

DRAFT FAIRFAX PLANNING COMMISSION MEETING MINUTES  
FAIRFAX WOMENS CLUB  
THURSDAY, OCTOBER 18, 2018

Call to Order/Roll Call:

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

Commissioners Present: Esther Gonzalez-Parber  
Mimi Newton (Chair)  
Michele Rodriguez  
Cindy Swift

Commissioners Absent: Norma Fragoso  
Philip Green  
Laura Kehrlein

Staff Present: Ben Berto, Planning Director  
Linda Neal, Principal Planner  
Garrett Toy, Town Manager  
Janet Coleson, Town Attorney

**APPROVAL OF AGENDA**

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

**PUBLIC COMMENTS ON NON-AGENDA ITEMS**

Ms. Diana Purdue stated her neighbor constructed a garage that now obstructs the flow of the creek. Principal Planner Neal stated the Building Official and engineers are of the opinion that the construction was fine. Staff will ask them to take a second look.

Ms. Valerie Hood, Dominga Avenue, submitted some information about 5G. She obtained signatures for a petition in opposition to the 5G rollout. She would like the Town to sponsor a forum about this issue.

Ms. Jess Lerner, Fairfax, stated she is on the 5G Free Fairfax Task Force and asked Commissioners to meet with the task force. The task force is meeting with electrical engineers, legal counsel, and people formerly in the industry to provide the Town with a comprehensive overview.

A Mill Valley resident discussed the 5G issue and recommended strengthening the current ordinance. She discussed the values of equity, supporting one another, and a shared sense of community. The current ordinance does not protect the mixed use and commercial zones.

Ms. Roberta Anthes, Snowden Avenue, stated she supported the amendments to the ordinance but was concerned about the exemption clause. She noted that facilities must be ADA compliant and Fairfax would not be able to comply with both FTA and ADA laws now that EMF sensitivity has qualified as a disability.

Mr. Richard Applebaum, Woodland Avenue, encouraged the Commissioners to meet with the representatives of the 5G Free Fairfax Task Force. He is concerned with the ordinance which was based on the Mill Valley Ordinance- it is not strong enough.

Rachel, Fairfax resident and business owner, stated she cares about the issue since it affects her physically- she is extremely sensitive to EMF's. There is a connection between EMF levels and serious health conditions.

Town Attorney Coleson referred to item #3 and stated the Fairfax Town Code requires an affirmative vote of not less than 2/3<sup>rd</sup> of the total voting membership for any Zoning Amendments. Any vote tonight would require five Commissioners- there were only four present. Staff recommended continuing this item to next week.

M/s, Rodriguez/Swift, motion to continue item #3 to the Special Meeting of October 25<sup>th</sup>.

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

ABSENT: Fragoso, Green, Kehrlein

## CONSENT CALENDAR

There were no Consent Calendar items.

## PUBLIC HEARING ITEMS

### 1. 216 Scenic Road; Application #18-16

**Request for a Use Permit and a parking variance to construct a 251 square foot, bedroom and bathroom addition onto an existing 537 square-foot studio cabin, increasing it to a 788 square-foot, 1 bedroom, 2 bathroom, single-family residence; Assessor's Parcel No. 001-025-22; Residential Single-family RS-6 Zone; Hossein Asghari, applicant/owner; CEQA categorically exempt per Section 15301(e)(1).**

Principal Planner Neal presented the staff report. She noted the following changes to the Resolution: 1) Condition #4, item (c) shall be removed; 2) Condition #22 shall be added as follows: "The building permit application for the project must include legalization of the patio cover and must be obtained prior to the start of construction on the addition".

Chair Newton opened the Public Hearing.

Mr. Hossein Asghari, applicant, made the following comments:

- He wants to resolve the problem with drainage.
- He is open to modifying the back wall of the garage.

Chair Newton closed the Public Hearing.

Commissioner Gonzalez-Parber provided the following comments:

- The Commission was previously looking for the patio legalization- this has been included.
- She supports the project.

Commissioner Rodriguez provided the following comments:

- She referred to Resolution No. 2018-15 and suggested the following modifications: 1) Condition #1 should require that the paint match the existing building; 2) Condition #7 should give the Planning Director or staff authority to approve minor alterations that are consistent with the intent of the approval.

Commissioner Swift provided the following comments:

- She has concerns about the parking with respect to the location and safety.
- The parking was legal for a cabin without a bedroom.
- There is a fire hydrant across the street, no parking in front of it, and a one-way street.
- She cannot make the findings.

Chair Newton provided the following comment:

- Making this a one-bedroom (from a cabin) should not legally transform that dwelling unit into a different size dwelling unit that would require a change in the parking requirements.

Commissioner Gonzalez-Parber provided the following comments:

- She disagreed with Commissioner Swift.
- She is looking at this as a matter of special privilege compared to what everybody else has in this area.
- It starts to feel almost punitive because the required parking for a 1 bedroom house is the same as that for a 2 or more bedroom house.
- She referred to the table on page 3 of the report and stated that this property has more parking than other properties in the same neighborhood.
- The Floor Area Ratio is smaller than other properties.
- People have a right to improve their properties- it adds value to the neighborhood.

Commissioner Swift asked if the table included carports. Principle Planner Neal stated "yes"- some of the "zeros" (under garage) could be uncovered parking decks.

M/s, Rodriguez/Gonzales-Parber, motion to adopt Resolution No. 2018-15 with the following modifications: 1) Condition #1 shall include that the paint shall match the existing building; 2) Condition #7 shall be modified as follows: "Any changes..... Application #18-16 *unless minor changes are proposed and consistent with the intent of this approval may be approved by Planning Director.*"; 3) The removal of item (c) in Condition #4; 4) The addition of Condition #22 as follows: "The building permit application for the project must include legalization of the patio cover and must be obtained prior to the start of construction on the addition".

AYES: Gonzalez-Parber, Rodriguez, Chair Newton

NOES: Swift

ABSENT: Fragoso, Green, Kehrlein

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

## **2. 355 Scenic Road; Application #18-17**

**Request for a Use Permit, Setback and Height Variance to construct a 304 square-foot storage area beneath an existing 2 car garage on a site developed with a single-family dwelling; Assessor's Parcel No. 001-062-29; Residential Single-family RS-6 Zone District; Patrick Yore, applicant/owners; CEQA Categorically exempt per Section 15303(e).**

Principal Planner Neal presented the staff report.

Commissioner Swift asked staff to address the requirement for fire sprinklers. Principal Planner Neal discussed the three triggers: 1) Substantial addition to the garage; 2) Its distance from the closest fire hydrant; 3) The narrowness of the road.

Commissioner Rodriguez asked how much grading would occur. Principal Planner Neal stated the applicant could address this question but she thought it would be a minimal amount (under two cubic yards).

Chair Newton opened the Public Hearing.

Mr. Patrick Yore, applicant, made the following comment:

- There is no need for grading underneath- it all tucks underneath the existing structure.

Chair Newton closed the Public Hearing.

Commissioner Swift provided the following comments:

- She has no problem with the application.
- She supports the application.

Commissioner Gonzalez-Parber provided the following comment:

- She could support the application.

Commissioner Rodriguez provided the following comment:

- She referred to the Resolution #2018-16, Condition #1, and asked if it should include language saying this shall not be a living area or bedroom.

Chair Newton provided the following comment:

- This is a storage room and not a living area.
- She would support the additional language to Condition #1.

