

City of Albany

Planning and Zoning Commission Minutes June 12, 2012 Meeting

Note: These minutes are subject to Planning and Zoning Commission approval. The minutes are not verbatim. An audiotape of the meeting is available for public review.

Regular Meeting

1. **Call to order-** The meeting of the Planning and Zoning Commission was called to order by Chair Arkin, in the City Council Chambers at 7:30 p.m. on Tuesday, June 12, 2012.

2. **Pledge of Allegiance**

3. **Roll Call**

Present: Maass, Panian, Moss, Arkin
Absent: Eisenmann
Staff present: City Planner Anne Hersch

4. **Consent Calendar**

A. **Meeting Minutes from February 14, 2012**

B. **Meeting Minutes from February 28, 2012**

Commissioner Arkin noted that he was absent from the February 28 meeting, but there is a quote in the public comment by him, which should be stricken.

Motion to approve items 4a and 4b: Commissioner Panian

Seconded by: Commissioner Moss

Ayes: Arkin, Panian, Moss, Maass
Nays: None
Motion passed, 4-0

5. **Public Comment on Non-Agenda Items**

None.

6. **Public Hearing Items**

A. **PA11-055- Conditional Use Permit, Design Review and Mitigated Negative Declaration for a new boutique auto salon at 1035 Eastshore Hwy.**-The applicant is seeking approval of a Conditional Use Permit, Design Review and adoption of a Mitigated Negative Declaration for a proposed boutique auto salon at 1035 Eastshore

1 Highway (next to Target). The applicant filed an application for a Conditional Use
2 Permit and Design Review in January 2012. The operation is proposed to be a new
3 8,304 sq. ft. building which will house an auto sales operation. A Negative
4 Declaration was prepared pursuant to CEQA has been circulated, with the public
5 comment period closed. Action is expected at this hearing.

6
7 ***Recommendation: Approve with project conditions.***

8
9 Ms. Hersch presented the staff report.

10
11 PUBLIC HEARING OPENED.

12
13 **Phil Banta, project architect-** made himself available for questions. He noted that they
14 have lowered the height of the repair facility by a foot and raised the height of the show
15 room by a corresponding amount. He said that they had done this to get a clear story of
16 glass along the east side of the building to allow morning light to enter the building, and
17 give the feeling that the roof is floating above the building masses. He also said that there
18 have been minor adjustments to the exterior sunshades.

19
20 Commissioner Arkin- said that it was noted that they would be achieving lead
21 equivalency. He noted that in the green building ordinance for a commercial building, it
22 said that anything greater than 5,000 sq. ft. should be lead certified.

23
24 **Phil Banta-** said that they will need to look at that. He says that certification is a lengthy
25 and expensive process, and that their understanding through Anne Hersch was that they
26 should have lead equivalency. He wanted more information on the City's requirements
27 regarding this issue. He said the lead equivalency worked well on previous projects
28 similar to this. He listed items that are part of the project that exceed what lead typically
29 requires. He mentioned the sunshades and the low e double glaze envelope for the
30 showroom. He said these aspects allow for day lighting to the effect that all electric lights
31 could be turned off. He added that there are thermostatically controlled vents on the west
32 and east side of the building to allow for night ventilation and that the roof would be
33 photovoltaic ready.

34
35 Commissioner Arkin- notes that they had discussed the project previously. He says that
36 there isn't any signage that is being approved, even though the building is a sign. He
37 noticed that on the plans that there are PV panels, and he says that he would like it if the
38 panels were tilted.

39
40 Commissioner Maass- appreciated the design and noted his reading of the MND was
41 complete. As a side note, he added it would be great to have an electric car dealership. He
42 said he could support this application.

43
44 Commissioner Panian- noted he was not at the original discussion. Having reviewed the
45 plan, submitted documents, and the MND, he would be in support of the application. He
46 appreciated the design and was in favor of the designs that were proposed. He noted that

1 he thought the commercial building would add to the aesthetic and consumer appeal of
2 that area of land.

3
4 Commissioner Moss- wanted to know if the in joist could be moved to the roof and the
5 other joist placed perpendicular to the building, so that it could look the same at all
6 elevations.

7
8 **Phil Banta-** indicated that this could be done; however, he worried that it would be
9 dishonest to the structural system.

10
11 Commissioner Arkin- noted that he felt the design worked. He noted two motions, if any,
12 would have to be made. The first would be regarding the negative declaration regarding
13 CEQA and the other would be regarding design review and the conditional use permit.

14
15 **Tim Southwick, applicant-** indicated that the auto salon and Target had agreed to ban
16 streamers and banners as Target requested, but that the applicant did not agree with the
17 ban on price stickers on the cars as the price and year model markings were crucial to their
18 business. He didn't want to mislead anyone.

19
20 Commissioner Panian- wanted to know if a lead certified equivalent was needed or an
21 actual certification.

22
23 Ms. Hersch referred to the green standards of compliance posted on the City website and
24 clarified that for new construction over 5000 sq. ft a lead NC check list version 2.2 was
25 required and the third party verification was the US Green Building Council.

26
27 Commissioner Panian- says that if there isn't any change in the conditions, there isn't any
28 special remark, so it would be the standard the applicant would be expected to meet.

29
30 Commissioner Arkin- clarified that for projects smaller than 5000 sq. ft an equivalency
31 would suffice, but if the project was greater than 5,000 sq ft, it would need a USGBC
32 review and certification. He says that even though the figure 30,000-50,000 was quoted, he
33 thinks that the USGBC is working to streamline the review and approval, so it could be
34 brought in for less.

