architectural Review would there be an issue with regard to
40 privacy?
41

42 Ms. Grote: The ARB standards don't specifically address privacy but they do address transitions
43 between uses.
44

45 Commissioner Griffin: I am wondering if we could pick up on some of the discussion that Dan
46 and Pat were having on the apparent overlap between the Commission tonight for example
47 asking for privacy to be addressed through modification of the windows and you are indicating
48 that we can make a motion that includes that condition of approval and at the same time that

1 would not conflict with what is going to happen in another couple of weeks when this application
2 goes before the IR hearing?

3
4 Mr. Sodergren: Well two things. They are separate processes and like I said there may be some
5 overlap depending on if there are conditions suggested tonight. As I mentioned previously you
6 can as long as it is tied to the impacts of the requested Variances, the three items, the setbacks
7 and the daylight plane you can make those suggested conditions as part of the Variance. When it
8 goes to IR those may be further enhanced or may be potentially modified.

9
10 Commissioner Burt: Follow on to that, I just wanted to make sure I was clear on the issue of
11 given that the discussions that we are having about rear windows and things all fall within the
12 setback Variance are they not then within the aspects that are properly within our purview
13 tonight?

14
15 Mr. Sodergren: Yes I think they would be if they do relate to those Variance considerations.

16
17 Commissioner Holman: I was curious about what the rear daylight plane would look like for this
18 project. There was not one included in our packet and I had submitted that previously. Does
19 Staff have anything to show us as to what the rear daylight plane would look like?

20
21 Chair Cassel: Do you want the rear daylight plane, as it would be if this were a 20 setback?

22
23 Commissioner Holman: Correct.

24
25 Chair Cassel: So you would take the property line 20 feet back from the rear line to almost the
26 middle of the property and then do it.

27
28 Commissioner Holman: Correct.

29
30 Ms. Grote: We did not prepare that. I believe the applicant did.

31
32 Chair Cassel: Is it okay if we have the applicant demonstrate this for us?

33
34 Mr. Northway: This may be a little dim but I will trace it with my finger. This is the house
35 through Gary's room on the bottom and a stairwell. This line running along here is 20 feet and
36 going up and over is the normal rear daylight plane. That is for the wider part of the second
37 floor. This is the sitting room and you can see the daylight plane goes right up the wall and over.
38 So essentially this part of the second floor, the narrower part. Yes, pretty close.

39
40 Chair Cassel: I need to hear what you are saying.

41
42 Commissioner Holman: I was asking the architect, John, if what I had drawn was accurate and
43 he said, yes, essentially. So I was asking if he could put that up it might be a little clearer.

44
45 Mr. Northway: This is basically correct. I am just looking. This is the one that I just showed
46 you. This is the wider part of the second floor, this side and then the one up above is the
47 narrower part. Basically the narrower part fits into the 20-foot daylight plane. When you are

1 asking about had we looked at other configurations we looked at this but the problem is you
2 would get a second floor running the length of the building this wide.
3

4 Commissioner Holman: So I have a question for the City Attorney. There is a lot to contend
5 with here and based on the comments from the other Commissioners I don't think, I am not
6 trying to speak out of turn here, I don't think anyone has difficulty with the front and rear
7 setbacks. Speaking for myself there would be pretty much no development potential on the
8 property if we didn't grant Variances for the front and rear setbacks. I think where we are
9 having some difficulty is with the daylight plane encroachment. So the three questions for the
10 City Attorney would be even though a second floor is permitted is it guaranteed by zoning? Is
11 full FAR that is permissible on the property guaranteed by zoning?
12

13 Mr. Sodergren: Perhaps one way to explore those issues would be to maybe as far as the
14 daylight plane issue go back and revisit the first two findings. The first finding is one of special
15 circumstances and the special circumstance in this case is that this is a wide shallow lot. So in
16 other words the purpose of this finding is to determine whether the wide shallow lot would
17 deprive that property of a normal daylight plane that the other properties would enjoy. Then the
18 second finding really deals with the magnitude of the Variance. If you find that there are special
19 circumstances then you have to determine the amount of Variance necessary to bring that
20 property in parity with other properties in the same zoning district in the same location. So it
21 may be helpful to split it into those two findings and explore those findings a bit.
22