M/s, Rodriguez/Gonzales-Parber, motion to adopt Resolution No. 2018-15 with the following modifications to Condition #1: "The use shall not be living space".

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

ABSENT: Fragoso, Green, Kehrlein

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

**3. Discussion/consideration of an Ordinance to permit certain medical marijuana dispensaries to conduct adult-use cannabis deliveries; Exempt from CEQA pursuant to Section 15061(b)(3), 15305 and 15183 of the CEQA Guidelines as separate and independent bases.**

Chair Newton noted this item has been continued to the October 25<sup>th</sup> Special Meeting.

## **DISCUSSION ITEMS**

There were no discussion items.

### **4. Minutes from the September 20, 2018 Planning Commission meeting**

M/s, Swift/Gonzalez-Parber, motion to approve the September 20, 2018 Planning Commission minutes as corrected.

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

ABSENT: Fragoso, Green, Kehrlein

### **Planning Director's Report**

Planning Director Berto reported the Election of the Chair and Vice Chair for the upcoming year will be on December's Regular Meeting agenda. He explained why each Commissioner should have a Town of Fairfax email address. Chair Newton added this would make it easier for the public to get in touch with a Commissioner. Planning Director Berto reported the Town Council took action with respect to the Tree Committee and created a Town appointed, at-large position in lieu of a Planning Commission representative. Commissioner Swift had a question about how the ordinance

addresses removals vs. alterations. Planning Director Berto responded that both are now included. Commissioner Rodriguez stated the Town, when reviewing an application, should get a report from an arborist as opposed to a company that performs tree removals. Planning Director Berto reported the upcoming Planning Commission Academy will be held in Long Beach on March 6<sup>th</sup> through the 8<sup>th</sup>, 2019. He briefly discussed the agenda for next week's Special Meeting.

### **Commissioner Comments and Requests**

Commissioner Gonzalez-Parber asked about time limits on parking and why the Town chalks tires. Principal Planner Neal stated parking has been an on-going battle in Town.

Commissioner Swift referred to agenda item #3 and stated she was disappointed that they were not taking a holistic approach to cannabis regulations.

Commissioner Rodriguez reported the Planning Director's Association of the Bay Area is holding a one-day meeting on November 2<sup>nd</sup> in Oakland regarding the new USGS Hayward Fault study. It links well with the emergency preparedness issues the Commission has been discussing.

Commissioner Gonzalez-Parber had a question about an email from a resident and what was precluded, in terms of a response from a Commissioner, under the Brown Act. Planning Director Berto explained that the Brown Act was a very detailed document that comes down to a fundamental concept- the public's business should be conducted in public. There is also the notion of "appearance" in terms of a possible conflict. Commissioners need to refrain from formulating an opinion until they are at a public hearing and receive all pertinent information and testimony.

Commissioner Rodriguez asked staff to forward any information from Marin Telecommunications about anything they are doing with respect to 5G.

Chair Newton agreed with Commissioner Swift's request that the Commission take a holistic approach to the cannabis issue.

### **ADJOURNMENT**

A motion was made, seconded and unanimously approved to adjourn the meeting at 8:50 p.m.

Respectfully submitted,

Toni DeFrancis,  
Recording Secretary



DRAFT FAIRFAX PLANNING COMMISSION MEETING MINUTES  
FAIRFAX WOMENS CLUB  
THURSDAY, NOVEMBER 15, 2018

Call to Order/Roll Call:

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

Commissioners Present:            Norma Fragoso  
   Esther Gonzalez-Parber  
   Mimi Newton (Chair)  
   Michele Rodriguez

Commissioners Absent:            Philip Green  
   Laura Kehrlein  
   Cindy Swift

Staff Present:                        Ben Berto, Planning Director  
   Linda Neal, Principal Planner  
   Garrett Toy, Town Manager  
   Amanda Charne, Assistant Town Attorney

**APPROVAL OF AGENDA**

M/s, Gonzalez-Parber/Fragoso, motion to approve the agenda as submitted.

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

ABSENT: Green, Kehrlein, Swift

**PUBLIC COMMENTS ON NON-AGENDA ITEMS**

There were no comments.

**CONSENT CALENDAR**

There were no Consent Calendar items.

**PUBLIC HEARING ITEMS**

- 1. Discussion/consideration of an ordinance to permit and regulate adult cannabis businesses in conformance with State Laws and Regulations pursuant to the Medical and Adult-Use Cannabis Regulations and Safety Act; Exempt from CEQA pursuant to Sections 15061(b)(3), 15301, 15305, and 15183 of the CEQA Guidelines as separate and independent bases.**

Town Manager Toy presented the staff report via a powerpoint slideshow. He noted this is a continuation of the discussion from the September 20<sup>th</sup> Commission meeting. He summarized the Commission's straw poll positions on various issues.

Commissioner Fragoso asked if there was a regulation that limits the amount of cannabis someone can have once it is no longer on the plant. Assistant Town Attorney Charne stated an individual is allowed to have six plants and all the cannabis those plants provide.

Commissioner Rodriguez asked for the definition of a microbusiness. Town Manager Toy stated it has to meet three out of four categories- manufacturing, retail, cultivation, and distribution.

Commissioner Rodriguez had a question about ITE standards for this type of retail use with respect to traffic generation and parking. Planning Director Berto stated he was not aware of any ITE standards. He noted there were unique traffic patterns associated with this type of business and staff would ask applicants for a traffic study.

Commissioner Gonzalez-Parber stated she would like to see a more detailed definition of manufacturing. Planning Director Berto stated that if the Commission wanted to get an ordinance to the Council soon, he recommended holding this discussion in abeyance since there is such a wide range of products out there.

Commissioner Fragozo referred to the pre-application criteria and asked staff to provide San Rafael's standards and requirements at the next meeting.

Chair Newton asked for an explanation of the terms "delivery-only", "storefront" and how it applies to existing and future businesses. Town Manager Toy stated the existing medical dispensary will be allowed to make deliveries for adult-use (recreational). They are already allowed to do medical marijuana deliveries under a different set of standards.

Commissioner Gonzalez-Parber asked if an owner that has a brick and mortar medical dispensary, who is also licensed to deliver retail adult-use, could he/she have another retail storefront for adult-use in a different location. Town Manager Toy stated "yes".

Chair Newton referred to the Buffer Zone Map and stated it did not include Deer Park and asked that all the commercial zones be included on the map.

Chair Newton opened the Public Hearing.

Mr. George Bianchini made the following comments:

- He works in the cannabis industry and has two of the San Rafael licenses.
- It has taken Fairfax too long to get to this point.
- They could end up with a public initiative and lose control.
- He supported the 600' buffer for new stores.

Mr. James Williams made the following comments:

- The "Yes on Proposition 64" campaign included a significant focus on the protection of kids.
- He has no problem with a suitable storefront in Fairfax but it should not be located where kids congregate.
- He is concerned about the buffer zone and how it applies to Contratti Field, Peri Park, and the Pavilion.
- The buffer zone should extend to playgrounds.

Ms. Teresa Bryan, Fairfax, made the following comments:

- She is a national cannabis advocate.
- The Town needs to allow the Marin Alliance a facility that is further away from the baseball field.
- The Town needs to allow competition.

Ms. Deb Nelson, Fairfax, made the following comments:

- She discussed the benefits of medical marijuana.
- She is against expansion of the Marin Alliance services.
- She is opposed to the Town backing into an ordinance to help a struggling individual business.
- She supported the 600' buffer zone.



