

**TOWN OF MORAGA
PLANNING COMMISSION MEETING**

Hacienda de Las Flores
Fireside Room, 2100 Donald Drive
Moraga, CA 94556

January 17, 2012

7:00 P.M.

MINUTES

I. CALL TO ORDER

Vice Chairman Socolich called the Special Meeting of the Planning Commission to order at 7:00 P.M.

ROLL CALL

Present: Commissioners Driver*, Richards, Whitley, Wykle, Vice Chairman Socolich

* Commissioner Driver arrived at 7:32 P.M.

Absent: Commissioner Obsitnik, Chairperson Levenfeld

Staff: Shawna Brekke-Read, Planning Director
Kelly Suronen, Assistant Planner

B. Conflict of Interest

Commissioner Richards reported that he was a personal friend of one of the neighbors who lived near the home located at 107 La Quinta, VAR 03-11, a public hearing item on the meeting agenda. He was uncertain whether or not he had to recuse himself from the discussion.

Commissioner Whitley understood that friendship did not constitute by itself a conflict of interest where Commissioner Richards would have to recuse himself, although if he [Commissioner Richards] was of the opinion that the friendship was of such a nature that an objective analysis could not be made for the item on the agenda, he should recuse himself.

Commissioner Richards advised that his friendship would not inhibit his ability to consider the item and he would remain at the dais for the entire agenda.

II. ADOPTION OF MEETING AGENDA

On motion by Commissioner Wykle, seconded by Commissioner Richards and carried unanimously to adopt the meeting agenda, as shown.

III. PUBLIC COMMENTS

There were no comments from the public.

IV. **ADOPTION OF THE CONSENT CALENDAR**

- A. **Approval of the October 3, 2011 Meeting Minutes**
- B. **Approval of the December 5, 2011 Meeting Minutes**

The Consent Calendar Items were moved for consideration under Item VI. Routine and Other Matters, as Items A and B.

V. **PUBLIC HEARINGS**

- A. **UP 13-11 / Patrick Whelan (Applicant), Nick Ghassem (Owner), 425 Moraga Road**: Consider Conditional Use Permit application to allow conversion of an existing vacant service station to include an expanded and modified convenience store, new automatic carwash, oil changing bay, outdoor vacuum air station, and continued gas sales. The project would include converting an existing service bay to accommodate the expanded convenience store and expanding a second service bay to accommodate an automatic drive-through car wash.

Assistant Planner Kelly Suronen presented the request for a Conditional Use Permit application to allow conversion of an existing vacant service station to include an expanded and modified convenience store, new automatic carwash, oil changing bay, outdoor vacuum air station, and continued gas sales. The project would include converting an existing service bay to accommodate the expanded convenience store and expanding a second service bay to accommodate an automatic drive-through car wash. She reported that there were four issues with the application: the appropriateness of the use for the site; noise in that the proposed carwash and two freestanding vacuum air stations exceeded the Town's noise standards and sound attenuation or different equipment would be required; on-site circulation; and signage.

In response to Commissioner Wykle, Ms. Suronen explained that an approval letter from the former Planning Director dated July 5, 2011, had been for the approval of two separate Conditional Use Permits that the applicant had applied for in 2011; one for a car wash and one for the convenience store.

Planning Director Shawna Brekke-Read explained that the former Planning Director had approved two Conditional Use Permits for the property; one for the expansion of the convenience store and an independent use permit for the operation of the car wash. The applicant would like to do both of those things and the issue now before the Planning Commission was approval of the expanded convenience store and a car wash. She noted that the car wash involved an expansion of the footprint of the building which required a use permit since it involved a modification of the exterior of the building which also required design review.

As to the parking requirements, Ms. Brekke-Read explained that the number of parking spaces had been based on the convenience store. The repair shop and the convenience store both required parking; four parking spaces for the convenience store and two for the repair shop, as reflected in Table 4, Development Standards, which had been attached to the January 17 staff report.

Ahmad Mohazid, Project Architect, Tecta Associates, San Francisco, explained that before he had purchased the gas station the property owner, Nick Ghassem, had two use permits approved on the same day by the same person, for a car wash and a convenience store expansion. The property owner had done his due diligence and had inquired whether the use permit must be extended. The property owner had been informed that was not required and he had thereafter purchased the gas station. He noted that the smallest possible car wash had been installed within the drip line of the building. A smaller car wash was not physically feasible or able to be manufactured by the manufacturer. He objected to a continuance of the application and asked the Planning Commission to make a decision on the application to allow approval of some of the conditions at a staff level.

Mr. Mohazid stated that the car wash would have a vacuum which would be 60 dBA 67 feet from the property line. He had found another vacuum which had a quieter motor, which could be considered, subject to staff approval. He suggested that there should be no parking required for the car wash given that customers would gas their vehicles and then get a car wash.

