

**APPROVED MINUTES
PLANNING COMMISSION MEETING
July 25, 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
James Dobbie
Philip Lively
Herman Christensen, Jr.**

EXCUSED: **Kristi Waldron**

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

2. APPROVAL OF MINUTES

MOTION approval of the June 27, 2007 meeting minutes as corrected.

M/S Dobbie/Lively Ayes: 4 Noes: 0 Excused: 1

3. PUBLIC COMMENTS

None.

4. COMMISSIONER'S REPORTS

None.

5. GENERAL PLAN COMMITTEE REPORTS

The General Plan Committee has not met since the last Planning Commission meeting. The next meeting is scheduled for August 1, 2007.

6. NEW BUSINESS

None.

7. STAFF REPORTS

Marc Hynes reported that a hearing was scheduled for July 13, 2007 with a final ruling by the end of this month regarding 51 Laburnam.

PUBLIC HEARINGS

8. **Conditional Use Permit – 94 Tallwood** – Conditional Use Permit request 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.

Marc Hynes introduced Jean Savaree, special legal counsel for the Town and Brian Wenter, special legal counsel for the Town. Deputy Town Planner Lisa Costa Sanders presented the staff report and introduced Dick Loewke, outside planner for the Town to respond to additional questions.

Commissioner Christensen asked if the basement area was included in the plans for the home and if it was intended to count in the floor area, and if there is any other way to calculate the cross-slope. Mr. Loewke responded that the average cross-slope determination is accurate and the correct method based on the code.

Commissioner Christensen asked if the building was constructed to the height shown on the plans? Mr. Loewke stated that there is disagreement as to what the average natural grade is.

Commissioner Christensen asked what constitutes substantial compliance? Jean Savaree stated when a code section references a specific number, you rely on that number.

Commissioner Dobbie asked at what point was the discrepancy determined. Mike Wasmann stated that it was discovered during the audit prior to the house completion.

Commissioner Dobbie asked if this should have been caught earlier? Mike Wasmann replied that the height is verified by a survey at the framing stage and that the house was built to an approved set of plans issued by the former Building Official. The approved plans included a determination of average natural grade.

Commissioner Dobbie stated that he would not want to see this happen again and need new procedures. Lisa Costa Sanders stated that Planning is now conducting a review of all plans in addition to the building department plan checker.

Commissioner Christensen asked if the basement was included in the floor area. Staff responded that a portion of the basement was included in the floor area calculations and other areas were not included (garage and porches).

OPEN PUBLIC COMMENT

Bill Ross, attorney representing the property owners, stated that there is no indication to do anything but what was directed by the former Building Official. He stated that he feels substantial compliance relates to percentage of compliance rather than actual compliance. Mr. Ross stated that he feels 18.6% is substantial compliance with the code. He further stated that the Kings relied on approvals granted by the former building official, the cost to remedy the situation is excessive and there is no impact to neighboring property owners. Mr. Ross stated that they are not waiving any rights of the lawsuit and estoppel can serve as basis for issuing permit.

Charles Marsala, Emilie, stated that the Commission needs to look at all the factors. Mistakes were made and where is the solution. The home does not impact neighbors.

Commissioner Dobbie stated that the Planning Commission relies on the Ordinance as written for basis of decision.

Melinda Tevis, Tallwood, stated that she raised concerns to Town management regarding the construction of this home.

Mr. Ross stated that the Commission needs to be rational in the 20% hillside rule. He further expressed concern that this process appears to be undue administrative delay.

CLOSE PUBLIC HEARING

Commissioner Lively stated that he could not approve the request, as the property does not meet the hillside code requirement.

Commissioner Christensen stated that he relies on strict compliance with the code.

Commissioner Dobbie stated he sympathizes with the property owner and stated that any modification to the ordinance with respect to this item must be done by the City Council and not the Planning Commission.

Chair Oster stated that the purpose of the Planning Commission is to enforce the Ordinance and hopes the City Council can resolve the issue

MOTION to deny the Conditional Use Permit allow a basement to exceed two feet in height above the surrounding average natural grade for hillside properties at 94 Tallwood based on the following findings:

M/S Lively/Christensen Ayes: 4 Noes: 0 Excused: 1 (Waldron)

Finding:

1. The proposed project will not be detrimental or injurious to persons, property or improvement in the vicinity and will not be detrimental to the public health, peace, safety, comfort, general welfare or convenience.
2. The proposed project for the subject site is not consistent with the Town of Atherton General Plan and the purposes of that plan and the Zoning Code.

Chair Oster advised of the 10-day appeal period.