Roselle, Director of First Montessori Pre-School, made the following comments:

- Parents of pre-schoolers have been under-represented at prior meetings.
- The 600' buffer zone should be upheld.

Mr. Tim Nardel made the following comments:

- Proposition 64 created a balance of public interest and protecting kids.
- The 600' buffer zone, if written into the law, is not voluntary.

Ms. Annie Schaeffer, Dominga Avenue, made the following comment:

- The 600' buffer zone should be upheld.

Ms. Betsy Kelly made the following comments:

- She wants to limit the impacts to her children.
- The 600' buffer zone should be upheld.
- Retail sales should be restricted to delivery.

Mr. Gabe Robinson, Kent Avenue, made the following comments:

- The 600' buffer zone should be upheld.
- They will need to address the unique traffic patterns related to cannabis businesses.

Mr. Rob Lence, Fairfax, made the following comments:

- The 600' buffer zone should be upheld.
- He was concerned about the impact on children.

Mr. Josh LaFrone, West Marin Little League Boardmember, made the following comment:

- He supported the 600' buffer zone and thought it should be larger.

Ms. Bridget Clark made the following comments:

- She appreciates the Town's cautious approach.
- She discussed the effect of cannabis on kids.
- She urged the Commission to review the County's Delivery Ordinance and follow their lead.
- She supported a traffic study.

Mr. Don Carney, Mt. View Road, made the following comments:

- He runs the Marin County Youth Court and works with kids that are impacted by substances.
- There is an epidemic of children using substances.
- A corporate THC industry has been created to make profits.
- Nobody has trouble getting marijuana.

Ms. Kelsey Fernandez made the following comments:

- She discussed products and the health risks of cannabis.
- This is a billion dollar market.

Mr. Doug Harning, Mono Avenue, made the following comments:

- He supported the 600' buffer zone.
- He urged the Commission to streamline the process.

Mr. Rick Hamer, Bolinas Road, made the following comments:

- They are facing the extinction of the medical marijuana capability due to the competition from corporate dispensaries.
- The mission should be to level the playing field.
- They should restrict retail and allow only delivery.

- It would be difficult to find a retail location that was further than the 600 foot buffer.

Ms. Beverly Brewster, Cascade Drive, made the following comments:

- She is the pastor of the Sleepy Hollow Presbyterian Church.
- Her youth ministry congregates in Fairfax.
- She urged the Commission to resist pressure to move swiftly and to keep in mind the health and safety of the youth.
- She would like to see delivery only.

Chair Newton closed the Public Hearing.

Town Manager Toy referred to page 2 of the staff report and asked for comments on Discussion item (a)- Eliminating categories of use.

Commissioner Gonzalez-Parber provided the following comments:

- She asked for clarification on “manufacturing” of cannabis. Town Manager Toy stated he would bring that information to the November 29<sup>th</sup> meeting.

Town Manager Toy referred to page 2 of the staff report, Discussion item (b)- Eliminating temporary cannabis events, and stated the Commission had previously supported the Councils’ ban on temporary cannabis events.

Town Manager Toy referred to page 2 of the staff report, Discussion item (c)- Commercial medical retailers, and stated the Commission had previously supported the Council’s position of continuing to allow medical cannabis dispensaries in Town.

Commissioner Rodriguez provided the following comments:

- The existing ordinance allows three medical marijuana dispensaries and they might want to amend this ordinance depending on the discussion regarding the commercial/retail side of things

Commissioner Fragoso provided the following comments:

- She clarified that the existing medical marijuana dispensary was the only one currently allowed in the buffer. Town Manager Toy agreed.

Town Manager Toy referred to page 2 of the staff report, Discussion item (d)- Personal/medical cultivation limits, and stated the majority of Commissioners supported the Council’s suggested six plants per parcel limit. It was currently not allowed in a multifamily district.

Chair Newton provided the following comments:

- She asked about the State limit for indoor and outdoor cultivation. Town Manager Toy stated the State simply says six plants could be grown indoor- it says nothing about outdoor cultivation.

Commissioner Gonzalez-Parber provided the following comments:

- She asked for additional information on the number of multi-plex houses in Town. This will need to be folded into the standards.

Commissioner Fragoso provided the following comments:

- They are talking about six plants per property and not six plans per housing unit on that property.
- She would recommend a “per property” limit whether single-family or multi-family.
- There could be an exemption for medical conditions.
- She has concerns about balconies and would like to see existing standards continued in terms of screening from the street, excessive odors, etc.

Commissioner Rodriguez provided the following comments:

- There should be 6 total per property.
- She was previously the dissenting vote on outdoor cultivation and is still leaning in that direction.
- There should be odor control/ventilation systems and lighting, plumbing, and electrical work should meet existing codes.
- There should be a full-time occupancy requirement.
- There should be consent of the property owner.
- The primary use of the property should be residential.
- There should be some level of security for outdoor cultivation to prevent access by children.
- Toxic, volatile chemicals should be prohibited.

Chair Newton provided the following comments:

- She was concerned about the limits.
- Everything should be up to code.
- She is not concerned about odors.
- She agreed that screening was important- the existing standards were adequate.
- She is "on the fence" about the per parcel issue. They should explore the option of seeking an exception for multi-units.

Town Manager Toy referred to page 2 of the staff report, Discussion item (e)- Cannabis deliveries (outside retailers) and stated the Commission was supportive of the Council's position to allow adult-use cannabis deliveries in Town, subject to State regulations.

Town Manager Toy referred to page 2 of the staff report, Discussion item (f)- Non-medical cannabis retailers and the number of retailers, and stated the Commission supported some form of non-medical cannabis retail use and limiting the number of storefronts and delivery-only businesses.

Chair Newton provided the following comments:

- She asked if the Formula Business standards had any impact. Planning Director Berto briefly discussed the purpose of the provisions and the definition of a "formula business". Chair Newton asked if this applies to the Central Commercial (CC) and Highway Commercial (CH) Zones. Planning Director Berto stated "yes".

Commissioner Gonzalez-Parber provided the following comments:

- The buffer zone needs to be respected.
- She could support a maximum of one to three retail businesses.
- She wondered how a micro-business would impact the numbers, and there should be a maximum of three no matter what kind.

Commissioner Fragoso provided the following comments:

- They should adhere to the State's buffer zone for any new business.
- The Formula Business regulations have worked well in helping maintain the character of Fairfax.
- She could support one or two retail businesses.
- This type of business would not necessarily enhance the downtown.
- She liked the idea of restricting them to the commercial zones, along Sir Francis Drake Boulevard, on a second floor in the back area of a building.

Commissioner Rodriguez provided the following comments:

- The Town already has a medical dispensary and delivery and given the size of the community was not sure they needed more.
- It would have to be in the CH Zone (the other side of Sir Francis Drake Boulevard) and in a limited portion of the CC Zone.

- She wants to maintain the State buffer zones.
- She would like to restrict the size of the building.

Chair Newton provided the following comments:

- She did not mind the buffer zone but was not sure it should cross Sir Francis Drake Boulevard.

Commissioner Gonzalez-Parber provided the following comments:

- She would like to see a requirement to develop youth education, prevention, and treatment programs. Funding is to be determined.
- She would like to see mechanical ventilation standards, security, and waste management.

Chair Newton stated she would like to continue this discussion to the November 29<sup>th</sup> meeting.

The Commission took a 10-minute break at 8:30 p.m.