35
36 Commissioner Panian- mentioned that there is a clause that has exceptions that would be
37 granted, but demonstration of hardship must be shown. He noted that because the
38 applicant is trying to meet equivalency, they would be considered an exception. He says
39 that what they don't have in order to grant the exception is the demonstration of hardship.

40
41 Commissioner Arkin- notes that they had completed a school to elite gold standard, and
42 that the consultant's fee, USGBC fee, and commissioning fee totaled to be \$20,000, so it
43 doesn't have to be the \$50,000 that larger, high-rise projects entail. He agreed with
44 Commissioner Panian in suggesting the applicant submit an application for an exception if
45 they do not want to meet the lead standard.

46

1 Commissioner Panian- clarified the hardship or infeasibility exemption clause, which says
2 that the burden is up to the applicant to show infeasibility. He says that the two aspects of
3 it are the compliance to the standard and the administrative aspect that they had
4 completed the standard. He thinks that if there is a hardship exemption, one thing that
5 could be considered is a higher standard, without the burden of certification.

6
7 Commissioner Moss- noted uncertainty in regards to whether or not they need a
8 certification from the green council, because it says both certified and verified in the
9 document. He isn't sure that they need to file for a complete certificate with the green
10 council.

11
12 **Phil Banta-** mentioned recently completing a project at Annie's Organic Food company in
13 Berkeley that received a lead gold standard certification. He says that they did it because
14 they wanted to add to their identity. He said that in their case, the investment was
15 worthwhile. He notes that it is desirable to reach those goals, within a budget. He says that
16 in his experience with the Green Building Council, he wasn't impressed with their criteria.
17 With this project, however, he encouraged the Planning and Zoning Commission to look
18 at the exception clause in regards to this project.

19
20 Commissioner Panian- asked staff that if the project was smaller and required only to
21 meet standard and not certification, what the level of involvement is that staff would have
22 in the verification that a project has met the standard.

23
24 Ms. Hersch indicated that staff would use an outside plan checking consulting service to
25 do that level of verification.

26
27 Commissioner Arkin- proposed to approve the project, and the receive paperwork relative
28 to a lead equivalency, and what the applicant would propose to do that would assure
29 them that they are achieving the intent of the Green Building Ordinance, but would do
30 short of a certification. He could see such a thing having a third-party lead person review
31 it and give their estimation, without going through the USGBC to do so.

32
33 Commissioner Moss- agreed with Commissioner Arkin, as long as it is verified by an
34 outside party, he would be fine with it. He says that he wouldn't sure about a certification.

35
36 Commissioner Arkin- noted that the code requires certification. He says that the chart says
37 that the certification is required above the minimum threshold.

38
39 Commissioner Panian- noted that the chart isn't in the book, or referenced from the book.
40 He likes Commissioner Arkin's suggestion, and agrees to look for alternate means of
41 satisfying the intent of the ordinance.

42
43 **Motion to approve Mitigated Negative Declaration:** Commissioner Panian

44
45 **Seconded by:** Commissioner Moss

46

1 Ayes: Arkin, Panian, Moss, Maass

2 Nays: None

3 Motion passed, 4-0

4
5 **Motion to approve of the Design Review and Conditional Use Permit:**

6 Commissioner Maass

7
8 **Seconded by with the following modification:** Commissioner Panian

- 9 • Removal of special condition SP6

10
11 Commissioner Panian- proposed that the compliance with the green building ordinance be
12 reviewed again to consider alternatives as proposed by the applicant with meeting the
13 threshold for demonstrating the hardship or exceptions.

14
15 Commissioner Arkin- brought up a suggestion by the applicant to modify the special
16 condition SP6 regarding price marking on vehicles and for sale signs.

17
18 Commissioner Panian- proposed that they remove that condition, but specifically for the
19 vehicle signs. He asks if it would be sufficient.

20
21 Commissioner Moss- thought that it was anything that is on the car, in the car, or a sign
22 out of the car, is not fine.

23
24 Commissioner Arkin- asked for clarification, if they would bring the equivalency issue
25 back to the commission at a later date for review and approval.

26
27 Commissioner Panian- said that the ordinance required the issue be done at the time of the
28 application, and he wanted to bring the question up so it wouldn't be addressed after, and
29 that it is part of the approval.

30
31 Ayes: Arkin, Panian, Moss, Maass

32 Nays: None

33 Motion passed, 4-0

34
35 **B. PA 06-053 St. Mary's College High School Mitigated Negative Declaration**
36 **Comment Period 1600 Posen Ave, Albany -** The Mitigated Negative Declaration
37 (MND) prepared for the new campus master plan/Conditional Use Permit will be
38 circulated for public comment from June 6, 2012-July 6, 2012. The document is
39 available on the City's website and hardcopy is available for review at Albany City
40 Hall. This is a study session to receive public comment on the MND during the
41 comment period.

42 *Recommendation: Receive public comment of the Mitigated Negative Declaration*
43 *pursuant to CEQA (California Environmental Quality Act).*

44
45 Ms. Hersch presented the staff report.