Mr. Mohazid explained that there were dedicated parking spaces for the vacuum stations separate from the seven existing parking spaces and he did not see that parking would be an issue. The site circulated well, was a large site, and if there was a need for another right turn only sign he suggested that could be part of the sign review process. He had no issues with the other conditions of approval recommended by staff, other than the fact that his client was a small business owner who would like to commence with his business investment. He suggested that his client was working well within the intent of the use permit applications that had been approved in July 2011.

Patrick Whelan, Project Manager, identified the landscape plan and explained that most of the existing landscaping would be filled in where plants had either died or needed to be replaced. No changes had been proposed to the existing pine trees up on the hill. Some plants to be added in the landscape areas included junipers, rosemary, and Indian Hawthorne. The existing oleanders would be continued with some smaller dwarf red oleanders on the site. There were existing pistachio trees at the front of the site that would remain. The rest of the landscaping in that area which was in poor condition and would be

replaced with an orange evergreen rose species providing color and continuous greenery.

Based on his experience, Vice Chairman Socolich stated that deer liked Indian Hawthorne. He recommended an alternative for that plant species.

Mr. Whelan acknowledged that revisions could be made to the landscape plan which he would communicate to the landscape architect.

Vice Chairman Socolich also spoke to the flow of traffic and commented that allowing traffic from the north entrance would require exiting from a right turn only from the south side to avoid the need for vehicles to have to back out.

Mr. Mohazid agreed it would make sense and would be reasonable for the south driveway to be an entrance and the north driveway to be an exit only which would eliminate the need to back out. If vehicles accessed from the south side, everyone would come up, depart, or travel to the car wash avoiding a north/south circulation conflict and backups.

Mr. Mohazid noted that the car wash dryer had a sound level of 80 dBA at the property line, a sound level he had verified this date with a sound meter, measured with associated night time traffic. The car wash would not be operated during the evening hours. He reiterated that the car wash was the smallest size available and could not be made smaller without making the tunnel larger necessitating an expansion into the site.

Mr. Whelan commented that while the car wash exceeded 55 dBA at the property line, the car wash would not create sound levels greater than the traffic along Moraga Road.

Mr. Mohazid suggested that a limitation on the hours of operation for the car wash could mitigate some of the concerns with respect to noise. The car wash was currently proposed to operate from 8:00 A.M. to 7:00 P.M., and the gas station itself from 6:00 A.M to 10:00 P.M.

PUBLIC HEARING OPENED

Lois Peterson, Moraga, supported a new business in the proposed location rather than a closed gas station. She also supported more competition in Moraga.

John Iskillia, Moraga, stated that it would be nice to have a car wash in Moraga.

Allen Sayles, Moraga, owner of property within close proximity to the proposed gas station along Moraga Road supported such a business in Moraga and the diversity it would provide as part of *Shop Moraga First*.

PUBLIC HEARING CLOSED

Commissioner Driver commented on the findings required to approve the application. He suggested that the issues with respect to sound would be addressed with the applicant having expressed the willingness to provide mitigation to the greatest extent possible. He suggested that could be done through a condition of approval for the use of new equipment. As to the concerns with respect to circulation, he noted that the applicant had indicated the willingness to consider several of the staff ideas to address that issue. He had not seen any information that the parking would be a problem and he suggested that seven parking spaces appeared to be adequate for the use. Given the absence of a resolution of approval, the Commission could not take action at this time. He urged staff to return with a resolution addressing the concerns that had been expressed.

Vice Chair Socolich asked that any resolution of approval include a condition as to the hours of operation for the car wash and expressed a desire to see more information on the new vacuum system the applicant had suggested which could be provided to planning staff.

Commissioner Wykle sympathized with the applicant who had been under the impression the project had been approved in July 2011. He pointed out that Moraga Road was a scenic corridor and the Planning Commission must find that the use permit was consistent with the policies and programs of the Moraga General Plan. Given that the site would be one of the first visible when entering Moraga the application must be carefully considered, and given the scenic corridor he urged the applicant to meet with planning staff to verify the native species in the area to ensure that deer or other animals would not eat the proposed plant material.

Commissioner Whitley asked staff whether or not there were any other businesses in Moraga with equipment operating at an 80 dBA level. Staff advised that there were none.

Commissioner Whitley commented on the homes located directly behind the site and given the decibel levels measured near or at the homes, he was concerned with the approval of a car wash and gas station that could impact those properties. He agreed that the sound level was a concern given that there was no other business in the Town that could be used as a comparison and given that the sound level was near or above the sound level of traffic in the area. He was not convinced that the findings could be made to approve the application

because of the sound issue alone. While he supported new business in Moraga and he liked the idea of a car wash, he emphasized that the application must meet all of the Town's rules and regulations.

Commissioner Whitley did not see that the application could be approved barring mitigation or other overriding factors to address the sound issue. He also spoke to the requirements as part of Planning Commission Resolution No. 17-99, which had included conditions regarding vending machines to be located inside, no outside storage of materials, prohibition of automotive maintenance, and no prepared food or alcohol sold in the convenience store, and which should be included in any resolution of approval for the application. If the Planning Commission were to approve the use, notwithstanding the sound issues, he stated that the hours of operation should be restricted, which had been part of the original resolution as well. He also questioned whether or not something akin to another liquor store should be permitted in the Town and suggested that issue should be addressed and discussed by the Commission.

