

**MINUTES
SARATOGA PLANNING COMMISSION**

DATE: Wednesday, January 23, 2008
PLACE: Council Chambers/Civic Theater, 13777 Fruitvale Avenue, Saratoga, CA
TYPE: Regular Meeting

Chair Hlava called the meeting to order at 7:00 p.m.

ROLL CALL

Present: Commissioners Cappello, Hlava, Kumar, Kundtz, Nagpal, Rodgers and Zhao
Absent: None
Staff: Director John Livingstone, Contract Planner Heather Bradley, Planner Shweta Bhatt and Assistant City Attorney Bill Parkin

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES – Regular Meeting of January 9, 2008.

Motion: Upon motion of Commissioner Nagpal, seconded by Commissioner Cappello, the Planning Commission minutes of the regular meeting of January 9, 2008, were adopted with corrections to pages 11, 13, 19, 26 and 28. (7-0)

ORAL COMMUNICATION

Mr. Gene Zambetti, Big Basin Way:

- Said he was here to provide a progress report on the relocation of tenants at Brookside Apartments.
- Reported that it has been a long and difficult endeavor.
- Reminded that he had promised to try hard to find comparable units for his tenants.
- Advised that they had meetings with 15 tenants. Some were relocated and others have left.

Mr. Colin Gray, Saratoga-Sunnyvale Road:

- Explained that they have reached agreement with all tenants. All of them are on board with concessions we've made.
- Added that a lot of effort went into this task and that 60 apartments were available nearby.
- Said that they are addressing issues as promised and that the tenants will be out by the end of February.

Commissioner Cappello advised that one of the tenants attended the last Planning Commission meeting complaining that little was being done to assist these tenants.

Mr. Colin Gray:

- Said that there was some confusion over the mandate over what would/could be done.
- Added that many tenants would not return calls.
- Assured that repeated attempts were made to address each individual but most were not receptive.
- Stated that although monetary assistance had not been mandated, some has been offered.

Commissioner Kundtz asked Mr. Colin Gray if the Commission could reasonably be assured that tenants will not be back before them in two weeks.

Mr. Colin Gray replied yes, that should be the case.

ORAL COMMUNICATIONS – PC DIRECTION TO STAFF

Director John Livingstone reported that it is been very quiet on this issue. It is possible that all sides are satisfied.

Chair Hlava directed staff to let this Commission know if things come up. If nothing is mentioned, the Commission will assume all is fine.

REPORT OF POSTING AGENDA

Director John Livingstone announced that, pursuant to Government Code 54954.2, the agenda for this meeting was properly posted on January 17, 2008.

REPORT OF APPEAL RIGHTS

Chair Hlava announced that appeals are possible for any decision made on this Agenda by filing an Appeal Application with the City Clerk within fifteen (15) calendar days of the date of the decision, pursuant to Municipal Code 15-90.050(b).

CONSENT CALENDAR

There were no Consent Calendar items.

PUBLIC HEARING - ITEM NO. 1

APPLICATION #07-366 (503-69-0120 KEYASHIAN, 21818 Via Regina (Continued from the January 9, 2008, meeting): The applicant requests Design Review approval to add 1,977 square feet to the existing upper floor and convert 1,707 square feet to the existing basement creating a lower floor. The total floor area of the new house will be 5,677 square feet. The maximum height of the proposed building will not exceed the 26-foot height limit. The maximum impervious coverage will not exceed the allowable 25 percent of the net site area. The lot size is approximately 53,562 square feet and the site is located in the HR zoning

district. Design Review approval is required pursuant to Saratoga Municipal Code Section 15-45.060. (Heather Bradley)

Ms. Heather Bradley, Contract Planner, presented the staff report as follows:

- Explained that the applicant is seeking approval to demolish an existing two-story residence and construct a new 5,700 square foot two-story.
- Described the new home as being a contemporary Mediterranean style with brown tile roof, stone veneer with stucco band, and details including columns and vertical metal railings.
- Distributed the color board.
- Reported that there would be a decorative entry gate at the street. The driveway will be widened to allow for sufficient Fire access.
- Said that two Ordinance-protected trees would be removed and replaced with trees of their value.
- Advised that a geotechnical clearance has been obtained.
- Said that Design Review findings can be made.
- Recommended Design Review approval.

Commissioner Nagpal asked about allowing a two-story on a predominately single-story street.

Planner Heather Bradley said that there are several two-story homes in the neighborhood.

Commissioner Rodgers:

- Pointed out that there are residences on the opposite hillside that are outside of noticing distance.
- Expressed appreciation for the orange story poles that offer those residents an opportunity to realize that something was pending here.
- Asked staff if there have been any inquiries.

Planner Heather Bradley replied no.

Chair Hlava asked if Condition #6 in the resolution is referring to all landscaping or just front yard landscaping.

Planner Heather Bradley replied that it refers to the landscape plan.

Chair Hlava suggested adding to the Condition #6, "Per Exhibit A."

Chair Hlava opened the public hearing for Agenda Item No. 1.

Mr. M. Keyashian, Applicant and Property Owner:

- Said that he loves this neighborhood.
- Reported that they had shared their design plan with the neighbors, who were supportive.
- Added that he implemented their input.

Ms. Andrea Costanzo, Project Architect:

- Reported that they have worked with staff, who did a great job.
- Added that they are available for any questions.