46

1 PUBLIC HEARING OPENED.
2

3 **Vivian Kahn, applicant-** said that the project, as it was presented to the city the previous
4 year, was designed to mitigate what was identified in the previous draft of the initial
5 study. She noted that the net increase in floor area is 12,500 sq. ft. less than the previous
6 proposal. She said that the previous project included an additional 33,890 sq. ft. of floor
7 area, two buildings that were removed, including a 14,500 sq. ft. multi-use building with
8 seating for 750 people and the 11,800 sq. ft. classroom building. She noted that the new
9 proposed chapel contains seating for 200, which is one class including staff, and is around
10 4,400 sq. ft. which is smaller than some of the other buildings. She said that the 4,400 sq. ft.
11 building would be close to the Valesian Hall. She noted that the building will be 40 ft. tall.
12 She said that while it will be visible, she believed that it will be screened by existing and
13 new landscaping, and will serve to block out light and glare. She mentioned that they
14 included a plan for landscaping. She pointed out differences in the new proposal,
15 including a storm water drainage system, circulation plan, landscape plan, and a specific
16 design for the music building. She said that they are asking for design review approval at
17 the same time as the use permit. She also mentioned that they submitted a revised traffic
18 management plan, one feature being that the school commits to not hold two large events
19 at the same time, and having no more than ten large events a year. She said that they are
20 now proposing to meet the entire parking requirement on site, which will help relieve
21 inconvenience that neighbors may have. She said that there will be a storm water pollution
22 prevention plan, which has to be done in compliance with laws. She said that the project is
23 regulated under c3 of the Alameda County Guidelines. She noted that less than 50% of the
24 previously existing impervious areas will be altered and that 100% of the runoff will be
25 treated using low-impact development approaches. She said that one feature will be a
26 2,500 sq. ft. rain garden which is designed to retain water so it doesn't run into Codornices
27 Creek. She said that the study found that because there was no increase in enrollment, no
28 significant change in traffic patterns, and no conflict with the Bay Area Clean Air Plan,
29 there will be no significant impact. She noted that they have done a noise study to show
30 that there will be no increase in ambient noise.
31

32 Commissioner Moss- asked if she is proposing an additional 33,890 square feet from what
33 is exists currently to what they want.
34

35 **Vivian Kahn-** said that they had included a table that compares the existing project and
36 the 2008 project.
37

38 Commissioner Moss- verified that the parking is increasing to 151 spaces, and additional
39 24 spaces.
40

41 **Vivian Kahn-** said that the previous application counted the 44 spaces on Posen Ave. as
42 part of the parking required to meet the requirement.
43

44 Commissioner Panian- said that the staff had mentioned that no action would be taken. He
45 clarifies that after the comment period is done, they will go back with a three part
46 approval.

1
2 **Joe Light, representing the Peralta Park Neighborhood Association-** believed that if the
3 hearing to receive comments would have been better if it was later and people had time to
4 analyze the documents and form a response. He said that there are inadequacies in the
5 initial study in terms of its scope, approach, assumptions, evidence, methodology, and
6 technical analysis employed that render it inadequate for the purposes of CEQA. He said
7 that speakers following him will go into detail on the technical and analytical
8 inadequacies, as well as identify potential impacts and problems that don't appear to be
9 comprehensively addressed in the document. He thought that the main problem, which
10 undermines confidence in the environmental analysis, is that there are aspects of the
11 project that are inadequately described, which results in the inability to discern the full
12 potential for impacts. He noted that, in addition to a new music building, classrooms, and
13 administrative space, the application entails a set of structures including a chapel which,
14 being intended for 200 people, could be capable of holding 400 people. He mentioned that
15 if a class is 200 people, then there would be an enrollment of 800 people, not 600 people,
16 which is the current limit. He noted that they are also proposing full kitchen facilities as
17 well as an enlargement of an 11,400 sq. ft. single-family home that houses 2-4 people by
18 2,500 sq. ft. He mentioned that residential uses aren't allowed in the PF zone. He said that
19 the use of the buildings could accommodate impact-producing events, or at least intensify
20 the unanalyzed usages of the site. He said that the Mitigated Negative Declaration is
21 predicated on the concept that if there isn't any immediate increase in enrollment, then
22 there will be no increase or alteration of activities that could adverse impacts, regardless of
23 the expansion of facilities. He believed that the application only provides a set of
24 incomplete descriptions, graphics, and details of the intended and potential uses of the
25 facilities. He noted that the application doesn't have any floor plans, designated levels of
26 building occupancy, or firm descriptions of purposes. He also pointed out that there isn't a
27 listing of ongoing non-curricular activities on the campus, where the current impacts of
28 the school are quantified and compared to potential new ones. He said that they can't
29 really know if the facilities, being used individually or in combination, could allow
30 additional or intensified activities, or even resulting in a request to increase enrollment,
31 which isn't subsumed in the assumption that having no new enrollment will ensure no
32 increased impact. He noted that once a facility is built, it is hard to resist using it fully. He
33 said that there are cases in the region in which private schools have increased their
34 buildings without increasing the allowance for enrollment, but those buildings ended up
35 being backfilled with increased enrollments. He was troubled that the project is a revision
36 of an earlier application for a long-range master plan that was submitted in 2008 and was
37 left in 2010, following comments on the flaws and inadequacies of the initial study and
38 MND. He said that the project is a reduced version of the previous one in which two
39 buildings were removed, but the current application also shows two buildings that
40 weren't to be included in the application, labeled as future projects outlined on the project
41 site plan. He said that the two buildings were removed, following questioning by the
42 PPNA, with the explanation that the removal was due their creating confusion, not due to
43 the removal from the master planning of the site. He believed that the explanation implies
44 that they are intended as a further step in an implicitly larger master plan process in
45 addition to the permissions sought in the current application. He said that because the

