

FAIRFAX PLANNING COMMISSION MEETING MINUTES  
FAIRFAX WOMENS CLUB  
THURSDAY, MARCH 15, 2018

Call to Order/Roll Call:

Chair Newton called the meeting to order at 7:00 p.m.

Commissioners Present: Norma Fragoso  
Philip Green  
Laura Kehrlein  
Mimi Newton (Chair)  
Michele Rodriguez  
Cindy Swift

Commissioners Absent: Esther Gonzalez-Parber

Staff Present: Ben Berto, Planning Director  
Linda Neal, Principal Planner  
Michelle Levenson, Assistant Planner

#### **APPROVAL OF AGENDA**

M/s, Fragoso/Green, motion to approve the agenda.

AYES: Fragoso, Green, Kehrlein, Rodriguez, Swift, Chair Newton

ABSENT: Gonzalez-Parber

#### **PUBLIC COMMENTS ON NON-AGENDA ITEMS**

Ms. Diana Purdue, Scenic Road, discussed the proposal to rezone the Highway Commercial (CH) Zone to Central Commercial (CC). It will not assure affordable housing. It is wrong on its face because it would remove the requirement for a Conditional Use Permit- the most important democratic process that citizens have.

Ms. Roberta Anthes, Snowden Lane, agreed with Ms. Purdue. She had questions and concerns about the basis for the proposed rezoning. She would like to see more affordable housing.

Ms. Laura Tempkin, Fairfax, was concerned about rezoning and new development. She is not in favor of any new housing being developed. She is in favor of rent control.

#### **CONSENT CALENDAR**

There were no Consent Calendar items.

#### **PUBLIC HEARING ITEMS**

1. **290 Tamalpais Road: Application #18-01**  
**Request for retaining wall height variance to construct an 8 foot tall, 63 foot long, concrete retaining wall to support a failing Tamalpais Road roadway cut along the property frontage of a site developed with a single-family residence and other accessory**

**structures; Assessor's Parcel No. 001-064-07; Residential Single-family RS-6 Zone District; Leo den Ouden, applicant/architect; Christopher Morrill, owner, CEQA categorically exempt per Section 15303(e)**

Principal Planner Neal presented the staff report. She noted staff made some changes to the resolution. She placed a copy on the dais.

Commissioner Green asked if the Town Engineer had commented on the project. Principal Planner Neal stated he would review the application prior to issuance of the Building Permit. Commissioner Kehrlein asked if this review was listed in the Conditions of Approval. Principal Planner Neal stated the Commission could add this if they would like but engineered plans are always reviewed by the Town Engineer.

Commissioner Swift referred to the staff report, page 2, second paragraph from the bottom of the page, and stated the last sentence should be eliminated.

Chair Newton opened the Public Hearing.

A resident asked about the length of the retaining wall and if the intent was to provide safety to the area. Principal Planner Neal answered that the wall was approximately 64 feet long and it was to provide safety to the area.

Mr. Leo den Ouden, architect, made the following comments:

- The hillside road cut experienced slough last year and it might not make it through another winter.
- The wing walls are about 16 feet long.
- He would typically do a shorter wall that was stepped back but this site is steep.
- He does not see any other alternatives.
- He would use colored concrete with texture so it would integrate with the earth.

Commissioner Fragoso asked if the voids that are seen at four foot intervals would be filled. Mr. den Ouden stated "yes". Commissioner Fragoso referred to the photograph and asked about the lumber and fencing behind the wall. Mr. den Ouden stated he thought it was some lattice work. It is not on the subject property.

Commissioner Rodriguez asked about the level of noise that would occur when drilling the soldier piles. The adjacent property is fairly close. Mr. den Ouden stated they would use a portable generator that runs a hydraulic drill rig. It would take about three days. He was not sure about the decibel level. Commissioner Rodriguez asked if they planned to plant some landscaping behind the wall. Mr. den Ouden stated there would be rock fill on the steep embankment. They do not plan to plant anything. Commissioner Rodriguez asked if they could tie into this wall, if necessary, in the future. Mr. den Ouden stated "yes".

Ms. Laura Tempkin made the following comments:

- She questioned why the holes had to be 21 feet deep.
- She asked if the wall had to be that high.
- They should put some trees or bushes in that area.

Mr. Paul Asad, Tamalpais Road, made the following comments:

- He is familiar with this section of road.
- This is a good solution.
- The soil is clay and the piers need to go deep into the ground.

- This project will make the neighborhood safer.

Chair Newton closed the Public Hearing

Commissioner Fragoso provided the following comments:

- She does not have a problem with the wall. It looks good.
- It seems to be sound construction.
- This is a minimalist solution that should work well.
- The proposed drilling depth is necessary in order to hit bedrock.
- This is a very good design.

