

Fairfax Town Council Minutes  
Special Meeting  
Women's Club, 46 Park Road, Fairfax  
and via teleconference  
Thursday, **February 29, 2024**

Mayor Coler called the Special Meeting to order at 6:30 p.m.

Pledge of Allegiance: Mayor Coler led in the Pledge of Allegiance.

Call to Order/Roll Call:

**COUNCILMEMBERS PRESENT:**

Bruce Ackerman  
Lisel Blash, Vice Mayor  
Barbara Coler, Mayor  
Chance Cutrano  
Stephanie Hellman

**STAFF MEMBERS PRESENT:**

Heather Abrams, Town Manager  
Janet Coleson, Town Attorney  
Jeff Beiswenger, Planning and Building Services  
Director  
Christine Foster, Deputy Town Clerk  
Public Works Director Loren Umbertis

Approval of Agenda

M/S, Cutrano/Blash, Motion to approve the agenda.

AYES: Ackerman, Cutrano, Hellman, Vice Mayor Blash, Mayor Coler

Mayor Coler read the Land Acknowledgement Statement and delivered a brief statement regarding the Town's position and protocols on hate speech.

Public Hearings

1. Directed referral of Planning Commission Resolution No. 24-01 temporarily suspending Planning Commission Resolution 22-01 for Application # 21-17 due to non-compliance with conditions of approval, plans and discretionary permits, including a Hill Area Residential Development Permit, Design Review Permit, Excavation Permit, Tree Removal Permit and Minimum and Combined Side-yard Setback and Retaining Wall Height Variances for a Single-family Residence, Detached Garage/Accessory Dwelling Unit at 79 Wood Lane.  
CEQA: Not a project under CEQA pursuant to Guidelines Section 21065. – *Town Attorney, Janet Coleson*

Linda Neal, Principal Planner, presented the staff report, described the history of the project approval and subsequent non-compliance, and staff recommendation.

Ms. Neal pointed out one correction to the supplemental amended Resolution on page 7 under the last "Now, Therefore Be It Resolved" clause. Under number 4, and recommended deleting "Excavation Permit moreover." The paragraph should read, "The shifting of the structures has resulted in a further encroachment into the required setbacks."

Councilmembers provided questions and comments.

In answer to Councilmembers questions, Ms. Neal confirmed that if the resolution is adopted tonight, the applicant would need to complete a second application and return to the Planning Commission with any changes to the project; that the applicant could move forward with items already approved but would need to provide any incomplete plans to the Building Department; the hearing is de novo; a combination of straw waddles over the site and debris barriers are the needed weatherization, none of which has been installed; and clarified with Kylie Otto, Attorney with BBK that the Council can direct the Building Official to inspect the property to ensure it is properly weatherized for the safety of both the property and adjacent neighbors.

Mayor Coler opened the public hearing.

Aaron Silberman, Attorney with Coby Friedman from Rogers Joseph O'Donnell, referred to a written statement outlining Mr. Friedman's position through correspondence and highlighting their concerns about the Council's authority to act on this directed referral, due process, and bias concerns. They disagree with some of the items outlined in the chronology contained in the staff report, and drew attention to events starting in June 2023 when there was an agreement reached under Attachment E about three items the Building Official and Mr. Friedman had discussed, the writ hearing, the ten new concerns raised about drainage, mudslides, and water, and asked that the Council review these and consider what effect they have on the credibility of the allegations, and why they were raised at these late dates.

Lastly, Mr. Silberman asked that the Town comply with the law and make its determination objectively. He proposed Mr. Friedman complete construction, submit completed plans when he is finished, and submit them for approval, with the understanding that Mr. Friedman may be risking that he will not get approval, but the house would be done without on-going weatherization concerns and the eyesore of incomplete construction.

Mayor Coler opened the meeting to public comments.

Frank did not support the building of the house due to non-compliance with Town codes.

Candace supported the building of the house due to the need for housing.

Mark Bell asked about the building inspection timeline.

Michael Mackintosh supported the building of the house.

Renu Malhotra voiced concerns but supported the building of the house.

Miya questioned the public hearing process.

Lynn did not support the building of the house due to lack of code compliance.

Deborah Benson agreed with the previous commentor.

Heather and Rick, adjacent neighbors, do not support the building of the house due to lack of code compliance.

Michael raised concerns about the Town code.

*Rebuttal – Applicant*

Mr. Silberman acknowledged concerns expressed by speakers, cited ambiguity in the code, and thinks ultimately there was a disagreement which led to these events. If Mr. Friedman had been given notice of these concerns, the process could have taken a different path and he would not have spent all the money he spent on issues now just being raised for the first time.

Mayor Coler asked for Council questions of Mr. Silberman.

Questions by Councilmembers ensued regarding timing, knowledge, and agreement of requirements by Mr. Friedman, public meetings held where drainage issues and emails from neighbors were discussed, Mr. Silberman's position about new requirements requested and the judge's ruling, responses that the project is about 85% complete and could be completed within two months, whether or not engineering firms had been hired and engaged, before the project returns to the Planning Commission, assurance that the project is being built to code, the Stop Work Order issued, State ministerial requirements for ADUs and JADUs, and the need to submit revised stamped plans.

Mayor Coler closed the public hearing and moved to Council deliberation.

