

FAIRFAX PLANNING COMMISSION MEETING MINUTES
FAIRFAX WOMENS CLUB
WEDNESDAY, APRIL 26, 2017

Call to Order/Roll Call:

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

Commissioners Present: Norma Fragoso (Chair)
Esther Gonzalez-Parber
Mimi Newton
Cindy Swift

Commissioners Absent: Bruce Ackerman
Philip Green
Laura Kehrlein

Staff Present: Linda Neal, Principal Planner
Michele Levenson, Zoning Technician

APPROVAL OF AGENDA

M/s, Newton/Swift, motion to approve the agenda with the following change; item #1 will be heard after item #6.

AYES: Gonzalez-Parber, Newton, Swift, Chair Fragoso

ABSENT: Ackerman, Green, Kehrlein

PUBLIC COMMENTS ON NON-AGENDA ITEMS

There were no comments.

PUBLIC HEARING ITEMS

1. 145 Forrest Avenue.; Applicant #17-35

Continued consideration of an application for a Conditional Use Permit to renovate and expand an existing single-family residence by 174 square feet, and remove an unauthorized vehicle pull-out and failed retaining wall; Assessor's Parcel No. 002-192-38; Residential RS 6 Zone; Erick Mikiten, Mikiten Architecture-applicant; Vakil Kuner, owner; CEQA categorically exempt per Section 15301(a).

Zoning Technician Levenson presented a staff report.

Chair Fragoso opened the Public Hearing.

Ms. Sue Peterson, Forrest Avenue, made the following comments:

- She does not have a problem with the new plans.
- She is glad that the wall is being fixed first- that is important.
- Her parking area is right up against the subject property's driveway.
- The tendency is for someone to drive across her parking spot.
- She is concerned about construction damage to her parking area (asphalt pad) and retaining wall. It should not be used for construction staging.

- It is the only parking she has on her property.

Chair Fragoso asked if her parking pad was in the right-of-way. Ms. Peterson stated she was not sure how far her parking encroaches into the right-of-way. Principal Planner Neal stated there was a wall built on Ms. Peterson's property to create a parking space. The parking space could be a few feet into the right-of-way- but it does not matter since the wall was built to provide parking for the house. Commissioner Newton asked Ms. Peterson if she would be opposed to any temporary delineations- rubber stands with orange tape during construction. Mr. Peterson stated "no". Principal Planner Neal stated the Building Official could take photographs prior to construction with the temporary delineation. Language could also be included in the Construction Management Plan that prohibits construction activities in this area. Chair Fragoso stated she would also like to include some notice in the file that the subject property could not consider this parking pad their exclusive parking space. Principal Planner Neal stated staff could come up with some deed restriction language.

Mr. Erick Mikiten, architect, made the following comments:

- He read a letter from the property owner. The property owner asked the Commission to approve the application tonight.
- He acknowledged the neighbor's parking issue and stated they would be willing to put up signs, tape it off, etc.
- The edge of the property is clear- it is the transition from concrete to asphalt.
- About one-third of both parking areas are in the right-of-way.
- They have come up with a good solution that everyone is happy with.
- They would like to be under construction soon.

Chair Fragoso asked Mr. Mikiten about the phasing of the construction. Mr. Mikiten stated the contractor wants to get everything going right away and not phase the construction. Commissioner Gonzalez-Parber asked if the retaining wall would be repaired first. Mr. Mikiten stated he was not sure.

Chair Fragoso stated the Commission was concerned about the condition of the driveway when they first looked at the application. It seemed to be failing. Mr. Mikiten stated he initially wanted the driveway work to be a separate permit.

Commissioner Swift asked if the Town Engineer has any guidance or limitations about how they should approach the project in terms of working on the retaining wall and house at the same time, etc. Principal Planner Neal stated this was in the purview of the Commission- a condition could be added that the work on the driveway is done prior to the work on the house. The Town Engineer was not asked this question.

Mr. Ken Mayer, contractor, made the following comments:

- He has submitted a bid for the project.
- The driveway is in rough shape.
- He did not think the two Redwood trees were stressed.
- He asked for as much leeway as possible in staging the project.

Commissioner Newton stated her concern was the safety of the workers and the ability of the upper part of the driveway to support heavy vehicles. Mr. Mayer acknowledged the condition of the driveway. He did not necessarily see it as a safety issue and did not want to be forced to do this work first. Principal Planner Neal stated there are times when property owners end up putting money into the house but do not want to fix illegal situations or corrections.

Mr. Mikiten made the following comment:

- The turnout could be blocked off during construction.

Ms. Peterson made the following comment:

- She referred to item #6 of the resolution and noted the Use Permit was conditioned upon removal of the unauthorized retaining wall.

Chair Fragoso closed the Public Hearing.