1 buildings were forecast, the contributions of the building should be considered in the
2 initial study's analysis to satisfy the requirements of CEQA.
3

4 **Richard Grasetti, environmental consultant for the Peralta Park Neighborhood**
5 **Association-** voiced his concern regarding the level of detail of the information provided
6 in the project description. He said that while they have a list of some things the facilities
7 will be used for, they don't know any constraints on its use, so it can potentially be used
8 for other things. He said that while they know the size of gravel used in the proposed rain
9 garden, they don't know what the design flow will be, how much water can go in and out,
10 and peak flows. He pointed out that even though the project application showed the
11 design, heights, and elevation of the proposed building, the initial study did not at all. He
12 says the original paragraph description of the project was not sufficient for a project of this
13 size. He believes there should be more information available to help determine if impacts
14 are significant. He wanted more information regarding the look of the Brother's residence
15 and as well as any clarification on change of uses. Another issue he noted was that the
16 initial air quality survey identified that diesel emissions may have an adverse health affect
17 on the students. He said the existing conditions that are going to be carried over should be
18 clearly stated so that an appropriate impact statement could be made. In terms of noise, he
19 recommended looking at single events rather than over a 24-hour span of time. He
20 questioned if the new proposal would be growth-inducing and increase enrollment on
21 campus. He then made himself available to questions.
22

23 **Donna Dedimar, Albina Ave resident-** noted a striking similarity between that the initial
24 study of this proposal and that of the 2008 proposal. She said whole passages seemed to be
25 taken from 2008 proposal because the proposal referred to various conditions that no
26 longer existed. She said her biggest concern was enrollment and noted that many of the
27 items she addressed in the September 9, 2008 meeting still hold true and she will have that
28 transcribed and send to the commission during the comment period. She expressed
29 confusion over the actual student enrollment numbers being 600 or 630. She referenced
30 various reports and documents from CEQA, staff, and conditional use permits from
31 previous meetings about the school and read that the enrollment of the school was not to
32 exceed 600 students with the exception of up 5% increase to allow for attrition and other
33 student body changes. She said that Jeff Bond had changed the language of this
34 enrollment cap to simply 630 students which she agrees is simpler but does not accurately
35 reflect the proposed enrollment cap of the 1994 conditional use permit. She stressed that
36 admissions and enrollment are two different issues and while St. Mary's can admit up to
37 630 students to account for attrition and other changes, they can only allow enrollment for
38 600 of them. She said if the enrollment cap was increased to 630 then admissions would
39 increase as well and if attrition is low, the school would enroll over 630 students. She said
40 that she has raised this issue for 5 years and the city has never followed up on St. Mary's
41 enrollment. She concludes that St. Mary's has not enrolled 630 students in any of the past 5
42 years and has denied request that enrollment be changed from 600 to 630 students. She
43 also added no CEQA analysis has ever been done to assess an enrollment of 630 and
44 therefore she says the staff should not unilaterally change the enrollment cap to 630. She
45 suggests rewording the language concerning the enrollment cap to better reflect the intent
46 of the existing conditional use permit. She presented her own proposal of how the

1 language should be revised. She added that this is what she has to say about CEQA
2 related issues but she has other issues that she will save for future meetings on un-CEQA
3 related issues.
4

5 Commissioner Moss- noted that the City Council made the conditions, so they are the ones
6 with the authority to revise the wording. He clarified that the Planning and Zoning
7 commission could only make a recommendation.
8

9 **Donna Dedimar-** added that City Council set the cap at 600, but this commission tried to
10 change the cap to 630.
11

12 Commissioner Moss- agreed that the Council should revise the language and said the
13 Planning and Zoning commission would not try to change the cap to 630.
14

15 **Hannah Bankier, Albina Ave resident-** said her biggest concern was traffic in regards to
16 noise but more so safety. She wanted to know if the activities associated with the new
17 proposal, for instance the chapel, could be in some way limited only to school days. She
18 expressed concern about how the new changes would impact the neighborhood as she
19 would like to keep the neighborhood a walking-safe place for her two small children. She
20 also believes there should not be an increase in parking because high school students
21 should be able to walk to school or dropped off. She would like for cars driving down her
22 street to have a parking spot on campus.
23

24 **Vin Ryan, Albina Ave resident-**said his main concern was parking during the events.
25 Although there are efforts from the school to warn nearby residents beforehand,
26 ultimately parking is still limited. He also said at times the students can be noisy
27 particularly during single events such as football games. He suggested noise mitigation
28 methods such as walls or trees to help with this issue.
29

30 **Laurie Copan, Albina Ave resident-**voiced her concern on the lack of traffic mitigation in
31 this area. She noted in the 1994 conditional use permit the issue of a speed bump to curb
32 traffic and speed was addressed but never put in place. She added that there have since
33 been no attempts on behalf of the school to mitigate traffic in this area. She mentioned one
34 example was back in March when the school hosted a college fair and there was no
35 parking left for residents. She added cars were parked in driveways and red zones. She
36 said the schools made no attempts to make sure residents driveways were not blocked and
37 that residents could get in and out of their garages in case of an emergency. She said her
38 neighbors have since been trying to work with the school on this issue but Copan
39 questioned why after ten years of meetings the school didn't plan for an event like that
40 and disregarded their neighbors. She wanted the school to follow through with any
41 mitigation concerning traffic included in the negative declaration and be held accountable.
42

43 **Cynthia Perry, Albina Avenue resident-**shared that she is a Head Royce parent and every
44 year she is required to sign a contract with the school agreeing to abide by certain traffic
45 and parking regulations surrounding the school. She added she must include her car's
46 license plate and model so neighbors could report her if she were to break the regulations.

