

**PLANNING COMMISSION  
APPROVED MINUTES**

**TOWN OF ATHERTON  
April 23, 2008  
6:00 P.M.  
TOWN COUNCIL CHAMBERS  
94 ASHFIELD ROAD**

**1. ROLL CALL:**

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

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

**2. APPROVAL OF MINUTES**

**MOTION to approve the minutes of the March 26, 2008 meeting as amended.  
M/S Dobbie/ Lively                      Ayes: 5                      Noes: 0**

**3. PUBLIC COMMENTS- none**

**4. COMMISSIONER'S REPORTS- none**

**5. GENERAL PLAN COMMITTEE REPORTS**

Commissioner Dobbie reported that the public meeting to review the draft zoning code update was held on April 9, 2008, and was attended by 50 people. He noted that Atherton zoning has not been reviewed in over 20 years. The consulting company, PMC who is working with the Town of Atherton, will be putting together their findings from the meeting, which will be reviewed by the Planning Commission and the City Council.

**6. NEW BUSINESS**

**Master Plan Update- 150 Valparaiso-** Sacred Heart Schools Master Plan Update for 2008.

Deputy Town Planner Lisa Costa Sanders introduced Sandy Dubinski, who presented the Master Plan Update.

**OPEN PUBLIC HEARING**

Sandy Dubinski, Sacred Heart Schools, reviewed the schools master plan update and responded to Commissioners questions.

Ed Goldstein, 71 McBain Avenue introduced himself as one of the neighbors on the St. Joseph's portion of Sacred Heart School's property. He anticipates the neighbors will work with the School through the changes proposed. He further mentioned that the primary concern is the traffic, but understands the school is aware of their concerns and have been working with a consulting firm to problem solve the current and projected traffic.

**CLOSE PUBLIC HEARING**

Commission Dobbie commended Ms. Dubinski on the presentation of the Master Plan and sets forth a great example for other schools.

Chair Oster agreed with Commissioner Dobbie.

**MOTION to receive of the Master Plan Update for filing  
M/S Lively/ Dobbie                      Ayes: 5              Noes: 0**

7. **Conditional Use Permit- 2 Valley** –Conditional Use Permit to allow a trellis to be located in the front yard. Atherton Municipal Code Section 17.36.165

**MOTION to continue this item to the May 28, 2008 meeting.**

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

8. **Heritage Tree Removal Permit and Mitigated Negative Declaration- 92 Sutherland-**  
Heritage Tree Removal Permit to allow the removal of forty-three heritage trees.  
Atherton Municipal Code Section 8.10

Assistant Planner, Andrea Mardesich presented the staff report and indicated staff support for the removal of forty-three heritage trees.

Chair Oster noted that the Commission should address the Mitigated Negative Declaration first.

Town Arborist, Kathy Hughes Anderson reported on the condition of the trees requested for removal. Ms. Hughes- Anderson noted that the infestation of the Tortis beetle, in addition to other pests and the Longhorn Bore have lead to the decline of these trees.

Chair Oster questioned whether this particular species of beetle kills the tree. Ms. Hughes Anderson noted that it does not kill the tree, however leads to tree decline.

Commissioner Lively questioned the types of trees suggested for replacement. Ms. Hughes Anderson confirmed that staff is requesting the Planning Commission

recommend size of trees and that she is in support of the replacement trees proposed by the applicant with the exception of the California Bay.

Commissioner Lively expressed his concern with the habitation of birds that could be displaced with the removal of these trees. Ms. Costa Sanders replied that the Commission could add a Condition that if any active nests are present, the trees cannot be removed during the nesting season. Commissioner Waldron added that the condition should also include beehives, as the bee population is declining rapidly.

#### OPEN PUBLIC HEARING

Melinda Tevis, 98 Tallwood thanked the Commission for their comments relating to protecting the birds during tree removal.

