

Town of Fairfax Special Planning Commission Meeting Minutes
Fairfax Women's Club
Thursday, February 25, 2016

Call to Order/Roll Call

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

COMMISSIONERS PRESENT: Bruce Ackerman
Norma Fragoso (Vice-Chair)
Esther Gonzalez-Parber
Philip Green
Shelley Hamilton
Laura Kehrlein (Chair)
Mimi Newton

STAFF PRESENT: Jim Moore, Planning Director
Linda Neal, Principal Planner
Katy Wisinski, Assistant Town Attorney
Michelle Levinson, Permit Technician

Planning Director Moore announced that the Bicycle and Pedestrian Advisory Committee will be meeting on Monday, March 5, 2016, at 7 p.m. to discuss updating the Bicycle and Pedestrian Master Plan.

Mr. Moore also announced that ABAG will be making a presentation at the Town Council's next meeting on March 2nd, which he discussed.

APPROVAL OF AGENDA

M/s, Green/Newton, Motion to approve the agenda:

AYES: Newton, Hamilton, Green, Kehrlein, Ackerman, Fragoso, Gonzalez-Parber

PUBLIC COMMENTS ON NON-AGENDA ITEMS

No one came forward to speak.

DISCUSSION ITEM

1. Continued discussion on policies to be addressed in the crafting of an Ordinance amending the Fairfax Town Code to rezone all properties currently located in the Highway Commercial (HC) Zone to Central Commercial (CC) Zone: specifically, updating the permitted and conditional use list in the Central Commercial Zoning Classification.

Planning Director Moore presented the staff report. Mr. Moore provided background information on the previous discussions relating to the transfer of zoning requirements for Highway Commercial (HC) to Central Commercial (CC), which include the transfer of allowable uses from HC to CC and those uses that would also require a conditional use permit (CUP).

Mr. Moore introduced Assistant Town Attorney Katy Wisinski and Michelle Levinson, Permit Technician. Mr. Moore provided an overview of the process involved in crafting a new Ordinance and noted that the move from HC to CC would be more pedestrian-friendly and in line with the General Plan, which he discussed.

Commissioner Hamilton discussed the purpose of the discussions in relation to land use and the effects of moving specific uses into larger categories. Chair Kehrlein commented on the absence of categories that might be deemed appropriate, such as large retail and light industrial, which she discussed.

Mr. Moore noted that the purpose of the exercise is to decide upon whether a use should be allowed under the CC zone by right, granted under a conditional use permit (CUP), or not allowed altogether, regardless of how they are categorized.

Ms. Neal noted that that Commissioner Hamilton was suggesting that there are some uses that might not be permitted at the front of a retail building, so there would be a need to indicate which general categories could be at the street front and which could be located at the back of a building.

Commissioner Green noted that some of the uses, which would not be deemed suitable for the CC zone, might be more suited to the CS zone, which Mr. Moore noted has limited space.

Ms. Wisinski suggested the commissioners use the notes column to indicate the location of a use in a building, which she discussed in relation to creating classification labels. Commissioner Hamilton discussed her concern that uses, which might not be suitable in a certain location, would automatically be allowed in that location because of how they have been classified. In response, Ms. Wisinski clarified the method she suggested, noting that there should be commonality between the uses that would separate those from different retail uses. She said that there must be reasonable and rational cause for treating uses differently, which she discussed. Mr. Moore noted that Ms. Wisinski would draft the ordinance pursuant to the CEQA process, which he discussed.

Commissioner Hamilton discussed more of her concerns about the use of permitted uses in classifications, which relate to allowing unlimited uses, such as bar and liquor licenses. Ms. Wisinski said she could incorporate appropriate language for review at the next meeting should that be the wish of the commissioners. Commissioner Green made a suggestion for including such language in the draft ordinance, which he discussed with Ms. Wisinski.

In response to Vice-Chair Fragoso, Ms. Neal confirmed that the General Plan or Zoning Ordinance does not address a timeframe for use permits for venues serving alcohol.

Ms. Wisinski clarified the differences between the two charts with regard to the Principal Permitted Uses and Conditional Uses in response to Vice-Chair Fragoso. Ms. Wisinski said she took the liberty of completing the table for permitted uses but did not go through the same exercise for conditionally permitted uses for reasons she explained, noting that there are no direct comparisons in some cases and it was felt the decision about including conditionally permitted uses in the CC zone should be made by the commissioners.

In response to Commissioner Hamilton, who asked if uses that are not included in the CC Zone could be granted a variance, Ms. Wisinski noted that variances are not granted for use permits. However, she noted that an applicant for a non-permitted use could request an amendment to the Zoning Ordinance.

