

City of Albany

Planning and Zoning Commission Minutes July 10, 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, July 10, 2012.

2. Pledge of Allegiance

3. Roll Call

Present: Moss, Panian, Arkin

Absent: Eisenmann, Maass

Staff present: City Planner Anne Hersch, Community Development Director Jeff Bond

4. Consent Calendar

A. Meeting Minutes from April 10, 2012

Held over to review at the next meeting on July 24, 2012

B. **PA 12-023: 812 Ramona 1st & 2nd Story Addition Design Review-** The applicant is seeking design review approval for a new 1st and 2nd story addition to the home at 812 Ramona. The existing home has 2 bedrooms and 1 bath and is 1,129 sq. ft. on a 5,000 sq. ft. lot. The applicant would like to add 659 sq. ft. to the first floor creating an expanded living room, dining room, and a new second bath. The second floor is proposed to be 976 sq. ft. and will include two new bedrooms, two bathrooms, and a bonus room. This results in a four bedroom, four bath home. The building height is proposed to be 21'8". One parking space will be provided in the garage and an uncovered parking space is proposed adjacent to the garage. The current home is a single story Arts & Crafts appearance and the proposed design is Neo-Mediterranean.

Held over due to a lack of quorum at the June 27, 2012 hearing.

Recommendation: Continue to a date certain of July 24, 2012

5. Public Comment on Non-Agenda Items

Clay Larson, Albany resident- comments on items from July 9th council meeting regarding UC senior housing whole food project. He says that when the issue was discussed, the question of inclusionary housing had only a one sentence comment in the staff report: "the city has inclusionary requirements but recent court rulings have invalidated the inclusionary requirements for rental housing projects". He believes that is not an accurate characterization of the project and asked Jeff to provide him with the court cases that were referred to. He was provided with the legal analysis of the case Palmer/Sixth Street Properties vs. City of Los

1 Angeles, which found that the city of Los Angeles's housing policies were hostile to the Costa-
2 Hawkins Act. He notes that one of the exceptions of the Costa-Hawkins Act is any concessions
3 or waivers described in the Density Bonus Law. Since the UC project and will be getting a
4 waiver of the parking requirements, he argues that they were exempted from the Costa-
5 Hawkins Act (Costa Hawkins says developer can set initial rents). He thinks the City should be
6 adopting ordinances in response to the 2009 court case Palmer/Sixth Street Properties vs. City
7 of Los Angeles and thinks inclusionary housing is an important element. He talked to Attorney
8 David Blackwell and asked if cost-prohibitive is the economic equivalent of physically preclude.
9 Blackwell said cities will argue for literal interpretation of law and developers will argue for a
10 more general interpretation. He notes that the City proposed a more developer-friendly
11 position which is not typical according to Blackwell. He thinks the City should review the
12 Density Bonus Law (which was last changed in 2008) and inclusionary housing law in light of
13 the 2009 court case.

14 15 **6. Public Hearing Items**

- 16
17 **A. Appeal of Building Official Decision: unpermitted stairs constructed in the public**
18 **right of way at 735 Evelyn Ave, Albany** -The applicant is appealing the decision of
19 the building official regarding unpermitted front stairs constructed in the public right
20 of way. The applicant received a building permit for a new foundation. Upon
21 completion of this work, a new stairway was installed in front of the home and
22 encroaches 2 ft. in the public right of way. The stairway was not included on the
23 building permit plans and was constructed without a building permit. The building
24 official determined that due to the stairs being constructed without a permit and the
25 encroachment in the public right of way, the applicant would be required to remove
26 the unpermitted work. The applicant has appealed this decision to the Planning &
27 Zoning Commission for further review and action.

28 *Contd. from 6/12/12 Planning & Zoning Commission hearing*

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

31
32 Anne Hersch presents staff report.

33
34 Commissioner Arkin asks if the opinion presented was that of the City Attorney.

35
36 Jeff Bond replies that it was his own analysis and that the City Attorney has not had a chance to
37 weigh in on the issue.

38
39 Commissioner Arkin says that he thought the question was what liability would the City have if
40 they took action to approve it as an encroachment into the right-of-way. He understands that
41 the opinion presented in the staff report is one option.