23 Mr. Steve Emslie, Planning Director: To the Chair, I would like to add on to the comments of
24 the City Attorney. The reason this is a unique lot is because of the lot shape and orientation. It
25 is orientated away and the reason it is wide and shallow is that it doesn't front on a street in the
26 conventional way. The narrow part of the lot as we know on a conventional lot faces the street
27 and lots are long and deep. So if you look at this in those terms and make that exception finding
28 we think the daylight plane is a very close connection to that because you know in your
29 comments from both Staff and the applicant that the daylight plane for a side yard, which this
30 would be if it were in the correct orientation, conforms. So we think there is a direct relationship
31 between the orientation of the lot and the unique circumstance that justifies the daylight plane as
32 well as the other findings because they do very closely relate.
33

34 Chair Cassel: I would like to bring this back to us for discussion amongst ourselves to see where
35 we are at with each other. I think it is important that each of us express our concerns and we talk
36 amongst ourselves about what are concerns are. Karen.
37

38 Commissioner Holman: I have just one or two more questions for Staff. One is the findings that
39 were associated with number two that Staff had proposed. I will save it for comments.
40

41 Chair Cassel: Okay. We have three Variances we are looking at would someone like to begin to
42 talk about how they feel about these and any comments they might have? Annette.
43

44 Commissioner Bialson: Does Karen want to speak to it first?
45

46 Commissioner Holman: Sure. I have absolutely no problem. I am very, very sympathetic to the
47 front and rear setback Variances as I stated previously there really would be no development
48 potential on this property if we didn't grant those Variances and that has to do with of course the

1 orientation of the property being shallow and long rather than the other way around. The
2 difficulty does come with the daylight plane exception. We have to make findings. I am having
3 difficulty making those findings for the daylight plane exception. The findings for the Variance
4 that have been used talk about the development pattern being consistent, substantially compliant
5 with the regulations and not special privileges inconsistent with the limitations upon other
6 properties in the vicinity in the same zoning district. What is presented before us is that this
7 project is being allowed to develop in a manner more consistent with the surrounding R-1
8 neighborhood. When I went and visited this court while there is a two-story apartment building
9 oriented towards Middlefield it transitions down as you enter into the court. Then everything
10 else except for the little what I called a little topknot on the one house across the street and down
11 some from this one everything else is single story, everything else is if you average them out
12 they are probably an average of 700 square feet, the buildings, the homes. There may be some
13 that are a little bit smaller and some maybe a little bit larger. The Comp Plan does talk about not
14 making abrupt changes so I am having some trouble making that finding. The granting of the
15 applicant will not be detrimental or injurious to property or improvements in the vicinity. The
16 daylight plane samples show me that there would be considerable daylight plane intrusions on
17 surrounding properties. So I am having some difficulty with this and perhaps the rest of the
18 Commission might enlighten me.

19
20 The rear daylight plane is as I have understood it, well obviously it is not a side daylight plane
21 and a rear daylight plane is there I believe to protect the privacy of adjacent properties. Most
22 people's private area is in the rear of their property. That is true with most properties. So that is
23 why we have a 20-foot at the rear setback and a daylight plane and it is only six feet on the side.
24 It is to address the daylight plane to the rear and their light. Perhaps the other Commissioners
25 can enlighten me but I am struggling with being able to make the findings for the daylight plane.
26 And, while I understand that there are preferences perhaps to a 17-foot high building on a single
27 floor there are other ways to design. It might not be optimal but we don't always get what we
28 want. So I am open to what other Commissioners have to say about this.

29
30 Chair Cassel: Annette.

31
32 Commissioner Bialson: Well, I agree with Karen that the issue of the front setback and rear
33 setback encroachment Variances is sort of a non-issue. I feel completely comfortable making
34 those findings. With regard to the rear daylight plane encroachment I have no problem making
35 the findings necessary for that as well.

36
37 We are talking about a ten inch encroachment and it does run 40 feet but I do believe that if you
38 look at the various ways that the applicant has attempted to design the building so you have
39 minimum impacts on neighbors and mitigate the need for any sort of Variance in that regard I
40 think he has done an excellent job with regard to that. Surrounding this is multiple dwelling
41 units on two sides. We are a substantial distance away from those and apartments could be
42 modified. There is a question as to whether they are at the end of their useful life at this point in
43 time. They could go to two stories very easily without all the protections and safeguards given
44 by the Individual Review process. I would rather see the Individual Review process address the
45 issues that I think we are wrestling with here. So I am going to propose that we agree entirely
46 with Staff and let this go on to the procedure that we created to address these issues and that is
47 the Individual Review process.