In response to Commissioner Newton, Ms. Wisinski provided an explanation of what should result from the proposed changes to the ordinance. She said that, if approved, the existing CH ordinance would be repealed in its entirety, but that the existing CC ordinance would be amended in relation to the permitted uses and conditionally permitted uses, which she discussed. Ms. Wisinski noted that it is anticipated there would be a shorter table of use classifications that would be defined in the definition section in the Zoning Ordinance. As other sections of the Zoning Ordinance are amended, they would be updated with those use classifications instead of individually enumerated uses until all the zoning districts have the same nomenclature. Ms. Wisinski confirmed that the amendments relate only to the CC zone and anything that refers to those sections and definitions in the code.

Discussions moved on to the first item in the table referring to alternative birthing centers, when Commissioner Ackerman commented on the term, and provided background information on a previous request to establish an alternative birthing center. Discussion took place on classification and licensing, and Commissioner Hamilton discussed the use of terminology in relation to business codes. Ms. Wisinski said the uses listed are from the current Fairfax code and bear no correlation to any other code.

In response to Commissioner Ackerman, Ms. Wisinski said she could investigate the legal definition for the use of Alternative Birthing Center, after which the commissioners can decide whether they wish to include this under a new use classification. Following further discussion, Ms. Wisinski said she will determine if a legal definition exists for this use and a suitable notation was made under the notes. Commissioner Fragoso discussed the difference between a birthing center and wellness center with regard to the location of medical offices in a building.

Chair Kehrlein opened the public comment period. A member of the public commented on alternative health and wellness centers, such as chiropractic and acupuncture that she would like included in the discussions. Chair Kehrlein closed the public comment period.

Commissioner Hamilton discussed her understanding of the difference between a medical practice and alternative medical practice and the location of such offices in a building.

Commissioner Newton commented on the need for the commissioners to review the draft ordinance before being reviewed by the Town Council. Ms. Wisinski noted that the General Plan provides no direction on changes to the existing uses, but the commissioners' task is to decide which uses that are included in the CH should be included in the CC zone. Ms. Wisinski confirmed she would review the classification for alternative birthing centers for further discussion by the commissioners.

Commissioner Fragoso led a discussion on the way forward with continuing the discussions on the tables.

Chair Kehrlein and Commissioner Hamilton discussed uses, such as appliance repairs, that could be permitted at the rear of a building. There was general consensus that storefronts should be reserved for retail and pedestrian uses and other uses could be conditional. Mr. Moore noted that staff could approve a permitted use.

Chair Kehrlein opened the public comment period. Todd Greenberg, 47 Buena Vista, asked for a balanced community and said there are valuable businesses at the front of a store, such as the former Mr. Fixit and a cobbler's store in Mill Valley. He said it is a great loss to the community if such businesses could not occupy storefronts.

Further discussion took place on domestic/appliance repair businesses and their placement in a building in the CC zone. There was general agreement that a business, such as one described by Mr. Greenberg, should be allowed to operate at the front of a building since it would be deemed to be part of the character of the town. Commissioner Newton discussed her concern that other businesses in that category, such as one with a windowless storefront, might also be able to occupy the same space as a cobbler, for example.

In response, Ms. Neal noted that, if a conditional use permit were required, there are legal findings that would need to be made for the permit to be approval. Counselor Wisinski suggested adding an additional finding for a CUP, whereby if a use is prohibited in the CC district or only allowed at the back of the premises, an additional finding would need to be made that the purpose of the use must closely fit the desirable criteria of business and she provided an example.

Following further discussion, there was consensus that light industrial uses would be permitted at the rear of a building and a CUP would be required to occupy a storefront.

General discussion took place on the need to regulate bars and restaurants, or only bars. Commissioner Hamilton commented on ABC licenses for alcohol, tobacco and firearms, which Counselor Wisinski suggested might be broader than the commissioners would like to consider. There was general consensus that Counselor Wisinski will provide further information before further discussion by the commissioners.

In response to Commissioner Newton, Counselor Wisinski confirmed that appliance sales should be a permitted use, unlike appliance repairs.

A member of the public expressed concern that fine dining establishments offering cocktails might be prohibited, noting that other towns have similar restaurants. In response, Commissioner Fragoso confirmed the commissioners are not considering prohibiting such restaurants, and Chair Kehrlein noted they are making a distinction between establishments where the primary focus is on alcohol, rather than dining.

