

FAIRFAX PLANNING COMMISSION MEETING MINUTES  
FAIRFAX WOMENS CLUB  
THURSDAY, MARCH 30, 2017

Call to Order/Roll Call:

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

Commissioners Present: Bruce Ackerman  
Norma Fragoso (Chair)  
Esther Gonzalez-Parber  
Philip Green  
Laura Kehrlein  
Mimi Newton  
Cindy Swift

Staff Present: Linda Neal, Principal Planner  
Mark Lockaby, Building Official  
Michelle Levenson, Zoning Technician

**APPROVAL OF AGENDA**

Principal Planner Neal stated a neighbor has requested that application #3 be heard prior to item #2 due to a personal matter. However, she did not see the neighbor in the Council Chambers.

M/s, Ackerman/Newton, motion to approve the agenda as submitted.  
AYES: Ackerman, Gonzalez-Parber, Green, Kehrlein, Newton, Swift, Chair Fragoso

**PUBLIC COMMENTS ON NON-AGENDA ITEMS**

There were no comments.

**CONSENT CALENDAR ITEM**

- 1. 50 Scenic Road: Application #17-08**  
Recommended for continuance off calendar at request of the applicant; Request for a Use Permit and Side Setback Variance to relocate a 221- square-foot, one-car, garage 19 feet north of the front property line to provide an additional 9-foot by 19-foot parking space on-site for the existing 687-square-foot, 2-bedroom residence; Assessor's Parcel No. 001-131-20; Residential RD 5.5-7 Zone; Laura Kehrlein, architect/applicant; Jeanne Lotta-Sellars and Thomas Sellars, owners.

Chair Fragoso noted this item has been continued per the request at the applicant.

**PUBLIC HEARING ITEMS**

- 2. 118 Tamalpais Road.; Applicant #17-05**  
Continued consideration of a modification of a previously approved Side-yard Setback Variance and Encroachment Permit for a retaining wall and access stairway to an existing single-family residence. The existing stairway was destroyed in a land slide almost 6 years ago; Assessor's Parcel No. 002-121-61; Residential Single-family RS 6 Zone District;

**Nick Rasic, applicant; Federal National Mortgage Association, owner; CEQA categorically exempt per Section 15301 and 15305(a).**

Principal Planner Neal presented a staff report. She showed a video of the existing access path

Commissioner Ackerman referred to the civil matter regarding access of the proposed stairs and asked if 120 Tamalpais could be rebuilt if they were not able to use the proposed stairs. Senior Planner Neal stated she could not answer this question- she does not have topographic maps or surveys of that property. The Town does not have purview over whether or not the property owner grants access to the neighbor- it is a civil matter.

Commissioner Newton stated the staff report refers to the applicant as the new owner and it is not until the end of the report that the foreclosure and unlawful detainer action against the tenant is discussed. There is also a reference, but no description, of a civil action. Principal Planner Neal stated staff was advised by legal counsel that they could go forward with this application.

Commissioner Newton noted a few typographical errors in the resolution.

Commissioner Green referred to the civil action and stated the courts have ordered the tenants to be removed for reasons that are irrelevant to this hearing. The tenants have asserted that if the stairway were to be improved than courts would allow them to be evicted.

Commissioner Gonzalez-Parber stated there were shared utilities (water and sewer lines) but the owner of the subject property was proposing to put in their own utilities. She asked if the neighbors were concerned about damage to the lines. Principal Planner Neal stated this is a question for the neighbors- the Town does not have jurisdiction over utilities.

Commissioner Gonzalez-Parber referred to the site plan and stated it looks like the damage access stairway was on the neighboring (120 Tamalpais) property. Principal Planner Neal stated that was correct. Commissioner Gonzalez-Parber asked who would be responsible for removing it or could it be left in place. Principal Planner Neal stated it would be the responsibility of the property owner. Chair Fragoso asked if the occupant of 118 Tamalpais was the property owner. Principal Planner Neal stated the occupant of 118 Tamalpais is the property owner of 120 Tamalpais- but not the owner of 118 Tamalpais.