Chair Fragoso provided the following comment:

- She recommended that a geotechnical engineer be on site during the grading process (initial phase) given the condition of the driveway and concerns about construction vehicles.

Commissioner Gonzalez-Parber provided the following comments:

- She would like to add some basic language that a professional would have to establish stability throughout the construction process.
- The arborist is concerned about stabilizing the driveway.
- She liked the project but has concerns about the retaining wall.

Commissioner Swift provided the following comments:

- This is an integrated project with everyone coming together to identify a solution.
- The Building Official will do inspections during construction.

Principal Planner Neal noted the Town Engineer was not sure what was under the driveway (tree roots, dirt) and he thought there might be some kind of movement. The Commission could condition the application upon the illegal improvements being removed and the applicant's engineer verifying it is stable or that they perform the minimum amount of work needed to be done to support construction vehicles. This should be done first.

Chair Fragoso provided the following comments:

- The applicant should submit a bond or letter of credit indicating they will complete the work on the driveway.
- She asked if there was a way to relocate the walkway.

Commissioner Newton provided the following comment:

- She suggested some changes in the language to the resolution to include the following:
 1. The applicant shall erect a temporary demarcation of the neighbor's parking area at 138 Forrest Avenue shall be installed during construction.
 2. The illegal retaining walls and other unpermitted work shall be removed.
 3. The stability of the driveway at 145 Forrest shall be determined prior to blocking off the neighbor's driveway and under no circumstances shall the neighbor's driveway/parking be used for the parking or access of construction vehicles for 145 Forrest Avenue or for residents of 145 Forrest Avenue.

M/s, Newton/Gonzalez-Parber, motion to adopt Resolution #16-28, 145 Forrest Avenue, with Commissioner Newton's changes in the language of the resolution and the following additional condition: 1) After removal of the illegal improvements, the project engineer shall verify the stability of the driveway subject to review by the Town Engineer. If additional stability is needed these improvements shall be subject to further review by the Town Engineer prior to construction on the house.

AYES: Gonzalez-Parber, Newton, Swift, Chair Fragoso

ABSENT: Ackerman, Green, Kehrlin

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

2. 196 Tamalpais Drive; Application #17-12

Request for a Conditional Use Permit to convert and enclose an existing, 136-square foot second-story deck to create a master bathroom and closet. Assessor's Parcel No. 001-052-14; Residential RS 6 Zone; Leyla Hilmi, applicant; Chris Miller and Robin Goldman, owners; CEQA categorically exempt per Section 15301(a)

Zoning Technician Levenson presented a staff report.

Commissioner Swift noted a typographical error on page 3 of the staff report.

Chair Fragoso opened the Public Hearing.

Mr. Craig Zellers, Tamalpais Road, made the following comments:

- He lives adjacent to the subject property and is the closest neighbor.
- He supported the project.

Ms. Leyla Hilmi, designer, made the following comments:

- This is a small project that would provide a huge benefit to the owners.
- There were no objections from the neighbors.
- An engineer has looked at the foundation and saw no problems.
- The intention is to match the existing siding and make it blend in as much as possible.

Chair Fragoso closed the Public Hearing.

Chair Fragoso provided the following comment:

- The project was straightforward.

Commissioner Gonzalez-Parber provided the following comments:

- This small addition would add a lot of function and value to the project.
- She supports it.

M/s, Gonzalez-Parber/Newton, motion to adopt Resolution No. 17-14, 196 Tamalpais Road.

AYES: Gonzalez-Parber, Newton, Swift, Chair Fragoso

ABSENT: Ackerman, Green, Kehrlein

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

3. 125 Live Oak Avenue; Application #17-13

Request for a Hill Area Residential Development Permit, Parking Variance, and Design Review for a 50% remodel/expansion of an existing 1,910 sf. single-family residence into a 1,962 sf. single-family residence; Assessor's Parcel No. 001-236-03; Residential RD 5.5-7 Zone; Dan Bettencourt, applicant/owner; CEQA categorically exempt per section 15031(a)

Principal Planner Neal presented a staff report.

Chair Fragoso had questions about the location of the turn-around and the alleged infringement on 130 Live Oak. Principal Planner Neal stated access to parking in one of the parking spaces could be blocked during emergencies.

Commissioner Swift asked if the V-ditch needed not only maintenance but also repair. Principal Planner Neal stated “yes”.

Commissioner Newton asked if there was language in the resolution that requires the applicant to do anything about the turn-around. Principal Planner Neal stated they have to pay for the painting and the erection of the sign. It should be included in the resolution.

Commissioner Newton had questions about the engineer’s letter, the street right-of-way, and the fee title deed. Principal Planner Neal stated the fee title deed is proof that they own the property. Commissioner Newton asked if the requirement for the fee title deed was included in the resolution. Principal Planner Neal stated “no”- the Commission could include it they choose.