48

1 Commissioner Griffin: I wanted to revisit the point that Commissioner Holman was discussing
2 about the two-story structure if I understand your point, Karen. The two story structure not being
3 particularly consistent with the courtyard streetscape and massing. I guess the flip to that is a
4 single story solution yields a long drawn out structure, which is not particularly consistent with
5 the cottages on the court either. So for me I then listened to Steve's comment in the Staff Report
6 here that talks about if this property were reoriented so that what is currently a rear yard setback
7 were to be a side yard setback it would pass and we wouldn't be here tonight discussing this
8 thing. I think that from a personal standpoint it is meaningful to me because this property does
9 mimic in many, many respects my own and consequently I am pretty empathetic to the
10 applicant's situation and I think that I would probably be in favor of supporting the Staff
11 recommendation with the addition of some language that would direct either Council or the IR
12 process or both to pursue this privacy aspect on those three windows that seem to be causing a
13 problem and make sure that they are addressed. I am proposing that frosted glass would be one
14 method of doing that.

15
16 Chair Cassel: I guess I will talk as we go down the line rather than being last all the time. I
17 don't have any problems with the front or the rear setbacks based on all the reasons that
18 everyone else has been talking about. I argued with myself about why the rear setback should be
19 the way it is and what it is and finally decided that it meets the daylight plane for the side
20 setback. The fact this is not a second story that it is going to reach the 30 foot height or is not try
21 to reach the maximum height that sometimes exist means that it is able to stay within that
22 daylight plane. The second floor is actually some distance from the other buildings that are
23 around it. It is very common in town to have a 20-foot setback on one property and a six-foot
24 setback on the next property based on the orientation of those particular houses on corner lots,
25 etc. This is very common. It is the experience that I have in my house and it is not unusual. If
26 this house happened to have a road along behind the apartments that are along Middlefield we
27 would now have a standard lot, we would have a 20-foot setback along the apartments and we
28 would have a six-foot setback along this side of the street. It is a very standard procedure that we
29 have all over town. It is the standard way we build houses in this town. Two stories are very
30 common in this house. I think the other piece to note is that although this is a second story there
31 is no one on the street where we are comparing these small units that would prefer to have a long
32 thin house. They would prefer to have the two-story house and they are here to support that two-
33 story house. They have expressed an interest in having the side yard or backyard whichever way
34 you see the orientation be large enough so it does provide them some break and some space on
35 that street and feel a little more open. So I will be supporting the motion and I can make the
36 findings. Bonnie. No, I don't have a motion. Eventually there will be a motion. I will be
37 supporting this issue.

38
39 Vice Chair Packer: If you want I could probably make a motion.

40
41 Chair Cassel: No let's go down the line first.

42
43 Vice Chair Packer: Okay. Then my comments will be that I agree with what Phyllis has said
44 and what Michael and Annette have said and also Karen with regard to the first two Variance
45 requests. I don't have a problem with the daylight plane Variance request because if we agree
46 amongst ourselves that it is appropriate to have a variance for the rear setback which is
47 approximately equivalent to what might be a side setback if we used our semantics differently
48 then since a second story is allowed under the R-1 zoning for this area, there is no single story

1 overlay here, then it is just logical to go with the third Variance request. Since they do want to
2 build a second story you have to deal with the daylight plane and the daylight plane has to start
3 from that point where the setback is as opposed to the 20-foot setback so it is all tied together.
4 You can't say that you agree with the rear setback Variance and not agree with the daylight plane
5 Variance because second stories are allowed. If you say you don't agree with the daylight plane
6 Variance then you are in essence saying you can't have a second story or you can have a second
7 story that is a very tiny second story. So that is another perspective I want to add to the
8 comments that my fellow Commissioners have brought forth. When there is a motion to support
9 the Staff Report I will support that motion.

10
11 Chair Cassel: Would one of you please start?