Commissioner Kehrlein provided the following comments:

- She did not see a soils report however the engineer is also a soils engineer.
- The drawing seems reasonable.
- That side of the hill is natural and without much landscaping but what is proposed seems reasonable.
- They are proposing an upgrade from the standard retaining wall. It is an attractive solution.

Commissioner Green provided the following comments:

- He likes the design.
- It is smart to drill down to bedrock.
- He could approve the project.

M/s, Green/Fragoso, motion to adopt revised Resolution No. 18-01, 290 Tamalpais Road.

AYES: Fragoso, Green, Kehrlein, Rodriguez, Swift, Chair Newton

ABSENT: Gonzalez-Parber

Chair Newton stated there was a 10-day appeal period.

## **GENERAL PLAN WORK PROGRAM**

### **2. Final review for recommendation to the Town Council on the 2018-2019 General Plan work program including recommendations for possible future Zoning Code amendments**

Planning Director Berto presented the staff report. He reported the Marinda Heights Subdivision Project (Wall property) application is still incomplete- staff is preparing a project status letter. After staff receives a complete application then the formal review will begin including the preparation of an Environmental Impact Report (EIR). There is a specific Website for this project. He reported the Town Council has had several discussions and a special workshop regarding cannabis regulations. The Town is currently operating under a commercial cannabis business moratorium which will expire on October 31<sup>st</sup>, 2018. He reported on the General Plan Implementing Programs and the priorities established by the Commission.

Commissioner Fragoso had questions about the Commission's review of the Marinda Heights Subdivision project, the timelines, the EIR, etc. Planning Director Berto stated he would have more details at the next meeting.

Commissioner Green referred to cannabis regulations and stated local real estate lawyers were very concerned with possible manufacturing and testing labs and the use of volatile chemicals. He asked Planning Director Berto to keep the Commission apprised any future workshop meetings.

Chair Newton referred to the cannabis regulations and asked if the goal was to have something done by November. Planning Director Berto stated “yes”. Once staff gets direction from the Council it will immediately come to the Commission.

Commissioner Swift asked if the commercial cannabis business moratorium could be extended for another year. Planning Director Berto stated “yes”.

Planning Director Berto reported on the General Plan Implementing Programs and the priorities established by the Commission. He referred to the Commission review of certain Zoning Ordinance amendments and distinguished between ministerial and administrative review. Ministerial permits are those reviewed by the Building Department such as plumbing, etc. Administrative review is discretionary- it involves public notice, evaluation by staff, but no Public Hearing by the Planning Commission. He stated the scope of the top ten implementation related priorities represented the current topical issues identified by the Commission as being priorities that emerged out of the approximately three hundred programs contained in the General Plan. He suggested staff present these top ten to the Council and see what they think in terms of priorities. Then the work can begin. Commissioner Fragoso asked if they were prioritized or listed at random. Planning Director Berto stated “yes- #1 was the highest priority”. He briefly discussed the priorities.

Commissioner Swift asked staff a question about the timeline.

Commissioner Green asked if some of the priorities could be combined so they could get most of them accomplished this year. He thought items #7, #8, and #9 were not really in the purview of the Planning Commission- they were public health/safety issues. Item #2 was quite complex. Planning Director Berto agreed that they would work in coordination with other agencies on some of these items.

Chair Newton opened the meeting to public comments.

Ms. Laura Tempkin made the following comments:

- She stated Fairfax residents should be able to vote on the Wall property project.
- She was against any more development in Fairfax.
- She would like to see more public input.

Ms. Debra Benson, Cascade Drive, made the following comments:

- She supported making historic preservation a priority.
- She would like to see an inventory and perhaps the creation of a Historic District.
- She is glad they are dealing with the issue of light pollution.
- She referred to the Marinda Heights Subdivision and thought clustering the development was a back-door approval. The proposal goes against the zoning of the property.

Ms. Tempkin made the following comment:

- She asked if there was a given amount of people that are allowed to live in a small Town given its constraints (one way in/out, access in emergencies, etc.).

Chair Newton stated the Town is in the beginning stages of reviewing the application for the Marinda Subdivision (Wall property) and there will be numerous opportunities for the public to get involved.

Chair Newton closed the meeting to public comments.