Chair Fragoso opened the Public Hearing.

Mr. Kenneth Burley, partner in the project, made the following comments:

- He can get the grant deed in a couple of days.
- They have been working on the project for two years.
- They are trying to clean up this eyesore.
- The turnaround does not encroach on the neighbor’s property.
- They can do an additional survey.
- It is a narrow road and there are no other options for the turnaround.

Mr. Albert Passon, soils engineer, made the following comment:

- He displayed a survey that shows how close the building was built to the property line.

Mr. Peter Lacques made the following comments:

- He is the owner of 130 and 132 Live Oak Avenue.
- He has no objections to the remodel- it is reasonable.
- He has five bedrooms and would need five parking off-street parking spaces to be in compliance with current codes. He has been using the area in front of the concrete planter for two of those spaces for many years. This area will be blocked off.
- This presents a hardship for him and his tenants.
- The Fire Department requirements would be a burden.
- This would force parking in tandem for his tenants- this is not a viable option.
- The applicant’s survey should incorporate his property.
- He referred to condition #7 and asked if other options had been considered.
- The notice was postmarked on the 17th- there is a 10-day noticing requirement.

Chair Fragoso asked if this turnout requirement was something new. Principal Planner Neal stated “yes”- since the Urban Wildland Interface regulations were put into place. It is common in the hillside areas.

Mr. Chad Gregg, Live Oak Avenue, made the following comments:

- The removal of parking would increase the already existing hardship on Live Oak.
- Fire trucks already turn around on the street.
- There is one way in and one way out of this neighborhood.

Commissioner Newton stated confirmation of the location of Mr. Lacque’s property line would not solve the parking problem. Mr. Lacques stated it was one thing to inflict a “no parking” zone under the assumption that it is a City right-of-way and quite another if it is on his property. This should be ascertained. He was asking for alternatives such as preserving one parking space or excavating the property across the street.

Chair Fragoso closed the Public Hearing.

Commissioner Gonzalez-Parber provided the following comment:

- She asked about the rules regarding removing trees in the public right-of-way. Principal Planner Neal stated it was the responsibility of the adjacent property owner to go through the Heritage Tree Removal process.
- She noted the 12' tree across the street could be removed to provide parking.
- The applicant has the right to improve his property.
- She understood the parking issue.
- Perhaps the Fire Department would work with the applicant on an alternative method/location.

Mr. Lacques stated he had discussions several years ago with the Fire Department about trimming a bit off of the hillside to the east of his property and a tiny bit of the area towards the middle of the road. He would like the opportunity to work with the applicant and the Fire Department.

Chair Fragoso asked if he would be willing to look at that area near the 12' tree near his property.

Mr. Lacques stated "yes" but there could be other solutions.

Chair Fragoso asked if there would be a problem under the Permit Streamlining Act in continuing this item. Principal Planner Neal stated the Commission could, under the time limit of the Permit Streamlining Act, continue the application for one month.

Commissioner Gonzalez-Parber had a question about the 10-day noticing period. Principal Planner Neal stated she has never gotten an answer on whether or not the 10-day period includes the meeting date.

Commissioner Newton asked the applicant if they would support a 30-day continuance. Mr. Burley stated "yes"- they will get a survey of the other property and work with the neighbor on alternative parking. They believe, however, that they have satisfied all the necessary conditions.

M/s, Gonzalez-Parber/Swift, motion to continue application #17-13, 125 Live Oak Avenue, for 30 days to allow the applicant and the neighbor the opportunity to discuss with the Ross Valley Fire Department alternative methods for the turnaround and to verify the edge of the public right-of-way in front of 130 and 132 Live Oak Avenue.

AYES: Gonzalez-Parber, Newton, Swift, Chair Fragoso

ABSENT: Ackerman, Green, Kehrlein

The Commission took a 5-minute break at 10:00 p.m.

4. 39 Wood Lane; Application #17-14

Request for a Hill Area Residential Development Permit, Excavation Permit, Design Review Permit and Fence Height Variance to construct a new 2,573 sf. single-family residence, a 536 sf. accessory dwelling unit, a 155 sf. carport, a 100 sf. shed and to repair a slide; Assessor's Parcel No. 002-1-081-04; Residential Single-family RS 6 Zone; Owen Donnelley, applicant/owner; CEQA categorically exempt per Section 15303(a).

Principal Planner Neal presented a staff report. She noted the resolution does not talk about the second unit because it does not require approval based on the new State law. Commissioner Swift

noted the resolution title does include a reference to it. Principal Planner Neal stated she included the reference because it was included in the plans. It could be deleted.

Commissioner Swift asked for clarification of the condition that required annual maintenance of the drainage system. Principal Planner Neal stated the plan for the slide repair includes a huge network of sub-drains. These need to be cleaned out. Chair Fragoso added the berm area at the base needs to also be maintained.

