



MEETING DATE: 4/03/06
ITEM NO. 9

COUNCIL AGENDA REPORT

DATE: March 27, 2006
TO: MAYOR AND TOWN COUNCIL
FROM: DEBRA J. FIGONE, TOWN MANAGER
SUBJECT: CONSIDER AN APPEAL OF A PLANNING COMMISSION DECISION DENYING DEMOLITION OF A PRE-1941 RESIDENCE, CONSTRUCTION OF A NEW SINGLE FAMILY RESIDENCE AND ACCESSORY STRUCTURE WITH REDUCED SETBACKS AND REQUEST FOR AN INTERPRETATION OF THE CELLAR POLICY ON PROPERTY ZONED R-1D. APN: 529-08-008 ARCHITECTURE AND SITE APPLICATION S-05-031 PROPERTY LOCATION: 54 CHESTER ST. OWNER/APPLICANT/APPELLANT: ANNA HUYNH AND KEVIN CRANE

RECOMMENDATION:

- 1. Open and hold the public hearing and receive public testimony.
2. Close the public hearing.
3. Uphold the Planning Commission's decision and deny Architecture and Site Application S-05-16 (requires motion).
4. Refer to the Town Attorney for the preparation of the appropriate resolution.

If the Town Council determines that the appeal should be granted and that the Planning Commission's decision should be reversed or modified:

- 1. The Council needs to find one or more of the following:
(1) Where there was error or abuse of discretion on the part of the Planning Commission; or
(2) The new information that was submitted to the Council during the appeal process that was not readily and reasonably available for submission to the Commission; or

PREPARED BY: BUD N. LORTZ, DIRECTOR OF COMMUNITY DEVELOPMENT

Reviewed by: Assistant Town Manager Attorney Clerk Finance
Community Development Revised: 3/27/06 2:18 pm

- (3) An issue or policy over which the Commission did not have discretion to modify or address, but which is vested in the Council for modification or decision.
2. If the predominant reason for modifying or reversing the decision of the Planning Commission is new information as defined in subsection (2) above, it is the Town's policy that the application be returned to the Commission for review in light of the new information unless the new information has a minimal effect on the application.
3. If the appeal is approved, (A) make the required findings and considerations (Attachment 1) and (B) approve the application subject to the recommended conditions of approval (Attachment 2).
4. Refer to the Town Attorney for preparation of the appropriate resolution.

PROJECT SUMMARY

The applicant is requesting approval to demolish a pre-1941 residence, construct a new single family residence and accessory structure and is requesting an interpretation of the Town's Cellar Policy. The applicant's letter of justification (Exhibit C of Attachment 6) and development plans (Attachment 8) are attached. The existing one story, 1,310 square foot residence is located at 54 Chester St. on a 5,500 square foot lot. The proposed two story Craftsman style home is 1,903 square feet with a 252 square foot detached garage and a 1,726 square foot cellar.

DISCUSSION

The main issues for the Council's consideration and discussion are as follows:

Design and Neighborhood Compatibility

Chester Street is comprised of one and two story homes with a variety of architectural styles. The proposed Craftsman style home is compatible with the other styles in the neighborhood. A two-story home is compatible with the neighborhood as there are seven other two-story homes in the neighborhood as listed in Table 1. The proposed house size (1,903 s.f.) and floor area ratio (FAR, .35) are compatible with the neighborhood. The average home size in the neighborhood is 1,731 square feet. There are five other homes that are larger than the proposed home and two homes that have a larger FAR.

The Town's consulting architect reviewed the project and concluded that the design is good and provided two suggestions (Exhibit D of Attachment 6). The first is to consider wood caps and bases at the front porch columns, which the applicant incorporated in the design. The second suggestion is to add divided lights to the double hung windows, which the applicant declined. The Town's consulting architect noted that the two suggestions would enhance the design, but were not absolutely essential to a good design.

Staff carefully evaluated the architecture and compatibility as discussed in Section 2 of the Planning Commission report (Attachment 6) and concluded that the home is well designed, the architecture is well executed and the mass, scale and compatibility of the home satisfies the Residential Development Standards.

Table 1 shows the house size, FAR and lot size of the neighboring properties.

Table 1

House Size Comparison for 54 Chester Street				
APN	Address	House Size	Lot Size	FAR
529-08-004	46 Chester St.	1,039	5,500	.19
529-08-005	48 Chester St.	936	5,500	.17
529-08-006	50 Chester St.	1,397	5,500	.25
529-08-007	52 Chester St.	1,753	5,500	.32
529-08-009	56 Chester St.	1,882	5,500	.34
529-08-010	58 Chester St.	1,925	5,500	.35
529-08-011	62 Chester St.	1,921	5,500	.35
529-08-012	64 Chester St.	1,966	5,500	.36
529-06-059	41 Chester St.	1,768	4,514	.39
529-06-058	46 Chester St.	1,319	6,000	.22
529-06-057	47 Chester St.	1,991	5,800	.34
529-06-056	49 Chester St.	1,280	5,600	.23
529-06-044	497 Bird Ave.	3,238	10,890	.30
529-06-043	59 Chester St.	1,739	5,940	.29
529-06-019	499 Wright St.	1,816	7,040	.26
<i>Average</i>		1,731		.29
529-08-008 (proposed project)	54 Chester St.	*1,903 sq. ft.	5,500	.35

**Square footage of propose home if the project is approved with entire cellar not counted in the square footage of house.*

Cellar Policy Interpretation

Staff forwarded this application to the Planning Commission because the cellar extends beyond what has traditionally been considered the building footprint. The total square footage of the cellar is 1,726 square feet. 1,411 square feet of the cellar is beneath the footprint of the home and 315 square feet of the cellar is beneath the attached deck located at the rear of the home.

Applicant's Request. The applicant requested that the Planning Commission make an interpretation that the attached deck is part of the building footprint. The applicant points out that the Town's Cellar Policy allows a cellar to be located underneath the building footprint which includes the

garage. The applicant believes that an attached deck should be considered part of the building footprint like an attached garage because the attached deck has the same impact as an attached garage. Further, the applicant states that the proposed cellar will not be visible to the neighbors and does not change the look of the house.

Staff's Interpretation. The Town's Cellar Policy states that cellars and basements (except light and exit wells) shall not extend beyond the building footprint (Exhibit G and H of Attachment 6). Historically, staff has not considered unenclosed decks to be part of the building footprint. The proposed home is 1,903 square feet, which is also the maximum allowed square footage for the site.

PLANNING COMMISSION

The Planning Commission considered this project on February 8, 2006 and denied the project. The verbatim meeting minutes (Attachment 5) and staff report (Attachment 6) are attached. The Planning Commission heard public testimony and discussed the cellar policy interpretation, mass and scale of the house and neighborhood compatibility. Originally, the Commission continued the item and directed the applicant to redesign the home, but the applicant requested a denial.

Public Testimony

Brian Cullman, 497 Bird Ave. Mr. Cullman supports the proposed project and states that the project is a nice addition to the neighborhood and also supports the basement underneath the deck.

Planning Commission Discussion

Interpretation of Policy. The Planning Commission supports the existing interpretation of the cellar policy. The Commission stated that cellars underneath the deck should count as part of the floor area. If the applicant proceeds with the current plan, the cellar underneath the deck will cause the proposal to exceed the allowed floor area by 315 square feet. The Planning Commission indicated that it is not inclined to support a home that is over the allowed floor area due to several issues that will be discussed in the following sections.

General Plan Policy Regarding Cellars. The Commission discussed General Plan policy L.P.2.3 which states, "Encourage basements and cellars to provide "hidden" square feet in-lieu of visible mass." The Commission concluded that the proposal does not meet the intent of this General Plan policy.

Mass and Scale. The Commission is concerned with the mass and scale, visibility, intensity, shadow impacts, setbacks and neighborhood compatibility. The Commission stated that the proposed home is too intense for the site and not compatible with the neighborhood. They directed the applicant to reduce the square footage on the second story, reduce the bulk of the house and increase the setbacks so that the house would be more compatible with the other homes in the area. The Commission acknowledged that the design of the house is acceptable.

APPEAL

The applicant appealed the Planning Commission's decision on February 17, 2006 (Attachment 3). The applicant asserts that the Planning Commission erred because they did not fully understand how the mass, scale and compatibility of the plan fits into the neighborhood (Attachment 4).

