

**APPROVED MINUTES
PLANNING COMMISSION MEETING
June 27, 2007
6:00 p.m.**

ATHERTON TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California

REGULAR MEETING

Chair Oster called the meeting to order at 6:00 p.m.

1. ROLL CALL:

PRESENT: **Marion Oster**
 Jim Dobbie
 Kristi Waldron
 Philip Lively
 Herman Christensen, Jr.

City Attorney Marc Hynes, Deputy Town Planner Lisa Costa Sanders, Building Official Mike Wasmann, Town Arborist Kathy Hughes Anderson and outside legal counsel Jean Savaree were also present.

2. APPROVAL OF MINUTES

MOTION to approve the minutes of the May 23, 2007 meeting as corrected.
M/S Christensen/Dobbie Ayes: 5 Noes: 0

3. PUBLIC COMMENTS - None

4. COMMISSIONER'S REPORTS - None

5. GENERAL PLAN COMMITTEE REPORTS – Commissioner Dobbie reported that the General Plan Committee last met with the Environmental Programs committee on June 6, 2007 to discuss green building measures.

6. NEW BUSINESS - None.

7. STAFF REPORTS – Marc Hynes reported that he has not received a ruling on the 51 Laburnum case yet and that the hearing is set for July 5, 2007 at 10:00 a.m. Marc Hynes introduced Jean Savaree, special legal counsel to advise the Commission on 94 Tallwood. Staff requested this item be taken first on the agenda. Lisa Costa Sanders reported that the Council introduced the basement ordinance with the effective date of the new Ordinance tracking the new drainage requirements.

PUBLIC HEARINGS

Agenda item #10 was heard ahead of agenda item #8

10. Conditional Use Permit – 94 Tallwood – Conditional Use Permit to allow a basement to exceed two feet in height above the surrounding average natural grade for hillside properties. Atherton Municipal Code Section 17.36.190.

Lisa Costa Sanders stated that based upon review of the application materials as submitted, the site does not meet the 20% cross slope requirement. Staff advised the applicant that staff could not support the request. Through the applicant's legal counsel, staff was advised to continue the item to allow time for review by an outside engineer. Based on that request, staff did not prepare a staff report for the Planning Commission's consideration. Staff recommends the Commission continue the item to the July 25, 2007 meeting.

OPEN PUBLIC COMMENT

William Ross, attorney for the property owners, requested the Planning Commission deny the application this evening. He stated that this hearing was a procedure agreed upon to stay the litigation. They would like to appeal to the City Council for consideration at their July meeting and that the City Council has authorized an outside planner to analyze the application.

Commissioners Lively asked Mr. Ross under what grounds does the Planning Commission have for denial. Mr. Ross replied that based on the Town's planner's review that the application does not meet the Code specified standard.

Commissioner Christensen asked about the timeframe for this issue. Mr. Ross replied that time is of the essence. The continuance was agreed upon prior to understanding that the Council cancelled their August meeting. The City has issued a temporary certificate of occupancy for the residence.

Mr. Ross stated that based on the verbal analysis submitted by the Town's planner tonight, the Planning Commission can find that the application does not meet the standard outlined in the code. The height of the basement exceeds 2' when measured from average natural grade and is therefore the basement is considered in the floor area calculations for the lot. The improvements at the site exceed the allowed floor area for the site. Excluding the basement area from floor area calculations would bring this property into compliance.

CLOSE PUBLIC COMMENT

Commissioner Waldron asked what the ramifications are if this item is continued. Commissioner Lively asked if the Council could hold a special meeting to hear this item. Jean Saveree replied that the Council has the ability to hold a special meeting and that she is not aware of how continuance might impact this item.

Commissioner Oster indicated that the Planning Commission takes their position very seriously and that she cannot vote to deny this item at this time.

MOTION to continue the item to the July 25, 2007 meeting.

M/S Dobbie/Lively

Ayes: 5

Noes: 0

Mr. Ross stated that based on representation by Town's special legal counsel Cris Carrigan, he feels this is undue administrative delay.

Jean Saveree stated that the continuance was originally at the request of the applicant and that the City Council can hold a special meeting with 24-hours notice.

8. Heritage Tree Removal Permit and Negative Declaration – 124 Austin – Heritage Tree Removal Permit and Negative Declaration to allow the removal of four heritage tree. Atherton Municipal Code Section 8.10.

Lisa Costa Sanders presented the staff report and indicated staff support for the tree removal request.

OPEN PUBLIC COMMENT

Roy Magruder, property owner, stated that they wish to remove the Pin Oak as it is crowded and feel it will not result in an odd gap with the neighbor's cedar. He stated that the Birch trees are being requested for removal for a new pool house.