Commissioner Gonzalez-Parber asked who prepared the plans- they were not signed by a design professional. Principal Planner Neal stated she would need to ask the applicant. It is not a requirement.

Chair Fragoso opened the Public Hearing.

Mr. Owen Donnelley made the following comment:

- His wife designed the plans.

Chair Fragoso closed the Public Hearing.

Commissioner Newton provided the following comments:

- This is a beautiful piece of property.
- She liked the design.

Commissioner Gonzalez-Parber provided the following comment:

- The design is beautiful.

M/s, Newton/Swift, motion to adopt Resolution No. 17-14, 39 Wood Lane, with the deletion of the reference to an accessory dwelling unit in the title.

AYES: Gonzalez-Parber, Newton, Swift, Chair Fragoso

ABSENT: Ackerman, Green, Kehrlein

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

5. 101-191 Piper Lane; Application #17-15

Request for a Design Review Permit, Parking and Side-Yard Setback Variances and an Encroachment Permit for exterior changes to existing multi-family residential development including but not limited to abandoning the swimming pool and construct a 480 sf. combination office/community laundry and bathroom addition to one of the buildings; Assessor's Parcel No. 001-150-41; Residential Multiple Family RM Zone; Ethan Daniels, architect; EAH Housing, owner; CEQA categorically exempt per Section 15301(a) and (e)(1).

Principal Planner Neal presented a staff report.

Commissioner Swift asked if the disabled parking was required due to the remodel. Principal Planner Neal stated developments should already be in compliance with ADA requirements.

Commissioner Swift referred to page 4 of the staff report and asked about the windows. Principal Planner Neal stated the windows would be double paned vinyl in black.

Commissioner Newton pointed out some typographical errors in the resolution.

Chair Fragoso opened the Public Hearing.

Mr. Ethan Daniels, Project Manager with EAH, made the following comments:

- EAH has been around since 1968 developing and managing affordable properties in the Bay Area.
- They are lining up the financing for the rehabilitation but they first need planning approvals.

Commissioner Swift noted they were putting in a Manager's office and she asked if they currently have an on-site manager. Mr. Daniels stated State law requires that they have a person of responsibility on site and they do have a maintenance person and property supervisor on site.

Chair Fragoso closed the Public Hearing.

Commissioner Newton provided the following comment:

- She does not have any issues or concerns with the project as proposed.

Commissioner Gonzalez-Parber provided the following comment:

- She supported the project.

M/s, Newton/Swift, motion to adopt Resolution No. 17-18, 101-191 Piper Court, with the corrections noted by Commissioner Newton.

AYES: Gonzalez-Parber, Newton, Swift, Chair Fragoso

ABSENT: Ackerman, Green, Kehrlin

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.

Principal Planner Neal stated the Commission could not take action tonight since the required number of Commissioners were not in attendance. She asked for comments or concerns.

Commissioner Newton provided the following comment:

- She asked the Commission how they felt about the Residential Second Unit Amnesty Program- she would like to give the Council a strong recommendation to re-instate it. Chair Fragoso stated she agreed.

Commissioner Gonzalez-Parber had questions about the amnesty program. Principal Planner Neal stated the prior program significantly reduced application fees although applicants still had to go through the permitting process. The new State law limits the permits that a jurisdiction could require.

Commissioner Newton provided the following comments:

- She asked if there were restriction on the ADU being part of the existing residence or separate structures. Principal Planner Neal stated they could be both.
- She was thinking about the number of detached structures that could be used as an ADU.

Commissioner Swift provided the following comments:

- She has a lot of questions- she would forward them to Principal Planner Neal.
- She had questions about the parking requirements, what is meant by "public transit", what a "care-share" vehicle is, areas where the Commission has discretion, short-term rentals, etc.

Commissioner Gonzalez-Parber provided the following comments:

- The staff report states that an AEU could be up to 1,200 square feet but shall not exceed 50% of the existing square footage of the house. A 50% remodel or addition requires review by the Commission- but not if it is a second unit. This could be an issue.
- She asked if anything could be done to address exceptions or special conditions. Principal Planner Neal stated it would probably have to be done on a case-by-case basis.

Chair Fragoso provided the following comment:

- She liked the proposed changes to the ordinance.

Principal Planner Neal asked the Commission to email any comments.

MEETING MINUTES

1. Minutes from the April 30, 2017 Planning Commission meeting

M/s, Swift/Gonzalez-Parber, motion to approve the April 30, 2017 minutes as corrected.

AYES: Gonzalez-Parber, Newton, Swift, Chair Fragoso

ABSENT: Ackerman, Green, Kehrlein

DISCUSSION ITEMS

There were no discussion items.

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 10:10 p.m.

Respectfully submitted,

Toni DeFrancis,
Recording Secretary