12
13 Commissioner Burt: Well first I would like to offer a different perspective on this issue of if we
14 think that a ground floor setback Variance is not a problem to any of us therefore we cannot have
15 any concerns over the second floor impact of that setback. I think that is an incorrect
16 assumption. We may still want to support this proposal but I don't think it necessarily follows. I
17 think what we have here is agreement among all Commissioners that we don't have a problem
18 with granting a setback variance on a ground floor. Where the rubber meets the road is what is
19 the impact if you extend that variance up to the second floor? What is the impact on the daylight
20 plane and the privacy issues? That is what is the crux of the problem that we have here or those
21 of us that have any problem with it.

22
23 So it could also follow if we had to technically make a decision that we can say yes, I am in
24 perfect support I have no problem whatsoever with a setback on the front and rear on the ground
25 floor but if that necessarily means that the daylight plane encroachments are all granted then
26 maybe I could not support that rear setback. Now having said that I am inclined to support
27 something that would allow a second story and allow those setbacks. The question is how can
28 we balance the interests and the preferences of those on Ellsworth both the applicant and the
29 neighbors on Ellsworth who are in favor of this design because from that streetscape it has
30 desirable aspects with the interests of those on Sutter who have a negative impact imposed upon
31 them. I think that is what we need to attempt to balance. In the findings and a literal reading of
32 the findings as opposed to what might be our inclinations to support this I think it is a bit more
33 problematic because even though the Staff says it is consistent with Policy L-12, Policy L-12
34 talks about preserving the character of the residential neighborhood in remodels and to make it
35 compatible with the neighborhood and adjacent structures. Well that is what we are struggling
36 with, is it compatible with adjacent structures and adjacent includes behind? So that is the issue.
37 I certainly at a minimum would favor what Michael was talking about is that because a Variance
38 is something that goes beyond normal circumstances, beyond an HIE and in this case these are
39 significant Variances that we are granting. They may be justified but these are very significant
40 Variances then it seems to be within our purview and I would be inclined to say that it would be
41 appropriate to impose certain restrictions in the Variance review process to help protect some of
42 the privacy.

43
44 Second, I would wish that there were a proposal that would have that second floor remodeled
45 somewhat somewhere in between what would be the maximum allowed without a second floor
46 setback and what is being proposed. I think it just extends too close to that rear yard property
47 line and too much of a daylight plane encroachment on the properties on Sutter but I don't know

1 that there is a reasonable solution to that problem and that was one of the reasons that I was
2 interested in hearing whether Commissioner Lippert had any ideas on that subject.

3
4 Commissioner Lippert: Well in looking at this the first thing I would like to say is that I agree
5 with most of the comments that my fellow Commissioners have said here. This definitely is a lot
6 that had been turned around and there are serious constraints on it allowing for normal
7 development. With that said I am pretty much in support of the findings and the
8 recommendations here for a number of reasons. First of all I want to say that had the adjacent
9 property behind this property been zoned R-1 I might not be inclined to support the
10 recommendations here. If there was an overlay zone that said that this is a one-story
11 neighborhood and constrained all the other properties and making it single story I wouldn't want
12 to see a second story here. But with that I think that the architect here as well as the owner is
13 making the best of a very, very bad and difficult situation. Just if this lot had been oriented the
14 other way so that the narrow portion had been facing the street we wouldn't be having this
15 discussion. There were a number of comments also that the public had made with regard to this
16 being a monster home. I think if this were located on a typical standard lot this would be a
17 modest home that we are talking about here.

18
19 Now getting to the crux of the matter that Pat has sort of hemmed me in I live in a very similar
20 situation. I live in a single story cottage on a corner lot and I happen to have a two-story
21 apartment building literally adjacent to me. The neighbors do have their deck, their staircase and
22 their deck how they approach their apartments overlooking what would be considered my side
23 yard. I don't consider that to be a privacy issue at all. In fact they can look right into my
24 bedroom windows and I have curtains that I use to maintain my privacy. They put up with my
25 dog. I have a dog run out there and I have a rather large dog that likes to be verbose but we seem
26 to get along just fine. They respect my privacy and I don't see them lingering out there
27 overlooking my side yard trying to gawk into my windows at all. That is their main staircase
28 into their building.

