



# City of Sunnyvale

## Meeting Minutes - Final Planning Commission

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Monday, July 26, 2021

7:00 PM

Telepresence Meeting: City Web Stream |  
Comcast Channel 15 | AT&T Channel 99

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**Special Meeting: Study Session - Canceled | Public Hearing - 7:00 PM**

### TELECONFERENCE NOTICE

#### **7:00 PM PLANNING COMMISSION MEETING**

#### **CALL TO ORDER**

Pursuant to Section 3 of Executive Order N-29-20 (March 17, 2020) and Section 42 of Executive Order N-08-21 (June 11, 2021), issued by Governor Newsom, the meeting was conducted telephonically.

Chair Howard called the meeting to order at 7:00 PM.

#### **ROLL CALL**

**Present:** 6 - Chair Daniel Howard  
Vice Chair Martin Pyne  
Commissioner Sue Harrison  
Commissioner John Howe  
Commissioner Ken Rheaume  
Commissioner Carol Weiss  
**Absent:** 1 - Commissioner David Simons

Commissioner Simon' absence is excused.

#### **ORAL COMMUNICATIONS**

None.

#### **CONSENT CALENDAR**

1. [21-0782](#) Approve Planning Commission Meeting Minutes of July 12, 2021

MOTION: Commissioner Howe moved and Chair Howard seconded the motion to approve the Consent Calendar.

The motion carried by the following vote:

**Yes:** 6 - Chair Howard  
Vice Chair Pyne  
Commissioner Harrison  
Commissioner Howe  
Commissioner Rheaume  
Commissioner Weiss

**No:** 0

**Absent:** 1 - Commissioner Simons

### **PUBLIC HEARINGS/GENERAL BUSINESS**

2.      [21-0769](#)      **Proposed Project:**  
                                 **APPEAL** of a decision by the Director of Community Development approving a Design Review to allow demolition of an existing single family home and construction of a new two-story single-family home resulting in 2,718 square feet (2,318 square feet living area and 400 square feet garage) and 44.9% Floor Area Ratio.  
**Location:** 687 Borregas Ave. (APN 204-25-019)  
**File #:** 2020-7473  
**Zoning:** R-0  
**Appellant / Owner:** Ted Schnur/ Ignatious and Raji Johnson  
**Environmental Review:** A Class 1 Categorical Exemption relieves this project from the California Environmental Quality Act (CEQA) provisions.  
**Project Planner:** Cindy Hom, (408) 730-7411, Chom@sunnyvale.ca.gov

Associate Planner Cindy Hom presented the staff report with a slide presentation.

Commissioner Weiss questioned the inclusion of a gas fireplace and water heater in the proposed project's plans. Associate Planner Hom stated that the proposed project was deemed complete after the City's Reach Codes came into effect on January 26, 2020. As such, Principal Planner Shaunn Mendrin assured Commissioner Weiss that the applicant would be subject to use all-electric appliances in the proposed project. He also verified that this issue would not warrant an amended modified Condition of Approval as it would be addressed during the building permit process.

Commissioner Weiss initiated a discussion on why another solar study was not

conducted since the one completed by Google SketchUp was called to question by the appellant. Principal Planner Mendrin explained that SketchUp is most used for solar studies involving single-family homes and that additional studies are not required. Assistant Director Andrew Miner added that since staff deemed the SketchUp solar study to be accurate, no further data is required.

Commissioner Howe requested clarification on what was mentioned in Associate Planner Hom's presentation regarding the ability of solar panels to supply enough power to a facility throughout the year. Associate Planner Hom stated that per the Zoning Code (Title 19) of the Sunnyvale Municipal Code (SMC), a solar shading of no more than 10 percent on adjacent roof surfaces and solar panels is permitted. Input from solar companies indicated 10 percent shading is still adequate since the energy collected over the course of the year is metered back to the grid and typically more than what is used. Assistant Director Miner provided an explanation on the origin and history behind the Zoning Code's solar access section (19.56.020) and confirmed that the proposed project meets the requirements of this Code.