Vice Chair Socolich pointed out that the Shell gas station across from Aegis had a car wash facility. He asked staff whether or not the Town had received any noise complaints from that facility.

Ms. Suronen was unaware of any concerns that had been raised with respect to that site.

Ms. Brekke-Read added that the Shell gas station car wash had commercial uses surrounding it with a parking lot in between.

Vice Chair Socolich recommended that the applicant obtain information from the manufacturer of the car wash as to its installation, and measurements of the noise level to the homes behind the site and provide data relative to that issue to staff.

Commissioner Richards was encouraged with the interest of new businesses in Moraga. While he recognized the concern with the sound levels, he stated that the Commission must weigh that concern in relation to not discouraging new business in the community. He pointed out that the Shell gas station did have a car wash and suggested that it would be difficult for the Commission to allow one car wash and deny another, particularly absent information on the dBA levels for the Shell gas station car wash. He asked for the actual dBA for Moraga Road, recognized that the applicant had expressed the willingness to limit the hours of operation for the car wash when the average dBA would be the same as the equipment being operated, and agreed that more details on the sound situation should be provided. He did not see any other concerns with the proposal.

Commissioner Whitley pointed out that the restriction on the dBA was contained in the Moraga Municipal Code (MMC) where the proposed use shall not generate more than 55 dBA during daytime hours and 50 dBA during nighttime hours.

Ms. Brekke-Read commented that the question was not whether or not the use should be allowed, but what could be done if the Commission favored the use to ensure that the noise standards were not exceeded. The Commission may require different equipment which may require a different configuration or an expansion of the building, or sound attenuation to ensure that the sound was contained on site. The Commission could not grant a variance for sound standards.

Commissioner Whitley stated that it was not up to the Commission to design the facility to ensure that the project met the Town's MMC but it was up to the applicant to propose a plan that complied with the MMC. As to the Shell gas station car wash, he suspected that it had been in place prior to the adoption of the MMC's sound restrictions. He emphasized that the Commission would have difficulty getting past the MMC requirement. While he would like to approve the application, the Commission could not grant a variance to the sound restrictions. Given the limited information the Commission had at this time, he agreed that the application should be continued to a date certain to allow everyone the opportunity to take another look at the proposal.

Mr. Mohazid suggested that one way to alleviate the concerns with the sound level could be to install doors on the car wash facility which could be automatically opened and which would reduce the sound level of the car wash to 55 dBA. He preferred to abide by the conditions of approval in the 1999 application related to no alcohol sales and food preparation. He could also abide by the same rules of 55 dBA with evidence provided to staff, and also resolve the landscaping issues at a staff level. He understood that the right turn only signs would return for consideration as part of the sign permit. He asked that the Commission approve the application at this time, subject to those conditions, and allow the applicant to resolve the discussed issues with staff.

Vice Chair Socolich pointed out that the Commission had not been provided with a resolution of approval. He wanted to see the applicant work with staff on a resolution of approval that could then be considered by the Commission.

Commissioner Whitley restated his concerns with the dBA levels with respect to the homes located immediately behind the subject property. How the applicant addressed that issue and how close the applicant got to the required dBA while the business remained profitable and viable was up to the applicant. He expressed concern with the sale of alcohol in the convenience store which had not been discussed by the Commission. While the applicant indicated a willingness to abandon the sale of alcohol, he recognized that was a profitable

component of the business and he was not desirous to take that option away from the application although he was unsure of the Commission's opinion on that issue or the opinion of the Town Council. He encouraged the applicant to allow the Commission to have a conversation on that issue at the next meeting.

As to when staff could return with a resolution for Commission consideration, Ms. Brekke-Read commented that staff had initially recommended that the application be continued to the meeting of February 6; however, the applicant was now being asked to provide additional information, and if so, the application should be continued to the second Planning Commission meeting in February.

Commissioner Driver encouraged a continuance to the meeting of February 6 with firm information on the sound levels to be provided by the applicant.

Mr. Mohazid stated that the applicant could not recall the sale of alcohol being a part of the discussion other than a discussion of things that were not allowed, and having discussed the issue with his client if the sale of alcohol was allowed, wine and beer would be sold.

Mr. Whelan commented that it had been assumed that the conditions as part of the approval of Resolution No. 17-99 had not included the sale of alcohol. Therefore, the sale of alcohol had not been part of the application.

Commissioner Whitley apologized in that he understood that the application had been changed to allow the sale of alcohol which had been allowed in the past.

Ms. Brekke-Read emphasized that the sale of alcohol had not been included on the notice for the agenda item in that the sale of alcohol involved different restrictions. She would not recommend that the sale of alcohol be included in the application at this time. With no alcohol sales, the issue of concern was noise and she asked the applicant how quickly the noise information could be provided.

Mr. Mohazid asked the Vice Chair what date staff would require information and still meet the noticing requirements for the February 6 meeting. He was confident that the requested information could be provided to staff in a timely manner.