Commissioner Gonzalez-Parber stated the arborist report refers to a Redwood tree (tree #1). This is a mistake. Principal Planner Neal stated the arborist report was done for the previous stairway. Construction of the new stairway would not require removing any trees.

Chair Fragoso had a question about the site plan and whether the stairs being abandoned to 120 Tamalpais need to be removed because they are substandard. Principal Planner Neal stated the Town Attorney has advised staff not to start any abatement proceedings on that property until the issues regarding 118 Tamalpais were settled.

Chair Fragoso opened the Public Hearing.

Ms. Claudia Williams, representing Fannie Mae, made the following comment:

- She agreed with the staff report.

Mr. Larry Bragman, attorney for Walter and Rebecca Bess, made the following comments:

- His clients bought 118 Tamalpais in 1990 and have live there continuously for the last 27 years.
- The property went through foreclosure in 2011 and this is what the unlawful detainer flowed from.

- The unlawful detainer was stayed in 2011 because of a lawsuit against Bank of America. The Bess' have been paying court ordered rent ever since then.
- The ownership of the house has been in dispute.
- A deal to buy back the house fell apart- they are now in litigation with Fanny Mae over that aborted buy back.
- Fannie Mae called on the Ross Valley Fire Department to inspect the property about six months ago and there was no mention of access or egress being a safety issue.
- The Bess' use the stairs at 124 Tamalpais. They have not had any problem getting to and from the house.
- Creation of the stairs would pose a problem for the tenants because one of the primary issues in contention is the price of buying back the property. This is an expensive, highly engineered project that would cost close to \$100,000.
- Fannie Mae would add the cost of this project to its equitable lien and make it a more difficult and expensive proposition for the Bess' to buy back the property.
- Mr. Bess was a licensed contractor and could do much of the work himself or supervise the work. He disagreed with a lot of the specifications in the current plans.
- There was no effort by Fannie Mae to make any improvements to the property until the litigation got "hot".
- Once the steps are built then Fannie Mae will go to the judge asking for a release of the stay so they can proceed on the eviction.
- The house is perched on a steep and unstable slope.
- The variance is a discretionary entitlement. 120 Tamalpais will be burdened.

Chair Fragoso asked about the plans for 120 Tamalpais. Mr. Bragman stated it is a predicament- it was filled with debris after the slide of 1982. It was sold to Mr. Bess for a nominal sum. There is no plan at this time.

Mr. Bragman made the following comments:

- He reiterated that the property that would be burdened by the variance would be 120 Tamalpais.
- 118 and 120 Tamalpais have shared joint access over 120 for decades.
- The Commission could grant this easement. This is an equitable solution.
- He stated the preservation of the existing utility lines for 120 Tamalpais should be a Condition of Approval.

Commissioner Newton asked Mr. Bragman if he was referring to an easement by prescription through continued use or an easement created by the Planning Commission. Mr. Bragman stated he was talking about an equitable easement as a condition of the variance. It could be justified by the historical relationship of the two houses.

Commissioner Newton noted there were plans in the packet with various dates and she asked if they should be looking at the plans dated November, 2016. Principal Planner Neal stated they should be looking at the plans labeled Attachment "C" (the revised plans).

Commissioner Green stated the Fire Report does not mention the stairs. There appears to be a hazard complaint that talks about the vegetation and removal of bushes. There is no category for "stairs". Principal Planner Neal stated the Fire Department told her that access was not an issue- they would put a large ladder up the hillside and climb up it. She noted they were not always the first to respond to an emergency.

Mr. Walter Bess made the following comments:

- He has lived at 118 Tamalpais since 1990 when they bought the property. A year later they bought 120 Tamalpais.