NEIGHBOR CONCERN

On March 29, 2006, staff received a letter from Elizabeth Ansnes, the property owner of 56 Chester St. and neighbor directly west of the site (Attachment 7). Ms. Ansnes is concerned with the location of the proposed home to hers and the shadows cast on her home that will limit her access to morning sun. In addition, the proposed side dormer presents a privacy issue for Ms. Ansnes.

The applicant states that he discussed the project with Ms. Ansnes approximately two years ago, in the initial stages of design. According to the applicant, Ms. Ansnes did not have an issue with the proposed home. Ms. Ansnes' concerns were brought to staff's attention after the Planning Commission hearing.

Discussion

The proposed location of the house meets all required setbacks. The adjacent homes on the north side of the street have their driveways located towards the west and home towards the east. The proposed home has a detached garage that is located in the rear of the site with the driveway on the east. Although the driveway location and detached garage is unique compared with the adjacent homes, staff determined that a detached garage helps to minimize the mass and scale of the proposed home. The shadows cast by the proposed home will primarily impact the neighbor to the west during the winter months and has less impact through the remainder of the year.

STORY POLES

On March 30, 2006, the applicant advised staff that the story poles are approximately 1.5 feet closer to the west property line than they should be. The proposed home is 6.5 feet setback from the property line and the story poles are located approximately 5 feet from the property line. The required setback per the Town Code is 5'.

CONCLUSION:

The Planning Commission denied the application due to the mass and scale, neighborhood compatibility issues and overall intensity of the proposed home on the project site. The Council should evaluate and determine if the proposed cellar may extend under the deck. The Council should also consider the mass and scale of the proposed home and determine if the proposed home is appropriate for the site and compatible with the neighborhood.

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MAYOR AND TOWN COUNCIL

RE: APPEAL OF 54 CHESTER STREET

March 30, 2006

ENVIRONMENTAL ASSESSMENT:

The project is Categorically Exempt pursuant to Section 15303 of the State Environmental Guidelines as adopted by the Town.

FISCAL IMPACT: None

Attachments:

1. Required Findings and Considerations (four pages)
2. Recommended Conditions of Approval (five pages)
3. Notice of Appeal (two pages) received on February 17, 2006
4. Letter from applicant dated March 22, 2006 (four pages)
5. Verbatim Meeting Minutes from Planning Commission meeting for February 8, 2006 (10 pages)
6. Report to the Planning Commission dated February 2, 2006 (minus Exhibits A, B and I)
7. Letter from Elizabeth Ansnes dated March 27, 2006 (two pages)
8. Development Plans (11 pages), received on December 1, 2005

Distribution:

Kevin Crane and Anna Huynh, 54 Chester Street, Los Gatos, CA 95032

BNL:JSG:mdc

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REQUIRED FINDINGS AND CONSIDERATIONS FOR

54 Chester Street

Architecture and Site Application S-05-031

Requesting approval to demolish a pre-1941 residence, construct a new single family residence and accessory structure with reduced setbacks and request for and interpretation of the cellar policy on property zoned R-1D. APN: 529-08-008
PROPERTY OWNER: Anna Huynh and Kevin Crane

FINDINGS

- The project is Categorically Exempt pursuant to Section 15303 of the State Environmental Guidelines as adopted by the Town.

CONSIDERATIONS

- As required by Section 29.20.150 of the Town Code for Architecture and Site applications:

The deciding body shall consider all relevant matter including, but not limited to, the following:

- (1) *Considerations relating to traffic safety and traffic congestion.* The effect of the site development plan on traffic conditions on abutting streets; the layout of the site with respect to locations and dimensions of vehicular and pedestrian entrances, exits, drives, and walkways; the adequacy of off-street parking facilities to prevent traffic congestion; the location, arrangement, and dimension of truck loading and unloading facilities; the circulation pattern within the boundaries of the development, and the surfacing, lighting and handicapped accessibility of off-street parking facilities.
 - A. Any project or development that will add traffic to roadways and critical intersections shall be analyzed, and a determination made on the following matters:
 1. The ability of critical roadways and major intersections to accommodate existing traffic;
 2. Increased traffic estimated for approved developments not yet occupied; and
 3. Regional traffic growth and traffic anticipated for the proposed project one (1) year after occupancy.

B. The deciding body shall review the application for traffic roadway/intersection capacity and make one (1) of the following determinations:

1. The project will not impact any roadways and/or intersections causing the roadways and/or intersections to exceed their available capacities.
2. The project will impact a roadway(s) and/or intersection(s) causing the roadway(s) and/or intersection(s) to exceed their available capacities.

Any project receiving Town determination subsection (1)b.1. may proceed. Any project receiving Town determination subsection (1)b.2. must be modified or denied if the deciding body determines that the impact is unacceptable. In determining the acceptability of a traffic impact, the deciding body shall consider if the project's benefits to the community override the traffic impacts as determined by specific sections from the general plan and any applicable specific plan.

- (2) *Considerations relating to outdoor advertising.* The number, location, color, size, height, lighting and landscaping of outdoor advertising signs and structures in relation to the creation of traffic hazards and the appearance and harmony with adjacent development. Specialized lighting and sign systems may be used to distinguish special areas or neighborhoods such as the downtown area and Los Gatos Boulevard.
- (3) *Considerations relating to landscaping.* The location, height, and materials of walls, fences, hedges and screen plantings to insure harmony with adjacent development or to conceal storage areas, utility installations, parking lots or unsightly development; the planting of ground cover or other surfacing to prevent dust and erosion; and the unnecessary destruction of existing healthy trees. Emphasize the use of planter boxes with seasonal flowers to add color and atmosphere to the central business district. Trees and plants shall be approved by the Director of Parks, Forestry and Maintenance Services for the purpose of meeting special criteria, including climatic conditions, maintenance, year-round versus seasonal color change (blossom, summer foliage, autumn color), special branching effects and other considerations.
- (4) *Considerations relating to site layout.* The orientation and location of buildings and open spaces in relation to the physical characteristics of the site and the character of the neighborhood; and the appearance and harmony of the buildings with adjacent development.

Buildings should strengthen the form and image of the neighborhood (e.g.

downtown, Los Gatos Boulevard, etc.). Buildings should maximize preservation of solar access. In the downtown, mid-block pedestrian arcades linking Santa Cruz Avenue with existing and new parking facilities shall be encouraged, and shall include such crime prevention elements as good sight lines and lighting systems.

- (5) *Considerations relating to drainage.* The effect of the site development plan on the adequacy of storm and surface water drainage.
- (6) *Considerations relating to the exterior architectural design of buildings and structures.* The effect of the height, width, shape and exterior construction and design of buildings and structures as such factors relate to the existing and future character of the neighborhood and purposes of the zone in which they are situated, and the purposes of architecture and site approval. Consistency and compatibility shall be encouraged in scale, massing, materials, color, texture, reflectivity, openings and other details.
- (7) *Considerations relating to lighting and street furniture.* Streets, walkways, and building lighting should be designed so as to strengthen and reinforce the image of the Town. Street furniture and equipment, such as lamp standards, traffic signals, fire hydrants, street signs, telephones, mail boxes, refuse receptacles, bus shelters, drinking fountains, planters, kiosks, flag poles and other elements of the street environment should be designated and selected so as to strengthen and reinforce the Town image.
- (8) *Considerations relating to access for physically disabled persons.* The adequacy of the site development plan for providing accessibility and adaptability for physically disabled persons. Any improvements to a nonresidential building where the total valuation of alterations, structural repairs or additions exceeds a threshold value established by resolution of the Town Council, shall require the building to be modified to meet the accessibility requirements of title 24 of the California Administrative Code adaptability and accessibility. In addition to retail, personal services and health care services are not allowable uses on nonaccessible floors in new nonresidential buildings. Any change of use to retail, health care, or personal service on a nonaccessible floor in a nonresidential building shall require that floor to be accessible to physically disabled persons pursuant to the accessibility requirements of title 24 of the California Administrative Code and shall not qualify the building for unreasonable hardship exemption from meeting any of those requirements. This provision does not effect lawful uses in existence prior to the enactment of this chapter. All new residential developments shall comply with the Town's adaptability and accessibility requirements for physically disabled persons established by resolution.
- (9) *Considerations relating to the location of a hazardous waste management facility.* A hazardous waste facility shall not be located closer than five hundred (500) feet to

any residentially zoned or used property or any property then being used as a public or private school primarily educating persons under the age of eighteen (18). An application for such a facility will require an environmental impact report, which may be focused through the initial study process.