#### CLOSE PUBLIC HEARING

Commissioner Dobbie questioned as to how one would determine which trees have active nests. Ms Hughes Anderson replied that the tree removal companies would determine. They have climbers go up into the trees, if there is a nest or something to represent bird habitation then they would leave the tree and bring in Wildlife transportation experts.

#### **MOTION to approve the Mitigated Negative Declaration :**

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

Commissioner Christensen stated that it seems as though the Coast Live Oak is being affected by the construction. Ms. Hughes Anderson replied that the tree is not a great specimen, but it will not be affected.

Commissioner Dobbie expressed his concern with the replacement trees and would like to discuss further. Ms. Hughes Anderson noted that the intent of the Landscape Architect is to recreate the Oak woodland and that the current Eucalyptus was most likely planted for quick screening. She further noted the native Oaks provide more diversity and restore the natural generation of shrubs and other Oaks. Ms. Hughes Anderson further noted that Blue Oaks would be a nice addition to the property.

Chair Oster questioned if they were any deficiencies with the soil. Ms. Hughes Anderson noted there is a layer of sandstone. Chair Oster stated that the trees would adjust to the conditions of the soil.

Ms. Hughes Anderson noted that the Oaks have been doing well with these conditions. She further noted that she received two calls from neighbors who expressed their support for the removal of the heritage trees once they became aware that they were primarily Eucalyptus.

Commissioner Lively noted that he has gone over the tree replacements and questioned if Ms. Hughes Anderson is happy with the proposed number of Oaks and Redwoods.

Ms. Hughes-Anderson stated that she would eliminate some the Bay's and replace with more Oaks rather than Redwoods.

Commissioner Dobbie agreed with Ms. Hughes Anderson.

Commissioner Lively noted that he believe that the replacement trees should be larger in size to start with, minimum of 40".

Ms. Hughes Anderson stated the applicant is here and can discuss.

#### OPEN PUBLIC HEARING

John Steven, Landscape Architects stated that it is the intention of the owners to create screening with a balance of trees. He further noted that a 48" box tree has been in the box for a long period of time and that if you start with a smaller tree it adapts better to the site and grows at a faster pace.

Commissioner Dobbie questioned if you were to take a 48" and 36" box tree, at what point would they be the same height.

Brian Fensky, project Arborist with Professional Tree Care Company noted that smaller trees are more aggressively inclined and a 36" box tree would catch up to a 48" in roughly 18 months.

Mr. Stevens also agreed with the Project Arborist.

Commissioner Christensen noted that he would like to see the California Bay be removed from the replacement list. Mr. Stevens agreed and stated that they will add an addition Oak tree.

#### CLOSE PUBLIC HEARING

Commissioner Waldron expressed her support for the removal of the trees given the current condition and that they were no longer serving as screening. She further noted that she agrees they should continue with the Oak woodland and leave it to the Landscape Architect and Ms. Hughes Anderson to determine the types and sizes of trees.

Commissioner Dobbie agreed with Commission Waldron and further stated that he would like to see the Redwoods be removed from the replacement list since the soil does not look to be suitable for Redwood growth.

Commissioner Christensen noted that he did not agree with Commissioner Dobbie and stated that the question is really what and how many trees. He further acknowledged that smaller trees do grow faster.

Commissioner Lively expressed support with the other Commissioners.

Chair Oster expressed her initial concern that the removal of 43 heritage trees is hard to take. However once she viewed the trees and were made aware of their condition, she noted that the homeowner and neighbors would benefit from the removal of the declining trees and replaced with more native trees.

**MOTION to approve Heritage Tree removal permit to allow the removal of forty-three heritage trees based on the following finding and subject to the conditions contained in the Heritage Tree Removal certificate with the following amended condition:**

**M/S Dobbie/ Lively**

**Ayes: 5**

**Noes: 0**

**Finding:**

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

**Amended Condition:**

Amend condition #2 to require replacement trees to be 25- 48" box size trees and 50- 36" box size trees. Species to be determined by the Town Arborist.

Chair Oster advised of the 10-day appeal period.