Chair Hlava asked if the outer buildings would be removed.

Ms. Andrea Costanzo said that two of the four would be removed.

Commissioner Kundtz asked if her client is aware of the \$70,000 tree bond amount.

Ms. Andrea Costanzo replied yes. She added that they were surprised at the amount.

Commissioner Nagpal expressed appreciation for the story pole installation and the fact that they were left in place for two weeks.

Ms. Andrea Costanzo advised that they had to go back after the storm to repair them.

Ms. Linda Parsley, Resident on Via Regina:

- Said her house is located up the hill.
- Stated that she had felt bad when the storm blew down their story poles.
- Said that this home's design is nice and will be beautiful.
- Reported that she has an ingress/egress easement that runs along the Keyashian's driveway although she has not been able to access this easement since another neighbor has completely fenced in their property.
- Asked that this project's proposed gate not interfere with access to this easement.

Chair Hlava advised that there would be a turnaround on this site for Fire access.

Commissioner Kundtz asked Ms. Parsley if her concern is that this gate might impede their ability to access their property via their easement on the neighbor's property.

Ms. Linda Parsley replied yes.

Commissioner Kundtz suggested that the applicant be asked if he is aware of this easement.

Ms. Linda Parsley said that she would also like to avoid the planting of tall trees on this property that might grow to block mountain views.

Commissioner Kundtz said that staff could verify what types of trees are required in the landscape plan.

Commissioner Zhao asked Ms. Linda Parsley if the easement is only for emergency access use.

Ms. Linda Parsley replied that it is an ingress/egress easement located adjacent to the existing driveway on the Keyashian property.

City Attorney Bill Parkin cautioned that this easement issue is a private civil matter beyond the purview of this Commission. He suggested asking the applicant his understanding of the easement and leaving it at that.

Planner Heather Bradley clarified that the actual easement is up the hill on the property above the slope and not on the Keyashian property, which is why she did not raise that issue in her staff report.

Commissioner Rodgers asked if the gate and/or pilaster would interfere with access onto the easement.

Planner Heather Bradley replied that she did not think so but that could also be made a condition of approval and also that it is addressed on the construction drawings.

Chair Hlava cautioned that this is about as much as the Commission can do.

Ms. Linda Parsley:

- Said that the owner of the property on which she has an easement has to be brought into compliance with fencing regulations.
- Added that Code Enforcement staff is currently enforcing this fencing violation.
- Stated that otherwise, this project is beautiful.

Mr. M. Keyashian assured that there would be no interference with the neighbor's easement by his gate. He added that he does not have plans for tall trees but rather prefers to plant fruit trees.

Chair Hlava closed the public hearing for Agenda Item No. 1.

Chair Hlava suggested adding text to Condition 13 that states, "The front gate and pilaster shall not intrude into the easement."

Motion: Upon motion of Commissioner Nagpal, seconded by Commissioner Rodgers, the Planning Commission granted Design Review approval to allow the construction of a new two-story residence on property located at 21818 Via Regina, with correction to Condition 6, renumbering of Conditions 7 to 12 and addition of Condition 13 to read, "Easements on construction drawings shall indicated that the gate and pilaster will not intrude on the easement," by the following roll call vote:

AYES: Cappello, Hlava, Kumar, Kundtz, Nagpal, Rodgers and Zhao
NOES: None
ABSENT: None
ABSTAIN: None

PUBLIC HEARING - ITEM NO. 2

APPLICATION #07-029 (397-25-009) Maesumi, 13921 River Ranch Circle: The applicant requests Design Review approval to demolish the existing home and shed and construct a new two-story home. The total floor area of the proposed residence and garage will be approximately 4,355 square feet. The net lot size is approximately 18,839 square feet and the site is zoned R-1-10,000. (Susanne Thomas)

Director John Livingstone presented the staff report as follows:

- Explained that the applicant is seeking Design Review approval to allow the demolition of an existing single-story Ranch-style house and the construction of an approximately 4,300 square foot, two-story Craftsman-style house.
- Distributed the materials board.
- Said that the project incorporates high quality materials including a carriage-style wood door, high-end front door and windows and using darker earth tone colors.
- Reminded that a Planning Commission Study Session was held in February 2007. The project's original design was Mediterranean. Since the original design and following numerous meetings with the applicant, the second floor was reduced, the setback for the second story was increased, and only one window faces the neighbor to the left side.
- Reported that neighbor correspondence has been received.
- Said that during the site visit the Commissioners also visited the adjacent neighbors' properties to see views.
- Stated that the project meets General Plan findings and Design Review findings.

Commissioner Rodgers pointed out that there is still an objection to the one window upstairs in the master bathroom. She suggested using some method to block any potential view onto the adjacent property such as opaque windows or some sort of screening trellis.

Director John Livingstone said that this particular window is a clearstory window used to provide light and ventilation. This sill of this window is at a six-foot height.

Commissioner Nagpal said that she is used to more slopes on the second story of a Craftsman-style house. She asked if there was any discussion on how to break the roof up on the front view instead of it being at the 26-foot height all along that view.

Director John Livingstone said he couldn't say as he is filing in for the project planner this evening. He suggested that perhaps the applicant could reply. He added that this is a hybrid design and that more roof means less a visible second story.