- As required by Section 29.10.09030(e) of the Town Code for the demolition of a single family residence:
 1. The Town's housing stock will be maintained in that the house will be replaced.
 2. The structure has no historic significance.
 3. The property owner has no desire to maintain the structure.
 4. The economic utility of the structure is in fair condition.

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CONDITIONS OF APPROVAL

54 Chester Street

Architecture and Site Application S-05-031

Requesting approval to demolish a pre-1941 residence, construct a new single family residence and accessory structure with reduced setbacks and request for and interpretation of the cellar policy on property zoned R-1D. APN: 529-08-008

PROPERTY OWNER: Anna Huynh and Kevin Crane

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:
(Planning Division)

1. APPROVAL: This application shall be completed in accordance with all of the conditions of approval listed below and in substantial compliance with the development plans dated December 1, 2005. Any changes or modifications made to the approved plans shall be approved by the Director of Community Development, Development Review Committee or the Planning Commission, depending on the scope of the change(s).
2. EXPIRATION: Zoning approval will expire two years from the approval date pursuant to Section 29.20.320 of the Town Code, unless the approval has been vested.
3. COMPLIANCE MEMORANDUM: The applicant shall prepare and submit a memorandum with the building permit, detailing how each of these Conditions of Approval have or will be addressed.
4. TREE REMOVAL PERMIT. A Tree Removal Permit shall be obtained prior to the issuance of a Building, Grading or Encroachment Permit.
5. NEW TREES. The new trees to be planted shall be double-staked, using rubber tree ties and shall be planted prior to occupancy.
6. PROTECTIVE FENCING. Prior to any construction or building permits being issued, the applicant shall install the required protective fencing.
7. ARBORIST RECOMMENDATIONS: The Consulting Arborist recommendations dated November 26, 2005 must be strictly adhered to, prior to and throughout construction.
8. SALVAGING OF MATERIALS. At least ten days prior to the date of demolition, the developer shall provide to the Town a written notice and an advertisement published in a newspaper of general circulation, regarding the availability of materials for salvage, including the name and telephone number of a contact person. No salvaging of material shall occur until a demolition permit has been approved by the Community Development Department.
9. RECYCLING. All wood, metal, glass and aluminum materials generated from the demolished structure shall be deposited to a company which will recycle the materials. Receipts from the company(s) accepting these materials, noting type and weight of material, shall be submitted to the Town prior to the Town's demolition inspection.

(Building Section)

10. PERMITS REQUIRED: A building permit shall be required for the addition and remodel of the existing single family residence. Separate permits are required for site electrical, mechanical, and plumbing work.

11. **CONDITIONS OF APPROVAL:** The Conditions of Approval must be blue-lined in full on the cover sheet of the construction plans.
12. **SIZE OF PLANS:** Four sets of construction plans, maximum size 24" x 36."
13. **SOILS REPORT:** A soils report, prepared to the satisfaction of the Building Official, containing foundation and retaining wall design recommendations, shall be submitted with the building permit application. This report shall be prepared by a licensed civil engineer specializing in soils mechanics. **ALTERNATE:** Design the foundation for an allowable soils 1,000 psf design pressure. (Uniform Building Code Volume 2 - Section 1805)
14. **FOUNDATION INSPECTIONS:** A pad certificate prepared by a licensed civil engineer or land surveyor may be required to be submitted to the project building inspector at foundation inspection. This certificate shall certify compliance with the recommendations as specified in the soils report; and, the building pad elevation, on-site retaining wall locations and elevations are prepared according to approved plans. Horizontal and vertical controls shall be set and certified by a licensed surveyor or registered civil engineer for the following items:
 1. Building pad elevation
 2. Finish floor elevation
 3. Foundation corner locations
15. **TITLE 24 ENERGY COMPLIANCE:** California Title 24 Energy Compliance forms CF-1R and MF-1R must be blue-lined on the plans.
16. **TOWN FIREPLACE STANDARDS:** New wood burning fireplaces shall be an EPA Phase II approved appliance as per Town Ordinance 1905. Tree limbs shall be cut within 10-feet of chimneys.
17. **SPECIAL INSPECTIONS:** When a special inspection is required by UBC Section 1701, the architect or engineer of record shall prepare an inspection program that shall be submitted to the Building Official for approval prior to issuance of the building permit. The Town Special Inspection form must be completely filled-out, signed by all requested parties and be blue-lined on the construction plans. Special Inspection forms are available from the Building Division Service Counter or online at www.losgatosca.gov.
18. **NONPOINT SOURCE POLLUTION STANDARDS:** The Town standard Santa Clara Valley Nonpoint Source Pollution Control Program shall be part of the plan submittal as the second page. The specification sheet is available at the Building Division Service Counter for a fee of \$2 or at San Jose Blue Print.
19. **APPROVALS REQUIRED:** The project requires the following agencies approval before issuing a building permit:
 1. Community Development: Judie Gilli at 399-5702
 2. Engineering Department: Fletcher Parsons at 395-3460
 3. Parks & Public Works Department: (408) 399-5777
 4. Santa Clara County Fire Department: (408) 378-4010
 5. West Valley Sanitation District: (408) 378-2407
 6. Local School District: (Contact the Town Building Service Counter for the appropriate school district and to obtain the school form.)

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Architecture and Site Application #S-05-031

TO THE SATISFACTION OF THE DIRECTOR OF PARKS AND PUBLIC WORKS:
(Engineering Division)

20. CARPORT. Engineering shall confirm carport driveability prior to issuance of a building permit.
21. GENERAL. All public improvements shall be made according to the latest adopted Town Standard Drawings and the Town Standard Specifications. All work shall conform to the applicable Town ordinances. The adjacent public right-of-way shall be kept clear of all job related dirt and debris at the end of the day. Dirt and debris shall not be washed into storm drainage facilities. The storing of goods and materials on the sidewalk and/or the street will not be allowed unless a special permit is issued. The developer's representative in charge shall be at the job site during all working hours. Failure to maintain the public right-of-way according to this condition may result in the Town performing the required maintenance at the developer's expense.
22. ENCROACHMENT PERMIT. All work in the public right-of-way will require a Construction Encroachment Permit. All work over \$5,000 will require construction security.
23. PUBLIC WORKS INSPECTIONS. The developer or his representative shall notify the Engineering Inspector at least twenty-four (24) hours before starting any work pertaining to on-site drainage facilities, grading or paving, and all work in the Town's right-of-way. Failure to do so will result in rejection of work that went on without inspection.
24. CONSTRUCTION STREET PARKING. No vehicle having a manufacturer's rated gross vehicle weight exceeding ten thousand (10,000) pounds shall be allowed to park on the portion of a street which abuts property in a residential zone without prior approval from the Town Engineer (§ 15.40.070).
25. SITE DRAINAGE. Rainwater leaders shall be discharged to splash blocks. No through curb drains will be allowed. Any sump outfall shall be directed to a 5' x 5' x 5' dry well located a minimum of 10-feet from property line.
26. NPDES. All pavement outside of the structure footprint shall be pervious.
27. SILT AND MUD IN PUBLIC RIGHT-OF-WAY. It is the responsibility of contractor and home owner to make sure that all dirt tracked into the public right-of-way is cleaned up on a daily basis. Mud, silt, concrete and other construction debris SHALL NOT be washed into the Town's storm drains.
28. UTILITIES. The developer shall install all utility services, including telephone, electric power and all other communications lines underground, as required by Town Code §27.50.015(b). All new utility services shall be placed underground. Underground conduit shall be provided for cable television service.
29. RESTORATION OF PUBLIC IMPROVEMENTS. The developer shall repair or replace all existing improvements not designated for removal that are damaged or removed because of developer's operations. Improvements such as, but not limited to: curbs, gutters, sidewalks, driveways, signs, pavements, raised pavement markers, thermoplastic pavement markings, etc. shall be repaired and replaced to a condition equal to or better than the original condition. Existing improvement to be repaired or replaced shall be at the direction of the Engineering Construction Inspector, and shall comply with all Title 24 Disabled Access