- If the project were approved he would like to be listed as “an additional insured” by any Fannie Mae contractors.
- He does not have liability insurance on 120 Tamalpais.
- In the most recent set of plans the Redwood tree (near the shed) is not shown. He would like to see the tree preserved.
- The sewer line is joined for 118 and 120 Tamalpais. The new plan calls for a new sewer line that would intersect close to where the stairs are next to the house.
- He is concerned the existing sewer line would be damaged.
- He asked that the old sewer line and old clean out be retained so 120 Tamalpais could use it when it is rebuild.
- The gas line may or may not be shared between the two properties. He is concerned the gas line for 120 Tamalpais would be destroyed during the construction.

Building Inspector Lockaby stated the Sanitary District requires a new sewer line for any house that changes hands. A new, separate sewer line would be required for 120 Tamalpais.

Commissioner Gonzalez-Parber noted the bottom of the stairs seemed to be spilling out into the roadway and stated this was a safety concern- there should be a three-foot landing at the bottom. She asked if those stairs could turn ninety degrees. Ms. Williams stated the plans were approved by the Town Engineer.

Commissioner Gonzalez-Parber asked if the shared stairway was in the five-foot setback of 120 Tamalpais. Mr. Bess stated “yes”.

Commissioner Ackerman asked if Mr. Bess had submitted plans to build stairs. Mr. Bess stated “no”.

Commissioner Gonzalez-Parber asked if this was a combined lot at one time. Principal Planner Neal stated the records are sketchy- the house at 120 Tamalpais was the original house and the subject house was a “summer cottage”. The lots were never merged.

Ms. Williams made the following comments:

- The Planning Commission has already issued the Variances and Encroachment Permit conditioned on the Town Engineer approving Fannie Mae’s plans for the stairs.
- Fannie Mae made the improvements suggested by the Town Engineer.
- The litigation is irrelevant for tonight’s purposes.
- Ownership is not in dispute in the civil action.
- She stated Mr. Bragman’s assertion that the unlawful detainer eviction action was stayed due to the pending litigation was false.
- The plans call for the removal of no trees.

Chair Fragoso closed the Public Hearing.

Commissioner Swift asked how a neighbor’s objection to a Side Yard Setback Variance is handled. Principal Planner Neal read the Purpose Section of the Variance Section of the Town Code. It is not always possible to maintain a required setback and a neighbor objecting is not a finding for denial of a variance.

Commissioner Green provided the following comment:

- He did want the stairway landing point to be less than three feet from the road.

Commissioner Newton provided the following comment:

- This issue should be addressed in the resolution and they should not rely on the drawing that is contradictory.

Commissioner Swift referred to Mr. Bragman's request for an equitable easement as a condition of the variance and asked if the Town Attorney would weigh in on this. Principal Planner Neal stated the Town Attorney noted this was a civil matter. Commissioner Green agreed and noted this was a question for the courts- the Commission does not have that discretion. Commissioner Newton disagreed and stated the Commission should consider it. Commissioner Swift asked if the Town Attorney was of the opinion that the shared easement issue was not up to the discretion of the Commission. Principal Planner Neal stated she did not ask the Town Attorney that question. She stated it might make sense to do an easement for the old location of the stairs but the proposed set of stairs jogs away from the easement and the setback substantially- it does not lead towards 120 Tamalpais.

Commissioner Green provided the following comments:

- He suggested adding a condition that is itself conditioned upon the outcome of a court order that creates such an easement.
- He is concerned about the landing and would like to add Condition 10 (d) that says: "During construction process the engineer on site should make sure a 3-foot minimum stair landing is retained".

Commissioner Swift provided the following comment:

- She asked if the application should be continued.

Commissioner Ackerman provided the following comments:

- He thought a continuance made sense.
- He thought the easement should be available in the future- it would be a benefit to the public and the future owner and would preserve that hillside.

Chair Fragoso provided the following comments:

- She disagreed- they do not have the purview to a property that is uninhabitable.
- They have no idea what the future owners might do.