Commissioner Zhao asked for the size of the bath window on the left side.

Director John Livingstone said he would defer that question to the applicant.

Commissioner Kumar asked if an operable skylight might be feasible here. He asked what the impact might be if there were no window on that elevation.

Director John Livingstone said that an operable skylight is possible. He added that windows are used to break up an elevation and add character.

Chair Hlava opened the Public Hearing for Agenda Item No 2.

Mr. Omid Shakeri, Applicant's Representative:

- Explained that he is here on behalf of Mr. Maesumi.
- Reported that Mr. Maesumi is excited to move into Saratoga and has worked for the last year on this design.
- Said that issues of bulk, size and privacy have been resolved.
- Assured that they have tried to accommodate requests from neighbors, staff and the Planning Commission.
- Reminded that the second floor has been set back considerably (63 feet) from the street. Dormers have been used to break up the roof.
- Added that their lot coverage is only at 21 percent and they have maximized setbacks.
- Asked the Commission to approve Mr. Maesumi's plans tonight.

Commissioner Nagpal asked why there is not more articulation on the front view along the 26-foot long ridgeline that is all the way along the front elevation.

Mr. Cherine Bassal, Project Architect:

- Said they have attempted to avoid the look of a two-story as seen from the street. They had to move the second story far back.
- Pointed out that one of the two dormers is fake. It is just an architectural feature to help provided symmetry with the other one.

Commissioner Zhao asked the size of the bath window.

Mr. Cherine Bassal said that it is two feet wide and four feet tall. The sill is at a six-foot height.

Commissioner Zhao said that she shared the concern with Commissioner Nagpal about the ridgeline. It is pretty bulky.

Mr. Cherine Bassal said he worked it out with staff. It was the only way. He added that the two-dimensional drawing does not do justice to the design. He pointed out that the roof slopes back.

Commissioner Rodgers asked if the master bath window could incorporate obscured glass, stained glass, plants or perhaps fixed louvers.

Mr. Cherine Bassal said that obscured glass is a good option. Any recommendation by this Commission would be followed.

Commissioner Kundtz suggested that a better view of the slope is visible on Sheet 4.

Commissioner Kumar said that it still gives the appearance of bulk.

Mr. Cherine Bassal said that a two-dimensional drawing does not give a good representation.

Chair Hlava said that a portico and the garage stick out in front but look flat in the drawing. Other things in the front will lessen the perception of bulk.

Mr. Cherine Bassal reminded that staff recommended the second dormer to balance the appearance.

Chair Hlava said that while the coverage is 21 percent it could be up to 60 percent. If it were at 60 percent a very large one-story house could be constructed. She asked why a two-story.

Mr. Cherine Bassal said that they had talked about a single-story residence but with the required setbacks and Water District easements, it was hard to work with the space available and that made a single-story impossible.

Mr. Omid Shakeri:

- Added that a one-story is hard to design on this odd-shaped lot.
- Reported that Mr. Maesumi has two small children who need a playground in the backyard.
- Said the idea is not to maximize the size of the house but rather to design one that fits Mr. Maesumi's needs. With a six-year old and 12-year old, he needs four bedrooms.
- Stated that the house designed is functional for this family.
- Suggested that this proposed roof design is easier on the eye versus building area with windows.
- Assured that this roof is not flat and square but rather one will see a gentle slope going back. This was a way to control the mass of the building.

Commissioner Rodgers said if one stands at the front of the house and looks up, the straight line is viewed uphill.

Mr. Omid Shakeri said that one is not looking at it straight on due to the right side of the garage and angle of the house placement.

Mr. Tom Murphy, Resident on Jerries Drive:

- Said that his property is across the creek.
- Advised that he had submitted correspondence earlier today.
- Asked that the Commission not lose sight of the rear of this property. Nothing in the plans mitigates bulk as seen from the rear.
- Pointed out that this is a creekside setting with Saratoga Creek largely untouched and in a natural state.
- Said he hopes the Planning Commission keeps in mind this unique natural setting.

Mr. Walter Shaw, Resident on Jerries Drive:

- Said he also submitted a letter yesterday.
- Said that he has spoken with Planner Suzanne Thomas, who was very cooperative.
- Explained that his concern is the two-story.
- Agreed that the focus on the bulk issue is on the front and not on the rear.
- Expressed concern relative to privacy and this natural setting.

- Said that he is concerned about easements relative to the creek and setbacks.
- Mentioned an existing chain link fence.
- Reiterated his concerns as being easements, two-story and privacy impacts as well as the bulky appearance from the back view.

Director John Livingstone cautioned that sometimes the Water District itself sometimes installs chain link fences.

Ms. Jamie Van De Ven, Resident on River Ranch Circle:

- Acknowledged staff's hard work.
- Said that one cannot hide the fact that this is a two-story, 4,000 square foot home in a single-story neighborhood.
- Added that it is incompatible in bulk and height. It would tower over other houses and will be the eyesore in this neighborhood.
- Expressed concern over the second-floor bath window and said that she loves skylights and has two skylights herself.
- Advised that she would be fine if they removed that window.
- Stated concern over property values and pointed out that one house recently went on the market although she cannot say it is because a two-story is proposed here.
- Said that a two-story does not belong in this neighborhood.