Ms. Brekke-Read clarified that staff would need the requested sound information by Wednesday, January 25 to allow staff the opportunity to prepare the meeting packets for the February 6 meeting. The agenda item would not have to be re-noticed if the Commission continued the application to a date certain.

Commissioner Driver emphasized that when the item returned to the Commission he would like the staff report to state definitively the potential noise impacts.

On motion by Commissioner Whitley, seconded by Commissioner Driver and carried unanimously to continue UP 13-11 for Patrick Whelan at 425 Moraga Road, to the Planning Commission meeting of February 6, 2012.

- B. VAR 03-11 / J. Allen Sayles Architect, Inc. (Applicant), Allan and Lois Peterson (Owners), 107 La Quinta:** Consider Variance application to allow construction of a new third car garage and storage space at the lower (ground) level of the home within ten inches (10") of the front property line, remodeling of interior space to create a new great room at the main level (second story) of the home, and remodeling of a new exterior front entryway. Addition and remodel will encroach within front and side yard setbacks and exceed floor area ratio (FAR) limitations.

Ms. Suronen reported that staff could not make the findings to approve the variance and therefore because of the project's inconsistency with the Zoning Ordinance, General Plan, and impacts to the surrounding properties, she recommended that the Planning Commission continue the public hearing and direct staff to prepare a rezoning amendment for Moraga Country Club so that the development reflects the zoning of the existing homes, and provide direction to the applicant regarding the setbacks and design that would be acceptable. The Planning Commission may also deny the variance, with or without prejudice, because the required findings could not be made.

Commissioner Wykle understood that part of the building encroached over the property line and into the private right-of-way with the front of the building encroaching 19 feet into the required 20-foot front setback. He asked how far the existing building encroached into the 20-foot setback. He understood that many of the buildings in Moraga Country Club were out of compliance with the 20-foot front yard setback requirement and the siting of the home was not necessarily inconsistent. He asked staff if the building, as it now sits, was inconsistent with the other buildings in the neighborhood. He also asked if the building was already encroaching into the 20-foot required setback.

Ms. Brekke-Read explained that minimum lot sizes in Moraga Country Club were 10,000 square feet with an average density of 3-DUA, an average which had included all of the common open space. The lots were actually closer to 4,000 square feet and different from the underlining zoning. The Zoning Ordinance allowed for remodeling within the setbacks although the setbacks did not conform to the zoning, and in this case the situation would be made worse with the creation of the third car garage.

Commissioner Wykle understood that the building encroached one foot over the property line and the deck extended three and a half feet over the property line, although the building was further back.

Commissioner Richards spoke to the current plans compared to what currently existed which appeared to be the same where the deck encroached over the property line while the building structure did not appear to go beyond the property line on the ground floor. Staff affirmed that was the case.

Commissioner Driver understood that the project had already been approved by Moraga Country Club's Architectural Committee. He asked staff how much that decision affected the Planning Commission's decision.

Ms. Brekke-Read advised that the Town's process required approval from the Homeowner's Association (HOA) before the Town accepted the application as complete, which was a requirement for design review. The application was now required to meet the Town's level of standards and criteria and would be subject to design review and approval.

Vice Chair Socolich commented that he had viewed the property and found that some of the neighboring homes had decks that appeared to come within two to three feet of the curb. He understood that a portion of the garage for the subject home would be extended with additional room under the deck.

Allen Sayles, Architect, Walnut Creek, recognized that the Planning Commission and the DRB would each review the project. The project was in a 3-DUA Zoning District where an average minimum size lot was 10,000 square feet, but where the homes in Moraga Country Club averaged approximately 4,000 square feet. The home encompassed approximately 40 percent of the footprint but was in a designated 3-DUA, which made no sense. He commented that similar projects had been approved in the past through a variance and a variance for administrative design review. He suggested that any work on any home in Moraga Country Club would require similar entitlements and noted that the homes had side property lines with either two zero lot lines or one zero lot line with a minimal amount of space on the other side, requiring two variances almost without exception. He identified the subject home as the Inverness model which had been set back a few feet from the street, a model which had been repeated all over Moraga Country Club on uphill slopes.

Mr. Sayles spoke to the FAR noting that all of the homes in Moraga Country Club, when built, were over 1,900 square feet on 4,000 square foot lots. He explained that the Town of Moraga counted the garage and the basement in the FAR which had nothing to do with the living space, as compared to the cities of Orinda and Lafayette which did not count the FAR beyond a two-car garage taking into consideration the need for storage. He asked the Planning Commission to consider the 3-DUA, all of the existing projects in Moraga Country Club, and realize that under strict interpretation of the Town's regulations, there was nothing in Moraga Country Club that would not have required a variance.

Mr. Sayles explained that historically a lot of value had been placed on Moraga Country Club's Architectural Committee. The project had been reviewed by that committee and had received a unanimous vote of approval. The project itself would be completely contained in the existing footprint, with two changes. He commented that the deck was part of the structure with the foundation footprint coming out all the way out and around. The project proposed to take the front deck structure footprint, move it back four and a half feet, line it up with the rest of the home front, and lift the deck approximately three feet to create an 8-foot space between the home and the street with the goal of creating a one-car garage for a golf cart allowing for parking completely off of the street, and also allowing a complete visual of the street for vehicular movement.