29
30 In addition to that the daylight plane issue as it turns out these buildings are configured exactly
31 the same way as my house and my neighbor's. I don't see that building next door as an inherent
32 right to continual daylight. I get a lot of daylight most of the day and in the winter time most of
33 the time it is overcast in the morning and the sun generally doesn't peek through until about nine
34 o'clock and then it hits my property and it is just fine. So I really don't see any problem with
35 this and if Bonnie had not said something about wanting to make the motion I would have done
36 it.

37
38 Vice Chair Packer: Go ahead Lee.

39
40 MOTION

41
42 Commissioner Lippert: Okay. Well I make a motion here that we support and uphold the
43 Director's recommendation for the Variance along with the Record of Land Use Action.

44
45 SECOND

46
47 Commissioner Bialson: I second it.

1 Commissioner Lippert: Thank you.

2
3 Chair Cassel: Okay, a motion has been made by Commissioner Lippert and seconded by
4 Commissioner Bialson. Do you wish to speak to it any more than you have?

5
6 Commissioner Lippert: Yes I just want to say one other thing about obscuring windows. I have
7 had to deal with this before and it is not an unpleasant thing to have to do to some windows to
8 apply a film but it does severely limit what happens in those spaces considerably. I think that it
9 can be handled in a number of ways with regard to curtains, draperies. I think that it is in the
10 neighbor's best interest to also take ample steps to make sure that they have curtains and
11 draperies that they can draw equally.

12
13 Chair Cassel: Annette.

14
15 Commissioner Bialson: I think we have all spoken to it and I have nothing further to say.

16
17 Chair Cassel: Is there anyone else who would like to speak to this? Michael.

18
19 Commissioner Griffin: I was going to propose a friendly amendment but I will wait for
20 Commissioner Holman's comments.

21
22 Commissioner Holman: Well, this is an unusual lot and that is why everyone is in favor of the
23 front and rear setback Variances. However, what is illustrated up here is what the typical
24 daylight plane area would be. I can appreciate that this would be compliant if this were a side
25 yard but indeed it is not a side yard it is a rear yard and for reasons I stated earlier the rear yard's
26 daylight plane is there to provide some assurance of some daylight to neighbors behind which is
27 typically people's more private space. Indeed the apartments behind could redevelop but they
28 also have a daylight plane that they have to comply with and there are people who live there now
29 who have a right to expect that daylight planes will be considered as a part of their expectation.
30 The single story aspect keeps being referred to as a long building incompatible with the
31 neighborhood. John Northway is a very capable creative architect and there are ways that it
32 doesn't have to be that. I couldn't be more certain of that. Privacy that we keep talking about is
33 really an Individual Review process and while I appreciate that people are mentioning that and
34 are sensitive to that it is really an Individual Review process and my concern about this is the
35 daylight plane. I have not heard anything that has helped me be able to make the findings. The
36 fact that the apartment behind could redevelop doesn't help me make findings. The fact that this
37 could satisfy the daylight plane if it was a side yard even though it is a rear yard doesn't help me
38 make findings. I am struggling with that. I can't make the findings for that third Variance for
39 the daylight plane.

40
41 Chair Cassel: Michael.

42
43 AMENDMENT

44
45 Commissioner Griffin: I would like to propose a friendly amendment without specifying exactly
46 what techniques would be used to mitigate the privacy concerns of the neighbors without talking
47 about film or curtains or whatever. I would like to propose text that would direct Council and

1 the IR review committee to pay specific attention to the three rear facing windows of the project.
2 Maybe somebody else has some better way to phrase that but that is my proposal.

3
4 Chair Cassel: It is up to Lee to decide whether he will accept this.

5
6 Commissioner Lippert: I will accept it. I think that you have made it pretty open there.

7
8 Chair Cassel: Annette?

9
10 Commissioner Bialson: That would be fine with me.

11
12 Chair Cassel: Do either of them want to make any comments on that? No, okay.

13
14 Commissioner Lippert: I think the IR process can handle it.

15
16 Chair Cassel: Pat.

17
18 Commissioner Burt: Can we get clarification? I was under the understanding we might
19 condition a Variance with specific requirements but I am not sure that we can direct an IR review
20 process as part of a Variance condition that we ask them to pay special attention. I am not sure
21 whether that is proper.