Commissioner Newton provided the following comments:

- The issue pertains to the first rise from the street to the first landing that abuts that property line.
- 120 Tamalpais could have an easement for access via that first rise.
- This issue is connected to the variance.

Commissioner Gonzalez-Parber provided the following comments:

- One of the conditions for an Encroachment Permit into the public right-of-way is that another function of public access is not blocked.
- It is too much to plan for the future of 120 Tamalpais.

Principal Planner Neal stated in order to get parking for a future project at 120 Tamalpais, they will need to provide parking and it would probably be placed in the frontage of this property and replace the rip-rap that was installed by the Town.

Commissioner Ackerman provided the following comment:

- Given that, fighting for that easement does not make sense.

Commissioner Kerhleim provided the following comment

- She noted a correction on page 2 of the resolution regarding Mr. Robert Settgast.
- These plans are an improvement over what was previously approved.

M/s, Ackerman/Gonzalez-Parber, motion to adopt Resolution No. 17-06 with the condition suggested by Commissioner Green regarding a three-foot minimum landing from the edge of the road and the correction noted by Commissioner Kehrlein.

AYES: Ackerman, Gonzalez-Parber, Green, Kehrlein, Chair Fragoso

NOES: Newton, Swift

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

### **3. 156 Toyon Road; Application #17-09**

**Request for a Use Permit for a 247-square-foot, storage room addition to an existing 1,860-square-foot, single-family residence; Assessor's Parcel No. 003-152-28; Residential Single-family RS-6 Zone; Owen Gump, applicant; Carl Diehl and Nancy Gump, owners; CEQA categorically exempt per Section 15031(a) and 15301(e)(1).**

Mr. Owen Gump, applicant distributed some information to staff and the Commission.

Zoning Technician Levenson presented a staff report. She clarified there were three windows that were installed- two large and a smaller fixed window.

Chair Fragoso asked if the improvements were done without permits. Zoning Technician Levenson stated "yes".

Commissioner Swift asked about the location of the windows. Zoning Technician Levenson stated the small fixed window is on the east side and the others are on the southern side of the residence.

Commissioner Newton referred to page 3 of the staff report and noted condition number three should be deleted. The number of findings in the resolution are correct.

Chair Fragoso opened the Public Hearing.

Mr. Owen Gump, applicant, made the following comments:

- He needs additional storage space as part of his photography business.
- There are a number of errors in the staff report.
- The project does not propose adding 247 square feet of storage space. There is an existing storage room on the basement level that is 104 square feet that does not have windows.
- He is proposing to permit the added windows, create some minor improvements, and create a second storage room that totals approximately 124 square feet. They would construct a dividing wall between the two.
- He was under the false impression that since he was not changing the building footprint of the house he did not need a permit for the windows.
- The size of the lot is 11,226 square feet.
- The staff uses several inconsistent measurements that distort the impact of the project to 310 Cypress Drive.
- The distance from his property to 310 Cypress is 145 feet and 310 Cypress is 54 feet lower in elevation (at the ground level) than the base of the windows.
- Vegetation blocks sight lines to the neighboring property.
- He disputed the fire safety requirements indicated in the staff report.
- 99% of the time the windows will be covered by blinds.

- He asked the Commission to approve the application as submitted

Commissioner Green asked if the windows depicted in Sheet No 9 (room labeled “storage room”) were the windows that the neighbors from 310 Cypress Drive were complaining about. Mr. Gump stated “probably”. Commissioner Green asked if those windows could be opaque. Mr. Gump stated he would prefer to have daylight.

Commissioner Ackerman had a question about the fire flow requirements. Zoning Technician Levenson referred to page 4 of the resolution, condition #6, and stated staff has not received the final report from the Ross Valley Fire Department but this condition allows flexibility during the negotiations. Mr. Gump stated the documents he submitted addressed this issue.

Commissioner Newton stated a space being used for storage does not usually need clear windows and she asked what type of work would necessitate daylight. Mr. Gump stated he might need to look at print orders for customers. Commissioner Newton stated he could put some transparent film on the two windows facing the neighbors. Mr. Gump stated those windows were the primary light sources.