PUBLIC HEARING OPENED

Allan Peterson, 107 La Quinta, Moraga, commented that the opposite side of La Quinta was a no-parking zone. He had two cars with a two-car garage. His smallest vehicle was 15 feet in length and his driveway was 14 feet in length. As a result, he had to park his vehicle in front of his neighbor's home in order to park on the street. He had no golf cart but lived in a country club. Adding a third car garage would be a great opportunity given that he was getting older. The home's living room was split level with three feet under the entire living area of the home which would allow the deck to be lifted up three feet and the living room up three feet and modifying the front and face. He stated that the home had always been two stories and a third car garage would allow the golf cart to be parked safely in a real full garage. He noted that there would be no addition to the home's FAR at 1,962 square feet of living area and they would not be adding more deck space.

Lois Peterson, 107 La Quinta, Moraga, explained that the intent of the project was that the entire living space be made one story since they did not use their living room as much for entertaining. As a result, raising it and creating a garage would be an added bonus. It would raise the roof on that side of the home to the existing roof level but would not expand on the home, with the garage to be pushed back within the footprint. She noted that Moraga Country Club's Architectural Committee had required signatures from their neighbors to sign off on the proposal just prior to their consideration and some signatures had been obtained but not from all neighbors. She understood that the Town had received four letters from residents and suggested that there appeared to be some confusion that the project would create a massive structure, which was not the case. She commented that she had contacted her next door neighbor, who was a tenant, and who had sent a letter this date expressing her comfort with the project once she had become aware of what the proposal was all about. She suggested that the project would enhance, not detract, from the neighborhood.

Carol Toso, Moraga, a resident of Moraga Country Club, introduced members of her family present in the audience. She identified herself as the attached neighbor to 107 La Quinta, commented that the property owners, her daughter and son in-law, had just learned of the project, and understood that other neighbors had not been notified of the proposal.

Kevin Mitchell Newby, 105 La Quinta, Moraga, owner of the adjoining unit to 107 La Quinta, questioned the description of 107 as a two-story single-family residence at 2,500 square feet in that his residence was the adjoining unit at 1,900 square feet, a split level townhome with the same design. While the interior of the units could be changed, he questioned the description of the square footage and asked for clarification from staff on that issue.

Mr. Newby questioned whether the Commission could make a decision on an application based on inaccurate information, reported that he had not received any notice of the project other than communication from his tenant who had been asked to sign off on the project for Moraga Country Club's Architectural Committee, and expressed concern with the potential approval of a project which would inaccurately represent Moraga Country Club's architectural design.

REBUTTAL:

Mr. Sayles explained that the Assessor's record for both of the properties at 105 and 107 La Quinta showed 1,940 square feet of livable space. He explained that the Town counts the garage and basement in the FAR which had taken it from 1,900 to 2,500 square feet for the home at 107 La Quinta. The two units were identical in floor plan and model. He noted that simply adding the third car garage under the existing structure would change the FAR.

In response to Commissioner Driver, Mr. Sayles identified Elevation A3 and walked the Commission through the plans. He also identified Plan A6, the existing plan, which had shown the home prior to the remodel and illustrated a wall all the way to the existing ground. He reiterated the intent to raise the deck three feet to match the other cantilevered deck, bring the wall back in line allowing eight feet to the street, double the landscaping in the front, and pull the wall back in line with the existing garage. The footprint had not been changed although the front foundation would be pulled back four and a half feet.

As a result, Mr. Sayles commented that the project would not encroach any more in the front yard setback given that the home footprint had not changed, with the front foundation pulled back four and a half feet. He identified the 20-foot setback noting that when the property was originally developed, Moraga Country Club designated ownership to the middle of the street pursuant to all of the original subdivision maps. When the Town of Moraga incorporated in 1974, the Town drew the street in but it was a private street. When the street was surveyed, it

was as it appeared on the subdivision maps although Moraga Country Club had shown that ownership was to the middle of the street.

Mr. Sayles affirmed that the existing vehicles owned by the property owner would be stored in the existing garage with a golf cart in the third car garage. He noted that as the property owner had testified, the street was difficult with limited on-street parking given that it was painted red on one side, as were many streets in Moraga Country Club. Placing a golf cart in the two-car garage would place one of the vehicles in the street. He advised that Moraga Country Club's Architectural Committee had supported the plan for the third car garage as a resolution for the storage of the golf cart on a difficult street.

Vice Chair Socolich understood that staff had concerns with the fact that the proposal would contribute to the massiveness of the home as compared to others in the neighborhood. He asked staff to respond given that the deck would only be raised three feet with the footprint to remain the same.

Ms. Suronen explained that the home was already close to the street, was a split level, and that by raising the deck up it would be higher, and from the street would appear larger.