Mr. Mike Van De Ven, Resident on River Ranch Circle:

- Said that he and his wife are the only ones who would see that elevation and they are okay if there is no window on that wall.

Chair Hlava cautioned that this Commission must consider this from good design practices perspective.

Ms. Jamie Van De Ven said that she has two operable skylights and assured that this owner would like them.

Commissioner Cappello asked the Van De Vens if their issues go away with the removal of this window.

Mr. Mike Van De Ven replied yes.

Ms. Jamie Van De Ven said if the window is gone or a single-story house is proposed. However, there is still a bulk issue but she had thought that a two-story was difficult to prevent.

Commissioner Nagpal asked if bulk was their chief concern.

Ms. Jamie Van De Ven said bulk and privacy.

Commissioner Kumar asked what if screening were to be installed.

Ms. Jamie Van De Ven said that it would take too long to grow in enough to provide sufficient screening.

Commissioner Kumar asked the Van De Vens if they consider this house bulky as viewed from their property to the rear or just the front elevation of this proposed home.

Ms. Jamie Van De Ven said all around.

Commissioner Kumar asked if bulk is more of an issue to them than privacy.

Commissioner Rodgers:

- Said that there are a number of ways to provide privacy and allow the applicant to have the window they want.
- Questioned if the Van De Vens would support use of skylights, screening vegetation, trellis, obscured glass and/or fixed slat windows.

Chair Hlava said she has a similar window in her bath and cannot see out.

Mr. Omid Shakeri:

- Said that Mr. Maesumi is open to use of obscured glass on this bath window.
- Said that in working with staff and the neighbors they have tried to address all comments.
- Added that Mr. Maesumi wants a livable house with a yard for his children.
- Stated he would appreciate the Commission's approval.

Chair Hlava closed the Public Hearing for Agenda Item No. 2.

Commissioner Kundtz asked if economic impacts and/or property values are the purview of this Commission.

City Attorney Bill Parkin said that this issue is not a finding in Design Review.

Commissioner Nagpal:

- Stated that this is an irregular lot in a sensitive creekside setting.
- Added that this is a single-story neighborhood zoned R-1-10,000.
- Said that the issue is good design.
- Said that her problem with this design is that it does not minimize the perception of bulk.
- Added that she has no issue with the two-story element if it is sensitively designed.
- Stated that the limitation is the odd-shaped lot that requires exceptional design.
- Advised that it is difficult for her to make two of the required findings relative to compatible bulk and height.
- Informed that she cannot support this request.

Commissioner Cappello:

- Said that Commissioner Nagpal has made some good points that he can agree with to a large degree.

- Said that as for Finding #1 that requires avoidance of interference with views and privacy, he does believe this design does a better job than the previous one. He can make that finding.
- Said that while he would have loved to see a single-story or two-story with basement level versus a two-story on this parcel, the bulk finding can be made in the affirmative.
- Stated that the compatibility with the neighborhood finding can be made also. He said he agreed with staff that there are many two-story homes in this area.
- Said that this applicant has done a lot to address issues such as setbacks and minimization of the second story. The window has been addressed by its six-foot sill height. With a toilet located directly below this window, it would not offer access to views of neighboring property.
- Added that since the applicant is willing to utilize opaque glass in this window, he is willing to condition that requirement.
- Advised that he would support this project as it is.

Commissioner Rodgers:

- Said that there have been lots of changes but are they enough.
- Suggested that this is kind of a Cape Cod styled home. It will look small. The angle reduces the bulk a bit as seen from the front.
- Said when considering a one-story versus two-story residence, it must be remembered that a one-story house can be 18-feet tall.
- Expressed the need to preserve the existing landscape so she is willing to support a two-story house on this site.
- Added that there is no single-story overlay in place for this area so the applicant is entitled to a two-story residence.
- Stated that the design has to be exceptional.
- Reminded that this applicant has worked with staff and came to the Planning Commission in a Study Session. This project meets the criteria for good design.
- Added that the issue of privacy has been raised. She reminded that this Commission was able to visit the adjacent properties and there is no visibility.
- Said that the applicant has expressed willingness to use obscured glass on the window facing the Van De Ven property. She would like to condition that.
- Said that a basement is not a good option on this property as it would be wet and damp all the time. It is not fair to ask this applicant to put up with that.
- Stated that she can make all Design Review findings.

Commissioner Kumar:

- Explained that he was not yet a Commissioner when the Study Session on this project was held in 2007.
- Agreed that this is a fairly irregular lot that requires optimum design.
- Stated that he thinks there are perceptions of bulk and that other options are available to reduce bulk.
- Said that he cannot make the findings for bulk and height but that privacy can be worked around.
- Said that the problem of bulk is a major one that needs some redesign to solve. The story poles were overbearing.

Commissioner Zhao:

- Said that she wished that a perspective rendering had been available as she has problems with the perception of bulk due to such a long 26-foot high ridgeline.
- Stated that she is not against a two-story house.
- Advised that she cannot make the bulk findings and seeks some creative way of doing the roofline.
- Informed that she cannot support at this time.

Commissioner Kundtz:

- Stated that the privacy issue has been dealt with.
- Said that redesign might compromise necessary living space needed by this family.
- Said that with the use of opaque glass on the bath window he can make the Design Review findings.