**2. 1914 Sir Francis Drake Blvd; Application #18-18  
Request for a Design Review Permit and a Parking Variance to expand/remodel the existing Lotus Café Restaurant from its current 683 square-foot commercial space at 1912 Sir Francis Drake Blvd. into the existing 687 square-foot commercial space at 1914 Sir Francis Drake Blvd.; Assessor's Parcel No. 001-223-12; Central Commercial (CC) Zone District; Paul Sroa, applicant/business owner; CEQA categorically exempt per Section 15301(a) and (e)(1) and 15303(c).**

Principal Planner Neal presented the staff report.

Commissioner Rodriguez asked if there was a Specific Plan or Historic Character Ordinance that applied to this building. Principal Planner Neal stated "no, although the General Plan does talk about developing one".

Commissioner Rodriguez had questions about the traffic study. Principal Planner Neal stated the traffic engineers have analyzed the number of seats that were in the hair saloon and determined that the application is not subject to the Traffic Impact Permit Ordinance. The expansion would serve the already existing customers but they would now be able to sit and eat instead of doing take-out.

Commissioner Gonzalez-Parber asked if the twenty-eight net new "average daily trips" cited in the report equated to parking demand. Principal Planner Neal stated they were separate issues. She stated the General Plan talks about a Master Parking Plan involving public and private parking lots whereby all businesses could benefit from all the parking.

Chair Newton opened the Public Hearing.

Mr. Paul Sroa, applicant, made the following comment:

- The driving force of the business is sustainable, organic, non-GMO products.
- The majority of the business now is take-out.
- The current space is very small- about 10 seats.
- They are adding another bathroom.

Mr. Tony Chan, general contractor, made the following comments:

- The walk-in compressor will be located on the ground next to the walk-in cooler. It is very quiet.
- They are installing a new A/C unit on the roof for the new section.

Mr. Rick Hamer, Bolinas Road, made the following comment:

- He likes the restaurant.

- Parking in recent years is over the top and has gotten so in demand that people create spots in red and yellow zones.
- This project will add 5 vehicles for the 20 seats.
- He referred to special privilege and stated other projects could have a problem complying with the parking codes.

Chair Newton closed the Public Hearing.

Commissioner Rodriguez provided the following comments:

- She supports the restaurant doing the expansion.
- The previous business (hair salon) had different peak period times and different parking requirements.
- The parking demand would be greater than that of the previous use. She is concerned.
- She referred to the Resolution, Conditions of Approval, (3), and asked that a reference be made about the roof mounted air system. This would allow staff to obtain the details since they are not shown on the plans. Principal Planner Neal stated she was told that this unit would be screened by the existing parapet. A statement indicating that roof mounted equipment should be screened could be added to Condition #3.

Commissioner Gonzalez-Parber provided the following comments:

- She is happy they are expanding.
- She supports the project.
- She was concerned that the ice machine was next to the mop sink. Mr. Chan, contractor, noted this is a tight location and they will separate the machine from the sink by a wall.
- She asked about the possibility of shared parking and encouraged the owner to talk to the adjacent businesses about a shared parking agreement.

Chair Newton provided the following comments:

- She has a concern about a granting special privilege.
- There is no place for parking.
- A key physical characteristic of this property is that it is directly across from the bus stop. This should be added to the resolution as one of the findings for the Parking Variance.
- She referred to the findings for the Parking Variance, (2), and asked for the following addition: *"Granting a Variance...cannot be reasonably attained and the property is located in the immediate proximity of a public transit stop and public parking lot"*.

Commissioner Fragoso provided the following comment:

- She has been waiting many years for this business to expand.
- There are a number of shared parking opportunities (Bike Museum, garage next door, etc.).
- She did not consider approval of the Parking Variance a grant of special privilege.

M/s, Rodriguez/Fragoso, motion to adopt Resolution No. 2018-19, with the following amendments:

1) Under Parking Variance, (2), the following shall be added: *"Granting a Variance...cannot be reasonably attained and the property is across the street from a public parking lot and bus stop"*; 2) Under Condition of Approval #3, the following shall be added: *"The roof mounted HVAC system shall be below the parapet"*; 3) Under Condition 8(a), the following shall be added: *"The applicant...refrigeration equipment and roof mounted HVAC...including..."*.

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

ABSENT: Green, Kehrlein, Swift

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

**3. 407 Cascade Drive: Application #18-21**

**Request for Design Review and Use Permit for a new, 2-story, 3-bedroom, 2 1/2 bath, 2,395 square-foot residence with an attached 530 square-foot (30 net square feet) garage (2,425 net building square feet) on a level 6,362 square-foot vacant lot. Independent of the garage area, the residence will contain 985 square feet on the first floor and 1,410 square feet on the second floor. Maximum proposed building height is 28.5 feet. Assessor's Parcel No. 003-044-09, Residential R6 Zone District; Shawn and Allison Madden, owners/applicants; CEQA categorically exempt per Section 15301.**

Planning Director Berto presented the staff report.

Commissioner Rodriguez noted the applicants were requesting the removal of two trees and she asked if they were native trees subject to the Heritage Tree Ordinance. Planning Director Berto stated "no- they were two, old fruit trees".

Commissioner Rodriguez noted there were eight story poles installed and she asked if there was an ordinance that addresses where they should be placed or is it determined by staff. Planning Director Berto stated this very straightforward and was discussed with staff.

Commissioner Rodriguez asked where the 100-year flood line was located. Planning Director Berto stated this property slopes down in the back and as a practical matter the 100 year flood elevation is contained within the banks and does not extend into the level portion of the property.

Commissioner Fragoso had a question about the staff recommendation to pull the west side of the second floor in by two feet. The east side would be more impacted by the volume of the project.

Chair Newton opened the Public Hearing.

Mr. Shawn Madden, applicant, made the following comment:

- They would consider reducing the height from 28.5 feet to 25.5 feet.
- They are not asking for any variances and the structure maintains a limited Floor Area Ratio.
- The lot is narrow and they are looking for the most efficient use of the space.
- The story poles are 6 inches too high- they installed them as fast as possible to get on the agenda.

Mr. Jason Alden, architect, made the following comment:

- The high point of the vaulted ceiling in Section A4 is 12 feet at the ridge.
- He thanked staff for the suggested alterations.
- Pulling the second floor in by two feet would affect the design in an awkward way. He would prefer to do this on the other side where the porches are located.
- The front and back of the house have different ceiling heights- the back of the house has a 9'6" ceiling height and the front has a 9' ceiling height.
- They are working within the constraints of the property and are not trying to get the biggest house possible.
- They are open to suggestions on how to reduce the mass.
- He stated he had some modified sketches for the Commission. Principal Planner Neal stated neither staff nor the public has had an opportunity to review these modifications and a review of revised plans should be done at a subsequent meeting.
- They would be happy to install obscure glass and shift the house over a foot or so to accommodate the neighbor's concerns.
- They would prefer not to reduce the ridge by three feet- it would significantly impact the bedrooms.

Ms. Beverly Brewster, Cascade Drive, made the following comment:

- She lives to the west of the project.
- The applicants have been extremely thoughtful and considerate.
- She is concerned about light and privacy impacts if the house were shifted towards her property. The distance between the houses would be tight and could create a “dark tunnel”.
- Moving the house over would be more of a concern than the windows or the stepping back of the second floor.
- She referred to the back deck and asked the applicants to do something such as a wall to increase privacy.

Chair Newton closed the Public Hearing.