Commissioner Whitley pointed out that while the deck was being raised up, the wall underneath the deck would be moving in, whereby it would have two contradicting effects; moving the deck up would create more mass and the wall moving in would create less.

Mr. Sayles noted that with the deck raised some area for landscaping would be created since there would be some depth at the storage area but not in front of where the golf cart would be stored. Permeable pavers with grass that could be driven over could be installed to enhance the front of the third car garage where the golf cart would be stored. He acknowledged that some of the existing trees that were in poor condition would have to be removed as part of the remodel. He added that the ridge was 27 plus feet back from the street. The third car garage mass would step back on the hill and would not produce a flat façade.

Vice Chair Socolich pointed out that those issues would be under the purview of the DRB.

Commissioner Whitley asked staff to comment on the concerns raised in the staff report regarding the massing. He understood from the staff report that the encroachment was expanding as opposed to retracting.

Ms. Brekke-Read pointed out that although the deck would be raised and the foundation pushed back, it would still be pushed forward from where the current

living space was located. The living space underneath the deck would be expanded in terms of the garage below.

Commissioner Richards understood initially that the actual building was being pushed closer or over the property line, although that was not what was happening in that the entire building was not moving forward.

Commissioner Whitley asked if raising the deck and changing the roofline would create a broken façade which increased the massing in an unacceptable way.

Vice Chair Socolich suggested that was an issue to be considered by the DRB.

Commissioner Whitley suggested that was something the Planning Commission should consider given the variance request. If considering the area underneath the deck as crawl space, as an example, and not living area the applicant was expanding out the living area closer to the lot line, and while not changing the footprint of the building the living area would be expanded when defining the garage and storage areas as living area.

Ms. Brekke-Read pointed out that the FAR was also being increased which required an exception. An exception could not be granted if a variance was needed putting the DRB in a dilemma along with other issues with respect to the FAR, the building line, and whether or not the zoning was appropriate. She recommended that the applicant apply for a rezoning which would offer the best solution. The Town would otherwise have to approve a variance to address a problem that would arise over and over again. She was of the opinion that the findings for a variance could not be made and she acknowledged that the applicant was not willing to wait for the process to amend the zoning. She explained that staff planned to present a rezoning proposal to the Commission at its next meeting and had been in discussions with both the Town Manager and the General Manager for Moraga Country Club on those efforts.

Commissioner Richards suggested that a rezoning proposal for the entire Moraga Country Club was a much longer term project than the application under consideration. He recognized that the applicant would not want to wait for that process to be completed. He also recognized that most of the homes in Moraga Country Club exceeded the Town's guidelines. He questioned rezoning Moraga Country Club entirely at this point and not considering the subject application at this time.

Ms. Brekke-Read advised that the staff recommendation was to deny the subject application based on staff's opinion that the findings could not be made to grant a variance. She asked the Commission to discuss that issue and determine whether or not the findings could be made to grant the variance.

Vice Chair Socolich emphasized that the rezoning issue would be a lengthy process and he questioned how Moraga County Club would be involved in that process. He recalled that the Planning Commission had approved applications in the past with structures that exceeded FARs.

Commissioner Whitley understood that under the current zoning, the project should not be approved since the findings to grant a variance could not be made, and staff's opinion was that the variance request could not be granted since the findings could not be made. The solution was to change the zoning to allow the approval of the project. It was possible the findings to support a variance could not be made absent the rezoning of the Moraga Country Club. He agreed that a rezoning effort was a good suggestion but recognized that tagging this application with the rezoning efforts would be difficult, although if the findings could not be made to grant a variance without rezoning the project could not move forward.

Commissioner Driver agreed with staff that it was difficult to make the findings and understood that the current zoning district applied to any of the properties in the Moraga Country Club was unrealistic in its expectations, further supporting the staff recommendation for a rezoning proposal. He recognized that the applicant would not want to wait for a rezoning effort to be completed before commencing with the project and he would agree that the applicant should not be required to do so.

The Commission discussed the three findings required to be made to grant a variance, as follows:

- A. Because of special circumstances concerning the subject property including size, shape, topography, location or surroundings, the strict application of the zoning regulations deprives the property of privileges enjoyed by other properties in the vicinity and in the same zoning district;
- B. The variance will not constitute a grant of special privilege which is not generally available to other property in the vicinity and in the same zoning district; and
- C. The variance substantially complies with the intent and purpose of the zoning district in which the property is classified.

The Commission emphasized that all of the buildings in the Moraga Country Club consistently did not comply with Finding C, and that the variance substantially complies with the intent and purpose of the zoning district in which the property is classified.

Commissioner Whitley understood that the living space was being increased adding to the FAR but not to the footprint of the building itself by the inclusion of the third car garage and storage area.

Commissioner Richards understood that the actual living space in the home would not increase if only the garage was counted as living space.

Mr. Sayles explained that the living space on the second floor would be the exact same footprint moved up and the split level would be eliminated. He noted that the Planning Commission had approved another home in the neighborhood, a couple of homes behind 107 La Quinta in 2009, and he had been the architect for that project. That home had involved the same issues with respect to FAR but had added another 600 square feet of living space.

