

**PLANNING COMMISSION  
DRAFT MINUTES**

**TOWN OF ATHERTON  
April 23, 2014  
6:00pm  
COUNCIL CHAMBERS  
94 ASHFIELD ROAD**

**1. ROLL CALL**

**PRESENT:** Philip Lively  
Eric Lane (arrived 6:28)  
Paul Tonelli  
William Grindley  
Mary Beth Widmer

Assistant City Attorney Jennifer Larson, Deputy Town Planner Lisa Costa Sanders, Associate Planner Andrea Mardesich, and Town Arborist Kevin Kielty were present.

**2. APPROVAL OF MINUTES**

**MOTION to approve, as amended, the minutes of the March 26, 2014 meeting.  
M/S Grindley/Tonelli Ayes: 3 Noes: 0 Abstain: 1 (Widmer) Absent: 1 (Lane)**

**3. PUBLIC COMMENTS**

William Grindley, Laurel Street, spoke about the street repairs being done on Laurel Street. He was unable to get out of his driveway and wanted to know why he and his neighbors were not notified of the street work. Deputy Town Planner Lisa Costa Sanders commented that noticing is not required for street repairs but she would let the City Manager and Public Works Department know about the situation.

**4. NEW BUSINESS - none**

**5. COMMISSIONERS REPORTS**

Commissioner Grindley gave a status update on high-speed rail.

Commissioner Widmer noted that she attended a Menlo-Atherton Little League game and there were approximately 15 people in attendance.

Commissioner Lively reported that the CCAC met to discuss fundraising. They expect to select the architect by late June/early July. They would like to see ground broken by August 2015. Additionally, Commissioner Lively reported that the Rail Committee met to prepare a response for the CalTrain Electrification DEIR. The comments were submitted to CalTrain April 22, 2014.

**6. STAFF REPORTS**

Deputy Town Planner, Lisa Costa Sanders noted that Parker Avenue was discussed at the City Council meeting.

**PUBLIC HEARING**

**7. Heritage Tree Removal Permit – 96 Ridgeview Drive (APN 073-181-340) – Heritage Tree Removal Permit to allow the removal of five Heritage Trees (including two in the Right-of-Way).**

Associate Planner Andrea Mardesich presented the item.

Commissioner Widmer expressed concern about the changes in drainage since so much soil removal was necessary.

Christopher Yates, landscape architect, responded that once the contaminated soil is removed, the site will be filled in to the level that was shown on the submitted plans.

Michael Young, arborist, explained that taking the soil out will necessitate the removal of the named trees since the feeder roots are in the soil removal area.

Commissioner Grindley asked why, if the soil is contaminated, is the tree healthy. Michael Young answered that the toxin is not poisonous to trees. Michael Young added that to successfully replant the tree, the soil needs to be retained with the roots and that they could not remove the contaminated soil and save the trees.

Commissioner Lively asked if soil samples were taken near the trees. Michael Young answered that there were multiple layers of sampling done.

Mitch Zaninelli, Red Horse Construction, spoke about the toxic soil samples adjacent to the Beech tree. He noted that contamination was in the top 16-24 inches only.

Commissioner Tonelli asked why the contamination levels are different around different trees. Mitch Zaninelli answered that it depends on the chemical's usage. He explained that the chemical is not water soluble and will cling to soil where it is sprayed. Commissioner Grindley asked if the toxin could be downhill from the subject property. Mitch Zaninelli answered that it could be downhill, due to silting, and added that the neighbors have been notified about the contamination.

In response to a question from Commissioner Tonelli, Town Arborist Kevin Keilty explained that it is likely that the toxin resulted from treating roses near the Beech tree for aphids. He added that Beech trees are surface rooted and sensitive to transplant. Removing soil to a safe level would dry the roots out too much.

Commissioner Tonelli asked about the other four trees. Kevin Keilty answered that they are not great specimens. He noted that the applicants will be replacing the oak with a large specimen.

The Commission agreed that the contaminated soil cannot be allowed to remain and losing the trees is disappointing. Commissioner Grindley noted that he would vote in favor but with great reluctance.