Commissioner Rodriguez provided the following comments:

- This is a rural, small scale, country-like area.
- This is one of the smaller lots along the street.
- This would be the largest house with the largest number of bathrooms and the largest floor area ratio by almost 10%%.
- The project is too large.
- The second floor is out of scale. The vertical windows are eight feet in length.
- She agrees with staff that the design is too boxy.
- The height is too big and the second floor is too large.
- The proposed lighting would create glare.
- She likes the architectural style but the size and massing are too great for this neighborhood and site.
- The colors are not rural.
- The story poles should be amended to reflect the actual size.
- She would recommend denial of the application.

Commissioner Gonzalez-Parber provided the following comments:

- This is a beautiful design and there are a lot of things that she likes about it.
- She looked at the property from the neighbor’s prospective and her initial reaction to the plans was correct- the project would be massive in volume and needs to be broken up.
- There are a lot of small cottages in that area. They should look at the surroundings more carefully and be respectful of the history and vernacular of the area.
- The project could be reduced by three feet in every direction and still maintain the design.
- She was concerned about the impact to light and privacy on the neighbors to the east.
- She could not support the project as proposed.

Commissioner Fragoso provided the following comments:

- There is a better way to reduce the volume than moving one side by two feet.
- She would like to look at the modified plans at the next meeting.
- She appreciated the applicants willingness to shift the house on the west side.
- The neighbors to the east are one-story and she asked the applicants to do what they could to maximize the privacy.
- She agreed with the comments made by the other Commissioners.
- The design is attractive but the size and mass is inappropriate for the site given the surrounding development.
- She could not approve the massiveness of the project.

Chair Newton provided the following comment:

- She recommended that the applicants consult with staff and review the plans.

Mr. Madden stated they would like a continuance.

Chair Newton asked staff if the applicants should sign a request for an extension of the Permit Streamlining Act. Planning Director Berto stated "no".

M/s, Rodriguez/Fragoso, motion to continue the application for 407 Cascade Drive to the December 20<sup>th</sup> meeting.

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

**4. 119 Live Oak Ave.; Application #18-19**

**Request for a Use Permit to construct a 95 square-foot access stairway onto the west side of an existing residence to provide code compliant access from the upper floor of the structure to the crawl space mechanical room; Assessor's Parcel No. 001-236-04; Residential RD 5.5-7 Zone District; Steve and Susan Scott, owners; Darold Petty, applicant; CEQA categorically exempt per Section 15301 (a) and (f).**

Principal Planner Neal presented the staff report.

Commissioner Gonzalez-Parber asked if any of the photographs depicted the actual house. Principal Planner Neal stated "yes- the one in the lower right-hand corner".

Chair Newton opened the Public Hearing.

There were no questions for the applicant.

Chair Newton closed the Public Hearing.

M/s, Rodriguez/Fragoso, motion to adopt Resolution No. 2018-20.

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

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

**5. 154 Ridgeway Ave.; Application #18-20**

**Request for a Use Permit to construct a 108 square-foot art studio, accessory structure with electricity and plumbing for a sink in the south rear yard of site developed with a 1,668 square-foot, 3 bedroom, 2 bathroom single-family residence; Assessor's Parcel No 001-214-20; Residential Single family RS-6 Zone District; Jessica Green, applicant/owner; CEQA categorically exempt per Section 15303(e)**

Principal Planner Neal presented the staff report. She noted there is a condition that a deed restriction be filed requiring that the unit is used as an artist's studio by the resident(s) of the main structure.

Commissioner Rodriguez asked about the applicability of the Home Occupation Ordinance and the Accessory Structure/Use Ordinance. Principal Planner Neal stated the deed restriction would address this. Home occupations are not allowed in accessory structures.

Chair Newton opened the Public Hearing.

Ms. Jessica Green, applicant, made the following comments:

- She needs the sink because she is working with clay.



- She would not be firing her work in the studio- she brings it somewhere else to be fired.
- She would be exhibiting her artwork from the studio occasionally during Marin Open Studio events. However, she rarely gets anyone coming to her house because is it so remote from the greatest core number of studios along the freeway corridor.
- The house is above the tiered retaining walls- the studio is nestled within the walls.

Chair Newton closed the Public Hearing.

Commissioner Fragoso provided the following comment:

- Her work is lovely.

M/s, Rodriguez/Fragoso, motion to adopt Resolution No. 2018-21.

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

ABSENT: Green, Kehrlein, Swift

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

**6. Continued discussion/consideration of an Ordinance amending the text of the Fairfax Zoning Ordinance, Town Code Title 17, Chapter 17.112, PDD Planned Development District Zone, pertaining to development standards and submittal procedures; CEQA exempt, Sections 15305 and 15138**

Planning Director Berto presented the staff report.

Commissioner Gonzalez-Parber asked for clarification on the phased review process and whether everything would still come in at once (Building Permit, Design Review Permit, etc.). Planning Director Berto stated this was discussed in the staff report- everything short of construction drawings would be required up front. Commissioner Gonzalez-Parber stated this was a disservice to the applicant. Planning Director Berto pointed out one advantage- it would give the applicant a much more predictable outcome.

Commissioner Rodriguez stated she has a different viewpoint from staff with respect to interpreting the material from BBK Attorneys at Law. She understood why they are starting with the PDD Zone but thought they should go broader and apply the standards to all zoning districts. She referred to Section 17.112.020 of the PDD Zone and stated they could expand on those standards and link it to the items listed on page 5 of the staff report. They need to delineate the layers of data that can be linked to health and safety.

Commissioner Fragoso stated they could work backwards into the standards. They need to flesh out the existing code.

Commissioner Rodriguez asked why they are focusing on the PDD Zone. Planning Director Berto stated this was a triage situation- the majority of the other zones at a minimum have a density standard. The PDD Zone does not have a maximum density.

Planning Director Berto agreed with Commission Rodriguez- this needs to be expanded into the other districts. The consultant was currently working on Historic Guidelines which will be folded into the context of the discussions about the downtown areas.

Commissioner Rodriguez asked if they needed a subcommittee to work on this topic. Commissioner Fragoso agreed that they might need a working group to expedite the discussions. Chair Newton was concerned that could cause more of a delay. She would rather follow staff's suggestions and review an ordinance.

Chair Newton referred to page 7 of the staff report and asked for comments on staff recommendation #1- Require application submittals prior to project being considered complete.

Commissioner Fragoso provided the following comments:

- This needs to be done to obtain the necessary information.
- It is more expensive and puts the onus on the developer.
- It gets them out of the “whack-a-mole” mentality.

Commissioner Gonzalez-Parber provided the following comment:

- She would like to reduce the guesswork experienced by applicants.

Chair Newton referred to page 7 of the staff report and asked for comments on staff recommendation #2- Modify submittal requirements.

Chair Newton provided the following comments:

- She agreed with this recommendation.
- She noted this would take some time.

Chair Newton referred to page 7 of the staff report and asked for comments on staff recommendation #3- Develop a ministerial path.

Commissioner Fragoso provided the following comments:

- Any developer who knows what they are doing will appreciate this.
- This provides up-front guidelines.
- This will help with larger developments.
- The density bonus requirements were problematic because the Commission and the community were not willing to talk about standards. They need to have a list of priorities (parking, height, open space, etc.).
- This ordinance will put the Town where it wants to be with respect to dealing with density bonuses and concessions.
- How would these standards apply to applications that are in process?
- She referred to Section 17.112.050 of the PDD Zone and stated it needs to be revised.
- She had a question about the 45-day moratorium.

Commissioner Gonzalez-Parber provided the following comments:

- The Commission does not get to weigh in if the developer checks all the boxes and meets all the requirements for completeness
- The Commission needs to develop those “boxes”.