Appellant Ted Schnur presented additional images and information to support his case.

Applicants Ignatious and Raji Johnson presented the project including additional images and information.

Commissioner Weiss probed the applicants about the possibility of improving the current landscape at the proposed project site. Applicant Ignatious Johnson responded that while certain portions of the current landscape (i.e., backyard and front strip) have been improved, he has chosen to keep the front yard's artificial turf to save water.

Commissioner Weiss asked the applicants about whether the proposed project will include a gas stove. When Applicant Ignatious Johnson confirmed that a gas stove will be used, Associate Planner Hom assured Commissioner Weiss that the City's Reach Codes pertaining to gas appliances will be enforced during the building permit process. Associate Planner Hom also advised that the Planning Commission may entertain the amendment of a Recommended Condition of Approval to ensure that the proposed project will maintain compliance with the City's Reach Codes.

Chair Howard opened the Public Hearing.

Teresa Habeck, a Sunnyvale resident, expressed that she would have opted against remodeling her home had she known that a two-story home would one day be adjacent to it. Since the proposed project will have a negative impact on the view from her bedroom window, her backyard privacy, and the noise levels she will be subject to, she suggested that a single-story expansion might fit the needs of the applicants while maintaining the continuity of the TJ Martin homes in the area.

Will Habeck, a Sunnyvale resident, clarified that the only two-story home located close to the proposed project site is the historic farmhouse built in 1912. He urged that the proposed project would have a negative impact on the view from his house, and he mentioned that multiple real estate agents advised him that less people would consider purchasing his property if it is adjacent to a two-story home. Mr. Habeck also suggested that a single-story expansion or the addition of an Accessory Dwelling Unit (ADU) will meet the applicants' needs without changing the feel and look of the neighborhood.

Commissioner Harrison questioned Mr. Habeck about two points he made during his statement. First, they discussed the proposed project's impact on Mr. Habeck's backyard view. Mr. Habeck explained that despite the proposed project being significantly behind the setback line, the sky he sees from the rear bedroom of his home will be obstructed if the proposed project passes. Then, Commissioner Harrison articulated that she has not encountered data to support the effect on property value that a two-story home has on adjacent lots. Mr. Habeck clarified that a smaller pool of applicants would be likely to purchase his home since plenty of people do not want to live next to a two-story home. Commissioner Harrison had no further questions for Mr. Habeck after he confirmed that he has no objective data from an independent study or otherwise to support his theory.

Lynette, a Sunnyvale resident, conveyed that a real estate agent informed her that a reduced pool of buyers is interested in lots adjacent to a two-story home. She revealed that a remodel of her own home included sliding glass doors leading to her patio that showcase the sky outside. She stated that this view will be replaced by a wall if the proposed project is approved.

Applicant Ignatious Johnson addressed the concerns voiced by Mr. and Mrs. Habeck. He stated that the rear bedroom of his home is in much the same position of the Habecks' rear bedroom. From this bedroom's window, Applicant Ignatious Johnson confirmed that he can see his fence and the roof of his northside neighbor's home since this neighbor's home is approximately eight feet away from

his fence. He stipulated that the Habecks' view should mirror his own regardless of whether his home is one-story or two-stories. In response to the concerns of Lynette, his rear neighbor, Applicant Ignatious Johnson advised that the rendering completed by his landscape architect included a view of the sky from Lynette's patio despite a two-story home in place of his current home. This is because the setbacks of the proposed project are about 50 feet from the rear fence. Lastly, Applicant Ignatious Johnson detailed that his northside neighbor voiced no concerns about the three percent shading that the proposed project will have on this neighbor's solar panels. If the solar panels produced reduced levels of electricity, Applicant Ignatious Johnson vouched to purchase additional solar panels to combat this loss.