Commissioner Swift noted the two windows that face Cypress were underneath a deck and she asked how much the deck impacts the sunlight. Mr. Gump stated there was a little bit of shade but with photographs it is more about the amount of light in the room rather than direct sunlight.

Commissioner Green asked if someone could reside in this room. Mr. Gump stated “no”- there is no heat, water, or sewer.

Commissioner Gonzalez-Parber asked about the size of the windows facing Cypress. Mr. Gump stated they were 3’ X 6’. Commissioner Gonzalez-Parber asked Mr. Gump if he would consider adding film to the bottom half of the windows. Mr. Gump stated that would not make a difference in terms of the view from Cypress. He would, however, consider it.

Ms. Pamela Meigs, Cypress Drive, made the following comments:

- The future use of the storage area could change.
- These are very large windows.
- She is concerned about the invasion of her privacy.
- Her realtor stated her property values could be negatively impacted.
- The windows should be higher up.

Mr. Richard Barons, Toyon Drive, made the following comments:

- His property is directly above the Cypress property. He has views of the back deck and can see the house.
- He is not concerned about the windows that face his property.
- There is a new fire hydrant in front of the subject property.
- He supports the project.

Mr. Gump made the following comments:

- Ms. Meig’s partner was not able to identify their property when they came to look at the windows.
- Ms. Meig’s claim that she could see her hot tub from his windows is not supported by the photographs. It is behind plantings.
- Similar projects of this nature have been approved in the neighborhood.

Commissioner Newton asked Mr. Gump if he would be willing to construct something, such as lattice, near the railings of the second and third floor to create the feeling of a visual separation. Mr.

Gump stated that was a good idea and he would be open to that. Chair Fragoso stated this approval could be left to the discretion of staff.

Ms. Meigs made the following comments:

- One foot slats would not be sufficient- the windows were 3' by 6'.
- She would be happy with the lattice if it could be placed high enough.

Mr. Carl Diehl, property owner, made the following comments:

- He supports the idea of some lattice.
- The elevation difference between the bottom of the window and the house at 310 Cypress is 54 feet. The top two feet of the window could remain without the lattice.
- There are no facts supporting the assertion of an intrusion of privacy.

Chair Fragoso closed the Public Hearing.

Commissioner Ackerman provided the following comment:

- Commissioner Newton's suggestion made sense

Commissioner Newton provided the following comment:

- She is not sure she understands the distinction between a storage area in a basement and a workspace in terms of the Town Code.
- They are having this conversation because of the applicant's profession and the desire to not impose too much of a burden on him to fix what he already did.
- She thinks the applicant can take advantage of the sunlight in the upper rooms.
- The easiest and cheapest thing to do would be to throw translucent film on the two windows.

Commissioner Ackerman provided the following comments:

- He agreed with the comments made by Commissioner Newton.
- There are two solutions- 1) put some kind of film or treatment on the windows to make them translucent; 2) install some type of lattice or vertical pieces that look similar from a distance to the railings on the deck that is at least three feet in height.
- He is talking about the south facing windows.
- This would be at the discretion of staff to review.

Commissioner Green provided the following comments:

- He would prefer the use of frosted glass.
- The lattice idea is great.
- Privacy is a feeling that is not measured by distance.

Commissioner Gonzalez-Parber provided the following comment:

- She would prefer the frosted glass or the lattice- but not the film.

Commissioner Kehrlein provided the following comment:

- She asked about the height of the railing above the storage room floor. Mr. Gump stated the distance from the top of the window to the floor was about six feet.

M/s, Newton/Green, motion to approve Resolution No. 17-08, approving a Conditional Use Permit to Convert Under Floor Area to Storage Space at 156 Toyon Drive, with the amended condition that the property owner either install frosted glass or opaque window treatment on the two south facing windows or alternatively a lattice and/or railing that could match the railings on the two upper floors that provided some obscuring of views below the south facing windows. Either option would be approved by the Planning staff and the Building Official.