Chair Newton referred to page 7 of the staff report and asked for comments on staff recommendation #4- Amend PDD Chapter 17.112.

Chair Newton provided the following comments:

- She does not have concerns with the staff’s outline.
- The purpose is to come up with something that is objective, simple, and identifiable early on in the process.
- They might want to “bite the bullet” and do something that is too simple for the sake of doing something as opposed to nothing.

Commissioner Rodriguez provided the following comments:

- The maximum floor areas should be much lower.
- This would be consistent with her preference for a 1,500 to 3,500 maximum house size.

Commissioner Gonzales-Parber provided the following comments:

- The chart on page 8 does not indicate a Floor Area Ratio (FAR). Chair Newton stated it was based on a greater slope. Planning Director Berto stated FAR's "break down" when you have over a 20,000 square foot lot.
- She asked if the chart on page 8, maximum floor area, took into account accessory structures. Planning Director Berto stated "yes" and explained that the Council was leaning towards allowing one, unconditioned, limited height accessory structure.
- They might end up with more stories on a steeper slope to make up for the smaller FAR.
- If an applicant complies with all the standards and it is reviewed on a ministerial level would it come to the Commission if the applicant was requesting and the site could accommodate more development. Planning Director stated it could be designed with an exception process.

Commissioner Fragoso provided the following comments:

- She would like to see the chart on page 8 (Slope, Parcel Size, Building Mass) in graphic form.

Planning Director Berto stated staff would submit draft regulations at the December meeting.

### **Discussion Items**

There were no discussion items.

### **7. Minutes from the October 18<sup>th</sup> and 25<sup>th</sup>, 2018 meetings.**

Chair Newton stated approval of the October 18, 2018 minutes would be continued because there are not enough Commissioner that can vote on them present at tonight's meeting.

M/s, Rodriguez/Fragoso, motion to approve the October 25, 2018 minutes as corrected.

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

ABSENT: Green, Kehrlein, Swift

### **Planning Director's Report**

Planning Director Berto reported a planning conference would be held at Sonoma State University on Saturday December 1<sup>st</sup>. He urged Commissioners to attend. The Commission will be taking over review of tree removals that are in conjunction with development applications. He will arrange a training session with the Town Arborist.

### **Commissioner Comments and Requests**

Commissioner Gonzalez-Parber asked about the status of the Meadow Way Bridge. Planning Director Berto stated the Council approved the design but it has to go through CEQA and NEPA. The Town is getting recommendations from contractors for emergency repairs. The reconstruction is estimated to occur by 2020.

### **ADJOURNMENT**

A motion was made, seconded and unanimously approved to adjourn the meeting at 11:23 p.m.

Respectfully submitted,

Toni DeFrancis,  
Recording Secretary



DRAFT FAIRFAX PLANNING COMMISSION SPECIAL MEETING MINUTES  
FAIRFAX WOMENS CLUB  
THURSDAY, NOVEMBER 29, 2018

Call to Order/Roll Call:

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

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

Commissioners Absent: Laura Kehrlein

Staff Present: Ben Berto, Planning Director  
Linda Neal, Principal Planner  
Garrett Toy, Town Manager  
Amanda Charne, Assistant Town Attorney  
Gail Karish, BBK Attorneys at Law

### APPROVAL OF AGENDA

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

### PUBLIC COMMENTS ON NON-AGENDA ITEMS

There were no public comments on non-agenda items.

### CONSENT CALENDAR

There were no Consent Calendar items.

### PUBLIC HEARING ITEMS

- 1. Continued discussion/consideration of Cannabis Regulations in conformance with State Laws and Regulations pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act; Exempt from CEQA pursuant to Sections 15061(b)(3), 15301, 15305 and 15183 of the CEQA Guidelines as separate and independent bases.**

Town Manager Toy presented the staff report and a PowerPoint presentation.

Commissioner Swift noted a Use Permit runs with the land and asked if one could be revoked. Assistant Town Attorney Charne stated "yes"- revocation has to be based on a public nuisance or a violation of the permit conditions.

Commissioner Green asked how West Marin Little League would be classified- a Youth Center, a school, etc. Town Manager Toy stated the Pavilion is classified as a Youth Center. The Commission could add parks (the ballfield) into the restricted areas.

Commissioner Green asked if there were parameters set up by the State that need to be followed to justify exceptions to the 600 foot buffer zone. Town Manager Toy stated State law indicates there is a 600 foot buffer but allows municipalities to create exceptions to that rule. The Town does not have to make findings but rather craft local exceptions to that rule. Planning Director Berto stated it would depend on the criteria the Town would apply to approve this type of business. The pre-qualification process could be linked to the Business License process.

Chair Newton asked if they could reduce the buffer by referencing Sir Francis Drake Boulevard, Broadway, and Bolinas and indicate that buildings along those streets would be acceptable since they are located in the downtown area.

Chair Newton opened the Public Hearing.

Ms. Lynette Shaw, owner of Marin Alliance, made the following comments:

- Her Business License was issued in 1997 and by State law her location is grandfathered in and exempt from the buffer zone.
- Patients have left the medical-only facilities. She has 80% fewer patients.
- There are 112 delivery systems in the Bay Area.
- She asked the Commission to approve the adult-use delivery component for her business.
- A microbusiness component would eliminate the necessity to pay for third-party distribution.
- Her proposed microbusiness would consist of retail, limited manufacturing, and transportation for both medical and adult-use recreational.
- She wants to be able to package up product with the Marin Alliance brand on site.

Mr. David Spanfanado, Boardmember of West Marin Little League, made the following comments:

- He spends eight months of the year on Contratti Ballfield.
- He urged the Commission to maintain the 600 foot buffer- and perhaps increase it to 1,000 feet.
- The ballfield and parks should remain drug-free.
- They should find a suitable location for Marin Alliance to run a retail adult-use recreational operation.

Mr. Lew Tremain, representing the Marin Alliance, made the following comments:

- They have never had a conflict with West Marin Little League.
- The Town would be able to regulate the microbusiness component- they can limit what happens.

Ms. Deb Nelson, Spruce Road, made the following comments:

- She is opposed to the expansion of Marin Alliance services at School Street Plaza.
- She urged the Commission to maintain the family-friendly culture of Fairfax.
- She supported maintaining the 600 foot buffer zone. There should be no exemptions.
- There should be a limit of two dispensaries.
- There should be a limit to the amount of cannabis any one individual could purchase at one time.

Ms. Mallory Guidheim, Willow Avenue, made the following comments:

- She has lived in Town for a long time and had no idea where the Marin Alliance was located.
- They are only talking about the Marin Alliance- the proposal would not increase the number of people smoking marijuana but would increase revenue for the Town.
- The Town should support the Marin Alliance.

Ms. Bridget Clark made the following comments:

- The black market has not gone away in Colorado.
- Parks and youth centers should be included in the buffer zone- anywhere that youth gather.

Ms. Jasmine Garrety, Park Road, made the following comments:

- She spoke on behalf of the youth.
- Marijuana use by youth is a problem in Marin County.
- The Town could create a Cannabis Control Board and regulate the THC levels.

Mr. Andy Peri, Cypress Drive, made the following comments:

- Having recreational delivery is perfectly aligned with the will of the residents of Fairfax.
- This is a heavily regulated industry.
- He supports allowing recreational delivery by the Marin Alliance.

Chair Newton closed the Public Hearing.