- 9. Exception Review- 8 Maple Avenue-** Exception Review to allow a second story addition to an existing non-conforming structure. Atherton Municipal Code Section 17.24.040 (F)

Deputy Town Planner, Lisa Costa Sanders presented the staff report and indicated staff support for the second story addition to the existing non-conforming structure.

Commissioner Waldron questioned the requirement for exception review. Ms. Costa Sanders confirmed that the exception review is necessary due to its non-conforming status of the home as it is located in the R-1B zoning district.

**OPEN PUBLIC HEARING**

Packee Davis, 8 Maple Avenue reviewed his request for an addition to his home and requested the Commission grant the request.

Commissioner Waldron confirmed there would have seven bedrooms.

Mr. Davis confirmed there would be a total of six bedrooms, three upstairs and three downstairs. He further noted that one would be an office for his wife and another room would be for guests. Mr. Davis noted that he has spoken with most of the neighbors.

Louis Mattas, 4 Maple Avenue expressed his support for the second story addition, as the homeowners need the space and bedrooms for their young children. He further stated that

this is non-conforming structure as it is an older home, but very well built. Mr. Mattas further noted that he has also spoken with some of his neighbors and all have been supportive.

Julie Davis, 8 Maple, noted that she has spoken with the owners of 6 Maple as they had some concerns with screening with the second story addition. Ms. Davis stated that she would address their concerns.

#### CLOSE PUBLIC HEARING

Commissioner Lively expressed support for the project.

Commissioner Waldron also expressed support for the project.

Commissioner Dobbie also expressed support for the project.

Commissioner Christensen noted there are other two story homes in the area. He further commented that he would like to see a condition added for screening.

Chair Oster stated that the plans are certainly in keeping with the exception as designed and followed the ordinances perfectly. She further expressed support for the proposed project.

**MOTION to approve the Exception Review allowing a second story addition to an existing non-conforming residence based on the following findings and subject to the conditions listed in the Exception Certificate with the following additional condition:**

**M/S Christensen/ Lively                      Ayes: 5              Noes: 0**

#### **Findings:**

1. The exception requested is compatible with the surrounding neighborhood visual character.
2. The landscaping and exception sought will not substantially decrease the privacy of neighbors.
3. The application shall not increase the degree of nonconformity as defined in section 17.44.050.
4. The exception requested is consistent with the general plan, the purposes of that plan and the zoning code.

#### **Additional Condition:**

1. Include landscape screening on the Easterly side of the second story addition.

Chair Oster advised of the 10-day appeal period.

- 10. Variance- 75 Monte Vista-** Variance to allow a 2,000 square feet second dwelling unit for full time habitation to be located 78' from the front property line and pole mounted solar panels to be located 60' from the front property line. Atherton Municipal Code Section 17.56

Chair Oster stated she has received another letter in favor of the proposed project.

Deputy Town Planner, Lisa Costa Sanders presented the staff report and indicated staff recommends the Commission deny the variance as the required findings cannot be met. She noted that although the large size and configuration of the lot is unique, it does not deprive the property owner of privileges enjoyed by other properties in the vicinity and there is sufficient room to construct improvements elsewhere on the property. Ms Costa Sanders further stated that the Commission has to find that the lot is unique in order to approve the Variance.

Commissioner Lively questioned whether the two items would be addressed as one item.

Ms. Costa Sanders confirmed that it is one variance with two items and noted that the Commission can approve one without the other.

City Attorney Marc Hynes noted that there is no real linkage with the two items requesting a variance. He further reiterated that if the variance is granted there would need to be a distinctive uniqueness to the property.

Commissioner Waldron noted that various options were discussed. She questioned whether the lot line is redesignated from front to back and therefore the cottage would be considered the main residence as an alternative. Commissioner Waldron further stated that she feels as if the code is working against the owner.

#### OPEN PUBLIC HEARING

Douglas Goldman, 73 Monte Vista presented to the Commission the family history of the property and the reasoning behind the request for the variance.