Chair Hlava:

- Said that she has given a lot of thought to this and was concerned about bulk.
- Advised that this lot is down the hill.
- Said that there are other two-story homes in the area.
- Stated that she can make the bulk and height compatibility findings.
- Said that obscuring the bath window in some way is an acceptable solution to the privacy concern.
- Stated that she can make the findings for approval.

Motion: Upon motion of Commissioner Cappello, seconded by Commissioner Kundtz, the Planning Commission granted Design Review approval (Application #07-029) to allow the demolition of an existing home and shed and construction of a new two-story residence on property located at 13921 River Ranch Circle, with the condition for opaque glass on the second-story bath window on the left elevation being made permanent, by the following roll call vote:

AYES: Cappello, Hlava, Kundtz and Rodgers

NOES: Kumar, Nagpal and Zhao

ABSENT: None

ABSTAIN: None

Chair Hlava advised that there are 15 days for appeal.

PUBLIC HEARING - ITEM NO. 3

APPLICATION ZOA07-0001 (City-Wide): The Planning Commission will consider a draft ordinance that will update existing regulations regarding fences, walls and hedges. The draft ordinance proposes to 1) establish an exception process that would allow property owners to exceed the maximum permitted fence height; 2) add fence height limitations around driveway

aprons; and 3) clarify ambiguous language and areas of the Code that are currently difficult to enforce. (Shweta Bhatt)

Ms. Shweta Bhatt, Planner, presented the staff report as follows:

- Explained that the proposed amendment is to regulations for fences, walls and hedges.
- Reminded that the Commission has held two Study Sessions on this Ordinance.
- Reported that the environmental review has been completed and no comments have been received directly related to the environmental document.
- Stated that some input has been received from community members in response to the ordinance update that has been included in the packets.
- Stated that one goal of this update was to establish an exception process that allows property owners to request modifications to the ordinance standards. That provision has been added.
- Distributed a sheet outlining the City Attorney's recommended changes to the text.

Chair Hlava suggested that each Commissioner advise of any proposed changes to this Ordinance.

Commissioner Cappello said flag lots are one area of concern.

Planner Shweta Bhatt said that Page 2, Subsection E regulates front property lines that abut side property lines.

Chair Hlava suggested flag lots be treated as a separate fencing entity and allow up to six-foot fence heights all around a flag lot. This seems clearer.

City Attorney Bill Parkin said that a flag lot would have to be defined.

Chair Hlava said that it would take a lot of staff time to figure out flag lot fence height allowances under this Ordinance as it is.

Commissioner Cappello said this could be addressed by titling Subsection E with Flag Lot and the rest of the text already there.

Chair Hlava asked if this is okay with the City Attorney.

Mr. Bill Parkin replied absolutely. It provides some clarity. He said his written comments are just clarifying suggestions.

Commissioner Nagpal said she takes issue with green fences and asked if they can be exempted.

Planner Shweta Bhatt said that the term "hedges" is not defined in the code. She added that there is an exemption for green fences.

Commissioner Nagpal asked if there is a definition of green fences.

Commissioner Cappello said there was one but it has been deleted.

Commissioner Nagpal pointed to page 3.

Commissioner Cappello said that it is deleted in the Attorney's recommendations.

City Attorney Bill Parkin said that he suggests the use of the term "hedge" versus "green fence."

Chair Hlava said that hedges should not be in the view triangle of driveways obstructing visibility.

Commissioner Nagpal agreed that they are not exempt from visibility issues.

Chair Hlava said that she has a problem with pool fence regulations in hillside districts. With the limit to 10 foot wide decking around the pool, she is not sure how to apply that standard.

Commissioner Rodgers said that 10 feet is fine or 4,000 square feet total enclosed area.

Commissioner Nagpal said that the 10-foot standard is proposed while the 4,000 square foot standard is current.

Chair Hlava suggested eliminating the Fence Exception Finding #5 that requires neighbor sign off.

Commissioner Cappello asked if an owner goes to his neighbors and one objects to a fence proposal, can they still come to the Planning Commission or does he have no option to go forward.

Planner Shweta Bhatt said that the owner could request Planning Commission review. The Commission could approval with the required findings. She said that she did not believe one neighbor refusing to sign off precludes a fence exception hearing.

Commissioner Rodgers said that the Commission could consider with written agreement.

Commissioner Nagpal said that Finding #5 could better read, "Considers the view of other adjacent property owners."

Commissioner Kundtz suggested that the neighbor simply acknowledge receipt of the notice like is done with other applications.

Chair Hlava said that while the Commission always considers what neighbors have to say, it is not a finding requirement.

Commissioner Rodgers said that an immediate neighbor has a closer relationship to a shared fence but she did not think that written consent is feasible.

Commissioner Cappello said the process as outlined in the draft is good but an uncooperative neighbor seems to result in no appeal process being available. He suggested that an appeal process be added to the language when there is not neighbor agreement.

Commissioner Nagpal said that the Planning Commission makes exception findings.

Commissioner Cappello said that as the Ordinance is written currently the Commission could make no decision if that finding is not met.

Chair Hlava said that this is why she wants Finding #5 removed.

Commissioner Nagpal asked if all findings must be made or just some of them.

Chair Hlava said she reads it to mean all findings must be met.

Commissioner Rodgers said she has some language issues relating to pool fencing.