- 9. Major Alteration Permit – 133 Atherton Avenue – Major Alteration Permit to allow relocation of a heritage gate from the Atherton Avenue side of the property to the Elena Avenue side of the property. Atherton Municipal Code section 8.14.090(B).**

Deputy Town Planner Lisa Costa Sanders presented the staff report, noted the reasons outlined in the staff report to support the request and introduced Laura Jones, town's historical consultant.

Laura Jones stated that it is important for the gates to remain on the property. She also stated that the house was demolished and there are no significant remaining structures on the property for the gates to relate to.

Commissioner Christensen stated that the gates will lose its relation to the public road that it has been historically located on. Ms. Jones stated that the gates will remain accessible to the public on Elena with relationship to a public street.

OPEN PUBLIC COMMENT

Missy Morris, Elena, stated that Elena is a busy street as a cut-through. She stated that the gates were important to the former property owner.

Benjamin McGriff, Architect, stated that his clients desire for additional privacy along Atherton Avenue with a solid wall and gate.

Commissioner Oster asked what will be located inside the property from the gates. Mr. Benjamin McGriff responded that formal gardens will be located throughout the property. Commissioner Oster asked why the gates could not remain at its current location. Mr. Benjamin McGriff responded that the owner would like a new entry to relate to the residence.

M. Madding, Edwards Lane, spoke in opposition to the request.

CLOSE PUBLIC COMMENT

Commissioner Christensen stated that historic items should remain in place of significance. He stated that he would not object to moving the gate along the Atherton Avenue side of the property, but not to the Elena side of the property. Commissioner Dobbie stated that he would like to see more information on intended use of the property prior to acting on the application. Commissioner Lively stated support for the relocation as long as it retains all elements. Commissioner Oster expressed concern with the relocation.

MOTION to deny the Major Alteration Permit at 133 Atherton Avenue based on the following finding:

M/S Christensen/Dobbie Ayes: 3 Noes: 1 (Lively) Excused: 1 (Waldron)

Finding:

1. Movement of the gate would be contrary to the historic setting of the artifact along Atherton Avenue.

2.

Chair Oster advised of the 10-day appeal period.

10. Heritage Tree Removal Permit – 44 Tuscaloosa – Heritage Tree Removal Permit to allow the removal of one Oak tree. Atherton Municipal Code section 8.10.

Deputy Town Planner Lisa Costa Sanders presented the staff report and stated that staff does not support the tree removal as there are no compelling reasons to remove the tree.

OPEN PUBLIC COMMENT

Eileen Gordon, property architect was present.

CLOSE PUBLIC COMMENT

Commissioner Dobbie stated that the tree is not a great specimen, but there is no compelling reason for its removal.

Commissioner Oster stated that the tree has nice shape and would like to see it retained.

MOTION to deny the Heritage Tree Removal Permit at 44 Tuscaloosa based on the following finding:

M/S Lively/Christensen Ayes: 4 Noes: 0 Excused: 1 (Waldron)

Finding:

1. The removal of the tree would be contrary to the purpose and intent of the Atherton General Plan.

Chair Oster advised of the 10-day appeal period.

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

Deputy Town Planner Lisa Costa Sanders presented the staff report and noted the reasons outlined in the staff report to support the tree removal request based on the mitigation measures contained in the draft negative declaration.

OPEN PUBLIC COMMENT

Steve Swanke, project architect, reviewed the intended use of the property.

CLOSE PUBLIC COMMENT

Commissioner Lively stated that the trees appear to be at the end of their life.

Commissioner Christensen stated support for the request.

Commissioner Dobbie stated concurrence with other Commissioners' comments.

Commissioner Oster stated that the pine trees are in the declining stage.

MOTION that the Planning find that 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 adopt the Draft Mitigated Negative Declaration for the 368 Walsh Road Tree Removal Project.

M/S Lively/Oster Ayes: 4 Noes: 0 Excused: 1 (Waldron)

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 thirteen 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 Dobbie/Lively Ayes: 4 Noes: 0 Excused: 1 (Waldron)

Finding:

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

Chair Oster advised of the 10-day appeal period.

- 12. Variance – 2 Belbrook** – Variance request to allow an accessory structure (bridge) to be located in the front yard. Atherton Municipal Code section 17.56.050

The applicant requests the item be continued to the next Planning Commission meeting.

MOTION to continue the item to the August 22, 2007 meeting.

M/S Oster/Dobbie Ayes: 4 Noes:0 Excused: 1 (Waldron)

13. ADJOURN

The meeting adjourned at 7:55 p.m.

Respectfully submitted,

Lisa Costa Sanders, Deputy Town Planner