Commissioner Green provided the following comments:

- He referred to Priority #1 and stated a lot of this deals with the “look and feel” of Fairfax. They need to concentrate on this historical preservation because of Government Code Section 65915, Density Bonus Exemption for Historical Projects- they want to aim for that.
- He referred to Priority #2 and stated there were visually significant areas of Fairfax throughout the Town. This is a complex idea and he recommended holding a workshop.
- He referred to Priority #4 and suggested they look at the “Anti-Mansionization” Ordinance from Beverly Hills.
- He referred to Priority #5 and stated it was good to specify the density bonus requirements. The Design Review aspects would be very important.
- He referred to Priority #6 and stated they need Land Use Ordinances that preserve neighborhood scale, character, etc. He noted it would also depend on the type of disaster.
- Priority #7a, #8a, and #9 could come off the list. They need to concentrate on government buildings and other places of assembly.
- He referred to Priority #7b and #10a and stated he was very supportive.

Commissioner Swift provided the following comments:

- She referred to Priority #1 and stated this was important and they should focus on this during the next year. It can help them address the concerns of the recent State housing mandates. They need a better understanding of the local, State, and Federal historic designations and guidelines.
- She referred to Priority #2 and #3 and stated these should be a priority for this year.
- She referred to Priority #4 and #5 and stated she would like the Commission to work on the Density Bonus Ordinance as presented by the Town Attorney. They want to tell developers what is important to the community.
- She referred to Priority #6 and stated they should start working on this right away. They need to define what a disaster is, what triggers recovery, how to rebuild the community, etc.
- She referred to Priority #7a and stated this was not a Planning Commission item.
- She referred to Priority 7b and stated she was supportive and suggested they review the Sign Ordinance in conjunction with this item.
- She referred to Priority #8a, #8b, and #9 and stated this should be taken off the table. A Fire Hazard Abatement District is a funding/taxing mechanism.
- She referred to Priority #10a and stated she did not see accomplishing this within the given timeframe. They should look at this in the future.
- She referred to Priority #10b and stated the scope was broad- her initial concerns had to do with parking in the downtown and establishing a no-net loss.

Commissioner Rodriguez provided the following comments:

- She appreciated the succinct staff report- it was very helpful.
- She suggested reformatting the matrix as it goes forward to the Council.
- They need to separate out Planning Commission items vs. items for other agencies.
- She likes the idea of a Historic District and step one would be the evaluation.
- Step two would be the hillsides and preserving the residential fabric.
- Step three would be the visually significant aspects.
- She recommends coming up with specific deliverables.
- She understood the interest in a Density Bonus Ordinance but stated she was thinking about in lieu fees.
- A Creek Master Plan is a future item.
- She is focused on the more immediate items- conservation, visual resources, and how they tie into neighborhood scale.
- She is interested in addressing parking and the affordable housing parking issue.

Commissioner Kehrlein provided the following comments:

- It is good that they have narrowed the items down.
- The next step would be to get the Town Council to look at the items.
- She agreed with the comments about separating out the Commission items vs. items that would be handled by other agencies.
- She referred to Priority #7a and stated she was involved with the seismic retrofit of the Pavilion. It has been going through a long process with a lot of different parties involved.

Commissioner Fragoso provided the following comments:

- She referred to Priority #1 and stated she would like the historic preservation consultant to begin on a work program.
- She complimented staff and liked the descriptors that are used.
- She agreed with the comments made by the other Commissioners.
- The work program should be sent to the Council for their input.
- The Commissioners have time to work out the details.

Chair Newton provided the following comments:

- She agreed with the comments made about historic preservation, preserving visually significant areas, and the Ridgeline Ordinance.
- She referred to Priority #4 and stated they did approve an application for turning a duplex into a single-family unit- their hands were tied and there was nothing they could do to prevent it so the idea of “no-net” loss of housing is very important.
- She referred to Priority #5 and stated she was open to ways they can further protect Fairfax’s Density Bonus rights of low-income/affordable housing developers.
- She supported Priority #6 and #7b.
- She agreed with the comments about eliminating items that are not in the Commission’s purview.
- She referred to Priority #8b and cited a provision that encourages clustering. She was not in favor of a “grid” approach.
- Maximizing the preservation of open space was very important.
- She referred to Priority #10a and stated it could take a while and she would like them to start to identify the stages of the plan. They might be able to get the ball rolling by taking “baby steps”.
- She agreed with the comments about no “net loss” of parking.
- She does not agree with the idea of not being concerned about trying to locate in-fill development close to transit hubs.

Planning Director Berto discussed the possible Zoning Ordinance Amendments listed in the staff report.

Commissioner Green referred to discussion item #1 and asked if this was limiting the time that a technically incomplete application (not the project) could be deemed complete. Planning Director Berto stated “yes”- they were talking about the planning phase. There has been concern expressed in the past about projects that have received building and planning permit approval but construction is delayed. He noted that technical studies do expire.