Chair Newton asked for comments from Commissioners Swift and Green since they were absent from the last meeting.

Commissioners Swift and Green provided the following comments:

- They supported the elimination of certain categories of uses; the ban on cannabis temporary events; to allow medical cannabis dispensaries in Town; up to six plants (indoors or outdoors); to allow adult-use cannabis deliveries in Town.

Commissioners Gonzalez-Parber provided the following comments:

- She changed her mind about the number of plants allowed- six is too many.

Town Manager Toy referred to page 2 of the staff report and asked for comments regarding discussion item (f)- Non-medical cannabis retailers and the number of retailers, and (g) buffer zones/locations.

Commissioner Green provided the following comments:

- He would support two retailers.
- They need to create competition.

Commissioner Swift provided the following comments:

- She agreed that two would be acceptable- a combination of store-front or delivery only.
- Limitations would include size, parking, and location.

Chair Newton provided the following comments:

- Her preference is not to have a limit but she would support at least three of each type (delivery, retail, medical-retail).
- They need to focus on parameters and details in terms of the pre-application phase, buffer zones, etc.
- She is not in favor of a buffer zone crossing over Broadway, Sir Francis Drake, or Bolinas given the nature of the businesses in the downtown area.

Commissioner Frago provided the following comments:

- She agreed with Chair Newton and stated the Highway Commercial (CH) Zone would be appropriate for a retail storefront adult-use recreational facility.
- She did not want to see it at Bolinas unless it was located upstairs and in the back.

- She is leaning towards one of each- medical (in-house and delivery), adult delivery only, and adult-retail in the CH Zone.
- She would not support the Marin Alliance expansion into retail at its current location.

Commissioner Gonzalez-Parber provided the following comments:

- She supported the 600 foot buffer zone.
- She could see one business owner having delivery, distribution, retail, and some level-one manufacturing.

Commissioner Rodriguez provided the following comments:

- She supported the existing business (Marin Alliance) who has an exception to the buffer because it is grandfathered in.
- She would support a microbusiness at Marin Alliance as described by the owner (limited manufacturing, distribution, and retail).
- She supports the CH zone with the buffers in place and might support a second floor location on Bolinas.

Commissioner Green provided the following comments:

- A medical-only business would not be viable.
- The buffers should be maintained.
- There are areas in the CH that are outside the buffer zone.
- He likes the idea of delivery businesses since it takes care of some of the public's concerns.
- Two issues weave into each other- the buffer zone and regulation of the potential retail facility and whether a business permit is granted or a permit that runs with the land. He would prefer the former.
- It is possible for a business to come up with a plan that is so clean that it could be located next to a school.
- He is in favor of a second floor location but not necessarily the back.

Assistant Attorney Charne clarified that the Marin Alliance is grandfathered in for its current operations. They would not be grandfathered in for any expansion.

Commissioner Swift provided the following comments:

- She was in favor of keeping a buffer of 600 feet from a school.
- She would support a shortened buffer zone for a retail storefront with respect to preschools.
- The CH and CC Zones would be appropriate.
- They can look at limiting storefront sizes.
- Having a retail business on the second floor in the back would not serve any purpose. Retail should be on the street and accessible.

Town Manager Toy referred to page 2 of the staff report and asked for comments regarding discussion item (i)- Business License/Permitting Process or Use Permit process and the Pre-application process or a first come, first served basis.

Commissioners Swift, Green, Frago, and Chair Newton stated they preferred a Use Permit process over a Business License/Permitting process for any adult-use retail.

Commissioner Rodriguez stated the Business License/Permitting process was not the right approach. It should be an administrative Use Permit granted by the Planning Director.

Commissioner Green did not want approval to run with the land.



Commissioners Swift, Green, Gonzalez-Parber and Chair Newton were in favor of the Pre-Application process.

Town Manager Toy stated the Commission would continue its discussion at the December 20<sup>th</sup> meeting.

The Commission took a 10-minute break at 9:05 p.m.

**2. Continued discussion/consideration of an Ordinance consolidating Titles 19 and 20 of the Fairfax Municipal Code relating to Telecommunications Facilities establishing comprehensive regulations for wireless telecommunications facilities in Town, including standards, application requirements, permitting process and location and configuration preferences; CEQA exempt per Section 15050(c)(2), 15378, 15061(b)(3), 15303, and 15305**

Town Manager Toy presented the staff report.

Attorney Karish gave a status report and stated the Town Council voted to participate in the coalition's appeal of the FCC small cell order which would go into effect on January 14<sup>th</sup>. She discussed the two orders, the appeals that have been filed, and the Reconsideration Petitions.

Commissioner Swift asked about the applicant's requirements for public notices. Attorney Karish stated this would only apply if there is a requirement in the Ordinance. Commissioner Swift asked if the "eligible facility request" (including those in a residential area) would be approved by the Planning Director. Attorney Karish stated "yes" and discussed the truncated process and the two definitions of "co-location". Commissioner Swift asked if downtown streetlights fall into the definition of a "pole". Town Manager Toy stated equipment must be mounted twenty feet high and he was not sure the poles in the downtown were at that height. Commissioner Swift asked about the allowable height of antennas on buildings. Town Manager Toy stated the ordinance requires that they be concealed or screened. Commissioner Swift stated she would like to add the Open Space Zone to the applicability table. She asked if an Encroachment Permit would be needed. Town Manager Toy stated "yes". Commissioner Swift noted there were no Historic Designations in the downtown but there are areas with murals- she would like these areas to be exempt (protected).

Chair Newton opened the Public Hearing.

Mr. Richard Applebaum, Woodland Avenue, made the following comments:

- He is a member of 5G Free Marin.
- The emergency ordinance was based on a Mill Valley template.
- They asked for Title 19 to be kept intact and for a new Title 20 to be created that addresses 5G.
- There are strong protections in Title 13 (regarding antennas) and Title 19 as they exist. They are concerned about losing these protections.

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

- Title 13 prohibits above ground electrical facilities, including telephone poles and antennas, in the downtown underground districts. The Commission should have a map of these districts.
- An ordinance was passed in 1990 regulating antennae facilities throughout Fairfax.
- He recommended the Commission retain Title 19 and create a new Title 20.
- A small cell 5G Ordinance would not help Fairfax in an emergency.

A resident made the following comments:

- She agreed with Mr. Egger's comments.

- 5G Free Marin has submitted twenty five recommendations to make the ordinance stronger and much more effective.
- Installation should be prohibited in all zones that have residential uses including the CC, CL and PD Zones. The CH and CS zones could be retained with parcel delineation.
- Installation should be restricted to the undergrounding districts.

Ms. Roberta Anthes, Snowden Lane, made the following comments:

- She picked out the best things from other ordinances and briefly discussed: 1) An annual certification clause; 2) A limited exceptions chapter; 3) An appeal process; 4) Including the ADA citations; 5) A more robust "Purpose and Intent" Section.
- FCC standards are not viable and are over-reaching.

Ms. Anna Harr, Greenbrae, made the following comments:

- These facilities should not be near schools and child care centers.
- Radiation goes deeper and quicker into children's softer brains that have a higher liquid ratio.

Ms. Leah Wildflower, Fairfax, made the following comments:

- Installation should be prohibited on decorative light poles.
- View sheds and general aesthetics need to be considered through the Design Review process.

Ms. Lauren Temkin, Fairfax, made the following comments:

- Years ago Fairfax was against cell phone towers.
- She was opposed to 5G and large frequencies all over Town.
- She is really freaked out.