- provisions. Developer shall request a walk-through with the Engineering Construction Inspector before the start of construction to verify existing conditions.
30. SIDEWALK REPAIR. The developer shall repair and replace to existing Town standards any sidewalk damaged now or during construction of this project. Sidewalk repair shall match existing color, texture and design, and shall be constructed per Town Standard Details. The limits of sidewalk repair will be determined by the Engineering Construction Inspector during the construction phase of the project.
 31. CURB AND GUTTER. The developer shall repair and replace to existing Town standards any curb and gutter damaged now or during construction of this project. New curb and gutter shall be constructed per Town Standard Details. The limits of curb and gutter repair will be determined by the Engineering Construction Inspector during the construction phase of the project.
 32. DRIVEWAY APPROACH. The developer shall install one (1) Town standard residential approach. The new driveway approach shall be constructed per Town Standard Details.
 33. AS-BUILT PLANS. After completion of the construction of all work, the original plans shall have all changes (change orders and field changes) clearly marked. The "as-built" plans shall again be signed and "wet-stamped" by the civil engineer who prepared the plans, attesting to the changes. The original "as-built" plans shall be review and approved the Engineering Inspector. A Mylar and AutoCAD disk of the approved "as-built" plans shall be provided to the Town before the Faithful Performance Security or Occupancy Permit is released. The AutoCAD file shall include only the following information and shall conform to the layer naming convention: a) Building Outline, Layer: BLDG-OUTLINE; b) Driveway, Layer: DRIVEWAY; c) Retaining Wall, Layer: RETAINING WALL; d) Swimming Pool, Layer: SWIMMING-POOL; e) Tennis Court, Layer: TENNIS-COURT; f) Property Line, Layer: PROPERTY-LINE; g) Contours, Layer: NEWCONTOUR. All as-built digital files must be on the same coordinate basis as the Town's survey control network and shall be submitted in AutoCAD version 2000 or higher.
 34. SANITARY SEWER LATERAL. Sanitary sewer laterals are televised by West Valley Sanitation District and approved by the Town of Los Gatos before they are used or reused. Install a sanitary sewer lateral clean-out at the property line.
 35. SANITARY SEWER BACKWATER VALVE. Drainage piping serving fixtures which have flood level rims less than twelve (12) inches (304.8 mm) above the elevation of the next upstream manhole and/or flushing inlet cover at the public or private sewer system serving such drainage piping shall be protected from backflow of sewage by installing an approved type backwater valve. Fixtures above such elevation shall not discharge through the backwater valve, unless first approved by the Administrative (Sec. 6.50.025). The Town shall not incur any liability or responsibility for damage resulting from a sewer overflow where the property owner or other person has failed to install a backwater valve, as defined section 103(e) of the Uniform Plumbing Code adopted by section 6.50.010 of the Town Code and maintain such device in a functional operating condition. Evidence of West Valley Sanitation District's decision on whether a backwater device is needed shall be provided prior to issuance of a building permit.
 36. CONSTRUCTION NOISE. Between the hours of 8:00 a.m. to 8:00 p.m., weekdays and 9:00

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Architecture and Site Application #S-05-031

a.m. to 7:00 p.m. weekends and holidays, construction, alteration or repair activities shall be allowed. No individual piece of equipment shall produce a noise level exceeding eighty-five (85) dBA at twenty-five (25) feet. If the device is located within a structure on the property, the measurement shall be made at distances as close to twenty-five (25) feet from the device as possible. The noise level at any point outside of the property plane shall not exceed eighty-five (85) dBA.

37. HAULING OF SOIL. Hauling of soil on or off-site shall not occur during the morning or evening peak periods (between 7:00 a.m. and 9:00 a.m. and between 4:00 p.m. and 6:00 p.m.). Prior to the issuance of a building permit, the developer shall work with the Town Building and Engineering Department Engineering Inspectors to devise a traffic control plan to ensure safe and efficient traffic flow under periods when soil is hauled on or off the project site. This may include, but is not limited to provisions for the developer/owner to place construction notification signs noting the dates and time of construction and hauling activities, or providing additional traffic control. Cover all trucks hauling soil, sand, and other loose debris or require all trucks to maintain at least two feet of freeboard.

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FILING FEES
 \$272.00 Residential
 \$1089.00 per Commercial, Multi-family or Tentative Map Appeal

Town of Los Gatos
 Office of the Town Clerk
 110 E. Main St., Los Gatos CA 95030

CC: CDD/MGT

FEB 17 2006

APPEAL OF PLANNING COMMISSION DECISION

I, the undersigned, do hereby appeal a decision of the Planning Commission as follows: (PLEASE TYPE OR PRINT NEATLY)

DATE OF PLANNING COMMISSION DECISION: Feb 8, 2006
 PROJECT / APPLICATION NO: S-05-031
 ADDRESS LOCATION: 54 CHESTER ST, LOS GATOS

TOWN CLERK
 JOSE CRANE #4004
 \$772.00

Pursuant to the Town Code, the Town Council may only grant an appeal of a Planning Commission decision in most matters if the Council finds that one of three (3) reasons exist for granting the appeal by a vote of at least three (3) Councilmembers. Therefore, please specify how one of those reasons exist in the appeal:

1. The Planning Commission erred or abused its discretion because SEE ATTACHED
- _____ ; OR
2. There is new information that was not reasonably available at the time of the Planning Commission decision, which is _____

 _____ (please attach the new information if possible); OR
3. The Planning Commission did not have discretion to modify or address the following policy or issue that is vested in the Town Council: _____

IF MORE SPACE IS NEEDED, PLEASE ATTACH ADDITIONAL SHEETS.

IMPORTANT:

1. Appellant is responsible for fees for transcription of minutes.
2. Appeal must be filed within ten (10) calendar days of Planning Commission Decision accompanied by the required filing fee. Deadline is 5:00 p.m. on the 10th day following the decision. If the 10th day is a Saturday, Sunday, or Town holiday; then it may be filed on the workday immediately following the 10th day, usually a Monday.
3. The Town Clerk will set the hearing within 56 days of the date of the Planning Commission Decision (Town Ordinance No. 1967)
4. An appeal regarding a Change of Zone application or a subdivision map only must be filed within the time limit specified in the Zoning or Subdivision Code, as applicable, which is different from other appeals.
5. Once filed, the appeal will be heard by the Town Council.
6. If the reason for granting an appeal is the receipt of new information, the application will usually be returned to the Planning Commission for reconsideration.

PRINT NAME: KEVIN CRANE + ANNA HUYNH SIGNATURE: Kevin Crane + Anna Huynh
 DATE: FEB 17, 2006 ADDRESS: 54 CHESTER ST.
 PHONE: 408-395-0029 LOS GATOS, CA 95032

*** OFFICIAL USE ONLY ***

DATE OF PUBLIC HEARING: ~ 4/3/06 S CONFIRMATION LETTER SENT: Date: _____
Pending Planning Department Confirmation TO APPLICANT & APPELLANT BY: _____
 DATE TO SEND PUBLICATION: _____ DATE OF PUBLICATION: _____

Kevin Crane and Anna Huynh
54 Chester Street
Los Gatos
Project: S-05-031

1. The Planning Commission erred or abused its discretion because the Commission did not fully understand and consider how the mass, scale and compatibility of the plan fits into the neighborhood. The design plan has met all the town standards, except for the cellar under the deck portion, according to the town's planning staff, the town's architect and the town's historical commission. They also agreed that the plan does fit in the neighborhood. There was no public disagreement from our neighbors about our plan designs.

March 22, 2005

Town Council Appeal
54 Chester Street
Los Gatos, CA 95032

Dear Town Council,

We are writing to request for your approval of the house design of our resident on 54 Chester Street.

As an introductory background, the project started out as a remodel. Our resident was built in 1920's and is, therefore, classified as a historical resident even though there is no distinguish architectural aspects to it. We have met with the historical committee a few times to ensure that the new design of the house meets the historical committee's requirements. When we submitted the drawings to the planning department for review and approval, they recommended us to submit a demolition application because the house remodel may go under the 50% savings requirement. We followed the planning department's recommendation and submitted the demolition application. Per the planning department's requirement, we also hired a structural engineer, whom found the structure of the house was too unsound to be saved. In addition, we paid the fees for the town architect to review the architecture drawing. The town architect had only two minor comments about window design and adjusting the shapes of the columns.

At this step of the process we thought we can obtain a building permit as a next step, as we thought we have met all the town's standards and guidelines, but we were notified that the drawings did not follow the town's planning staff's interpretation of the cellar policy. We felt that we had spent many months working with the town to arrive with a workable design of the resident so it was a huge disappointment for us to learn the news. But we decided to go ahead and request for approval from the planning commission and now the town council's.

I will now address the Planning Commission concerns. Our house plans were denied due to the following concerns that will be addressed individually. But first I would like to address my understanding of the roles and responsibility of the planning commission.