Chair Newton stated she would like the Commission to comment on each item one at a time.

Chair Newton asked for comments on item #1.

Commissioner Kehrlein provided the following comments:

- The proposed change is a good idea.
- She asked if the applicant would be notified that the application is in jeopardy of being withdrawn.

- 180 days is a good time frame- similar to Building Permit time lines.

Commissioner Green provided the following comments:

- He agreed with Commissioner Kehrein's comments.
- They need to provide notice to the applicants in a reasonable period of time.

Commissioner Swift provided the following comments:

- She asked if they were talking about all applications. Planning Director Berto stated any discretionary application.
- The proposed change is a good idea.
- Applicants should be made aware of the time frames and what happens if they do not meet them.

Commissioner Rodriguez provided the following comments:

- She supported the proposal.
- She supported an incomplete application expiration, approved planning project expiration, Building Permit expiration, and continuous construction expiration.

Commissioner Fragoso and Chair Newton provided the following comments:

- They agreed with all the comments that were made.

Chair Newton asked for comments on item #2.

Commissioner Fragoso provided the following comments:

- She supported the proposed change to match the Ross Valley Fire Department definition.
- She supported the new "bedroom" language.
- She wanted more discussion on these items.

Commissioner Swift provided the following comments:

- She would keep them separate.
- The Fire Department has a different purpose for their definition.
- Denoting the bedroom aspect brings in other issues such as required parking.

Commissioner Green provided the following comments:

- He agreed that the "bedroom" language was important.
- The difference between the definition of "substantial remodel" and "50% floor area" is the amount of discretion in the former- the latter is quantifiable.

Commissioner Rodriguez provided the following comments:

- They seem to be two different things and what they trigger.
- One triggers a conformance in parking- the other triggers installing sprinklers in the house.
- She likes the idea of clarifying the definition.
- Simple improvements (beams, joists) are not related to parking.
- She does not see a nexus between installing sprinklers in the entire building and small building changes.

Commissioner Kehrein provided the following comments:

- She asked if a project would need review if it met all the requirements, it was not a 50% remodel, but they were adding a bedroom. Senior Planner Neal stated "not unless they were in a hillside area on unstable soil and they are excavating a certain amount of soil" or did not meet the parking requirements.

- Adding a bedroom should require Planning Commission review. This requirement could be put in somewhere else (not the 50% remodel). Senior Planner Neal stated it would be easy to separate the 50% remodel issue from the “bedroom” issue.
- It is good to have consistency between agencies.

Chair Newton asked for comments on item #2(b), (c).

Commissioner Green provided the following comments:

- He is in agreement with the proposed change for covered parking and tandem parking- but not in favor of parking in the side yard setback. This is a fire/safety issue.

Commissioner Swift provided the following comments:

- She asked how many applications are submitted for parking in the side yard setbacks. Senior Planner Neal stated a lot since parcels are narrow, etc.
- She discussed the new State laws regarding ADU’s and parking.
- She asked if covered parking has been historically equated to a “garage”. Senior Planner Neal stated “no- there are a lot of carports”.
- She supported the proposed changes regarding covered and tandem parking.
- She wants the Commission to continue to review side yard setback applications.

Commissioner Kehrlein provided the following comments:

- She would like to encourage covered parking.
- A garage or covered carport is an asset to a property.
- They should try to fit in parking wherever possible without the need for a variance.
- She would like it to be easier for applicants to meet the requirements.

Chair Newton provided the following comment:

- They could build in a provision that would enable an applicant to ask for a hearing.

The Commission took a 10-minute break at 9:57 p.m.

Chair Newton asked for comments on item #3.

Commissioner Kehrlein provided the following comments:

- This is the bane of her existence.
- The site area is often technically too small because of the slope of the property.
- She would like to see a way to make the approval of small additions much easier on a substandard parcel.

Commissioner Swift provided the following comments:

- She had several questions.
- She was concerned about public review on some of these small projects.

Commissioner Green provided the following comment:

- He is in favor of the idea as long as the public has adequate notice and the chance to appeal.

Commissioner Rodriguez provided the following comments:

- She asked which applications would fall under ministerial review or administrative review. Some might automatically go to Building Permit review.

Chair Newton provided the following comments:

- There are several categories- lots that are not wide enough, window seat additions, etc.
- A neighbor should be able to ask for Planning Commission review prior to the administrative approval.
- They should talk further about this.

Chair Newton asked for comments on item #4.

Commissioner Kehrlein provided the following comments:

- She supported anything that could be done to reduce applications for the Tree Committee.
- Many of the applications could be done over the counter.