Helen Sang, Architect noted that the main residence is 4,800 square feet in area and according to the Code an accessory structure can be 1200 square feet per one acre. Ms. Sang further acknowledged and thanked Commissioner Waldron for pointing out that the Code seems to be working against them.

Mr. Goldman stated he and his family would like to what they have been doing on the property for generations.

David Keton, PGH noted that remodeling the current second dwelling unit would be a huge undertaking and would risk the loss of existing heritage trees; including two heritage Oaks and a Redwood that are near the current existing second dwelling unit. The foundation is in need of replacement and they would not be able to excavate near those trees.

## CLOSE PUBLIC HEARING

Commissioner Christensen stated that this is an estate used by a family for over 100 years. He stated that there are not many of these “estate” properties and of this size left. Commissioner Christensen expressed support for the applicant in addressing this matter to the Commission. He further expressed that the new building would certainly be an improvement and would approve the installation of solar panels as proposed.

Commissioner Lively stated that he had viewed the property and agrees with Commissioner Christensen. He further stated that the property is unique in its physical size and the creek running through a portion of the property. Commissioner Lively further expressed support for acceptance of the proposed Variance.

Commissioner Dobbie stated he agreed with the other two Commissioners. He further noted and understood why the Staff recommended denial of the Variance, as they do not have the flexibility to approve according to current Town of Atherton Code. He noted this is why the Commission exists, as they do have the flexibility to make unique decisions.

Commissioner Waldron expressed support for the proposed variance including the solar panels.

Chair Oster agrees that the property is unique as it is a large piece of property with a channel running through it. She further noted that in addition to the physical characteristics of the property, that it is unique in that it is the only property where the property has been in the family for 100 years.

City Attorney Marc Hynes responded that what qualifies the property as unique is not on personalities of the owners.

Chair Oster noted and agreed.

**MOTION to approve the Variance to allow a 2,000 square feet second dwelling unit for full time habitation and pole mounted solar panels to be located from the front property line due to special circumstances of the property, shape/ size, use and heritage trees.**

**M/S Christensen/ Dobbie**

**Ayes: 5**

**Noes: 0**

### **Finding:**

1. There are special circumstances applicable to the property, including size, shape, topography, location or surroundings, where the strict application of the Zoning Title deprives such property of privileges enjoyed by other property in the vicinity and under identical classification.
2. The Variance is subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the

limitations upon other properties in the vicinity and zone in which such property is situated.

3. The Variance does not authorize a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

Chair Oster advised of the 10-day appeal period.

- 11. Conditional Use Permit- 73 Monte Vista-** Conditional Use Permit to allow a partially covered 9'-10" tall trellis to be located 88' from the front property line. Atherton Municipal Code Section 17.36.165

Deputy Town Planner presented the staff report and indicated staff support for the Conditional Use Permit.

#### OPEN PUBLIC HEARING

Douglas Goldman, 73 Monte Vista was available for questions.

Denis Keton, PGH commented that the trellis would look beautiful. He further noted that he had received a letter from the Steins, neighbors to 73 Monte Vista of their support for the proposed Conditional Use Permit.

#### CLOSE PUBLIC HEARING

Commissioner Waldron commended the owners for their efforts in using the solar panels.

Commissioner Dobbie also agreed with Commissioner Waldron.

Commissioner Christensen expressed support for the solar panels.

Commissioner Lively expressed support as well.

Chair Oster stated that the only place the panels are visible is from the neighbors. She further expressed support for the proposed Conditional Use Permit.

**MOTION to approve Conditional Use Permit to allow a partially covered 9'-10" tall trellis to be located 88' from the front property line.**

**M/S Lively/ Waldron**

**Ayes: 5**

**Noes: 0**

#### **Finding:**

1. The proposed 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 trellis will be located and its use conducted in a manner in accordance with the General Plan and the purposes of that plan and this title

**12. ADOURN**

M/S Waldron/ Dobbie to adjourn meeting at 8:07 p.m. Motion passed.

**Respectfully submitted,**

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Lisa Costa Sanders, Deputy Town Planner