The town council passed Resolution 2002-25 which governs the design review process and clarifying the roles and responsibilities of the town's planning commission and town's architectural consultant.

A. The planning commission must make one of the following findings to modify the consulting architect's recommendation.

- *That the recommendations of the consulting architect were made based on erroneous information provided by the applicant.*
- *That the consulting architect made a mistake of fact.*

- *That there is compelling evidence, received through public testimony that there is a privacy or other neighborhood impact to warrant plan modifications.*

The planning commission desires to make modifications to our house plans, but did not find any of the above findings to overrule the architect's opinion that our house plans are fine. We did not provide erroneous information to the consulting architect, the consulting architect did not make a mistake of fact, and there is no compelling evidence of neighborhood impact, but on the contrary of testimony of neighborhood support.

C. Rather than focus on the design detail of proposed projects, the planning commission should look for trends in the design of proposed projects that reflect the need for changes to the design standards.

Our house plans met the town's design standards for all the following concerns of the planning commission, except for one item (cellar). If the planning commission has concerns about the design standards of our plans, they need to change the standards for all architectural plans submittals not just single out the one plan they happen to see every now and then. Hundreds of plans are submitted and approved by the planning staff that meets the town standards without the planning commission ever seeing them.

Our plans were review by the historical committee, by the town's planning staff, and by the town's architect. We have addressed all their concerns and have incorporated their recommendations into our house plans.

To address the concerns of the planning commission:

1. Bulk and Mass –
 - a. The house plans are for a two story house; the second story is set back from the first story and has two dormers on the side. The height of the house from the street is 26 feet, while the standards are set at 30 feet. The highest point of our house at 26 feet is the same height as our neighbor's house on 56 Chester, but the 26 feet of height is less than other two stories houses in the neighborhood, such as houses on 58 and 41 Chester Street.
 - b. The roof line from the street drops down and becomes smaller on the back half of the house where it is a really a clerestory. It only covers half of the first floor footage and it is not visible from the front street.
 - c. We took into consideration to lessen the mass of the house by putting the garage in the back of the lot instead in front of the lot; thus creating less mass facing the street. This is compared to the neighbor at 52 Chester who has a two car garage in front and which takes up 40 feet of the 50 foot lot width towards the street. Our plans have only 30 feet of mass facing the street.
 - d. The above ground square footage of the house design is 1903 square feet. This meets the town's standards for FAR for that lot size (5500 sf).

- e. There are many houses in the neighborhood, specifically on Bird and Wright Avenue, where the houses at or exceed the current FAR for the lot size. The development behind Highway 9 on Boyer Lane where the houses of 2600 sq feet were built on lot sizes of 4,000 in 2001.
 - f. In summary, our house is designed to minimize the bulk and mass at or beyond the town standards.
2. Shadowing – Based on the above explanation of bulk and mass, our house plans create less of a shadowing effect than the neighbor’s house on us (56 Chester). The plans also create less shadowing than other two story houses in the neighborhood.
3. Visibility – The visibility of the house plans were kept to the minimum. This is explained the bulk and mass section.
4. Setback – The current house plans call out for 7 foot setback on one side with one exception where a small 3 foot section of the wall is located with 6 foot setback. The other side of the house’s setback is 10 feet. The town standards for setbacks is 5 feet. We have met or exceeded the town’s standards.
5. Character – The character of the house plans resemble our current house character (1920 craftsman style). The look of the house does fits into the character of the neighborhood. The town’s architect and the planning staff both have agreed that the character and look of the house plans are perfect for the neighborhood. There have been several plans approved in our neighborhood that truly do not fit the neighborhood character. For example, houses on 493A/B Wright Avenue were built two or three years ago, both houses look identical and the designs are inappropriate for the character of the neighborhood.
6. Cellar not conforming – this is the crux of the matter. We have made the decision to reduce the mass of the house by having the detached garage located in the back of the house. This also provides the authentically look of the 1920 house. The town’s cellar policy allows a cellar under an attached garage. Please note that our lot naturally slopes from the front to the back; therefore, the house requires to have a four feet deck above ground attached to the back of house in order to go from inside the house to the back yard. The deck requires a four foot foundation support and it would be natural to use the area under the deck. We consider the deck is an extension of the house and part of the main footprint. The deck is smaller than a two car garage by 75 square feet.

Because the lot naturally slopes from the front to the back, there is no visibility of the cellar from the front view of the house. In addition, the natural slope lot does not require an additional height for the cellar in the back of the house, including the deck portion. As a result of the natural slope lot, the mass of the house above ground is the same with or without the cellar.

In reality, we can not apply the town's cellar policy or the town's height policy to our house design because of the natural slope of the lot. The town's cellar policy and height policy can be enforced for houses that are built on flat lot.

7. What we are truly requesting is to allow a cellar under the attached deck in the similar light as an attached garage, or allow the additional FAR as it does not create additional visible mass what so ever.

In conclusion, the planning commission is going against the town's architect, the town's planning staff and the town's standards in denying our house plans without a thorough understanding the design of the house, as well as the natural slope of the lot.

Thank you for your time and consideration in this matter.

Sincerely,

Kevin Crane and Anna Huynh

A P P E A R A N C E S:

Los Gatos Planning
Commissioners: Phil Micciche, Chair
John Bourgeois
Michael Kane
Tom O'Donnell
Lee Quintana
Steve Rice
Joanne Talesfore

Assistant Director of
Community Development: Randy Tsuda

Town Attorney: Orry Korb

Transcribed by: Vicki L. Blandin
(510) 526-6049

P R O C E E D I N G S:

COMMISSIONER KANE: I live within 500 feet of the
subject property and must recuse myself.

ORRY KORB: For the record, Commissioner Kane,
you're recusing yourself because your house is within 500'.

CHAIR MICCICHE: Okay, next item, 54 Chester
Avenue, Architecture and Site Application S-05-031. Is the
Applicant here? Have you submitted a card with your name on
it? Thank you. Mr. Kevin Crane.

KEVIN CRANE: My name is Kevin Crane and I and Ann
are the owners of the residence on 54 Chestnut Street. We've
been actually working on this project since early 2003, and
the reason why it's taken so long is we spent a lot of time
designing the house to make sure it meets the Town's
requirements and also meets our needs. So we've been working
with the Town quite a number of hours. I'd like to make this
brief. I just want to go over the main point of the Town's
Staff Report.

We do not have an attached garage, as you can see
from the plans, but a detached garage, which minimizes the
mass of the house and enhances the look of the house at the
same time. So the detached garage is in the back.

1 We investigated the option of having the garage
2 attached to the house, which would have made this meeting
3 not necessary, but that option is not feasible because it
4 would change the design of the house and probably make it
5 less compatible to the neighborhood.

6 We would like the Commission to view the attached
7 deck in the same light as the attached garage. The underdeck
8 portion of the cellar is about 315' square feet. It's

9 smaller than a cellar that is permitted on a typical
10 attached two-car garage, which is about 444' square feet.

11 We also are taking advantage of the slope and
12 topography of the house. The lot naturally slopes down, so
13 the cellar is only a foot about the ground, which also
14 minimizes the house, and it slopes to 4' in the back, so
15 it's not even a 4' cellar all the way through the house. So
16 the deck is 4' or 5' above the ground. The cellar under the
17 deck would give the house a more architectural look than one
18 without one. Currently we have a deck and the size of it,
19 one side of it is concrete blocks as opposed with cellar be
20 having windows.

21 We have spoken to our neighbors and they have no
22 concern about the cellar under the deck. There is no
23 visibility of the cellar and the deck to the side and back
24 and front neighbors.
25

1 As mentioned before, the windows along the deck
2 will provide the house with the authentic look of a 1920
3 house with a basement. We currently have a partial basement.

4 To sum it up, overall the cellar does not minimize
5 the mass of the house as opposed to an attached garage if we
6 went that route. I believe that's all I have to say.

7 CHAIR MICCICHE: Do we have any questions of the
8 Applicant at this point? Commissioner Bourgeois.

9 COMMISSIONER BOURGEOIS: Your tree mitigation, it
10 says you're taking out five and that you're required to
11 replace it with three 36" boxed trees. On the plans I didn't
12 see any landscaping plans. I look at the yard and I'm having
13 trouble figuring out where you could actually put three 36"
14 boxed trees. Have you guys thought through the landscaping
15 yet?

16 KEVIN CRANE: In the plans, if you look there I
17 guess in the back they'll probably reside in the left-hand
18 corner of the lot.