Commissioner Ackerman asked Counselor Wisinski to explain the comment regarding building supplies and lumber, noting that the current lumber business has retail items on the interior and exterior of the store. Counselor Wisinski noted that principal permitted uses in this category are required to be within a building, and it was perhaps anticipated that a CUP would be required for outdoor sales.

Commissioner Green explained why he believed that contractors' facilities should not be allowed in the CC zone. He commented on the toxicity of a diaper service and the unlikelihood of a department store opening, which is why he believes they are also unsuitable uses for the CC zone, although he noted that there is a dry-cleaning service.

Commissioner Green thought that a carpenter's and cabinetry business should be more clearly defined. Commissioner Ackerman noted that there is a cabinet-making business in Town and that he thought it made sense to allow the businesses under a CUP, so that it is not ruled out entirely.

Chair Kehrlein commented on such types of businesses being light industrial, to which Commissioner Newton is in agreement. She suggested that a building contractor's business should be allowed at the back of a building and conditionally allowed at the front.

Chair Kehrlein discussed the reasons she believe a department store should require a CUP, based on its size and deliveries, which prompted discussion. Commissioner Hamilton favored the requirement for a CUP for the businesses discussed, noting that the purpose of a CUP is to control uses in a location. Commissioner Hamilton and Commissioner Gonzalez-Parber commented on a diaper service.

There was general consensus that the classification of the uses discussed should be placed under light industrial, to be permitted at the back of a building and would require a CUP for the front. Counselor Wisinski said she would seek clarification on banning a department store from the CC zone.

Commissioner Hamilton led a discussion on catering services. Counselor Wisinski suggested adding a category for professional food preparation for off-site consumption. There was general consensus that it should be permitted at the back of a store and require a CUP for the front.

Chair Kehrlein discussed her hesitation to ban department stores. The commissioners will await further clarification from Counselor Wisinski.

In response to Commissioner Gonzalez-Parber, staff said the current lumber business would become legal, non-conforming if the ordinance is adopted.

In response to a member of the public, staff confirmed that the changes do not affect the Away Station, which is part of Fairfax Lumber and is in a different zone.

Commissioner Newton led a discussion on current businesses in the CH zone where part of their sales operation is on the exterior of a building. Ms. Neal noted that they would become legal non-conforming uses.

In response to Commissioner Ackerman, Counselor Wisinski said she would recommend an appropriate use classification for uses encompassing graphic artists, painters, etc. Discussion ensued on the creation of a category for professional offices, including financial businesses. There was general consensus that the category would be a permitted use on the second floor and at the back of a building, but would require a CUP for the front of a building. Categories under light industrial should not be permitted on the second floor.

Ms. Neal discussed the reasons staff believes storefronts should be reserved for retail use only, and she noted there is second floor space for offices in downtown buildings, which prompted discussion. Counselor Wisinski suggested a combined use that draws people through the door with a suitable finding, to which there was agreement.

There was general agreement to Commissioner Hamilton's suggestion for changing furniture and upholstery from personal services to light industrial. There was also agreement to allowing light industrial as a permitted use at the back of a building and conditionally permitted use at the front, with a ban on the second floor, which allows residential use.

Following comments by Commissioner Fragoso, there was general agreement that gyms and weight-training establishments would need a CUP in the CC zoning district.

There was general agreement that janitorial services would be suitable under the light industrial category. Discussions moved on to laundry services/drycleaners, when consensus was reached that a CUP should be required for reasons relating to toxicity.

Commissioner Newton addressed lumber stores and outdoor nurseries and said she would approve of retail nurseries and garden supply stores.

A discussion on laboratories commenced with general consensus being reached that a CUP should be necessary and the use should not be permitted in a storefront. Furthermore, laboratories should be categorized separately, not in the storefront and requiring a CUP.

Discussions took place on the suitability of a lumbar yard and outdoor nursery in the CC zone, and Ms. Neal read the code on the purpose of the CC zone. She said there are other areas where those uses could be located. There was agreement that lumber yards should not be allowed in the CC zone, while the majority of commissioners (4:3) agreed that garden supplies and nurseries should be allowed under a CUP.

Discussions moved on to mail order and catalogue sales. There was consensus that they should be categorized under light industrial and allowed in the back of a building or on the second floor. Counselor Wisinski said she would consider the classification for mail services and advise the commissioners. Packing and crating would be categorized under light industrial.

Discussions on parks on public property ensued. Counselor Wisinski suggested it remain allowable in the CC zone for reasons she discussed and noted it would be a public use.