Ms. Vicky Seavers, EMF Safety Network, made the following comments:

- She is impressed with the Commission's perseverance, thorough deliberation, and sense of purpose.
- She asked them to "think outside the box".

Ms. Kya Bosie, Forest Knolls, made the following comments:

- She does professional EMF analysis in homes.
- Microwaves love liquid fluids (water), children, and babies.
- Children's skulls are thin and their brains have a lot more fluid. Radiation can penetrate the entire brain of a child.

Mr. Bob Erst, San Rafael, made the following comments:

- Ordinance requirements should include a fire hazard assessment
- Co-locations should not be allowed.
- He discussed other hazards that could be caused by equipment.

Ms. Kathleen Boggs, San Anselmo, made the following comments:

- RF radiation below the FCC exposure limits does great harm.
- These facilities should be kept at a safe distance from schools (a buffer distance of 1,000 feet).
- She discussed "digital dementia".

Ms. Kim Hahn, San Rafael, made the following comments:

- Cell tower radiation kills trees.
- Telecom companies should be required to do a tree analysis near antennas.
- She discussed the Endangered Species Act and stated this technology can impact animals.

Ms. Mallory Geidheim, Willow Avenue, made the following comments:

- AT&T and Verizon are the only people who would benefit from this technology.
- People should have a choice.
- They do not need more coverage.

Ms. Valerie Hood made the following comments:

- They have come together since the first meeting.
- A 5G forum will be held on February 5<sup>th</sup>.
- She asked the Town to look into the insurance aspect as a means of blocking this technology.

Ms. Liz Deitrich, San Anselmo, made the following comment:

- She read the recommendation from 5G Marin about the noticing process after an application is received and supports including this requirement in the ordinance.

Ms. Janet Fitzgerald, Fairfax, made the following comments:

- The community is willing to help the Commission.
- Nobody wants this technology. It is not needed.
- There is a way to stop this by reaching out to other cities.

Mr. Andy Peri, Cypress Drive, made the following comments:

- Property values would decline if these facilities are allowed to come into Fairfax.
- There should be a rigorous permitting process.
- There should be an on-going monitoring process (24/7).
- They are asking for undergrounding.
- Cultural resources need to be considered.

Ms. Bonnie McMurray, San Anselmo, made the following comments:

- She agreed with the comments made so far.
- She wanted to know where every cell tower was installed- it should be public knowledge.

Chair Newton closed the Public Hearing.

Commissioner Green provided the following comment:

- The Burlington, Massachusetts Recertification Affidavit should be considered.

Commissioner Swift provided the following comments:

- She referred to the Ordinance and the wording "if feasible" and stated this should be strengthened in the application process.
- She would like the Tree Committee to have some input in the process.
- She asked how equipment manufacturer(s) would provide evidence regarding the ambient noise levels from different equipment.
- She is concerned there is no public noticing or commenting regarding the eligible facility request. The Town should publish this information on its Website.
- She referred to the buffer zones and stated she would like to see how endangered species could be addressed.
- Story poles should be required of new applications.
- The application should include a map of the geographic service area.
- There should be a time limit for the design and development standards extension.
- Any lighting on poles should be dark sky compliant and the color should be regulated.

- The Open Space Zone and any deeded public access areas should be added to the applicability map.

Commissioner Gonzalez-Parber provided the following comment:

- The ADA has changed the way the environment is built and could be used as leverage.

Commissioner Rodriguez provided the following comments:

- She stated Resolution No. 2018-18 and the Ordinance need to describe the historic character and rural nature of the community.
- The resolution and ordinance should define "small cell".
- The section of the ordinance regarding eligible facilities leads her to believe that CEQA determinations can be applied and an Initial Study should be required.
- She referred to Exhibit A, Purpose Section, Modifications (J), and stated they should add the software upgrades; and Substantial Change (V), and stated this was an important section and bay stations need to be added to (1). She would like to see more restrictions in terms of height increases.
- She referred to Exhibit A, Purpose Section, Substantial Changes, and stated it deals strictly with physical modifications and should include increases in decibel levels, EMF levels, light, etc.
- She supports buffers for residential, schools, child care facilities.
- Exceptions should all be pulled together under the Exceptions Section. It should be beefed up.
- She referred to Exhibit A, Location and Configuration Preferences (D), and stated the following could be added: "...not on ridgelines, flood zones, near a mural, not affecting protected species or heritage trees, not by historic buildings (50 years or more)".
- She referred to Exhibit A, Design and Development Standards (G), and stated it should include size limits.
- She agreed with Commissioner Swift's comments about dark sky compliance.
- She liked the idea of requiring proof of liability insurance.
- She referred to Exhibit A, Additional Design Standards (D)(3) and would like it reduced from six cubic feet to as small as possible; and (F) (2), and stated she was in favor of restricting facilities near schools and child care facilities.
- She referred to Exhibit A, Conditions of Approval, (3)(b) and stated it should say "*current property owner*".
- She referred to Exhibit A, page 24, and stated that was where the San Anselmo exception standards would be added.
- She referred to Exhibit A, Wireless Telecommunication Collocation, (E) Permitted Uses, and stated she was not sure how these uses relate to the other zones.
- She referred to Exhibit A, Business License, and stated it was redundant.
- She referred to Exhibit A, Permit Expiration, and stated she would like these reduced to the minimum number of years possible, and (C)(1) should include complaints or new technology.

Commissioner Green provided the following comments:

- He supported the addition of language regarding a nuisance condition and removal.
- He would like to see letters from doctors that support the assertions about health risks.
- He supported the language regarding ADA compliance.
- He would like to look at the San Anselmo Ordinance since it is more restrictive.
- Overall, they are heading in the right direction.

Chair Newton provided the following comments:

- She is empathetic to the concerns expressed about not consolidating the different sections and not losing some of the protections that already exist.

- She has concerns about the consolidation of the two titles.
- She is in favor of the ordinance recommendations submitted by the local group.
- She stated the Burlington model was potentially useful.
- She asked if mapping the underground districts was possible.
- She agrees with the concerns about fire hazards, view sheds, and aesthetic considerations as a high priority, buffers from endangered species, limitations on distances between facilities, facilities should be away from schools, etc.

Commissioner Fragoso provided the following comments:

- She agrees with a lot of the recommended changes including a prohibition against installation on the historic light poles.
- She supported a public noticing and review process.
- She is confused about the different heights of poles (telephone vs. light pole).
- She supports residential buffers.
- Liability insurance is a good idea.

Commissioner Gonzalez-Parber provided the following comments:

- She asked if the monitoring (RF compliance certification) could be increased. Attorney Karish stated there is little case law on what can be done in terms of conditions of approval. An annual test would seem reasonable- beyond that would be a gray area.
- She agrees that it might be easier to not consolidate the two titles.

Commissioner Green provided the following comment:

- He asked staff if they looked at the San Anselmo ordinance to determine if it is more restrictive. Town Manager Toy stated staff modeled this ordinance after Mill Valley's and a portion of Petaluma's. The proposed ordinance has more restrictions than the San Anselmo ordinance.

M/s, Swift/Green, motion to continue this item to the December meeting with a revised Resolution and consolidation of the Commission comments and ask staff to provide a legal response addressing what can actually be modified.

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

ABSTAIN: Gonzales-Parber

ABSENT: Kehrlein

## **ADJOURNMENT**

A motion was made, seconded and unanimously approved to adjourn the meeting at 11:26 p.m.

Respectfully submitted,

Toni DeFrancis,  
Recording Secretary