19 COMMISSIONER BOURGEOIS: Behind the sunken
20 courtyard?

21 KEVIN CRANE: Correct, by the sunken court and to
22 the left of it.

23 COMMISSIONER BOURGEOIS: Away from the garage?

24 KEVIN CRANE: Away from the garage.

25 COMMISSIONER BOURGEOIS: All three of them?

KEVIN CRANE: All three of them.

1 COMMISSIONER BOURGEOIS: Okay.

2 KEVIN CRANE: It will be slow growth. We have a
3 couple trees back there, slow growth Chinese trees.

4 COMMISSIONER BOURGEOIS: So you've actually
5 selected trees that you're going to plant?

6 KEVIN CRANE: We'll probably go with the same type
7 of trees that we currently have.

8 COMMISSIONER BOURGEOIS: Okay, that's crape myrtle
9 and it was Chinese tallow, and Chinese tallow is not on the
10 I think approved Town tree list.

11 ANNA HUYNH: Can I add to that?

12 CHAIR MICCICHE: Sure. Could you state your name,
13 please for the record?

14 ANNA HUYNH: My name is Anna Huynh and I'm an
15 owner of the property. We thought about the landscaping of
16 the house, but we haven't put too much thought into the
17 future plan, but we will plant whatever trees that are
18 approved by the Town.

19 CHAIR MICCICHE: Okay, we'll take that. Thank you.
20 Any other questions of the applicant at this point? Go
21 ahead.

22 COMMISSIONER QUINTANA: We have a General Plan
23 policy, which states, "Encourage basements and cellars to
24 provide hidden square footage in lieu of visible mass." How
25 do you interpret that in light of your project?

LOS GATOS PLANNING COMMISSION 2/8/2006
Item #4, 54 Chester Street

5

1 KEVIN CRANE: I interpret it as exactly that, by
2 having a cellar we minimize the mass of the house, because
3 the other option would have been like an attached garage out
4 in front, which would have created a huge...the house would
5 be a lot bigger from the street and wouldn't fit with the
6 historical nature of having the garages in the back of the
7 lot. That's how we interpreted it.

8 COMMISSIONER QUINTANA: Okay. I'll reserve my
9 comments on that until later. Thank you.

10 CHAIR MICCICHE: Any other questions at this
11 point? Seeing none, I'll ask the Applicant to sit down for
12 the time being and I'm going to open the public hearing to
13 Brian Kulman.

14 BRIAN KULMAN: I'm Brian Kulman and I live at 497
15 Bird Avenue, which is directly across from the Cranes' home.
16 It's a different address because we're on the corner and our
17 front door is on the other street, but the longest side of
18 our house does face directly to their property.

19 I have seen the plans that they have shown us and
20 the story poles as well, and I'd like to say that I approve
21 of the project as well as the design, and especially Mr.
22 Schlow's work, which he has several homes he's worked on,
23 designed, in our neighborhood, which are all lovely, and
24 this is certainly in the character of those other homes and
25 the character of our neighborhood, this current design.

LOS GATOS PLANNING COMMISSION 2/8/2006
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6

1 The proposed structure does not block our view.
2 Actually it blocks our view of undesirable things, which are
3 the backs of the apartment buildings on the street, Towne
4 Terrace beyond. So the structure serves a nice purpose and
5 it's definitely advantageous to the neighbors.

6 I also understand their basement request and I'd
7 like to say that I support that as well, and I understand
8 how it fits, having that extra space and the way it's
9 designed, serves the particular family needs that they have.
10 It's very functional, and because it's in the back of the
11 home it's not visible. We wouldn't even know it was there
12 from our home or any other home in the neighborhood, so I
13 don't see any harm to the neighbors in the design or the use
14 of having their basement as requested.

15 One benefit perhaps is that it allows the garage
16 to remain where it is, which is set back from the front of
17 the home towards the back of the lot. I imagine if they were
18 not granted the use of the basement the way it is and had to
19 make a change to the design, they might have to move the
20 garage and attach it to the house to get additional space,
21 which would not look as good or benefit the neighborhood to
22 have that big of a structure, particularly a garage, more
23 visible to the street in front of the house. So again, just
24 my general support to the project.

25 CHAIR MICCICHE: Thank you. Any questions of the
speaker? Seeing none, thank you very much. I don't seem to

1 have any other speaker cards at this time, so I will call
2 the Applicant back up for, I won't use the word rebuttal,
3 because I didn't hear anything bad from this guy.

4 KEVIN CRANE: We worked with the Town quite often,
5 the planning staff, with Sandy, and they were pretty
6 helpful, and with Randy. And so we incorporated from the
7 Historical Committee all the way up to here, and I think we
8 came up in the joint effort with a very solid set of plans
9 that meets my needs and the Town's needs. That's all I have
10 to say.

11 CHAIR MICCICHE: Any questions of the Applicant.
12 Commissioner Bourgeois.

13 COMMISSIONER BOURGEOIS: The cellar issue, and
14 this might be just as much for Staff as it is for the
15 Applicant. So one of the things in front of us is
16 interpreting whether or not this deck can be considered an
17 extension of the home and so that basement area below the
18 deck should be counted as part of the FAR. And in their
19 letter they said they misinterpreted that and they assumed
20 it would be... How did that process go through Staff? How
21 did that go over the DRC and what was Staff's opinion on
22 that being excluded from the FAR?

23 RANDY TSUDA: I believe it was actually Sandy that
24 caught it at the counter during a resubmittal process and it
25 was caught before it went to DRC the final time. It was
something that to be very frank we caught midstream. We did

1 not catch it at the initial review stage, and tech review is
2 normally roughly three weeks after the application is
3 submitted. We did not catch it at tech review. It was caught
4 after that process midstream. We brought it to the
5 Applicant's attention and we had a meeting to discuss the
6 implications and how that cellar policy is worded and talked
7 about their options at that point, and they decided to
8 pursue an interpretation of the cellar policy.

9 COMMISSIONER BOURGEOIS: Thank you.

10 CHAIR MICCICHE: Commissioner Quintana, did you
11 have a question?

12 COMMISSIONER QUINTANA: No.

13 CHAIR MICCICHE: No question of the Applicant?
14 Commissioner Talesfore.

15 COMMISSIONER TALESFORE: I do. I'm looking at your
16 subterranean courtyard and I'm just wondering—I did visit
17 the site by the way—how is that integrated into the rest of
18 the backyard? Is it a deck? How are you delineating that
19 courtyard from the rest of the yard, and can you tell the
20 purpose of putting...

21 KEVIN CRANE: The way we kind of designed it is
22 that the cellar portion of it be under the deck and we're
23 going to have doors that go from that cellar into the
24 courtyard right there 4' underneath the topsoil of the
25 ground, we can barbeque and so forth there, and then you can
go up the stairs to the ground level on the left-hand side

1 of the drawing there. And so that's how we plan to kind of
2 incorporate it.

3 COMMISSIONER TALESFORE: So will that become your
4 yard, or is the 10' to the fence going to be your yard, your
5 useable space?

6 KEVIN CRANE: Well both. I view that as the 10'
7 would probably be grass and flowers up in that area, and
8 then the courtyard would be 4' below that.

9 COMMISSIONER TALESFORE: And what are you putting
10 for safety features so people don't fall off of the yard
11 into the courtyard? Do you have a feature there?

12 KEVIN CRANE: Probably don't have any features
13 there. I was just thinking large flowerpots of maybe a small
14 fence around it or something.

15 RANDY TSUDA: Commissioner, on sheet A4 there's a
16 section through the structure that illustrates that
17 courtyard and per a building code there is a rail that's
18 required around that courtyard.

19 COMMISSIONER TALESFORE: So there will be a rail?

20 CHAIR MICCICHE: Yeah.

21 COMMISSIONER TALESFORE: Because it's 4'. Okay,
22 that's what I was looking for.

23 CHAIR MICCICHE: Commissioner Quintana.

24 COMMISSIONER QUINTANA: This is a question. Is
25 there a connection between the subterranean courtyard and
the deck?

1 KEVIN CRANE: As you go out the courtyard on the
2 left there would be stairs to go up to the ground level
3 area. I think we had a couple of plans. I can't see the
4 plans right now. Have we got stairs to the deck on that
5 side?

6 COMMISSIONER QUINTANA: No, on the opposite side.

7 KEVIN CRANE: The opposite side. At one point we
8 had stairs on both sides of the deck. I think we submitted
9 it just on one side. I guess you'd walk around to the right
10 of it up back on the deck, or you can go inside the house
11 and go on the second level and get to the deck that way.