Commissioner Kundtz said he wants to consider Authorities/Approving Bodies.

Chair Hlava opened the Public Hearing for Agenda Item No. 3.

Ms. Mahnaz Khazen, Resident on Victor Place:

- Said that this is a most interesting subject to her as she has a flag lot.
- Stated her agreement with the idea of allowing six-foot tall fencing all around a flag lot.
- Said that she absolutely agrees with the proposal to remove Finding #5 requiring neighbor approval. The governmental body needs the right to review notices, hear comments and make a decision based on fact.
- Questioned the differences between the gate pilaster height differences allowed between wrought iron versus wood gates. Iron gates have a 7-foot maximum and wood gates an 8-foot maximum.
- Stated that she likes the fact that light fixtures are not included and thanked staff for that.
- Inquired about regulations for fencing adjacent to scenic highways.
- Explained that she has a property on Quito Road that is both scenic and noisy. How would that be addressed?

Chair Hlava said that scenic highway refers to Saratoga-Los Gatos Road.

Commissioner Nagpal agreed that Quito Road is not a designated scenic highway.

Commissioner Rodgers said that it might go up the hill on Highway 9.

Ms. Linda Parsley, Resident on Via Regina:

- Said that she has a flag lot.
- Said she would like to see these changes as she currently has 10 different kinds of fencing surrounding her flag lot. There is a 60-foot long solid wood fence, hedges, corral fencing, wire fencing and a fence with lattice. Nothing matches.

- Added that the saddest part is that wildlife has no access to her property or very limited access. Deer no longer have access.
- Reminded that she has an ongoing complaint about one neighbor's new fence.
- Stated that staff has said that since all the fencing in this area is illegal, they would not enforce just that one property but rather it should be treated as a civil matter relative to the access to the easement.
- Reported that she had to have a survey done when a neighbor placed a fence three-feet into her property. That fence had to be relocated to the property line.
- Asked for clarification on parallel fences and walls.

Commissioner Nagpal said that there is horizontal distance required between a retaining wall and fence.

Commissioner Kundtz said that this relates to retaining walls coming down a hill.

Director John Livingstone said that no changes are proposed to #C. It is applied when retaining walls are too close together.

Ms. Linda Parsley said she would like to see the fence removed off the retaining wall.

Director John Livingstone said that height is currently measured from the lowest side.

Ms. Linda Parsley said she would like to see fencing limited to 4,000 square feet as fencing prohibits wildlife trails. She said it would be nice if wording were added that encourages neighbors to work with neighbors on what kind of fencing would be put in.

Chair Hlava said that this Commission has no desire to get between two neighbors on the issue of what types of fencing they want.

Ms. Priscilla Ho, Resident on Woodmont Drive:

- Said that when deer are on the property whatever you plant one day is gone the next. It is hard to plant when deer traipse across the property.
- Mentioned the potential for eight-foot high deer fencing.
- Stated that she would love to have a gorgeous yard and may need that size fence to keep the deer out of it.
- Recounted that contacting neighbors is not always easy. For one request, she called one neighbor a number of times to no success.
- Said that it looks nicer if the center of a wrought iron gate is higher than the pilasters by one to two feet rather than lower at the center of the gate.

Commissioner Rodgers asked if this could interfere with visibility.

Ms. Priscilla Ho said that her gate is set back 30 feet.

Chair Hlava closed the Public Hearing for Agenda Item No. 3.

Chair Hlava asked the City Attorney to go over his comments.

City Attorney Bill Parkin:

- Said that there is some inconsistency between taking measurements from the bottom of a retaining wall versus the highest point.
- Added that the text should be stricken on how to include retaining walls.

Chair Hlava said that there is a big difference between fencing on a hillside versus residential areas.

Commissioner Cappello said that with every case where there are different grades there is a retaining wall. It could be just 2 x 12 wood board at the base of a fence to retain soil.

Commissioner Nagpal said the use of higher versus lowest point for measurement needs to be considered. Right now the practice is to use the higher point, with the lower point for retaining walls.

Commissioner Cappello said consistency is needed.

Commissioner Nagpal suggested the higher point.

Director John Livingstone said that there are pros and cons. It could appear that a three-foot high fence looks six-feet tall if measured from the higher point.

Chair Hlava said she agrees with the measurement from the higher elevation.

City Attorney Bill Parkin:

- Suggested defining hedge and pulling green fences out. Height limitations should not apply to hedges.
- Agreed that Finding #5 of the exception findings could be eliminated.
- Said that trellis should be renamed entryway trellis.
- Said that a width limit should be assigned to entryway trellis.

Commissioner Cappello suggested the term pedestrian entrance.

Commissioner Rodgers said that the width of the opening would define it.

Commissioner Nagpal suggested a five-foot width for entryway trellis openings.

City Attorney Bill Parkin:

- Said that the term "yard" should be eliminated and "setback areas" used.
- Advised that his changes on Page 3 represents simplified language on the issue of pilasters.

Commissioner Nagpal asked why the one-foot maximum difference between wrought iron versus wood fence pilaster heights.

City Attorney Bill Parkin explained that pilasters are allowed to exceed the fence height by two feet, which equals an eight-foot maximum height. The wrought iron gate in a front yard is limited to five-feet in height to a maximum height of seven feet for the pilasters.