Commissioner Whitley suggested that Finding A could not be made to grant a variance given the fact that the variance was not being done to remedy a particular problem with the property. He recognized that the property was closer to the street than other properties and moving the wall four feet back would create a better sight line for the street, which would allow the Commission to find that the property was different and therefore making that change would essentially remedy a situation that deprives the property of privileges. He personally was of the opinion that Finding A was a situation where there was a building in the development with an unusual problem related to the building that could only be remedied by a variance; however, the subject property involved a variance request to allow the expansion of the living area including the garage, which was not remedying a problem on the property that was different from other properties in the area. Therefore, he could not make Finding A to grant a variance.

Vice Chair Socolich commented that the argument could be made that moving the front of the building back underneath the deck three to four feet would provide additional safety as the property owner exits the garage with a better sightline of the street.

Commissioner Driver noted that the staff report was specific to the variance being related to the setback issue with the FAR being a DRB issue because it was a guideline.

Commissioner Whitley spoke to the fact that in this case, there would be a significant change to the architecture of one building and not the other and the adjoining neighbor/property owner had objected to the change based on massing and design. While a neighbor's objection should not stop a change to a piece of property, he suggested that there was a heightened concern in this case since the properties were adjoined.

Commissioner Richards did not want to encroach on the purview of the DRB in terms of the FAR. He understood that the variance under the purview of the Planning Commission would improve a situation, not make it worse, in terms of the building footprint and setback issues. He shared the concerns with the fact that the two buildings were adjoined and there would be a change in architecture and appearance, although that was under the purview of the DRB.

Ms. Brekke-Read asked whether or not the Commission desired to continue the item to a date uncertain to allow the DRB the opportunity to review the project, allow the Commission feedback on the design issues related to the FAR, and allow the applicant the opportunity to speak with the neighbors

Vice Chair Socolich noted that the DRB would hold a public hearing in any event, and the application may come back to the Commission regardless. He suggested it was a good idea for the neighbors to better understand the proposal and having input from the DRB and the neighbors would be a good idea.

Commissioner Richards agreed with that direction, suggested that input from the DRB would be helpful, and recognized that some neighbors had not had the opportunity to understand the proposal.

Commissioner Wykle agreed with the comments although he expressed concern with the precedent that could be made allowing a structure to encroach 19 feet two inches into the required 20-foot setback.

Commissioner Driver understood that setbacks were measured to the farthest building protrusion that was not a deck or an eave. He asked if it mattered if the building protrusion was occupied by a garage or otherwise.

Ms. Brekke-Read explained that the measurement was from the roofline.

Commissioner Driver understood that the project did not change the existing condition in terms of the front setback.

Mr. Sayles reiterated that the wall would move back, the roofline would not change, but the roofline in the front would lift.

Commissioner Driver asked whether or not staff would return with a new zoning ordinance, or provide more information on the variance request after DRB review and input from the neighbors.

Commissioner Richards did not support the rezoning of the entire Moraga Country Club. He suggested that was not the answer to the issue, although it could offer a longer term solution.

Vice Chair Socolich was not opposed to the initiation and carrying out of a rezoning proposal but emphasized that effort could take years.

Commissioner Driver agreed there could be benefits to a rezoning effort, separate from the subject application, and suggested that the variance be brought back to the Commission after the DRB had the opportunity to provide input on the application.

Vice Chair Socolich pointed out that the issue would continue to be raised. He saw no reason not to consider rezoning Moraga Country Club entirely irrespective of the subject application.

Commissioner Whitley offered a motion to continue VAR 03-11 to a date uncertain, request that the design be reviewed by the DRB with a report back to the Planning Commission, that the applicant may consider finding arguments in support of granting the variance based on the projected findings regarding the fact that the building would not be more massive, and that the applicant may consider speaking to the homeowners who objected to the development.

As part of the motion, Vice Chair Socolich recommended that staff also consider a rezoning of the entire Moraga Country Club area.

Commissioner Whitley asked for a separate motion.

On motion by Commissioner Whitley, seconded by Commissioner Driver and carried unanimously to continue VAR 03-11 for Sayles at 107 La Quinta to a date uncertain, and request that the design be reviewed by the Design Review Board (DRB) with a report back to the Planning Commission.

On motion by Vice Chair Socolich, seconded by Commissioner Wykle to request that staff pursue a rezoning of the entire Moraga Country Club area to address an issue that would likely re-occur in the future.

On the question, Commissioner Whitley asked if the motion and recommendation to staff was for an informal investigation with planning staff to investigate whether or not it would be appropriate to rezone the entire Moraga Country Club area. He was uncertain that the Moraga Country Club, the Town Council, and the Town Manager was in support of such an effort.

Ms. Brekke-Read explained that staff had spoken with the General Manager and Assistant General Manager for Moraga Country Club who were conducting general research on the issue. She noted that many communities that had developments such as Moraga Country Club Planned Unit Developments (PUD) had records on setbacks, zoning and the like, although those records did not exist for Moraga Country Club.