Commissioner Harrison asked Applicant Ignatious Johnson to share an email exchange with his northside neighbor in which this neighbor had no objection to the proposed project. Chair Howard directed this question to staff to consider privacy requirements. Assistant Director Miner advised that the permission of all parties involved would be required to publicize the contents of this email and asked Commissioner Harrison if seeing it is necessary for her to make a land use decision. Commissioner Harrison confirmed that while it is not necessary for her to view the email exchange, she believed that it might be of importance to the public.

Appellant Schnur highlighted that the SketchUp software used to complete the solar study was a free downloadable version. He expressed concern with this since he thought that a qualified, licensed architect should have completed the solar study instead. In his opinion, Appellant Schnur believes that the Zoning Code's solar access section is badly written, unfair, and does not meet the intent of the law.

Appellant Schnur presented additional images and information to support his case.

Chair Howard closed the Public Hearing.

Commissioner Howe asked if staff is aware of a second solar study completed by the applicants which captured data from noon on December 21st. He also asked if this solar study was reviewed by staff and is considered a qualified study. Associate Planner Hom revealed that the applicants obliged to having this solar study done for the appellant. Findings from this study were submitted to staff prior to the hearing and staff found no shading impact on neighboring homes with solar panels.

Commissioner Harrison asked Senior Assistant City Attorney Rebecca Moon if she has any concerns with the legality of the solar access section of the Zoning Code.

Senior Assistant City Attorney Moon responded that she does not have any concerns since Section b of the ordinance was enacted to address confusion surrounding Section a. In reference to the question Appellant Schnur raised about the interpretation of the ordinance, Senior Assistant City Attorney Moon explained that laws exist to aid with the interpretation of laws and that courts presume that laws adopted later in time will have more bearing over laws adopted earlier in time. Senior Assistant City Attorney Moon stated that since Section b of the solar access section clarifies how a solar study must be performed and is intended to modify Section a, she has no concerns about the legality of the Zoning Code or its solar access section.

Commissioner Harrison questioned whether the findings of the applicants' solar study were presented in a way that is consistent with similar residential projects. Assistant Director Miner answered that they were and explained that since there were not a lot of good ways to measure solar shading in the past, there was a need for licensed professionals to complete solar studies. Today, free software such as Google SketchUp has simplified the process of measuring solar shading. Although it is free and easy to use, its results are still valid.

Vice Chair Pyne requested clarification on what is meant by, "cumulative shadowing effect of less than ten percent total over the course of the three hundred sixty-five-day solar cycle," as noted in Section b.2 of the Zoning Code's solar access section. Assistant Director Miner replied that if more than 10 percent of the rooftop is shaded between 9 a.m. and 3 p.m. Pacific Time on December 21st, a solar study taking place over the course of a year is required. This is to ensure that the average amount of shade on the rooftop does not exceed 10 percent over the course of a year.

Commissioner Rheume proposed the motion to approve Alternative 1: Deny the Appeal and approve the Design Review based on Recommended Findings in Attachment 3 and subject to the Recommended Conditions of Approval in Attachment 4. Commissioner Howe seconded his proposal and invited Commissioner Weiss to include a friendly amendment pertaining to the City's Reach Codes.

Commissioner Weiss suggested that for the proposed project to be compliant with the City's Reach Codes, it should not include gas appliances. In addition, she advocated for the replacement of the artificial turf in the proposed project's front yard with drought-tolerant native vegetation.

Commissioner Rheume accepted Commissioner Weiss' recommendations.

Commissioner Howe confirmed with Assistant Director Miner that the City's Reach Codes were enacted by the City Council as an ordinance. As such, Commissioner Howe advised Commissioner Weiss that staff will inform the Building Department and the applicant about the Reach Codes and their applicability.

Assistant Director Miner addressed Commissioner Weiss' second recommendation by explaining that since the City enforces water conservation through an existing ordinance, Commissioner Weiss should reiterate the standards of this ordinance in a modified Recommended Condition of Approval rather than implement an ad hoc amendment.

Assistant Director Miner reminded the Commissioners that Associate Planner Hom offered the use of flat, concrete roof tiles rather than S-curve roof tiles for the proposed project. Commissioner Rheume confirmed that he agrees with this recommendation.