AYES: Ackerman, Gonzalez-Parber, Green, Kehrlein, Newton, Swift, Chair Fragoso

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

**4. 760 Center Boulevard; Application #14-06**

**Request for Design Review approval of proposed changes to a previously approved Design Review Permit for a 320-square-foot, drive-through, commercial building currently under construction; Assessor's Parcel No. 002-131-13; Highway Commercial CH Zone District; Rich Dowd, architect/applicant; Rich Carson, business owner; CEQA categorically exempt per Section 15301(a)**

Principal Planner Neal presented a staff report.

Commissioner Swift asked about the garbage issue. Principal Planner Neal stated now that this is a permanent building it is reasonable for the Commission to include a condition that they have garbage service.

Commissioner Green asked if staff was surprised that the promised public restroom was not provided. Principal Planner Neal stated staff did not issue a permit to wall off the public bathroom. Building Official Lockaby stated the modular unit came without a door and the bathroom was going to have to be refigured in order to add the exterior door.

Chair Fragoso opened the Public Hearing.

Mr. Rich Dowd, architect, made the following comments:

- He discussed the reasons for the design changes and the history of the project.
- The changes are due to cost.
- Approvals of pre-fab commercial units have to go through the State of California Department of Housing.
- They got approvals though the State but the manufacturer went out of business and the work had to be done on site.
- They tried to find solutions that maintained the integrity of the original design.
- The solutions were cost-effective.
- The bathroom issue is cost driven- it would cost between \$25,000 to \$30,000 to make the bathrooms accessible to customers.
- The code allows them to provide a bathroom facility within 500 feet of the pre-fab. The Good Earth is amendable.
- They have a solution to the bike parking issue- it can be relocated to the north side.

Commissioner Kehrlein asked if the wood siding would be a different color. Mr. Dowd stated a color palette was in the packet. They are proposing a gray color (transparent) but the wood tone would come through. Commissioner Kehrlein asked if they plan to screen the rooftop unit- it is very visible. Mr. Dowd stated the original unit failed and they were not able to find another one that would fit below the parapet.

Commissioner Gonzalez-Parber referred to the restroom issue and asked what would happen when the Good Earth was closed. Mr. Dowd stated there were other businesses across the street. Commissioner Gonzalez-Parber asked about the bench material. Mr. Dowd stated they would be wood placed on a steel support.

Chair Fragoso asked if the wood on the trellis would be painted gray. Mr. Dowd stated it would remain as is. Chair Fragoso stated she was concerned about the gray siding since it was dark and

would look like the asphalt. She liked the colors of the stone. She is disappointed that the problem with the bathroom did not come back to the Commission sooner. Mr. Dowd stated they feel they have “covered their bases”. Chair Fragoso stated she would like to see some type of “escape clause” in case the restroom issue becomes a problem.

Chair Fragoso asked Building Official Lockaby if the entire development was sited to allow clearance for the driveway. It seemed tight. Principal Planner Neal stated Traffic Engineer Parisi approved the layout.

Commissioner Swift had a question about the ADA parking and asked about the garbage collection. Mr. Dowd stated they are still planning on bringing the garbage across the street. Commissioner Green pointed out there is a condition that the business obtains garbage service.

Commissioner Green asked what they do with the coffee grounds. Mr. Dowd stated they used to have a guy pick it up and recycle them but currently they get disposed.

Chair Fragoso asked why the bathroom could not be placed where they had proposed installing an ATM machine. Mr. Dowd stated “cost”- building a new facility would cost \$50,000 to \$75,000.

Mr. Rich Dowd, architect, made the following comments:

- Relocating the bike parking and ADA parking to the north side would help alleviate the circulation issues.
- There will be stripping on the north side.
- He discussed the path of travel issues.