12 COMMISSIONER QUINTANA: Thank you.

13 CHAIR MICCICHE: Any other questions of the
14 Applicant? That being the case, I'm going to close the
15 public hearing and open it up to a motion, comments, or
16 questions of Staff. Yes, Commissioner Quintana.

17 COMMISSIONER QUINTANA: Question of Staff. I want
18 an interpretation of what the Staff Report says. It says,
19 "Staff finds in the case the cellar under the deck will not
20 increase the mass of the proposed home and will not be
21 visible to neighbors. In addition, the underdeck portion of
22 the cellar is smaller than the cellar area that's permitted
23 under a typical attached two car garage." Is this statement
24 intended to mean that Staff supports exceeding the FAR
25 should the Commission interpret the cellar policy as not
including or exempting the area under the deck?

1 RANDY TSUDA: If the Commission upholds the
2 current interpretation of the cellar policy, you're asking
3 are we recommending that you grant a bonus FAR? No.

4 COMMISSIONER QUINTANA: Okay.

5 CHAIR MICCICHE: Yes, Commissioner O'Donnell.

6 COMMISSIONER O'DONNELL: Again, let me just throw
7 this out because I'd kind of like to hear what my fellow
8 commissioners think.

9 I went out and looked at it too and that back
10 porch is not a very substantial structure; I guess I should
11 say it that way. What I worry about is the precedential
12 value I guess of this decision, because it's almost like you
13 go build some deck in the backyard, and then you put a
14 cellar underneath it, and then whether the deck stays or
15 goes doesn't really make much difference because now you've
16 got your cellar. I mean I can see that people aren't going
17 to be able to see it, it's not going to probably hurt
18 anybody, but I'm afraid if you say this is a cellar...

19 To me the clear intent of a cellar is basically
20 under the structure of the house. The front of that house
21 has a front porch, but I don't have any doubt that that
22 front porch is part of the house, so to the extent that the
23 cellar is under the front porch I don't have any problem.

24 But you go into the backyard and you see this
25 connection, and I just think if you say that's somehow the
structure under which you can build cellars, there's almost

1 no limit to what you can do to have an underground house in
2 your backyard. The exception gets swallowed by what you're
3 doing, so your cellar becomes the size of your backyard, and
4 while I'm very sympathetic with what they're trying to
5 accomplish, I really worry that to say this is a cellar is
6 such a stretch of I think the reasonable language of that it
7 would be hard to justify. I'd love to hear people tell me
8 why that's wrong.

9 CHAIR MICCICHE: I'm going to make a comment. I
10 think your interpretation is very correct. To me it's going
11 to become more of a question of if we allow an extension of
12 the FAR here rather than saying it isn't part of it. It is
13 clearly in my mind part of the square footage, so let me
14 state that first. So the only question in my mind is whether
15 or not, because of the way it's been done in this specific
16 case, would I consider allowing the additional square
17 footage on this property? So that's where I'd be coming
18 from.

19 COMMISSIONER BOURGEOIS: I would agree with the
20 Chair. I think clearly it's got to be under the building and
21 I don't think we want to start going with decks. But if we
22 made them remove it, it would make no visible difference to
23 the mass and scale of the home. There would be no visible
24 difference, so I think you're right. I think it's a question
25 of whether we're going to allow that FAR.

1 I think the bigger question for me is something
2 Commissioner Quintana alluded is this General Plan policy
3 that says, "Encourage basements and cellars to provide
4 hidden square footage in lieu of visible mass." And it seems
5 like they maxed out the visible mass and added a cellar, so
6 it almost seems like double dipping to me, and that's where
7 I'm personally having a struggle.

8 CHAIR MICCICHE: That's fine. Commissioner
9 Quintana.

10 COMMISSIONER QUINTANA: I would like to give some
11 background and the history of that General Plan amendment
12 and its intent.

13 I, along with Michael Burke, previous Planning
14 Commissioner and previous Councilperson Linda Lubeck, were
15 on a subcommittee of the General Plan Committee, which was
16 charged with putting into words and wordsmithing the ideas
17 that came out of the General Plan Committee, and one of the
18 things we were charged with was developing a community
19 development element.

20 While we were doing that we kept bumping into the
21 issue of the fact that while the town was primarily built
22 out, there seemed to be an increasing trend towards
23 increasing the intensity of already developed lots. But we
24 also recognized that there was a desire for people to have
25 more living space, and we looked at it and said how can we
balance the two, and we came up with this policy.

1 The intent of it was to fulfill the desire for the
2 bigger house, but at the same time not increasing the
3 visible intensity of the house on the site so that we
4 wouldn't be ultimately impacting the character of existing
5 neighborhoods. What we meant by that was that if you were
6 going to have a basement, we didn't want you to max out the
7 square footage on the top, because we were trying to get
8 that intensity reduced and hidden in a basement or cellar.

9 So the way I look at this particular proposal, I
10 agree that it's double dipping. In addition, it has
11 increased the mass of the building because it has raised the
12 building 4' to get that cellar underneath, so I don't think
13 it meets the intent of the policy, not even considering the
14 issue of the interpretation of cellars under a deck, which I
15 thoroughly agree with everybody who has spoken on that
16 already.

17 The Town Council policy and the Planning
18 Commission policy on basements does not deal with the intent
19 of the General Plan amendment, it simply defines what a
20 basement is and the parameters within which it must stay,
21 how far it can intrude into side yard setbacks and rear yard
22 set backs, et cetera, but it doesn't deal at all with
23 whether the proposed cellar of a house meets the intent of
24 the General Plan policy. So just to meet the definition, it
25 doesn't do it.

CHAIR MICCICHE: That's fine.

1 COMMISSIONER TALESFORE: I ditto. But what I do
2 want to bring up are a couple of other areas that I noticed,
3 and even though we don't have neighbors here complaining,
4 when I visited the site what I was struck with was how the
5 house as designed now seems to be pinching its adjacent
6 house, its adjacent neighbor, and when I looked at the
7 impacts I'm seeing visibility impacts to that second story
8 and maybe even some of the first story as well as shadowing.
9 It's in our plans if you haven't looked at it.

10 I was really taken aback by the amount of
11 shadowing, and I don't know, I think it's our responsibility
12 as planning commissioners to consider, especially in a
13 demolition, that when they put a house back I believe the
14 General Plan says that it should be put back in keeping with
15 the same style and mass that was originally there. Not the
16 largest on the street maybe, not the smallest, or not the
17 same; somewhere in the mid-range. But the shadowing really
18 bothered me a lot and I'm hoping that can be somehow
19 reduced. I find it very impactful. So those are my concerns
20 as well.

21 CHAIR MICCICHE: Are you suggesting a redesign
22 then?

23 COMMISSIONER TALESFORE: Maybe, yes. A redesign or
24 a re-something.

25 CHAIR MICCICHE: Okay, that's fine. We heard your
comment. Commissioner O'Donnell.

1 COMMISSIONER O'DONNELL: I was impressed with the
2 same problem. My difficulty with that neighborhood is it's
3 like every house that gets built out there now is doing the
4 same thing. So then it becomes very difficult because you're
5 saying you can't do it but six of your neighbors just did
6 it. I know not immediate neighbors, but that neighborhood--
7 and I'm not saying this critically--I am saying people really
8 want to get every square foot they can. A lot of the houses
9 within a (inaudible) range have exactly done that.

10 CHAIR MICCICHE: They're small lots.

11 COMMISSIONER O'DONNELL: That doesn't seem
12 consistent with the policy, I agree with you.

13 I do like the concept of using a cellar to reduce
14 the mass. It wasn't done here. So it's almost like saying
15 you want your cellar, reduce some mass. But I also agree
16 with you that do we really want to have the houses designed
17 so they take every single possible square foot, because this
18 house goes from 1,300 square feet or something to 3,600
19 square feet.

20 COMMISSIONER QUINTANA: On a 5,000 square foot
21 lot.

22 COMMISSIONER O'DONNELL: On a 5,000 square foot
23 lot, yeah, 3,625. I mean I'm sympathetic with the desire and
24 maybe the need for that, but boy, we're sure jamming a lot
25 of house on a little, small lot, and it upsets me. But I
just focused on the cellar issue and I think I agree with

1 everything everybody said about the cellar. It should be a
2 way to cut mass and this doesn't do it, and I'd sure like to
3 see some mass cut on that house.