Commissioner Nagpal said it might be appropriate to have a gate taller than five feet in height on a larger property. The issue is the size of the property.

Commissioner Cappello said that this might be an exception issue that can be brought to the Planning Commission. He added that materials in addition to wrought iron should be considered as long as it is another see-through material.

Chair Hlava reminded that wood gates are not allow right now.

Planner Shweta Bhatt said that current Code limits wrought iron front gate heights to five feet. Staff is not proposing a change.

Director John Livingstone said that the Commission could amend to allow other metal produces as long as they are in an open format.

Commissioner Cappello said that there are new materials all the time and should be considered if they are see-through.

Chair Hlava said if the material is not wrought iron she wants it to go through a review/exception process to ensure it is a good quality and attractive material.

City Attorney Bill Parkin:

- Said that he has made a minor language change to page 4 for clarity.
- Said that a very minor language suggested change on page 5 adds, "on a single site."
- Said that on page 6 the staff insertions of "solid" have been deleted for fences on arterial streets.
- Suggested that the term "Existing Non-Conforming Fencing" be amended to read "Existing Legal Non-Conforming Fencing."
- Cautioned that amnesty is not granted with this ordinance amendment for existing fences.

Commissioner Nagpal asked if dog fencing is considered electrical.

Commissioner Rodgers said she is more concerned with fences that would hurt a child.

Chair Hlava asked why the wire fence prohibition is being removed.

City Attorney Bill Parkin said that chain link fencing is limited to athletic courts. Non-hillside properties can use chain link while hillside properties cannot.

Director John Livingstone said that chain link fencing is allowed in areas other than hillside.

Chair Hlava said that not all properties on hills are in a hillside district. She suggested that the questions and comments raised be given to staff and brought back as a clean draft ordinance. There are still too many issues.

Commissioner Nagpal agreed.

Commissioner Rodgers questioned whether all decisions have been made yet.

Commissioner Zhao asked where the hillside districts are located.

Chair Hlava said that they are within another part of the ordinances.

Commissioner Nagpal reviewed proposed edits:

- Page 1 – consistent with higher point, the hedge issue is fine.
- Page 2 – consensus to removing Finding #5 and instead refer to noticing.

Commissioner Kundtz suggested the text to Condition #4 be added to read, “adjacent property owners noticed and no negative comments received.”

Chair Hlava suggested, “Impact on immediate adjacent neighbors is considered.”

Commissioner Zhao reminded that noticing is automatic.

Chair Hlava reiterated her suggestion to strike Finding #5 and add her text, “adjacent property owners noticed and no negative comments received.”

Commissioner Nagpal:

- Entryway trellis width is identified as five feet.
- Said that language should be added to Finding #4 that states that no adverse impact to adjacent neighbor(s) or general vicinity.
- Section E should read “Flag lots and front lot line not adjacent to the street.”

Commissioner Rodgers said that there is the issue of flag lots with different types of fences all around. Suggested the need for an exception if a flag lot becomes fenced in at more than 4,000 square feet via fences on surrounding properties.

Commissioner Kundtz said that compatibility is questioned each and every time.

Commissioner Rodgers said that a flag lot has the potential of feeling like “Folsom” prison if it has six foot fencing all around.

Chair Hlava said that since hillside lots are a minimum of two-acres, they would not feel like Folsom prison.

City Attorney Bill Parkin said that this would have to be thought out carefully.

Commissioner Cappello asked about the enclosed flag lot and when it becomes an issue.

City Attorney Bill Parkin said the last person coming along is not the best way to deal with it.

Director John Livingstone:

- Said that there are two questions here.
- Stated that one question is how to address compatibility on a flag lot. However, unless there is an exception required, they just put their fence in.
- Said that the next question is what to do if a flag lot in a hillside district that is surrounded by other properties' fences results in an enclosed fence area in excess of the allowed 4,000 square feet.
- Added that this is a rare exception.

Commissioner Rodgers suggested that perhaps anyone putting in a fence that is adjacent to an interior flag lot would require some sort of review.

Director John Livingstone said that this would be an administrative decision that could be appealed to the Planning Commission.

Chair Hlava added that someone who buys a flag lot knows what he or she is getting.

Commissioner Nagpal reminded that use of the term "yard" is replaced by "setback area."

Director John Livingstone suggested adding, "edge of pavement." He added that gates couldn't go that close as they need a queuing area at least one car distance back from the street.

Chair Hlava suggested text, "Pilasters for wrought iron gates need to be located behind the triangle."

Commissioner Cappello suggested adding Fence, Wall, Pilaster, or Compact Hedge.

Chair Hlava reiterated that they must be outside the triangle.

Commissioner Nagpal said there were no changes to page 3. Page 4 should add "parallel walls" and delete reference to fences.

Chair Hlava said that there are so many possibilities for pool fencing outside of enclosing 4,000 square foot of area with fencing. It does not seem clear.

Director John Livingstone said that a pool has to be fenced around. If the entire lot is fenced in (non-hillside), they don't need to have pool specific fencing. However, some still fence in their pools for child safety. In hillside districts there is a limit to 4,000 square feet enclosing fencing. A lot of people want more. When an owner has a very large pool and patio area, they may not want to fence in just 4,000 square feet. While the fence around a pool is exempt, the ordinance would allow 10-foot area surrounding the pool to be enclosed in fencing to create usable areas around these pools.