Staff has asked Moraga Country Club to inquire of Contra Costa County as to whether or not there were records with the County that could provide that information. Moraga Country Club did have FAR information on all of its individual home models. Staff could return with a report to the Commission with information as to how the homes were constructed in different communities as compared to Moraga, what direction the Commission would like, whether or not the Commission would like exceptions to the rules rather than variances, and the process that was used by many cities, which could be done more exploratory the first time around. Staff could also be asked to initiate a full rezoning effort.

Vice Chair Socolich recommended that staff be directed to move forward with an effort to pursue a rezoning of the entire Moraga Country Club area, as staff had recommended in the January 17, 2012 staff report.

Commissioner Richards was uncertain that Moraga Country Club would be supportive of an entire rezoning effort. He otherwise inquired of the number of variances considered in Moraga over the past five years.

Commissioner Whitley stated that he had been a member of the Planning Commission for the past eight years. He recalled five or six variance requests over that time.

Vice Chair Socolich commented that he could recall half a dozen variances over the two years he had been a member of the DRB.

On motion by Vice Chair Socolich, seconded by Commissioner Wykle and carried unanimously to direct staff to undertake a rezoning of the entire Moraga Country Club area.

VI. ROUTINE & OTHER MATTERS

A. **Approval of the October 3, 2011 Meeting Minutes**

The following revision was made to the second to last sentences of paragraph two on Page 2 of the October 3, 2011 minutes regarding the comments made by Roger Wykle:

Spirit and written document (of General Plan) says to preserve open space, to the maximum extent possible. Understands Town's fiscal concerns, however, purchase of 331 Rheem is not an overriding reason (to subdivide).

On motion by Commissioner Driver, seconded by Commissioner Wykle and carried unanimously to approve the minutes of the October 3, 2011 meeting, as amended.

B. Approval of the December 5, 2011 Meeting Minutes

The following revisions were made to the minutes of the December 5, 2011 meeting, as follows:

To the first sentence on paragraph 4 of Page 15:

Commissioner Driver was not prepared to address the implications to the Town in terms of the budget and public safety.

To the eighth paragraph of Page 12, Vice Chair Socolich asked staff to verify who made the comments and verify their accuracy since he could not recall making the comments.

After staff review, the minutes of the December 5, 2011 meeting were to be returned to the Commission for approval at the next meeting on February 6, 2012.

VII. REPORTS

A. Planning Commission

There were no reports.

B. Staff

1. Update on Town Council actions and future agenda items.

Ms. Brekke-Read reported that Planning Commissioners had been forwarded a public hearing notice for a subdivision on property owned by the Bruzzone family located in the City of Orinda which abuts and was separated by one lot of the undeveloped portion of the Country Club lots. She also reported that the Sustainable Communities Strategy, sponsored by the Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC) would hold a series of workshops in Alameda and Contra Costa County. The workshop for Alameda County had conflicted with the Town Council meeting and Kelly Suronen had attended that workshop. The workshop for Contra Costa County conflicts with the January 23 DRB meeting. She advised that all interested parties were encouraged to attend the workshop, to be held in the City of Richmond. Five of the scenarios would be presented to the Town Council during its January 25 meeting. The Planning Commission would be provided with the same information.

Ms. Brekke-Read further reported that the project proposed at 1800 Donald Drive would be presented to the DRB on Monday, January 23. Story poles had been installed on the property to identify the proposed building height. The DRB would also be considering a fence at 312 Rheem Boulevard in the scenic corridor within one foot of the property line, which would be a five and a half foot mostly wooden fence. Staff had recommended that the fence be pushed back considerably. As to the status of the former Shell gas station site, the applicant was still remediating the soil. There were no active applications for the site at this time.

Ms. Brekke-Read added that staff would be presenting a contract for approval with Consultant Jerry Haag to process the Saint Mary's College Student Recreation Facility on January 25, with the hope that the project would be scheduled for a public hearing in April. Staff was also in contact with another consultant who was interested in processing an application for Signature Homes, for detached single-family homes for the former bowling alley site across from the Rheem Valley Shopping Center.

Ms. Brekke-Read also reported that the Town had received few applications for positions on the DRB and Planning Commission. She encouraged interested persons to apply to the Town.

Vice Chair Socolich reported that he had heard a recent radio talk show where a long time real estate developer/appraiser/author had written the book, *Behind the Green Mask* about property owner's rights, green building and smart growth, and how U.N. Article 21 signed by former President Bush had pushed the entire issue of transit centers, smart growth and the like, which the author had suggested would negatively impact everyone's life. Information was available on the Internet.

VIII. ADJOURNMENT

On motion by Commissioner Driver, seconded by Commissioner Richards to adjourn the Planning Commission meeting at approximately 10:22 P.M. to a regular meeting of the Planning Commission on Monday February 6, 2012 at 7:00 P.M. at the Moraga Library Meeting Room, 1500 Saint Mary's Road, Moraga, California.

A Certified Correct Minutes Copy

Secretary of the Planning Commission