**MOTION that the Planning Commission approve the Heritage Tree Removal Permit for the removal of five heritage trees, identified on the site plan as trees #41, #43, #49, #59, and #72 at 96 Ridgeview Drive subject to the conditions listed in the Heritage Tree Removal Certificate based on the reasons incorporated in the Staff Report.**

**M/S Tonelli/Widmer Ayes: 4\* Noes: 0 Abstain: 1 (Lane)**

*Findings:*

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

Chair Lively noted the 10-day appeal period.

8. **VariANCES – 70 Linden Avenue (APN 061-173-070)** – Variance to 1) allow basement lightwells to extend into the required side yard setback for the main residence and 2) allow a swimming pool to be located closer to the front and exterior side property lines than is allowed by the Atherton Municipal Code.

Associate Planner Andrea Mardesich presented the item.

Fu-Tung Cheng, designer, gave an overview of the project. He highlighted the desire to preserve the Thomas Church landscaping and explained the need for variances.

Commissioner Grindley asked for clarification on how the lightwells will provide ventilation. Fu-Tung Cheng answered that there will be grating above to let light and air through.

Commissioner Tonelli asked why the design couldn't be made to fit inside the setbacks. Fu-Tung Cheng answered that it would ruin the proportions and design of this modernist house. He added that he feels the request complies with the spirit and the wishes of the Town.

Chris DiCenzo, owner, spoke in support of the request and gave a background of the project as well as a history of the house and grounds.

Commissioner Lane commented that he believes in the design and would like to make it work. He expressed concern about the location of the pool.

Commissioner Widmer is concerned about the light wells and light pollution. Commissioner Lane pointed out that this project will create less light than a two-story house, which would be allowed by right on the site.

Commissioner Tonelli admires and respects the design and the desire to keep the house at one story and preserve the historic nature of the house.

Commissioner Lively noted that it is an unusual lot, located at the intersection of three streets. He likes one-story houses and is in favor of granting both variances.

**MOTION that the Planning Commission approve two Variances at 70 Linden Avenue as the subject property is uniquely limited due to being located at the corners of Catalpa Drive, Linden Avenue and Hawthorne Drive.**

**M/S Grindley/Lane                      Ayes: 4              Noes: 1 (Widmer)**

*Findings:*

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 owners in the vicinity and under identical land use and zoning classification.*

2. *Granting the Variances does 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. *Granting the Variances will not adversely affect the interest of the public or the interest of the residents and property owners in the vicinity of the premise in question.*
4. *The granting of the Variances is consistent with the objectives of the General Plan and the Zoning Code.*

Chair Lively noted the 10-day appeal period.

## **9. Ordinance Amending Atherton Municipal Code Chapter 17.40 Accessory Buildings and Structures**

Deputy Town Planner Lisa Costa Sanders introduced the item noting some of the items for discussion are staff-initiated changes to the code and others were suggested by residents, designers, and builders.

Associate Planner Andrea Mardesich presented the item. She explained the first change proposed to the ordinance: remove 8' setback requirement between Accessory Building and Accessory Structures, and between various Accessory Structures.

Commissioner Lively asked what minimum distance staff is proposing. Andrea Mardesich answered that staff is not proposing a minimum separation distance between structures.

Commissioner Grindley confirmed that the proposed change is to the setback between accessory buildings and accessory structures and between accessory structures and other accessory structures.

Commissioner Tonelli is concerned about allowing no minimum and having no design review.

### OPEN PUBLIC COMMENT

Joe Comartin, Polheumus Road, gave a brief history of the item and explained his practical experience with implementing the setback.

Commissioner Lane noted that this would not change the fundamental that these structures must be eight feet away from the house.

Joe Comartin added that design problems resulting from the setback are becoming more prevalent due to the increase in garden amenities.

Commissioner Lane commented that he doesn't want to spur unintended consequences. He wants to keep the intention safe but not overly restrictive.

Carol Flaherty, Camino de los Arboles, spoke in support of the proposal. She sees it as a practical and thoughtful change.

Associate Planner Andrea Mardesich explained the next suggested change: to allow small, uncovered structures to encroach into the required side and rear yard setbacks of the main residence. Andrea Mardesich explained that this change was proposed by staff primarily to allow air conditioning units to be next to a house and not closer to adjacent properties.