1 She said St. Mary's traffic and parking regulations don't seem to be properly enforced. She
2 suggested St. Mary's employ a program similar to other local schools in order to better
3 enforce their regulations. She also stated that based on the increase in square footage there
4 would be a greater risk for fire and seismic activity. She recommended that the school put
5 more thought into what is done in an emergency situation because the current procedure
6 relies heavily on the Albany Fire Department and she believes the Berkeley Fire
7 Department would have an easier time getting to the situation as they do not have to cross
8 a bridge.
9

10 **John Gabriel Vonkerr, Albina Avenue resident-** expressed concern about activities at the
11 school extending beyond school hours and going to summer and weekends. He shared
12 that he has two young children and understands he must have certain precautions for
13 them since he lives on a busy street by a school. He hoped, however, that the school's
14 activities would not extend beyond the school hours as this would then affect everyday
15 life.
16

17 **Amy Tick, Westplace/Posen resident-** wanted clarification on the uses of the new
18 buildings would be. She added that it did not seem to be specified in the documents she
19 had seen concerning this project and was curious how the commission would be able to
20 make an informed decision without this information.
21

22 **Michael Thompkins, Monterey Avenue resident-** shared that he played a lead role in
23 negotiating with the school regarding the parameters of use for the athletic field. He stated
24 that while initially the relationship with the school was good, overtime the school has been
25 disregarding the set parameters and have been using the field for longer than their allotted
26 time. He also noted that in some cases, for instance, football training in the summer, the
27 school could mitigate noise and neighbor disruption by not using whistles. While he
28 understands that the school is not obligated to do so he noted that studies have shown that
29 a football team can be just as successful without the use of whistles. In relation to the
30 current issue, he advised that if parameters of use are set with the school, the school
31 should be prepared to enforce them. He believes that it should not be the neighbors job
32 each time to make these agreements and that the school should work harder to make
33 matters work as well.
34

35 **Chris Hamilton, Albina Ave resident-** requested clarification on how residents could
36 follow up on changing the language regarding the enrollment cap at St. Mary's.
37

38 Commissioner Moss- said that residents would have to go to the planning department and
39 have them send the request to City Council as either a determination of condition of
40 approval or a restatement of approval.
41

42 Ms. Hersch-clarified that with this application request, there would be a new conditional
43 use permit and project conditions. She said that while previously City Council had the
44 final decisions on the project, in this new application the Planning and Zoning
45 Commission will be reviewing it and taking action. She said she believes the Commission
46 can modify a condition of the Council, but she will clarify with the city attorney.

1
2 **Sarah Cone, Hopkins Court Contingency-** expressed concern about parking lots and
3 additional parking. She said she's been impacted over years because of the night lighting.
4 She believes with the new lighting on the higher level parking lot may cause a problem for
5 her and her neighbors. She also added that there hasn't been much landscaping or
6 mitigation of the parking lots and that often times the current parking lot is not full and
7 that additional parking may not be necessary. She also said the higher parking structure is
8 much more visible than the old parking structure.
9

10 Commissioner Moss- said that there's a new ordinance that prohibits glare and over-
11 lighting of neighbor's property.
12

13 **Kevin Shipp, Albina Ave resident-** stated that he had read the CEQA document but was
14 still uncertain about the work being done. He does not believe there is enough information
15 given about the project and would like to know if school activities are going to be
16 extended into summer and other time out of school so that he can plan for it.
17

18 Commissioner Arkin-thanked those who shared and noted that the comment period was
19 open from June 6 to July 6 and could be submitted to city staff at City Hall. He invited the
20 applicant to address any issues.
21

22 **Vivian Kahn-** did not have anything further to share at the time but made herself
23 available for questions.
24

25 Commissioner Moss- listed a few items he would like to see in the negative declaration
26 including photometric plans to show what would happen with the night time lighting, a
27 discussion of traffic and noise issues, and possibly conversation about rewriting the
28 enrollment cap. He invited Berkeley council members to join the discussion about Quiet
29 Streets and noted that since these streets are in Berkeley the Albany Planning and Zoning
30 Commission had no jurisdiction, however, they were open to working with the City of
31 Berkeley on this issue as well as with traffic issues. In terms of the use for the chapel, he
32 believes the City cannot limit the uses of the chapel if the uses are religious, for example,
33 weddings and services. He will have the City Attorney clarify. He also wanted more
34 description regarding the uses of certain buildings, for example, would the music building
35 also have dancing and recitals?
36

37 **Vivian Kahn-** said the music building was mostly for instructional space. She said the
38 original proposal for 750 fixed seats had been taken out.
39

40 Commissioner Moss- asked for information regarding the predicted end times of this
41 instruction and how late after school events and programs would take place.
42

43 PUBLIC HEARING CLOSED.
44

45 Commissioner Panian- focused on the mitigated negative declaration and wanted
46 clarification on the actual student body population so that a decision could be made