42
43 Jeff Bond says he is not familiar with the City ever approving private improvement in public
44 right-of-way but notes that there could have been situations where this has occurred. He says
45 that they will sometimes see landscaping steps but this situation involves handrails built to the
46 edge of the sidewalk, and there are alternatives that do not encroach on public right-of-way. He

1 hopes the commission and applicant will consider the easier alternatives which are more
2 appropriate uses of the public right-of-way.

3
4 Commissioner Arkin says he can think of instances where encroachments have been granted
5 but not for an entire stairway.

6
7 PUBLIC HEARING OPENED
8

9 **Susy Meyer, homeowner and applicant/appellant-** says she has reviewed City's report and
10 hopes to get clarification on the paragraph which states "the City is not in a position to gift
11 public land, gifting land is against state law, etc" and that she as the property owner would be
12 required to purchase the land from the City. She believes that she owns the land but the City
13 has an easement and would like clarification from the City Attorney regarding her issue.

14
15 Commissioner Arkin- says they can give her clarification. He says the property line is two feet
16 from the edge of the sidewalk so the City owns that land.

17
18 Jeff Bond- says that "easement" is a mischaracterization and that the City owns the sidewalk
19 and two feet towards Meyer's house.

20
21 **Susy Meyer-** says she would like to explore her options more fully and asks for a continuance
22 for 60 days in order to work with the City to hire an appraiser.

23
24 Commissioner Arkin- says that the City Council would have to express interest in selling the
25 land before an appraiser is hired, and the Planning and Zoning Commission should discuss the
26 issue prior to that.

27
28 Commissioner Moss- says the Commission can deny Meyer's request and she could appeal to
29 City Council, which he believes would be the best option. He says it would take longer to
30 agendize for the City Council without going through the Planning and Zoning Commission.

31
32 Jeff Bond- agrees that Moss' idea is procedurally the best. He says he could also talk to the City
33 Manager to see if it could be done without an appeal but cannot speak for her.

34
35 Commissioner Moss- replies that since the Commission cannot approve encroachment on City
36 easements, the cleanest option would be to send the issue to City Council, who can make that
37 decision.

38
39 Jeff Bond- notes that there is also a design review issue regarding the steps and thinks there is a
40 better way to treat the project architecturally.

41
42 Commissioner Moss- says that if the steps were pulled back two feet so they were on the
43 property line, there would be no problem with the design.

44 Chair Akin- says it would be a shame if the applicant purchased property from the City only to
45 have the design denied by the Commission based on design review concerns.

46

1 Commissioner Panian- says he reviewed original plans and found them to be unclear, and that
2 almost none of the plans were followed. He says he is disinclined to portion of pieces of the
3 sidewalk to homeowners and believes that would be poor planning. He does not believe that
4 four wood steps would require transfers of land and would like to deny the application and
5 allow Council to make a decision in the case of an appeal. He does not want to grant more
6 undue privilege especially since he believes the applicant did not make a good faith effort to
7 correct the issue.

8
9 Commissioner Arkin- invites applicant to respond.

10
11 **Susy Meyer-** says that at the last meeting she was unclear why the house had been lifted and
12 why what had originally been planned as four steps turned into more than that. She says she
13 discussed with her contractor what happened and discovered there was a large boiler under the
14 house that they did not know about. In order to give three inches clearance above the boiler,
15 they had to lift the house higher than originally intended which meant they had to build more
16 stairs. She says Mr. Henderson signed off on the extra height. She says she never meant to
17 interfere with ordinances and that she had to work around an unforeseen inconvenience which
18 caused more issues. She presents the Commission with a drawing that shows the changes
19 which had to be made, and with the document containing the signature of the inspector Mr.
20 Henderson.

21
22 PUBLIC HEARING CLOSED

23
24 Commissioner Arkin- notes that they are dealing with a compounding of issues including the
25 presence of three extra steps than what was designed, and that the top stair starts further
26 towards the street. The combination resulted in stairs that encroach into the City right-of-way.
27 He understands that the boiler created a problem but believes there were alternative solutions.

28
29 Jeff Bond- says he has talked to Henderson and that Henderson never authorized building stairs
30 into public property.

31
32 Commissioner Arkin- says that the permits for the house were for 18 inches and the house was
33 clearly lifted higher than that, which should have required review before the Commission.

34
35 Jeff Bond- says the office is insistent about any modifications to plans being submitted in
36 writing and given to Anne, rather than a verbal communication.