MOTION: Commissioner Rheume moved and Commissioner Howe seconded the motion for Alternative 2 - Deny the Appeal and approve the Design Review based on Recommended Findings in Attachment 3 and subject to modified conditions of approval.

The modified Conditions of Approval are as follows:

- 1.) Note that Recommended Condition of Approval PS-4 must be added and should read as follows: "Roof Material. Prior to building permit issuance, the applicant shall revise the plans to show concrete, flat roof tiles."
- 2.) Note that Recommended Condition of Approval PS-5 must be added and should read as follows: "Compliance with Reach Codes. The applicant shall work with staff to ensure Reach Codes requirements are met."

Commissioner Rheume emphasized that his role as a Planning Commissioner is to enforce policy. The proposed project's ability to meet the City's requirements and Senior Assistant City Attorney Moon's explanation about these requirements solidified his belief that the proposed project meets City policies. Therefore, Commissioner Rheume voiced his support of the proposed project.

Commissioner Howe stated that since the proposed project meets the Zoning Code requirements, the Planning Commissioners are required to approve it.

Commissioner Harrison echoed Commissioner Howe's statement and recognized the applicants' efforts to ensure that every requirement of the City is met.

Vice Chair Pyne believes that the proposed project meets the requirements of the Zoning Code's solar access section. In reviewing the legislative history of the Zoning Code's solar access section, he discovered that the City Council declined the Sustainability Commission's recommendation that 3 p.m. is too early of a time to evaluate solar shading. As a result, Vice Chair Pyne believes that Section b.1 of the Zoning Code's solar access section is in alignment with the City Council's interpretation, so he spoke in favor of the proposed project.

Chair Howard confirmed his support of the proposed project since it meets the City's standards which, as a Planning Commissioner, he is bound to uphold. He encouraged those who want to improve the City's standards to engage in the study issues and the public process for creating them.

Commissioner Weiss stated her opposition for the proposed project since it does not fit in aesthetically with the surrounding TJ Martin homes, a second solar shading analysis was not completed, and the applicants displayed a lack of concern for the environmental features of the proposed project.

The motion carried by the following vote:

**Yes:** 5 - Chair Howard  
Vice Chair Pyne  
Commissioner Harrison  
Commissioner Howe  
Commissioner Rheaume

**No:** 1 - Commissioner Weiss

**Absent:** 1 - Commissioner Simons

This decision is final.

**STANDING ITEM: CONSIDERATION OF POTENTIAL STUDY ISSUES**



**INFORMATION ONLY REPORTS/ITEMS**

3. [21-0776](#) Planning Commission Proposed Study Issues, Calendar Year: 2022  
(Information Only)

**NON-AGENDA ITEMS AND COMMENTS**

**-Commissioner Comments**

None.

**-Staff Comments**

Assistant Director Miner announced that on July 27, 2021, the City Council will be adopting a resolution directing the City Manager to allow outdoor dining on private parking lots and close the 100 block of South Murphy Avenue until December 31, 2021. At the same hearing, the City Council will consider a Long-term Legislative Advocacy Position (LAP) to modernize the Ralph M. Brown Act as it pertains to teleconferencing.

Assistant Director Miner informed the Chair and Vice Chair of upcoming training opportunities.

Assistant Director Miner revealed that on July 13, 2021, the City Council adopted the ordinance for Below Market Housing that the Planning Commission reviewed on June 14, 2021.

Assistant Director Miner informed the Commissioners that during the Planning Commission hearing on August 9, 2021, the hotel project located on 247 and 295 Commercial Street will have to be continued to another date certain.

Vice Chair Pyne questioned Assistant Director Miner about whether Planning Commissioners will be returning to hearings in person on or before October 1, 2021 as suggested in the staff report for 21-0576. Assistant Director Miner revealed that the topic is still being discussed. Senior Assistant City Attorney Moon and Administrative Aide Guia Sharma stated they have no information on the topic.

**ADJOURNMENT**

Chair Howard adjourned the meeting at 8:43 PM.