Commissioner Newton discussed the reasons she believes the use should not be subject to a CUP, which relates to encouraging individuals to convert their property to open space. Commissioner Ackerman discussed the reasons the use should require a CUP. He believes it could change the character of the CC zone and that it would be preferable to discuss the proposed changes.

In response to Commissioner Gonzalez-Parber, staff confirmed a CUP would be appropriate for conversion to a public park or similar design, to which most of the commissioners were in agreement (6:1).

Counselor Wisinski commented on the continuing discussions. She suggested the commissioners discuss the permissible uses, and that staff could continue completing the conditional use table based on the commissioners' decisions made this evening. Mr. Moore suggested that staff draft an ordinance for the commissioners' review.

Commissioner Green and staff discussed permitted service uses in the CS zone. There was general consensus amongst the commissioners that these uses should remain allowable only in the CS zone and not in the CC zone.

Discussions went on to storage units and garages. Ms. Neal discussed the reasons such businesses would not be desirable in the CC zone.

Chair Kehrlein opened the public comment period and Todd Greenberg commented on residences in the downtown area and limited parking. He expressed concern that residential uses that have been in existence for a long time would be prohibited from providing parking in addition to limiting retail at the front of a building. He said it appeared the changes might make it hard to do either.

Mr. Moore said that Mr. Greenberg owns a house next to 31 Broadway with parking at the front, which is legal non-conforming. He noted that the Town wants to preserve housing and that the parking policy applies to second floor uses.

Commissioner Hamilton commented on storage units in relation to ancillary use, and asked if the current code allows first floor residential. In response, Ms. Neal said first floor residential requires a CUP and she suggested that, should storage be allowable in the CC zone, staff suggests it should require a CUP for reasons she discussed.

Commissioner Fragoso said the code would not preclude an existing homeowner to add a garage and Mr. Moore noted that design review would be required.

Mr. Greenberg noted that he does not own the property he lives in and he commented on his belief that there should be the ability to provide parking.

Discussions on parking garages and storage units as primary uses in the CC zone continued amongst the commissioners and staff. Commissioner Hamilton commented on not wishing to allow a property to have only these uses. Staff recommended allowing the uses under a CUP for reasons discussed. The commissioners declined to allow parking garages and storage units as primary uses in the CC zone (5:2).

A discussion took place on scientific instrument shops and services in relation to a business that sold metal detectors. Ms. Neal noted that it was a retail/wholesale service business and combinations of different types of uses require a use permit. Discussion took place on whether scientific instrument shops and services should be categorized as professional services, rather than retail or wholesale services. Counselor Wisinski noted that it could be classified as either retail or wholesale and/or professional services. She said they might wish to consider the pedestrian element when classifying scientific instrument shops and that she would make further recommendations.

Discussion took place on swimming pool sales, including sales of items relating to pools. Counselor Wisinski suggested that businesses with showrooms of hot tubs and spas should be classified as light industrial, while businesses selling items relating to hot tubs, etc., should be classified as retail, to which there was consensus.

There was consensus that upholstery shops should be classified as light industrial, tool and cutlery sharpening should be classified under personal services, and ticket agency would be a professional service. In response to Commissioner Ackerman, Counselor Wisinski said that the notes could reflect the need for soundproofing construction in order for a sharpening service to be permitted in the CC district. There was also general consensus that warehouses should not be allowed in the CC Zone.

Commissioner Newton said she believes that garden supply stores appear to be a retail use, as opposed to a nursery, which prompted discussion. There was general consensus that such a business would fit a retail use if the items on sale were contained within a building.

In response to Commissioner Green, Ms. Neal noted that live entertainment should require a CUP for reasons she discussed, so it is not listed as a permitted use under the CC zone.

Chair Kehrlein opened the public comment period and Todd Greenberg discussed his concern that many people will be affected by the proposed changes and who are unaware of the process. Mr. Greenberg asked the Town to ensure that business owners and residents are made aware of the impacts of the zoning changes.

In response, Mr. Moore explained that an ordinance is being crafted and he discussed the public process. He said that all the property owners and residents within a 500 sq. ft. radius of the area affected will be notified when there are formal public hearings by the Planning Commission and Town Council. Mr. Moore said that tonight's meeting is notified on the Town's website and in three public spaces and is also being televised.

Commissioner Fragoso and Mr. Moore discussed the effects on current businesses if the ordinance becomes effective, with input from Counselor Wisinski.

Commissioner Green suggested a classification is rewritten on page 2 of the draft table.

A motion was made, seconded and unanimously approved to adjourn the meeting at 10:20 p.m.