Councilmembers recognized State ministerial review of ADUs and JADUs which does not remove the requirement for plans to be submitted; questioned the applicant's confusion as to the order with which things needed to be done; the revisions made that go against Planning Commission approval and conditions; the recommendation to require the applicant to submit new plans, resume construction, and weatherize the project; concerns with setting a precedent; safety concerns with excavation; movement of the foundation by three feet; water coming off the property; disregard by Mr. Friedman after guidance given by the Planning Department; and there was unanimous support by the Council to move forward with the staff recommendation.

M/S, Cutrano/Hellman, Motion to adopt a Resolution No. 24-\_\_\_\_ revoking and rescinding Planning Commission Resolution No. 2022-01 for application # 21-17, including approvals for a Hill Area Residential Development Permit, Design Review Permit, Excavation Permit, Tree Removal Permit and a Minimum and Combined Side-yard Setback and Retaining Wall Height Variances and accompanying building permits for a residence located at 79 Wood Lane, with the amendments in the supplement and the amendment Ms. Neal read into the record earlier.

AYES: Ackerman, Cutrano, Hellman, Vice Mayor Blash, Mayor Coler

Mayor Coler asked staff to work with Mr. Friedman on weatherization of the property.

## **BREAK**

Mayor Coler called for a break, and thereafter reconvened the meeting at 8:10 p.m.

## Regular Agenda

2. Discuss partial implementation for rent stabilization program; consider adoption of a resolution to start partial implementation of the rent stabilization program; and consider introduction of an ordinance to amend Chapter 5.55 (Rent Stabilization Program) of the Town Code.

CEQA: This Resolution and Ordinance are exempt from the California Environmental Quality Act ("CEQA") pursuant to section 15061(b)(3) of the State CEQA Guidelines. —  
*Planning Director, Jeff Beiswenger and Town Attorney, Janet Coleson*

Planning Director Jeff Beiswenger gave the staff report and PowerPoint presentation relating to a partial implementation for a rent stabilization program, consideration of a Resolution which would initiate it, a minor amendment to an ordinance to establish a \$1,000 fee for a hearing process, and consideration of introduction of an ordinance to amend Chapter 5.55 of the Town Code.

Town Attorney Janet Coleson commented that the partial implementation date is April 5<sup>th</sup> which is required in the ordinance. Chapter 5.55 provides for a fee for hearings, as paid by the housing provider.

Mayor Coler opened the meeting to public comments.

Rick Hamer asked for amendments to the proposed ordinance.

Wendy Baker opposed the partial implementation.

Frank Egger opposed the partial implementation.

Susan Malloy supported the partial implementation.

Michael Sexton opposed the partial implementation.

Phillip Salaverry opposed the partial implementation.

Nick Colda opposed the partial implementation.

Susan Adams voiced support of Option A.

Laurie Kramer opposed the partial implementation.

Cindy Swift opposed the partial implementation.

Liliana Lavezzo supported the partial implementation.

Candace Nealricker opposed the partial implementation..

Liz Froneberger asked for a change to the proposed ordinance and had questions.

Joe supported the partial implementation.

Jeremy LaBeau opposed the partial implementation.

Kelly London opposed the partial implementation.

Deb London opposed the partial implementation.

Dave Baranco opposed the partial implementation.

Mallory Geitheim opposed the partial implementation.

Naomi Schultz supported the partial implementation.

Laura McMahan, Executive Director of Legal Aid of Marin supported the partial implementation.

Debra Benson opposed the partial implementation.

Ben opposed the partial implementation.

Lynn opposed the partial implementation.

Chris supported the partial implementation.

Morgan supported the partial implementation.

Mo McManus supported the partial implementation.

Allison supported the partial implementation.

Kurt Ries, Co-Chair of the Marin Chapter of the Democratic Socialists of America supported the partial implementation.

Other public comments and questions were made.

Mayor Coler opened council deliberation.

In response to Council questions, staff clarified that the estimate of \$209,000 for the Housing Specialist includes a salary as well as technology support and it was the higher of the estimates under all three options; that the hearing is a flat \$1,000 and could be for a number of units under an increase;; and that generally there is a fee collected which has a budget for a program and the stabilization program operates within that budget and is self-funded.

M/S, Cutrano/Ackerman, Motion to waive the 10:00 p.m. rule.

AYES: Ackerman, Cutrano, Hellman, Vice Mayor Blash, Mayor Coler

Councilmembers continued deliberation and agreed that Option A is a program aimed at providing a mechanism through a hearing to address problems associated with increases above what the law requires; that the Housing Specialist position has been budgeted all year; suggested the program begin so everyone can see how it works; asked to respect all views; recommended education on legal rights, fair housing, and training landlords to understand their rights and responsibilities; suggested partnering with another jurisdiction with similar programs; a suggestion to bring the matter back after the November election; and comments that the housing provider and/or tenant do not have to choose the hearing process but it provides something much lower in cost than hiring attorneys.

M/S, Hellman/Cutrano, Motion to adopt a Resolution to start partial implementation of the Rent Stabilization Program; read by title only and introduce an ordinance amendment to Chapter 5.55 (Rent Stabilization Program) of the Town Code to provide for an interim \$1,000 petition fee to cover the cost of providing a hearing conducted by a hearing examiner.

AYES: Ackerman, Cutrano, Hellman, Vice Mayor Blash, Mayor Coler

### Adjournment

The meeting was adjourned at 10:42 p.m. in memory of Fred "Lee" Berensmeier.