37
38 Anne Hersch- clarifies that the contractor was also responsible for design.

39
40 Commissioner Arkin- says he observed streets in the vicinity and all of them follow the two foot
41 right-of-way. He notes that there is evidence of some fences or retaining walls built over
42 property lines illegally. He says that the issue at hand needs to be resolved and could be by
43 either moving the stairs back or rebuilding a steeper set of stairs. He recommends that the
44 Commission denies the appeal.

45

1 **Commissioner Panian made a motion to deny the appeal of item 6A and up hold the decision**
2 **of the Building Official:**

3
4 **Seconded by:** Commissioner Moss

5
6 Ayes: Moss, Panian, Arkin

7 Nays: None

8 Motion passed, 3-0
9

10 Commissioner Arkin- notes that the applicant can still appeal to City Council as mentioned
11 earlier. He thinks the Commission should have further discussion regarding their denial.
12

13 Commissioner Panian- suggests they wait until further action is taken regarding an appeal to
14 City Council. He believes the contractor who designed and built the stairs is clearly at fault by
15 not following ordinances and not submitting changes to the City. He thinks that the applicant
16 should tell the contractor to fix the issue before considering going to City Council.
17

18 Jeff Bond- adds that they would be able to work with the contractor and homeowner much
19 more quickly than going through the process of appealing to City Council.
20

21 Commissioner Moss- recommends that the stair design should be sent to Staff and they can
22 approve or deny it without needing to be brought to the Commission.
23

24 **Susy Meyer-** asks for the denial of her appeal in writing or email.
25

26 Commissioner Arkin- informs Meyer that there is a 14 day appeal period and that staff can help
27 her through the process.
28

29 Anne Hersch- says that the decision will arrive by email within a few days but will be an official
30 letter.
31

32 Commissioner Arkin- clarifies that 14 day period begins with day of decision.
33
34

- 35 **B. PA 12-030 1498 Posen Design Review & Parking Exception** -The applicant is seeking
36 design review approval of a second story addition for the home at 1498 Posen
37 Avenue. The applicant is proposing to convert 283 sq. ft. of an existing attic area to a
38 new master suite with a master bedroom with walk-in closet, code compliant
39 staircase, hall closet, and bathroom. The maximum existing building height is 25'. A
40 parking exception is also being sought for one off-street parking and recognition of an
41 existing garage space to satisfy one off-street parking requirement.

42 ***Recommendation: Approve with Project Conditions***
43

44 Anne Hersch presents staff report.
45

1 Commissioner Arkin- asks if the proposed area for remodeling were slightly smaller, would
2 the issue still be brought to Commission.

3
4 Anne Hersch- says that the issue is the building of a second story addition.

5
6 PUBLIC HEARING OPENED

7
8 **Chad Shepherd, contractor-** says they have been working on the home and making sure it
9 complies with current code. He says they think it makes sense to make the attic a bit bigger
10 to help comply with standards and to make the home appeal more to a family with more
11 than one child. He says they will probably put the home up for sale.

12
13 **Linda Fisher, resident of home across the street-** thinks they are doing a fantastic job on the
14 project and notes that since the structure is remaining the same, the home is still compatible
15 with the neighborhood. She says that there is plenty of street parking on Posen Avenue and
16 hopes the Commission approves the parking exception.

17
18 Commissioner Panian- asks if the planning commission only conducts design review.

19
20 Anne Hersch- replies affirmatively to Commissioner Panian's question and says the applicant
21 also had to come before the Commission because of the parking exception.

22
23 Commissioner Arkin- notes that the single car garage not included in the plans is legal.

24
25 Anne Hersch- says that the driveway is not a legal parking spot.

26
27 Commissioner Arkin- notes that the house is under the limit for square footage and says that
28 they encourage building within original structure of house.

29
30 Commissioner Moss- asks to see pictures of second story windows.

31
32 Commissioner Panian- says they would look favorably upon this addition because it
33 improves the property without moving beyond the envelope. He thinks they should make
34 an exception for the parking but is worried about the proportions of windows with respect to
35 design review. He says they should specify the design of windows within their approval.
36 He says he is in favor of granting the application for both requests.

37
38 Commissioner Moss- agrees that he is also in favor of granting the application but notes that
39 there is an exterior change with the addition of one window, so the staff report needs to be
40 corrected.