4 COMMISSIONER TALESFORE: And what I think you were
5 speaking to as well is the intensity of the development.
6 It's almost overwhelming, and I really feel badly about all
7 that, but some lots just can't take that much intensity of
8 the building or the mass I guess is what I'm saying.

9 CHAIR MICCICHE: Commissioner Quintana.

10 COMMISSIONER QUINTANA: I also went to the site
11 and I used the site to run through the exercise in the
12 handbook on the Residential Design Guidelines. It was a very
13 interesting experience because basically what I concluded
14 based on that is the only common feature in the neighborhood
15 that had more than three checkmarks was single-family house.
16 Other than that, all the features that were common were
17 details, like window shape and door shape and that kind of
18 thing. So it really pointed out to me at what point do we
19 affect the character of the neighborhood?

20 I also asked Staff the question of what the
21 statement that the house was compatible with the
22 neighborhood was based on, and the answer I got was from the
23 project manager was that there were other two-story houses
24 in the neighborhood. There were two other reasons, but I
25 can't remember what they are unfortunately, but they did not
include compatibility of mass and scale with the

1 neighborhood. Then I asked how do you determine that, and
2 she said, "We simply assume that if the architect says it's
3 architecturally compatible, that's it's compatible with the
4 neighborhood." I also asked Randy how Staff looked at it,
5 and he indicated they look at the table that's included in
6 our Staff Report.

7 To make a long story short, I looked at the table,
8 I tossed out the biggest and the smallest, I came up with
9 the average size of 1,703 feet, which is slightly smaller
10 than the average listed on the table, including the biggest
11 and the smallest, and then I looked at what was the median
12 size, and that was about 1,740 to 1,750 feet, which is
13 closest to the average listed in the table.

14 So even looking at that, I would say that that
15 figure is more compatible with the neighborhood, taking an
16 average, not forcing them into the smallest and not forcing
17 them into the biggest, and still in the long run that
18 average, or median, is going to constantly go up, but at
19 least at a more gradual level.

20 RANDY TSUDA: Mr. Chair?

21 CHAIR MICCICHE: Yes.

22 RANDY TSUDA: If I may clarify my response to
23 Commissioner Quintana.

24 CHAIR MICCICHE: You certainly may.

25 RANDY TSUDA: The question was what did you look
at when you were evaluating neighborhood, and I said I

1 looked at the homes in the table. My response was not
2 intended to imply that we only look at the numbers in the
3 table. It was simply these are the homes that we look at in
4 defining neighborhood.

5 COMMISSIONER QUINTANA: In that case I apologize,
6 because I thought I asked what do you look at for
7 neighborhood compatibility.

8 RANDY TSUDA: No, you asked what did you consider
9 the neighborhood when you were evaluating compatibility, and
10 I answered the homes on the table.

11 COMMISSIONER QUINTANA: Okay. If I misspoke, I'm
12 sorry. I intended what do you look at to determine
13 compatibility. But even if you just look at those homes,
14 most of them are not as massive and as complicated a design
15 as this one. It's a beautiful design, but I'm not sure it
fits on this lot.

16 COMMISSIONER O'DONNELL: We're kind of maybe
17 getting a consensus. If we decide that this is too big and
18 it's too bulky, I would kind of like to know one, obviously,
19 if that's the case, whether there is a consensus or not, but
20 two, what we're really saying. Because what Lee said would
21 suggest that perhaps the reduction of I guess a couple
22 hundred square feet of the above cellar bulk would get it
23 down to the average if I understood you correctly.

24 I'll let you respond to me in a moment, but I'm
25 just saying I always feel bad about these things because

1 what people want to do, I'm very empathetic with it. If we
2 were to turn it down because of its bulk, size, et cetera,
3 it would be nice if we could kind of say something about
4 where we're coming from on it, so if we do turn it down and
5 it does come back to us, they'll have had a little help.

6 CHAIR MICCICHE: My only comment on that is I've
7 worked with our consulting architect for a good many years
8 now. Since he's come aboard he's really streamlined the
9 system for me. I tend to read what he says and try to go
10 with that concept. Even though I'm hearing that we see some
11 mass and bulk issues that may be there because they've gone
12 to the limit of the FAR, what I read with him is that he
13 thinks the project looks pretty good, and he has a far
14 better eye than myself and a lot of other people on that
15 basis in looking at drawings and coming to that conclusion.

16 COMMISSIONER O'DONNELL: But forget the drawings.
17 Just look at the story poles.

18 COMMISSIONER QUINTANA: I need to talk.

19 CHAIR MICCICHE: I know, and I think what happens
20 is story poles alone always look massive to me, from my
21 view.

22 COMMISSIONER QUINTANA: I need to talk.

23 COMMISSIONER O'DONNELL: When you go out there and
24 you try to walk between the exterior story poles and the
25 fence, you don't have to know anything about how bulky
anything looks to realize that that is now a very, very

1 small setback, and it's going to be two stories, and I'll
2 tell you, I sure wouldn't want to live next door. So I'm not
3 saying anything real sophisticated, and I have a great
4 respect for Larry Cannon. On the other hand, it's like
5 pornography: you know it when you see it, and boy that is
6 every inch you can get on that.

7 CHAIR MICCICHE: I agree. I agree. It's small lot.

8 COMMISSIONER TALESFORE: May I make a comment?

9 CHAIR MICCICHE: You can make any comment you
10 want.

11 COMMISSIONER TALESFORE: What I would say about
12 Mr. Cannon's assessment is that he was assessing the design
13 of the structure. He's made no comment about its
14 appropriateness to the site, and so that being said, yes
15 it's a good design, but the question is, is that a good
16 design to the site and the neighborhood?

17 CHAIR MICCICHE: I believe he is referencing the
18 site in his statement.

19 COMMISSIONER TALESFORE: Right. That's how I
20 looked at it. It's over the limit.

21 CHAIR MICCICHE: That's fine. No, that's good. I'm
22 not going to argue with you.

23 COMMISSIONER TALESFORE: And I don't have any
24 quibble with a second story. It's just it's over the mass
25 and the scale that it should be.

1 Randy, I have a question for you then. I'm not
2 sure where we're going to go with this, but if we were to
3 deny it or send it back, I'm a little concerned about
4 sending it back with directions, because sometimes that
5 alludes to the fact that it just needs a little tweaking. I
6 don't know about that in this case. I think I've heard so
7 many big things about this that maybe it just needs a total
8 redesign.

9 CHAIR MICCICHE: You can send it back with the
10 direction that it has to be reduced in mass and bulk.

11 COMMISSIONER TALESFORE: Well, but then you get
12 into how much.

13 CHAIR MICCICHE: Well, then you're going to have
14 to look at another design.

15 COMMISSIONER TALESFORE: Well then I want it to
16 come back to us if that's the case. But Randy, what would
17 you suggest?

18 RANDY TSUDA: It's always helpful to the Applicant
19 and to Staff if you can provide us some guidance in terms of
20 what you're specifically looking for. I've heard a square
21 footage number thrown out. There may be guidance in terms of
22 increasing that site's setback that you were concerned
23 about.

24 COMMISSIONER TALESFORE: Yeah.

25 RANDY TSUDA: Any maybe guidance in terms of
reducing the shadow impacts on that adjacent neighbor to the

1 left, maybe in terms of reducing the bulk of the second
2 story. It would be helpful to hear that kind of input from
3 the Commission.

4 COMMISSIONER TALESFORE: So is that a redesign to
5 Staff?

6 RANDY TSUDA: Depending on what the consensus is,
7 it's sounding to me like...at this point the comments I've
8 heard are a substantial redesign.

9 CHAIR MICCICHE: Yeah, it's significant enough
10 that if you can't leave it to the satisfaction...

11 COMMISSIONER TALESFORE: So fundamentally we're
12 looking for a new design?

13 CHAIR MICCICHE: Yeah, that's what it comes down
14 to.

15 COMMISSIONER TALESFORE: Okay. Thank you.

16 CHAIR MICCICHE: Somebody want make a motion?

17 COMMISSIONER QUINTANA: No. I have something to
18 say first if I may.

19 CHAIR MICCICHE: No, I'm requesting a motion. You
20 can say it afterwards.

21 COMMISSIONER O'DONNELL: I'll make the motion.

22 COMMISSIONER TALESFORE: No, I'm going to make it.

23 CHAIR MICCICHE: Would you make the motion,
24 please?

25 COMMISSIONER TALESFORE: Okay, I want to make a
motion to refer the application back to Staff for further