1 appropriately. He said key to the discussion would be determining if there would be a de
2 facto increase in population due to increase in infrastructure. He stated clarification on this
3 determination would help him make a decision. Another issue he highlighted was noise
4 and traffic. He pointed out lack of details and specificity could be contributing to this
5 issue. He added that there has been discussion of a conditional use permit since the land is
6 designated public facilities land use. He said this means that any residential use of this
7 land then would require a variance. He hoped to hear see formal comments from the
8 speaker than had spoken about adequacy. With respect to design review, he said the
9 music building had a lot of detail and had good design. He said the function of the
10 building may need to be discussed more but the design aspect was well executed. He
11 added the other buildings did not have the same level of detail particularly the chapel
12 element. He said the use and residential aspects of these building should be considered.
13 He said in terms of access to the school in emergency situations, Berkeley should be
14 stipulated to get involved and help determine the suitability of the bridge to fire safety
15 and emergency response. He believed that the Planning and Zoning Commission is the
16 body that makes the decision concerning the enrollment cap and that it is important that
17 the commission be upfront about this issue.
18

19 Commissioner Maass- agreed with what Commissioner Panian had to say about
20 enrollment and being upfront. He would like to see a greater traffic management plan
21 come out of this process as well as an assessment of emergency vehicle access.
22

23 Commissioner Arkin- said that he is confident issues are being identified and will be
24 addressed in the future. Looking ahead to the crafting of conditions, he said it may be
25 useful to hear various suggestions as well as look at how effective other cities have been in
26 crafting conditions for similar projects. In terms of enrollment, he said data of enrollment
27 numbers highs and lows for each month could be useful. He felt it was appropriate for
28 staff to use the enrollment maximum in the CEQA study. He said the impacts of building
29 envelopes for height and square footage should be studied as maximum limits as well. He
30 restated that the comment period did not end until July 6th.
31

32 Commissioner Moss- said that he was not sure if PF (Public Facility) was the appropriate
33 zoning for this facility because St. Mary's is privately owned. He echoed Commissioner's
34 Panian point about residential uses in a PF zone.
35

36 Ms. Hersch said she would have to speak with the City attorney to clarify if the area
37 requires rezoning or a variance.
38

39 Commissioner Arkin said in this case it was a likely an existing nonconforming use that
40 predated the requirements in the PF zone. He said the issue at hand would be expanding
41 the non conforming use and which mechanism would be used to do that.
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6. 7. New Business

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A. Appeal of Building Official Decision: unpermitted stairs constructed in the public right of way at 735 Evelyn Ave, Albany -The applicant is appealing the decision of the building official regarding unpermitted front stairs constructed in the public right of way. The applicant received a building permit for a new foundation. Upon completion of this work, a new stairway was installed in front of the home and encroaches 2 ft. in the public right of way. The stairway was not included on the building permit plans and was constructed without a building permit. The building official determined that due to the stairs being constructed without a permit and the encroachment in the public right of way, the applicant would be required to remove the unpermitted work. The applicant has appealed this decision to the Planning & Zoning Commission for further review and action.

Recommendation: Receive the report and uphold the decision uphold the decision of the Building Official to remove the unpermitted stairs within sixty (60) days of the decision.

Ms. Hersch presented the staff report.

PUBLIC HEARING OPENED.

Susie Meyer, new homeowner of 735 Evelyn and appellant- passed out supporting documents including photographs and letters from her doctor and neighbor to the commission and staff members. She stated that she is appealing the decision and is requesting a variance for the stairs. She referred to 6 of 10 essentials listed in the City of Albany’s Design Guidelines for Residential Homes and New Additions, saying that they were relevant to the topic at hand. She added that contrary to what is written in the staff report, the new stairs and handrail were included in the building plans and detailed in the scope of work on their application. In building the stairs, she said she reminded the contractor of her orthopedic problems and as a result additional broad low rise stairs were created to accommodate her medical condition. She stated that many neighbors have complimented her on her stairs and that the stairs are more of an asset to Evelyn Avenue than a liability. She said these steps added warmth and character to the house and are constantly used now. She refuted City staff’s claim that the stairs were in the public right of way and proved hazardous. She mentioned that the entire width of the sidewalk was still available for pedestrians. She felt the City was essentially asking for an unreported easement on her property in excess of 8 ft. In her own survey around town, she claimed there were many plain sets of stairs t as well as landscaping and fences that looked to be equally in violation of the public’s right of way. She has included photos of example residences. She asserted that landscaping, walls, and fences were unwelcoming structures unlike her set of stairs which had a low risk of causing injury. She concluded that she believes her house strives to achieve what an Albany house should be and she hopes the Commission will grant her a variance and permit for the stairs as built.

1 Commissioner Moss-asked about the size of the substandard lot mentioned.

2
3 **Susie Meyer** -replied that she believes it is 50 x 50.

4
5 Commissioner Arkin- asked for her cross-street.

6
7 **Susie Meyer** -said that it was Washington and Portland.

8
9 **The applicant's ex-husband and employer (no name stated)**- said that he was surprised
10 by the incongruity in the case that there are allowed uses about the sidewalk that do
11 present actual trip hazards while these stairs which are used to accommodate a
12 disability are unpermitted. He says there is information presented in the building
13 application that the staff report claims is not included. Even in the event that the
14 information was not presented, he said it is implied that if a house is raised 18 inches
15 that some structure to accommodate this would be included in the scope of work. He
16 added that the steps were also sustainable and required fewer resources to create this set
17 of stairs then to create a new design. He concluded that these stairs should be allowed a
18 variance because they not only appeal to the City's design plan but also served as an
19 accommodation to the applicant's disability.

20
21 Commissioner Moss -asked staff if this would be an encroachment rather than a
22 variance.

23
24 Ms. Hersch- clarified that it would be a permanent encroachment if they chose to allow
25 for the stairs that way. She also added that has been a recorded city dedicated easement
26 in this location and that is why there is a 10 ft. requirement for the sidewalk.