Chair Hlava said that if this is appealed to the Planning Commission she might be willing to support that provision.

Commissioner Nagpal said that it allows for an exception.

Commissioner Rodgers said that something like this comes to the Commission for judgment. She said she has no problem with a pool enclosure and 10 feet deck area around a pool.

Chair Hlava said the owner could always appeal.

Commissioner Rodgers suggested adding swimming pool fence.

City Attorney Bill Parkin said that if the enclosed 4,000 square foot area is enough to fit the pool, the use of the 10-foot area around the pool might only be permitted if an exception is sought.

Commissioner Rodgers said that the word "solid" should be added to page 6.

City Attorney Bill Parkin suggested "solid or any other type of fence."

Commissioner Nagpal asked if existing legal non-conforming situations could be appealed.

City Attorney Bill Parkin said any Planning Commission decision could be appealed.

Chair Hlava said that enough changes have been made. Should the amended draft come back to the next meeting or to a Study Session.

Commissioner Rodgers said that the issues of chain link outside of hillside districts; flag lots closed in on hillside districts and notice issues need further clarification.

Chair Hlava asked if the continuance should be to a date certain or uncertain.

Director John Livingstone suggested a date certain as long as Shweta Bhatt and Bill Parkin have time to go over the changes. He reminded that additional noticing is not required for items continued to a specific date.

Commissioner Nagpal asked Director Livingstone if he has a suggested date.

Commissioner Rodgers said that while she does not expect an additional mailing, she would like to see something reported in the newspaper to advise the community on the status of this update.

Chair Hlava suggested either February 27th or March 12th.

Director John Livingstone said that March 12th would be fine. He clarified that appeals may be final at Planning Commission level.

Commissioner Nagpal agreed that administrative decisions are appealed to the Commission. If the Commission makes the original decision, those decisions are appealed to Council.

Planner Shweta Bhatt said that this is included in the Ordinance.

Chair Hlava said that the whole issue of chain link fences was deleted.

Director John Livingstone said that it was added back in another spot. They are allowed in non-hillside zoning but not allowed in hillside zoning.

Commissioner Cappello suggested forbidding them all around.

Commissioner Nagpal said that with shrubbery growing on it they are invisible.

Commissioner Hlava said that it is hard to do without chain link fencing with agricultural uses.

Commissioner Rodgers said that those are existing fences.

Commissioner Cappello added that they could be grandfathered.

Director John Livingstone said that wood fences don't last. When they fall, replacements would meet ordinance standards. However, chain link fences are around for a long time although new ones can be prohibited.

Commissioner Nagpal reiterated that they are not visible if landscaping is growing on them.

Commissioner Cappello asked if they should be allowed with screening shrubbery.

Commissioner Rodgers said that no one would see them to complain about them.

Commissioner Kundtz said that they are allowed around pools.

Commissioner Rodgers said also around athletic courts.

Director John Livingstone said that chain link fencing painted black requires less maintenance and plants can grow on them.

Commissioner Zhao asked why chain link fencing should not be allowed on hillside properties.

Commissioner Cappello said because of wild life.

Commissioner Zhao said that one couldn't see these chain link fences when they are located far back in their backyard.

Commissioner Rodgers said that animals couldn't pass through them.

Commissioner Zhao said they could not pass through a wood fence either.

Chair Hlava said that chain link fencing would still be in the ordinance.

Director John Livingstone said that this issue (chain link) can be brought back as is and changes could be made at the next meeting. He said that a whole updated package would be brought to the next hearing on this ordinance.

Commissioner Nagpal said that she wants this ordinance to be reflective of what's actually happening.

Commissioner Rodgers suggested that staff come back with some "either/or" language.

Commissioner Cappello said it could be exception versus stay as it is.

Ms. Priscilla Ho pointed out that chain link fencing disappears on a larger property. It is better looking than a solid fence would be.

Chair Hlava suggested chain link be allowed on properties over one acre in size.

Commissioner Nagpal suggested zoning R-1-40,000.

Chair Hlava suggested lot size versus zoning.

Commissioner Rodgers said right now chain link is prohibited on hillside properties.

Commissioner Nagpal suggested that it be handled separately on hillside versus residential zoning.

Motion: Upon motion of Commissioner Kundtz, seconded by Commissioner Rodgers, the Planning Commission CONTINUED CONSIDERATION TO ITS MEETING OF MARCH 12, 2008, consideration of a draft ordinance to update existing regulations regarding fences, walls and hedges, by the following roll call vote:

AYES: Cappello, Hlava, Kumar, Kundtz, Nagpal, Rodgers and Zhao
NOES: None
ABSENT: None
ABSTAIN: None

DIRECTOR'S ITEMS

There were no Director's Items.

COMMISSION ITEMS

Commissioner Rodgers advised that she would be absent from the April 9, 2008, meeting.

COMMUNICATIONS

There were no Communications Items.

ADJOURNMENT TO NEXT MEETING

Upon motion of Commissioner Cappello, seconded by Commissioner Kundtz, Chair Hlava adjourned the meeting at approximately 10:52 p.m.

MINUTES PREPARED AND SUBMITTED BY:
Corinne A. Shinn, Minutes Clerk