22
23 Mr. Sodergren: The way I interpreted the friendly amendment and correct me if I am wrong was
24 not so much a condition but as a request to the Council to consider that. So it wouldn't be
25 formally incorporated as a condition but it would be noted probably in the Staff Report and in the
26 record as a request that that be focused on. Is that the nature of it?

27
28 Commissioner Griffin: Yes.

29
30 Chair Cassel: Do we have any other comments?

31
32 Commissioner Burt: I would just like to comment on one notion of this curtains somehow
33 having a protective value on the privacy of the neighbors who are being looked down upon.
34 Curtains on the second story would in no way protect the privacy of those that are potentially
35 having their privacy infringed upon. We are not worried about the single story neighbors in the
36 rear infringing upon the privacy of people who have taller windows on a second story it is vise-
37 versa that is the issue. So I don't see how curtains would in any way provide any of the
38 protections that those people are concerned with. So I think it needs to be some installed
39 obscuring of the glass and I don't think I am comfortable with merely asking that it be a
40 consideration being adequate. I think overall, as I said before, I think I am comfortable with the
41 project in terms of the front and rear setback. I am comfortable with there being a second story.
42 I don't think this particular proposal before us goes far enough to balance the needs of the
43 applicant and the interests of the residents on Ellsworth with those residents behind. I am not
44 totally opposed to it I think it can be modified and still provide the square footage on a second
45 floor and provide a bit more protection. I think regrettably I am not going to be able to support
46 the motion on that basis.

1 Chair Cassel: Well I will make a comment to the windows. An elevated window in the
2 bathroom allows very little viewing that angles down unless you are going to stand on your
3 tiptoes. A window placed well in the staircase provides light and if it is placed well it doesn't get
4 you don't into the neighbors as long as it is done well. The other window is far back from the
5 20-foot setback that would there or could be there if that room, it is at least the 20 feet back
6 within the site. So I don't think these windows are that major. None of us have talked about the
7 window at the end of the sitting room that was discussed but again that is long ways from the
8 apartment complex and there is a tree in between. I would like to call the vote.

9
10 MOTION PASSED (5-2-0-0, Commissioners Burt and Holman voted no)

11
12 All those in favor please vote aye. (ayes) All those opposed? (nays) That vote passes five to
13 two with Lee Lippert, Annette Bialson, Bonnie Packer, Michael Griffin and Phyllis Cassel voting
14 yes and Pat Burt and Karen Holman voting no.

15
16 Thank you very much for coming this evening and for hearing this through. I hope everyone has
17 learned something. The discussion of the windows will go on to the IR process.

18
19 We have a few more items on our agenda that we need to continue with. The next item on the
20 agenda is Commission Member Questions, Comments and/or Announcements.

21
22 ***COMMISSION MEMBER QUESTIONS, COMMENTS, AND/OR ANNOUNCEMENTS.***

23
24 Chair Cassel: Lee Lippert has told me that he has an item that he would like to present to us.

25
26 Commissioner Lippert: It is with great pleasure that I can report from the City Council that they
27 upheld the Commission's decision on 928, 940 and 1180 East Meadow that is the request by
28 Trumark Companies to proceed with their Vesting Tentative Map for the property. The Council
29 voted to uphold that recommendation and in fact a formal map will be drawn to go back before
30 Council.

31
32 Chair Cassel: Thank you Lee and thank you for bringing a report back. Are there any other
33 questions, comments or announcements? Karen.

34
35 Commissioner Holman: Just one. Last time we met we didn't have a quorum that could
36 participate to approve the minutes of the December 8 meeting.

37
38 Chair Cassel: We will get to that.

39
40 Commissioner Holman: So that being the exception to the rule previously we have talked about
41 how it is preferable certainly for the Commission to have opportunity approve minutes before
42 items go to the Council. The other thing is that Commission members, certainly I do and I think
43 others have expressed interest in having a copy of the packet item that goes to Council when it
44 involves a project that has come to the Commission and that doesn't always happen. So I just
45 wanted to get that back on the table.