Principal Planner Neal noted Traffic Engineer Parisi has not looked at the plans submitted tonight- this would need to be a condition.

Chair Fragoso closed the Public Hearing.

Commissioner Kehrlein provided the following comments:

- She has an issue with the rooftop unit.
- She supports the project.

Principal Planner Neal stated the rooftop equipment was not depicted on the elevations and should be screened. She asked the Commission to include this as a condition of approval.

Commissioner Gonzalez-Parber provided the following comments:

- The project is beautiful.
- She has a serious concern about the circulation and is happy about the bathroom change.
- This is a very congested and tight site.
- Putting the bike racks to the north helps a lot.
- She supports the project as is.

Commissioner Swift provided the following comments:

- She referred to the resolution, Section 2, #3, relating to the General Plan Circulation Element goal of encouraging bicycle transportation, and stated this is a drive-through coffee shop and she was not sure they should be encouraging bicyclists.
- She would like to see an approved agreement with one of the businesses for use of their bathroom that meets the hours of operation and the building code prior to issuing any permits.
- She asked if the pathway from the sidewalk needed to be addressed. Commissioner Kehrlein stated that should be included in Condition #16.

Commissioner Green provided the following comments:

- He was concerned about the bathroom issue.
- He suggested adding a condition that is consistent with the language on page 4, third paragraph in the staff report: "A formalized agreement with all entities with bathroom facilities.....". Reference to signage should be included in the condition.

Chair Fragoso provided the following comments:

- She would like to see more detailed plans on the disabled parking and bicycle parking. Commissioner Ackerman stated that would be covered by Condition of Approval #16.
- She would like the reference to the need for rooftop screening added to Condition #16.

M/s, Ackerman/Kehrlein, motion to adopt Resolution No.17-09 approving modifications to application No. 14-06, 760 Center Boulevard, with the additional conditions discussed by the Commission.

AYES: Ackerman, Gonzalez-Parber, Kehrlein, Swift, Chair Fragoso

ABSTAIN: Newton

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

**5. 85 Bolinas Road, Suite 1, 2, and 3; Application #17-10  
Request for a Use Permit for a 2,600-square-foot, health clinic on the ground floor of an existing commercial building; Assessor's Parcel No. 002-122-27; Central Commercial CC Zone; Dr. Joseph Smith, applicant; Peter Stroeber, owner; CEQA categorically exempt per Section 15301(a).**

Principal Planner Neal presented a staff report.

Commissioner Green asked about the Parking Finding and asked staff if this was a concern. Principal Planner Neal stated a Parking Variance was granted for construction of the building and only 18 parking spaces were required. If the Commission was concerned that there could be an increase in traffic then the business could be subject to a Traffic Impact Permit. She recommended the same language that was used for 29-31 Bolinas Road. Commissioner Green stated he would like to add that language to the conditions.

Chair Fragoso opened the Public Hearing.

Dr. Joseph Smith, applicant, made the following comments

- He is the founder of Atlas Health and Atlas Seminars.

Commissioner Swift asked Dr. Smith how many locations he has. Dr. Smith stated "one". Commissioner Swift asked for the business days and hours for each of the suites. Dr. Smith stated he started at 8:30 a.m. and worked until 8:00 p.m. The classes will be done in the middle of the day and after hours (6:00 p.m. to 8:00 p.m.). He plans to poll people about the best days of the week for classes.

Commissioner Swift had questions about who would administer the injections and do the testing. Commissioner Swift asked how many people would be coming to the facility on a daily basis. Dr. Smith stated he dreams big- as many as the Commission would allow. Commissioner Swift asked about the number of employees. Dr. Smith stated he had one administrative assistant (but would like to hire another), an off-site nutritional therapist (would like to hire another, and possibly three interns).

Chair Fragoso asked about the number of employees in the café and for the vitamin sales. Dr. Smith stated there would be two employees in the café (one at a time) and the administrative assistants would do the retail sales. Chair Fragoso asked where the employees would park. Dr. Smith stated probably in the parking lot. Chair Fragoso stated she would like to consider a requirement that prohibits staff from parking in the lot.