27
28 Commissioner Arkin -offered an example of a permanent encroachment.

29
30 Commissioner Moss -clarified he wanted to know if a variance was needed rather than
31 some other form of allowance.

32
33 Commissioner Panian -said that he thought a permanent encroachment or variance
34 would be needed because a regular encroachment is a permit that is no longer in effect
35 after the work is done.

36
37 Ms. Hersch -said that the City has been working with the idea of a permanent
38 encroachment and the city engineer felt that if the work required a permanent
39 encroachment permit, the application should go through the Planning and Zoning
40 Commission for review and condition.

41
42 The commissioners agreed.

43
44 Commissioner Panian -noted that Albany is full of legal non-conforming building
45 structures.

46

1 Commissioner Arkin -added that these structures were in many cases built before the
2 current version of the zoning code was in effect.

3
4 Ms. Hersch -clarified that the packet included the detail included in the building permit
5 submittal. It showed 4 stairs and the hand railing.

6
7 Commissioner Arkin -said that the public hearing is still opened and that the appellant
8 wanted to make another comment.

9
10 **Susie Meyer** -asked if it was permissible to have a retaining wall that goes to the edge if
11 the sidewalk but not a staircase.

12
13 Commissioner Arkin- said that it was permissible to build a retaining wall at the
14 property line provided that it did not exceed the height requirements. He said the
15 Planning and Zoning Commission would then look at the specifics of the lot during
16 design review.

17
18 **Susie Meyer** -wanted clarification on why it was permissible to build a wall but not a set
19 of stairs.

20
21 Commissioner Panian -said that the building of any structure was prohibited if it was
22 not a legal designation and the homeowner was building beyond their property line and
23 into the City's property. He said the edge of the concrete may not correspond to the
24 property line.

25
26 Commissioner Arkin- said the Planning and Zoning Commission might approve
27 something like this but this does not mean they definitely will.

28
29 Commissioner Moss -said the Planning and Zoning Commission is typically give more
30 leniency towards sub standard lots.

31
32 Commissioner Panian -said that he did not believe the lot was 50' x 50' but a standard
33 100 ft' deep.

34
35 Ms. Hersch -said the site plan presented on the building permit showed the lot to be 50'
36 frontage by 51'11" of depth.

37
38 PUBLIC HEARING CLOSED.

39
40 Commissioner Maass -pointed out that part of the problem was that what was built
41 contradicted with what was proposed in the plans. He said the other issue was that the
42 stairs were in the public right of way and with the handrails and seemed to impede
43 access more than a 3' retaining wall would. He said it would be possible to construct the
44 stairs in a way that may not achieve the same aesthetic appeal but was further back from
45 the sidewalk and had the same gentle rises. He said he would like to avoid creating a

1 variance as it is a big deal. He said he has not completely made up his mind yet on this
2 issue.

3
4 Commissioner Moss -said that the look of the house went along well with what was
5 detailed in the design guidelines, however, the stairs encroaches into the public right of
6 way. He noted the lot is substandard and there is a lack of space. He said he would have
7 liked the stairs to be illustrated in the original plans and would have recommended the
8 posts be moved back one riser so the handrails would not encroach in the public right of
9 way. Overall, he enjoyed the design and was not bothered by the encroachment.

10
11 Commissioner Panian -said the examples and reasons presented were reasonable. He
12 said the design guidelines were purely guidelines and ordinances would be take priority
13 in this situation. He also expressed concern about changing the ordinance as it could
14 cause an issue for future homeowners. He mentioned that the stairs being well
15 constructed are beside the point as they were not approved in the original plans that
16 were presented. He disagreed with staff that the commission was simply appealing a
17 decision, stating that it the appellant is requesting a variance. He said a variance would
18 require special circumstances at the site that requires a finding to be made and an
19 exception to be made. He said this seems to be providing an easement for one person
20 who may be the homeowner now but may not be in the future. He said if the
21 Commission were to make a variance, they should make sure the finding is not undue
22 privilege. He agrees with Commissioner Maass that these are simple stairs that require
23 minimal hardship to see the obstruction removed. Since this is a new nonconforming
24 condition being made, at a minimum the conditions being granted should made in the
25 right context. He does not believe the Commission has the right to overrule the building
26 inspector simply on the base of an appeal. He said he is disinclined to grant a waiver to
27 encroach on public land for private purposes. He also felt overruling the building
28 inspector's decision would undermine the inspector's authority and create a slippery
29 slope situation. He said if a variance is crafted by staff or the rest of the Commission he
30 is open to hearing it, but would suggest taking caution. He said he has seen many
31 applications where applicants had to make drastic changes to their houses in order to
32 comply with city regulations and while he understands the appellant's circumstances,
33 he does not feel inclined to agree to the stairs.

34
35 Commissioner Moss -said there are many encroachments on Solano that went through
36 the Commission and were granted. He bought up Little Star Pizza as an example.

37
38 Commissioner Arkin- mentioned that this was a commercial property and they had zero
39 setbacks.

40
41 PUBLIC HEARING RE-OPENED.

42
43 **Susie Meyer** - said she appreciates that Commissioner Panian did not want to
44 undermine the building inspector's authority, however, she cited Mr. Henderson as the
45 genesis of her appeal. She said he had told her getting a note from her doctor about her
46 orthopedic pain would go a long way towards getting the stairs approved.