Commissioner Widmer expressed concern about dog runs and chicken coops. Andrea Mardesich explained that dog runs are already allowed anywhere on the property as fences under six feet tall are not restricted. She added that this proposed change is complaint based.

Commissioner Grindley asked about the noise regulations for pool equipment. Deputy Town Planner Lisa Costa Sanders answered that there is a decibel rating to be met as well as specific hours of operation for pool equipment.

Associate Planner Andrea Mardesich explained the remaining items proposed for amendment.

Chair Lively cautioned that a lot of time and money was spent on the update to the Town's Municipal Code and he is hesitant to jump in and change it in short order.

Commissioner Grindley noted that they are attempting to legislate design.

Commissioner Lane suggested that they could now see how the rules are implemented.

Chair Lively asked staff which of the changes are most important. Associate Town Planner Andrea Mardesich answered that the first two are most important to staff.

Carol Flaherty noted that people are waiting for these changes to be made and she sees them as trivial.

Joe Comartin spoke briefly about the benefits of the builder's roundtable. Chair Lively asked who the stakeholders of the group are. Mr. Comartin answered: the Building department, Planning department, residents and builders.

**MOTION to recommend the City council adopt the Ordinance amending Atherton Municipal Code Section 17.40.040 to add the words "or skylights" to section 17.40.040 so it reads: "Windows. Accessory buildings and structures may include windows and/or skylights, except that no window openings or skylights that face the side or rear property line shall be located over nine feet above the ground level."**

**M/S Grindley/Lane Ayes: 5 Noes: 0**

Chair Lively would like to cover only one of these items at each meeting moving forward.

**MOTION to continue the public hearing to the next Planning Commission meeting on May 28, 2014.**

**M/S Lane/Grindley Ayes: 5 Noes: 0**

**10. Ordinance Adding Atherton Municipal Code Chapter 17.58: Density Bonus and Other Concessions or Incentives.**

Deputy Town Planner, Lisa Costa Sanders presented the item. She explained that this is state law requirement that is applied to the Town of Atherton if the Town does nothing. It would be beneficial to adopt an Atherton-specific density bonus ordinance, as it would be applicable to the Town.

Commissioner Widmer expressed concern that the Planning Commission will be responsible for approving future density bonus applications. She asked several questions about the State's requirements for density bonuses.

Assistant City Attorney Jennifer Larson noted that the ordinance creates no new liability for the Town. She added that the Town is actually doing the bare minimum to comply with the state's requirements. If the Town does nothing, the Town is subject to the State's density bonus regulations. Jennifer Larson

commented that the ordinance compiles with the intent of the Town's ability to support affordable housing.

Chair Lively noted that adopting the ordinance will keep the approval of the Town's Housing Element on the fast track. He added that once the Housing Element is approved it will be good for seven years.

Commissioner Lane commented that the ordinance allows the Town to maintain the design of the town, which, in some cases, is very different from the rest of the state.

Commissioner Widmer expressed concern that the Planning Commission should not be the body that grants a density bonus. Assistant City Attorney Jennifer Larson addressed her concerns by stating that the Town has no intention to create a monetary fund to provide subsidies. It was explained that concessions might be in the form of reduced parking requirements or a streamlined building permit process.

Commissioner Widmer suggested that if an applicant proposed the waiving of Town fees, the Planning Commission does not have the authority to grant it. Deputy Town Planner Lisa Costa Sanders and Assistant City Attorney Jennifer Larson agreed that if that case arose, the Planning Commission would then make a recommendation to City Council. Assistant City Attorney Jennifer Larson explained that the Planning Commission serves as a quasi-judicial capacity and takes an advisory role to the Council.

Assistant City Attorney Jennifer Larson added that staff took great care to prepare the ordinance and researched other jurisdictions that share the same values as Atherton. Hillsborough has had this ordinance in place for several years and has not had any applications for density bonuses.

**MOTION that the Planning Commission recommend the City Council adopt, as amended, the ordinance entitled "An Ordinance of the City Council of the Town of Atherton Adding Chapter 17.58 to the Atherton Municipal Code."**

**M/S Grindley/Tonelli                      Ayes: 5                      Noes: 0**

**11. ADJOURN** – The meeting adjourned at 8:55pm.

Respectfully Submitted:

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Lisa Costa Sanders, Deputy Town Planner