CLOSE PUBLIC COMMENT

Commissioner Waldron expressed support for the request.

Commissioner Lively expressed support for the request with the additional condition that the applicant be required to implement the recommendations of the Arborist report for the remaining trees.

Commissioner Christensen stated support for the request.

Commissioner Dobbie stated support for the request.

Commissioner Oster stated support for the request with modification to condition #2 to require two 36" box size native oak trees, rather than one 36" box size tree.

MOTION to find the Initial Study and draft Mitigated Negative Declaration prepared for this project are adequate and in conformance with the California Environmental Quality Act and that the Planning Commission adopt the Draft Mitigated Negative Declaration for the 124 Austin Avenue Tree Removal Project.

M/S Waldron/Oster

Ayes: 5

Noes: 0

Finding:

1. The Initial Study and Draft Mitigated Negative Declaration prepared for this project are adequate and in conformance with the California Environmental Quality Act.

MOTION to approve the Heritage Tree Removal Permit to allow removal of four heritage trees based on the following finding and subject to the conditions of the Heritage Tree Removal Permit with the following additional conditions.

M/S Oster/Lively Ayes: 5 Noes: 0

Finding:

1. The removal of four trees would not be contrary to the purpose and intent of the Atherton General Plan.

Additional Conditions:

1. Condition #2 shall be modified as follows; replace “a 36” box size tree” with “two 36” box size native oak trees”.
2. Add condition #4 to read as follows; “The applicant shall implement the recommendations of the Arborist report prepared by Urban Tree Management dated September 5, 2006 for all remaining trees on-site.”

- 9. Conditional Use Permit – 7 Faxon Forest – Conditional Use Permit to allow a spa with trellis to be located at the front yard setback. Atherton Municipal Code Section 17.36.050(A)(3).**

Lisa Costa Sanders presented the staff report and indicated staff support for the proposed location of the spa and trellis.

OPEN PUBLIC COMMENT

Eric Peterson, Architect, stated that the applicant chose the location of the spa for proximity to the master bedroom. Richard Lungram, job site superintendent for the property, stated that work was stopped after the Town’s inspector denied the form inspection due to the location of the spa.

CLOSE PUBLIC COMMENT

Commissioner Lively asked is the location of the trellis included in use permit. Staff responded in the affirmative. Commissioner Lively requested the following additions to the conditions of approval; condition #1 date of plans should reflect May 18, 2007, condition #2 include the current hours of operation of 8:00 am until 8:00 pm for spa equipment and condition #5 include “and Trellis” shall be shielded or downlit.

MOTION to approve the Conditional Use Permit to allow a spa and trellis to be located at the front property line based on the following finding and subject to the conditions of the Conditional Use Permit with the following amended conditions;

M/S Dobbie/Christensen Ayes: 5 Noes: 0

Finding:

1. The proposed spa and trellis at the proposed location will not be detrimental or injurious to persons, property or improvements in the vicinity, and will not be detrimental to the public health, peace, safety, comfort, general welfare or convenience.
2. The proposed spa and trellis will be located and conducted in a manner in accord with the general plan and the purposes of that plan and the zoning code.

Amended conditions:

1. Condition #1; change the date from June 7, 2007 to May 18, 2007.
2. Condition #2, add the current hours of operation of 8:00 am until 8:00 pm.
3. Condition #5, include "and trellis".

11. **Heritage Tree Removal Permit and Negative Declaration – 368 Walsh Road** – Heritage Tree Removal Permit and Negative Declaration to allow the removal of thirteen heritage trees. Atherton Municipal Code Section 8.10.

Lisa Costa Sanders indicated that this item is requested for continuance at the request of the applicant to allow additional time to survey the trees and prepare a new conceptual plan for the use of the site.

MOTION to continue the item to the July 25, 2007 meeting.

M/S Waldron/Dobbie Ayes: 5 Noes: 0

12. **Heritage Tree Removal Permit – 44 Tuscaloosa** – Heritage Tree Removal Permit to allow the removal of one heritage tree. Atherton Municipal Code Section 8.10.

Lisa Costa Sanders indicated that this item is requested for continuance to allow the applicant time to revise the arborist report to include analysis of the tree requested for removal.

MOTION to continue the item to the July 25, 2007 meeting.

M/S Dobbie/Lively Ayes: 5 Noes: 0

13. ADJOURN

Future meeting attendance:

- Commissioner Waldron cannot attend the July meeting.
- Commissioner Lively cannot attend the August meeting.
- Commissioner Oster cannot attend the September meeting.

M/S Dobbie/Waldron to adjourn the meeting at 7:10 p.m. Motion passed.

Respectfully submitted,

Lisa Costa Sanders, Deputy Town Planner