1
2 Commissioner Moss -pointed out there is multiple occasions when the Commission has
3 granted encroachment for handicap ramps. He said he did not like this idea originally
4 but staff had told him that it was already built and there was no other way for the
5 applicants to access the house.

6
7 Commissioner Panian- said this project is pretty big and was not thought out carefully
8 and he is not prepared to approve it.

9
10 Ms. Hersch -said if the Commission agreed to a variance tonight, the applicant would
11 have to file a formal application with the city, pay the fee, and come back to the
12 Planning and Zoning Commission.

13
14 Commissioner Arkin -asked if anyone knew the rise of the stairs as they were built -the
15 difference in height from step to step.

16
17 Susie Meyer suggested it was about 5-6".

18
19 Commissioner Arkin -assumed the distance was about 5-6". He said looking at the
20 submitted plans, there are five risers. Looking at the previous stairs before building
21 there were two risers and now there are eight risers. This means this house is eighteen
22 inches higher than what was proposed which is a problem. He said in the plans the first
23 riser is behind the column, but in the as built picture, the first riser is in the middle of the
24 columns. He said looking at how the current steps were designed and built, the steps
25 would have to extend into the sidewalk in order to work. He then questioned if they
26 should reward builder error.

27
28 Ms. Hersch -stated the architect had originally asked to go to 24" but staff told him at
29 24" the project would have to go through administrative design review and gave him
30 the materials. He said the time was not available to go through that route and Mr. Bond
31 and Mr. Henderson told the architect that 18" would be the maximum that could be
32 built with this permit without having to go through the administrative design review
33 process.

34
35 Commissioner Arkin- said that in his survey of the city, he did not find many stairs that
36 encroached on the property. He suggested inviting the city attorney to weigh in on this
37 issue before any action is taken by the commission. He would like the attorney to assess
38 the city's liability should an accident occur due to such encroachment. He suggested
39 continuing the item and getting more feedback later.

40
41 Commissioner Arkin -added that many of the photos the appellant presented of other
42 encroachments she'd seen around Albany were in fact not encroaching. He also asked
43 the Commission what they would have said to this project if the project was up for
44 approval prior to building.

45

1 Commissioner Arkin -agreed with Commissioner Moss that the lot was substandard and
2 closer to the sidewalk to begin with. He said there may be a variance here and he would
3 like to e-mail City Council about this issue.
4

5 Commissioner Panian- said if a variance were crafted he would make sure at a
6 minimum it was not a permanent easement so that if the sidewalk needed to be
7 widened, the City could do it.
8

9 Commissioner Arkin -suggested perhaps having an easement that was no longer in
10 effect at the point of sale. He also clarified that no action was being taken at this point
11 but that the commissioners were simply discussing possibilities.
12

13 PUBLIC HEARING RE-OPENED.
14

15 **The applicant's ex-husband and employer (no name stated)-** discussed some of the
16 concerns Commissioner Panian had and agreed with Commissioner Arkin's ideas of
17 temporary easement.
18

19 Commissioner Moss- said he was against a variance partly because a variance is granted
20 in the rights, but he thought a temporary encroachment might be feasible. He also was
21 concerned that if this is an issue of accessibility, it may turn into a civil liberties lawsuit.
22

23 Commissioner Arkin agreed the accessibility issue as well as the maximum height issue
24 given by staff should be taken to the city attorney.
25

26 Commissioner Panian read information and requirement about getting a variance. He
27 requested more information about different mechanisms mentioned to allow for this. He
28 highlighted that it is not an accessibility issue.
29

30 Commissioner Arkin said a temporary encroachment based on medical need may be the
31 most appropriate device. He said a key question for the city attorney would be if they
32 are permitting a potential trip hazard that the city could be liable for. He also asked
33 which solution would work for this situation and how far the house was lifted.

34 Commissioner Moss asked if the applicant would need an indemnification for the
35 encroachment or a deed restriction.
36

37 Commissioner Arkin said he believes applicants have to sign an indemnification for a
38 building permit.
39

40 Commissioner Panian asked the appellant to talk with her builder or contractor about
41 the plan.
42

43 Ms. Hersch asked if the commission would like to move the item to a date certain, June
44 26, 2012. The commission suggested moving it to July 10, 2012 as a number of the
45 commissioners will be absent on June 26.
46

1 PUBLIC HEARING CLOSED.
2

3 **Motion to continue item 7a to a date certain of July 10, 2012:** Commissioner Panian
4

5 **Seconded by:** Commissioner Maass
6

7 Ayes: Arkin, Panian, Moss, Maass

8 Nays: None

9 Motion passed, 4-0
10

11 **8. Announcements/Communications/Discussions**
12

13 a. Update on City Council agenda items related to Planning and Zoning activities.

14 b. Review of status of major projects and scheduling of upcoming agenda items.
15

16 Ms. Hersch took a survey of who would be present at the next meeting for scheduling
17 purposes.
18

19 She stated the wireless appeal is scheduled to go to City Council on July 2, 2012.
20

21 **9. Future Planning and Zoning Commission Agenda Items**
22

23 a. Next Planning and Zoning Commission hearing scheduled for Tuesday, June 26, 2012.
24

25 **10. Adjournment**

26 The meeting was adjourned at 10:38 p.m.
27

28 Next regular meeting: Tuesday, June 26, 2012, 7:30 p.m. at Albany City Hall
29
30
31

32 _____
33 Submitted by: Anne Hersch, City Planner
34
35

36 _____
37 **Jeff Bond**
38 **Community Development Director**