41
42 PUBLIC HEARING CLOSED

43
44 **Commissioner Moss made a motion to approve application with conditions:**

45
46 **Seconded by:** Commissioner Panian

1 Ayes: Moss, Panian, Arkin

2 Nays: None

3 Motion passed, 3-0

4
5 **C. PA12-019 Legalization of previous home addition and a roof pitch change at 927**
6 **Pierce St.**-The applicant is seeking Design Review approval to legalize a rear yard
7 addition and to change the existing roof pitch of the home at 927 Pierce St. The addition
8 was constructed many years ago without permits and is approximately 130 sq. ft. in area
9 and 8 ft. in height. The applicant would like approval for a cedar shingle finish. The
10 home has flat roof and the applicant would like to change to a hipped roof with comp
11 shingle roofing materials. The existing home is stucco and painted white.

12 *Recommendation: provide feedback to the applicant and staff.*

13
14 Anne Hersch presents staff report.

15
16 PUBLIC HEARING OPENED

17
18 **Alfredo Bustamante, applicant-** expresses a preference for pitch roofs versus flat roofs. He
19 states that he did not know the rear addition was not legalized when he had bought the
20 house and he hopes to have it legalized now to improve the look of the house and make it
21 more in line with the other houses on the block. He also points out that the shingle finish has
22 a much more natural appearance, the rear addition is not visible from the street, and there are
23 many other houses in Albany in which the walls differ in the materials they are made out of.

24
25 Commissioner Moss- says he does not have any problems with the application but he would
26 suggest the building inspector look at it.

27
28 Commissioner Panian- believes the heart of the issue is essentially the reconstruction of the
29 fire damaged property into a house with a completely different look. He mentions the
30 historical value and diversity the house brings to Albany and points out the inaccuracy of the
31 plans. He has no issues with the shingle finish but did not like the fact that the application is
32 being presented to the commission after it was built. If taken through initial design review,
33 he says the commission would have discussed a number of issues they typically discuss
34 regarding windows and other details.

35
36 Commissioner Arkin- asks Anne Hersch if the building inspector David Henderson is
37 looking for the same window recess in a retrofit situation.

38
39 Anne Hersch- explains in a retrofit situation the applicant is required to take pictures of the
40 existing windows and submit a manufacturer's cut sheet for the City's records.

41
42 Commissioner Moss- states the windows must meet the 2 inch recess.

43
44 Commissioner Arkin- says the stucco detail on the existing house can be replicated to meet
45 the requirement.

46

1 Commissioner Moss- agrees with Commissioner Panian that the windows have to be
2 changed to meet the code requirements even though they are already built.

3
4 Anne Hersch- clarifies that when the fire happened, the applicant applied for a building
5 permit to work on the part of the house where the fire occurred (bathroom) and the permit
6 was issued. She says when the building inspector went to the property; however, other parts
7 of the house were being worked on without a permit. This resulted in a stop work order.

8
9 **Alfredo Bustamante-** says he mentioned changing some windows because of the fire damage
10 to the stucco. He does not understand why these windows are a problem as they are the
11 same as the previous windows. He says he has pictures of the old windows. He apologizes
12 for working on part of the house that was not permitted but he says he believed that it was
13 allowed.

14
15 Commissioner Panian- expresses disappointment that the Jackson and Solano application the
16 applicant had mentioned did not go through the commission's review either. He also clarifies
17 that the discussion is not about the design of the window but rather the way in which the
18 window is installed and framed.

19
20 Commissioner Arkin- mentions divided lights required divided muttons at the front of the
21 house.

22
23 **Alfredo Bustamante-** says he can get exterior grills for the window, but the existing windows
24 are easier to clean.

25
26 Commissioner Arkin- notices the roof plan does not match the elevations but assumes the
27 pitch will be the same all around with 45 degree hips. He says the new look is compatible
28 with both neighbors and if detail could be made around the front window that matches the
29 previous stucco work, then the project is fine.

30
31 Commissioner Moss- recommends changing the front window so that it can maintain the
32 same recessed iconic look of the previous windows. He says the applicant's side windows are
33 fine. He asks the commission how they would feel about having the applicant work with staff
34 to create a more recess looking window instead of the current flushed one.