1 Chair Cassel: We used to get packets on Saturday that had stuff that was coming in current and
2 items that were coming before the Commission. It would sometimes come with our packets,
3 items that were going before Council and others that were of interest to us.
4
5 Ms. Grote: Now, the whole Commission would like to receive those or just the Council
6 representative for that upcoming meeting.
7
8 Chair Cassel: Well we used to get them maybe that has been a change.
9
10 Commissioner Bialson: We never got the whole packet.
11
12 Chair Cassel: Not the whole packet that was going to Council but items of concern coming from
13 the Commission.
14
15 Ms. Grote: And the whole Commission would like to receive those? Okay.
16
17 Commissioner Bialson: Are those available online?
18
19 Ms. Grote: They are.
20
21 Chair Cassel: Maybe that is why we stopped doing it.
22
23 Commissioner Bialson: Plus destroying a lot of trees and a lot of effort and a lot of money. I
24 just don't understand why those parties who are interested in a particular project cannot go on
25 line and get those things.
26
27 Commissioner Holman: CMRs are available online but attachments are not.
28
29 Ms. Grote: We are able now to put attachments online but let me double check with Zariah.
30 Does the City Clerk's Office do that for City Council?
31
32 Ms. Zariah, Betten Executive Secretary: No.
33
34 Ms. Grote: Then the City Clerk's Office only puts the City Manager's Report online they do not
35 put the attachments. So we will make sure that you get hardcopies of the report and the
36 attachments.
37
38 Chair Cassel: We didn't used to get maps or the whole map process. Anyway, let's talk about
39 that later about what we should do about that.
40
41 Ms. Grote: We will do the best we can to get you everything that is going to the Council that is
42 pertinent to the Planning Commission for that evening.
43
44 Chair Cassel: Are there any other comments? Okay, Commission Representation at Council
45 meetings. We are up through April. We need May, June and July. Is it possible for Annette,
46 Michael and Karen to take each one of those?
47
48 Commissioner Bialson: I am not sure of my vacation plans is the only problem.

1
2 Chair Cassel: What did you say yes to, Michael?
3
4 Commissioner Griffin: May would be fine.
5
6 Chair Cassel: Okay.
7
8 Commissioner Holman: I will take July.
9
10 Chair Cassel: And that will be Karen and we will see what Annette's schedule looks like.
11
12 Okay, minutes.
13
14 Commissioner Bialson: Mike said he would swap with me those times that I may be gone so I
15 will take June.
16
17 Chair Cassel: Great. That's fine. Now minutes.
18
19 **APPROVAL OF MINUTES**: November 10 and 17 and December 1, 8 and 15, 2004
20
21 Chair Cassel: Starting with November 10 the meeting for November 10 we need to add in
22 attendance Lee Lippert and Annette Bialson. Other than that would someone make a motion?
23
24 MOTION
25
26 Vice Chair Packer: I will so move that we approve the minutes of November 10, 2004.
27
28 SECOND
29
30 Commissioner Bialson: Second.
31
32 MOTION PASSED (6-0-1-0 Commissioner Griffin abstained due to being absent)
33
34 Chair Cassel: It should be noted that Michael Griffin was absent for that meeting. All those in
35 favor please say aye. (ayes) Opposed. That motion passes six to one with Mr. Griffin
36 abstaining because he was absent.
37
38 On November 17 the Special Meeting that had two people absent from that meeting, Karen
39 Holman and Michael Griffin, Karen for a conflict. Would anyone like to move those minutes?
40
41 MOTION
42
43 Vice Chair Packer: I will move those minutes of November 17, 2004.
44
45 SECOND
46
47 Commissioner Lippert: I will second.
48

1 MOTION PASSED (5-0-2-0, Commissioners Griffin and Holman abstained due to absence at
2 this meeting)

3
4 Chair Cassel: Any other comments or corrections? All those in favor please say aye. (ayes)
5 Opposed? That motion passes five yes and two abstentions based on the fact that they weren't
6 here.

7
8 On December 1 a Special Meeting at 7:00 PM Karen Holman was absent and would someone
9 like to make a motion?

10
11 MOTION

12
13 Commissioner Bialson: I will make the motion.

14
15 Chair Cassel: Who would like to second it?

16
17 SECOND

18
19 Vice Chair Packer: I will second.

20
21 MOTION PASSED (6-0-1-0, Commissioner Holman abstained due to absence)

22
23 Chair Cassel: All those in favor please say aye. (ayes)

24
25 This was for December 8, we have some corrections that were submitted by Joy Ogawa and
26 those corrections have been incorporated into the minutes we received. Is a motion?