Commissioner Gonzalez-Parber asked Dr. Smith about disposal of bio-hazardous waste. Dr. Smith stated they do not have any.

Mr. Frank Egger, Meadow Way, made the following comments:

- Bolinas Road is the retail “heart” of Fairfax.
- There is no revenue to the Town from a health clinic.
- Giving up retail space for a health clinic does not make financial sense for Fairfax.
- This building is being piecemealed into a major clinic.

Ms. Annie Schaefer, Dominga Avenue, made the following comments:

- She is the co-owner of The Find.
- Her business has seen a decline since Casa Manana closed.
- She supports businesses that draw foot traffic.

Dr. Smith made the following comments:

- There is value in giving information and education to the community.
- They will be providing free services.

Chair Fragoso closed the Public Hearing.

Commissioner Green provided the following comments:

- Marin has an aging population that needs health care.
- He likes the project.
- He would like to see a condition added with the suggested language regarding a Traffic Impact Permit.
- He could support the project.

Commissioner Newton provided the following comments:

- She acknowledged that health care jobs are the future.
- The retail part is ancillary.
- She does not think a vitamin store would bring a lot of foot traffic.
- There is a sterile nature to medical services that was anathema to retail.
- This is not the right place for a medical establishment. It is not in the spirit of the General Plan.

Commissioner Gonzalez-Parber provided the following comments:

- This would be great for the community.
- Fairfax is the frontier of “alternative clinics”.
- This could be a “destination business” and there could be a lot of benefit to attracting people from outside of Fairfax.
- This location is removed enough from the downtown area.
- She supports the project.

Chair Fragoso provided the following comments:

- She agreed with the comments made by Commissioner Newton and Mr. Egger.
- The closure of Casa Manana was between the landlord and the tenant.

- This is not the right location for this business.
- There are policies in the General Plan that preserve and enhance the retail base in the downtown.

Commissioner Swift provided the following comments:

- She is concerned about the traffic and the parking because this business will be seen as a “destination”.
- The prior businesses brought in foot traffic.
- The plans seem unset in terms of how the suites will be used.

Commissioner Kerhleim provided the following comments:

- It has been hard for retail businesses to succeed in this complex.
- The building design suggests office use.
- She does not see parking to be a problem.
- She is struggling with the café space since it is ancillary to the business model.

Commissioner Green provided the following comment:

- He asked if the Ross Valley Fire Department was requiring sprinklers in the building. Principal Planner Neal stated “no”- just alarms.

M/s, Green/Gonzalez-Parber, motion to adopt Resolution No. 17-10 with the added condition regarding a traffic analysis and the possible need for a Traffic Impact Permit, the revisions to Condition #5, and a condition that employees shall park off-site.

AYES: Ackerman, Gonzalez-Parber, Green, Kehrlein

NOES: Newton, Swift, Chair Fragoso

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

**6. Draft Accessory Dwelling Unit Ordinance; discussion/consideration of a draft Accessory Dwelling Unit Ordinance being proposed to bring the Fairfax Accessory Dwelling Unit Ordinance into compliance with new State Regulations; CEQA categorically exempt per Section 15300.1, and Statutory Exemptions, Public Resources Code Section 21080.15(b)(15) and 21080.17.**

Chair Fragoso stated this item would be continued.

**MINUTES**

**7. Minutes from the February 16, 2017 meeting**

Chair Fragoso stated approval of the minutes would be continued.

**8. Report from Principal Planner Neal**

Principal Planner Neal stated the Town Attorney is concerned that individual Commissioners do not have Town Hall email addresses. These will be set up to allow the public to contact Commissioners.

**ADJOURNMENT**

A motion was made, seconded and unanimously approved to adjourn the meeting at 12:40 a.m.

Respectfully submitted,

Toni DeFrancis,

Recording Secretary