35
36 **Commissioner Moss moved to approve item 6C with the following additional conditions:**

- 37
38
- 39 • The building inspector will inspect the structure and make sure it is to code
 - 40 • Design review is approved for a hip roof with comp shingle roof material
 - 41 • The rear addition is in cedar shingles
 - 42 • Applicant work with staff to find a solution to make the front window look
43 closer to what the existing window looked like and if no solution is found- the
44 application will return to the Planning and Zoning Commission

45 **Seconded by:** Commissioner Panian
46 Ayes: Moss, Panian, Arkin

1 Nays: None

2 Motion passed, 3-0

3
4 The commission discussed hoping to see more applicants adhering to their scope of work
5 and providing details to the City before construction. They realize the difficulty of this
6 because the current procedure is based on what work the inspector catches as he drives-by
7 but the commission hopes to enforce this matter more efficiently and hope to discuss this
8 issue further as an agenda item.

9
10 D. **PA12-024 Conditional Use Permit & Design Review for 650 Cleveland-** The
11 applicant is seeking Design Review and Conditional Use Permit approval to for the
12 property at 650 Cleveland Ave. The site contains an existing 1,790 sq. ft. building on
13 an 18,000 sq. ft. lot. An artist studio use is proposed for a portion of the building. A
14 workshop and contractor materials storage is also proposed. Improvements include
15 two new storage sheds at the property totaling 36 sq. ft. in area, replacement of
16 existing windows, new doors, and a new solar storage shed.

17 ***Recommendation: provide feedback to the applicant and staff.***

18
19 Anne Hersch presents staff report.

20
21 PUBLIC HEARING OPENED.

22
23 **Peter Beaudry, applicant-** requests to use the property for not only his wife's artist studio but
24 also for constructing garden or storage sheds.

25
26 Commissioner Moss supports the application.

27
28 Commissioner Arkin commends the applicant or seller for cleaning up the lot. He asks the
29 commission how much they care about what is done in this area as it a commercial/mixed
30 use/industrial zone and is not very visible from the larger part of Albany. He also wants
31 information about if anyone will be living here and also suggests security for the site. He has no
32 issues with the application.

33
34 Commissioner Panian is comfortable with the application in this particular location although he
35 mentions this may not be the case in other areas of Albany.

36
37 **Commissioner Panian made a motion to approve item 6D:**

38
39 **Seconded by:** Commissioner Moss

40 Commissioner Arkin- suggests the applicant add landscaping and art to give the land more
41 character.

42
43 Ayes: Moss, Panian, Arkin

44 Nays: None

45 Motion passed, 3-0

46

1 **7. New Business**

2
3 None.

4
5 **8. Announcements/Communications/Discussions**

- 6
7 a. Update on City Council agenda items related to Planning and Zoning activities.
8 b. Review of status of major projects and scheduling of upcoming agenda items.

9
10 Anne Hersch informs the commission of the approval of the University Village project last
11 night. She says the University would have to get an RFP to develop the grocery store portion of
12 the project and Belmont Village can begin the Design Review process. She clarifies if the City is
13 sued, the University would pay for the legal costs. She also reports the AT&T appeal is
14 returning to City Council next Monday, July 16, 2012. She clarifies that in staff analysis they had
15 found another feasible site for AT&T where AT&T said none existed. As for scheduling of
16 upcoming agenda items- Anne Hersch brings up the matter of a general plan update discussion.
17 She also took a survey of who would be present at the upcoming meeting.

18
19 Commissioner Panian expresses interest in creating a mandate that design plans have some
20 level of professionalism and discussing this in a meeting. The commission agreed that this
21 discussion would be important to have on the agenda for the meeting on July 24, 2012.

22
23 **Paul O'Curry-** shares that many people do not know which part of the sidewalk is their
24 responsibility and which part is the City's.

25
26 **9. Future Planning and Zoning Commission Agenda Items**

- 27
28 a. Next Planning and Zoning Commission hearing scheduled for Tuesday, July 24, 2012.

29
30 **10. Adjournment**

31 The meeting was adjourned at 9:12 p.m.

32
33 Next regular meeting: Tuesday, July 24, 2012, 7:30 p.m. at Albany City Hall

34
35
36 Submitted by: Anne Hersch, City Planner

37
38
39
40 **Jeff Bond**
41 **Community Development Director**