27
28 MOTION

29
30 Commissioner Bialson: So moved.

31
32 SECOND

33
34 Commissioner Griffin: Second.

35
36 Chair Cassel: Karen.

37
38 Commissioner Holman: I was conflicted on item number two so I can't vote on that one.

39
40 MOTION PASSED (7-0-0-0 with Commissioner Holman abstaining from Item No. 2 due to a
41 conflict)

42
43 Chair Cassel: Conflict on item number two. The motion was with Annette. Michael seconded.
44 Any other comments? All those in favor please say aye. (ayes) All those opposed? That passes
45 seven to nothing with the exception that Karen Holman did not participate in item number two
46 where she was conflicted.

47

1 On December 15 we have a set of minutes. There is a minor error for some reason on line 14
2 under the list of Commissioners there is a person named Manager that happened to be a
3 typographical error. Other than that we were all present. Would someone make a motion for
4 these minutes?

5
6 MOTION

7
8 Commissioner Griffin: I so move.

9
10 Chair Cassel: Michael moved it.

11
12 SECOND

13
14 Vice Chair Packer: I will second.

15
16 MOTION PASSED (7-0-0-0)

17
18 Chair Cassel: Bonnie seconded it. All those in favor? (ayes) All those opposed? The motion
19 passed seven to nothing.

20
21 Are there any other comments or any other business to come before this meeting?

22
23 ***NEXT MEETING***: February 9, 2005.

24
25 Chair Cassel: The next meeting will be on February 9, 2005.

26
27 Mr. Sodergren: I am sorry I just had two brief comments. The first comment is I would like to
28 introduce Don Larkin. Don will be joining the City Attorney's Office in March so you may see
29 him at some of these Commission meetings.

30
31 The second comment is you may have seen in a previous email that was floating around I made
32 an informational reference to a case *Nasha v. The City of LA*. That case had to deal with
33 procedural due process and bias. It is kind of an interesting case. If you didn't get a copy I have
34 copies. While I was thinking about it there was another case also coming down from the same
35 court in LA also dealing with procedural due process. It seems like there has been a flurry of
36 these down in LA and it seems like the courts have really been focusing more on these
37 procedural due process issues. So I have handed out that second case, the Lacy Street case just
38 for informational purposes.

39
40 Chair Cassel: Thank you. Pat.

41
42 Commissioner Burt: Dan can you give us the reader's digest version of what the impact of this
43 is?

44
45 Mr. Sodergren: Well basically the Lacy Street case in that case there was a Director's
46 determination supporting an application and it was overturned by the Los Angeles City Council.
47 In that case the Plaintiff claimed that he was denied a fair hearing because the Council was so
48 distracted that they didn't give the proper focus to his application. The court goes into great

1 detail. There happened to be a videotape of it the court relied on and several of the Council
2 members were eating and some of them were on cell phones and some of them were gone and
3 some of them were walking around and talking to each other. It made for a very bad record and
4 so the court on that basis overturned the decision. In the Nasha case that I sent out, and again if
5 you didn't get a copy I have copies, involved a decision from the LA Planning Commission in
6 which one of the Planning Commissioners wrote an article opposing the project that came before
7 the Commission. So the court in that case determined that because the Commissioner wrote this
8 article that he was biased and on that basis overturned the decision.

9
10 Chair Cassel: He wrote the article prior to voting on the issue?

11
12 Mr. Sodergren: Prior to voting on the issue, correct. So they both have to deal with the
13 procedural due process issue one was on bias and the other was just a general fair hearing
14 requirement. Again, it just seems like there has been a trend. There hasn't been one of these
15 cases for quite awhile and all of a sudden they seem to be popping up more. The Plaintiff's
16 attorneys seem to be focusing on that aspect of the law. So it is just for informational purposes.

17
18 Chair Cassel: If there is no other business I am going to adjourn the meeting. Thank you Dan.
19 Lee?

20
21 Commissioner Lippert: I just wanted to make an announcement that today Philip Johnson passed
22 away. I don't know how many people are aware of that.

23
24 Chair Cassel: Thank you.

25
26 Commissioner Lippert: He was in his 90's.

27
28 **ADJOURNED**: 10:10 pm