Commissioner Green provided the following comments:

- He agreed with Commissioner Kehrlein.
- A report from an arborist who is not going to do the tree removal work is a good idea.
- The Town could pre-approve some arborists.
- He asked if there was a program to identify trees that are in danger of falling in the right-of-way. Planning Director Berto stated "no". Residents should call the Building Department for an Emergency Tree Removal Permit.

Commissioner Swift provided the following comments:

- She asked about the current requirements for tree removals in relation to arborists.
- She asked if an evaluation by the Building Department would be done to assess the claim that a tree is damaging a structure. Senior Planner Neal stated "yes".
- She had questions about the reviews that would be done in-house.
- She recommended review of the Tree Ordinance by the Town Arborist.

Commissioner Fragoso provided the following comments:

- She agreed that staff should be able to review Tree Removal Permits with an arborists report from a company that does not provide removal services.
- Staff should be able to review permits when a tree is causing damage to a residence.
- She agreed with staff's recommended changes.

Chair Newton provided the following comment:

- She supported the staff recommendations.

Chair Newton asked for comments on item #5.

Commissioner Kehrlein provided the following comments:

- She agreed with most of the recommendations except the Use Permit for accessory structures as living spaces. It could cause impacts to adjacent properties. Plumbing Permits for these structures should be reviewed by the Planning Commission.

Commissioner Green provided the following comments:

- He agreed with Commissioner Kehrlein.
- They need to make sure that an accessory structure that is going to be an ADU is in compliance.

Commissioner Swift provided the following comments:

- She supported the recommendation for Fence Height Variances.
- She wants the Planning Commission to review Encroachment Permits into the public right-of-way and monument signs in the downtown area.

- Accessory structures should be reviewed by the Commission.

Commissioner Rodriguez provided the following comment:

- She supports staff processing applications ministerially and reducing the number of them that come to the Commission.

Commissioner Fragoso provided the following comments:

- She supported the recommendations for the Fence Height Variances, Encroachment Permits, arbors on fences, and monument signs (depending on the sign).
- Tool sheds, cabanas, garages could be approved by staff.
- Living spaces should be reviewed by the Commission.

Chair Newton provided the following comment:

- They need to continue the discussion on this item.

Chair Newton asked for comments on item #8.

Commissioner Green provided the following comments:

- A Building Permit might need to be active for more than a year due to the excavation season. Senior Planner Neal stated an applicant can request a one-year extension (granted by the Planning Director). Commissioner Green supported this idea.
- This recommendation should apply to visible, commercial projects.

Commissioner Swift provided the following comments:

- There should be expiration dates according to the particular type of permit.
- She supported the staff recommendations.

Commissioner Rodriguez provided the following comment:

- There should be substantial, on-going construction on any project.

Planning Director Berto thanked the Commission for the feedback.

## **PLANNING DIRECTOR'S REPORT**

Planning Director Berto reported he would put a link to the League of California Cities 2018 Housing Regulation Guide on the Town Website. Staff is in the process of completing the Annual Housing Element Report. Staff has a new Resolution numbering format (five digits, with the year listed first). He discussed the status of the opening of the new Java Hut building. He briefly discussed the Formula Business Ordinance and how it relates to historic guidelines. Commissioner Green stated the intent of the Formula Business Ordinance needs to be clarified.

## **MINUTES**

### **4. Minutes from the February 15, 2018 Planning Commission meeting**

M/s, Fragoso/Kehrlein, motion to approve the February 15, 2018 Planning Commission minutes as corrected.

AYES: Fragoso, Green, Kehrlein, Rodriguez, Swift, Chair Newton

ABSENT: Gonzalez-Parber

## **5. COMMISSIONER COMMENTS AND REQUESTS**

Commissioner Fragoso stated she attended a recent Marin County Board of Supervisors meeting and they adopted a new Green Building Code. Fairfax should “piggy-back” on this. One significant change is the requirement for EV charging stations for some new developments.

Commissioner Swift asked if the “Dark Sky” presentation would be done in April. Senior Planner Neal stated “yes”. Commissioner Swift asked that the PowerPoint slides from the cannabis workshop in December be posted to the Town Website.

## **6. Election of a member of the Planning Commission to serve on the Fairfax Tree Committee**

Commissioner Kehrlein asked if it was possible to reduce the term. Planning Director Berto stated there is some movement to allow the Council to appoint an at-large member if nobody on the Commission is able to serve.

## **ADJOURNMENT**

A motion was made, seconded and unanimously approved to adjourn the meeting at 11:15 p.m.

Respectfully submitted,

Toni DeFrancis,  
Recording Secretary