

Town of Fairfax Regular Planning Commission Meeting Minutes
Fairfax Women's Club
Thursday, April 21, 2016

Call to Order/Roll Call:

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

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

COMMISSIONERS ABSENT: Laura Kehrlein

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

APPROVAL OF AGENDA

M/s Ackerman/Green, Motion to approve the agenda.
AYES: Ackerman, Gonzalez-Parber, Green, Hamilton, Newton, Chair Fragoso
ABSENT: Kehrlein

PRESENTATION

1. Presentation by Christina Berteau, from Greywater Action, on greywater systems and new building codes for water conservation

Ms. Christina Berteau, representing Greywater Action, gave a Powerpoint presentation that included the following: 1) A Survey of common greywater systems; 2) Greywater is...; 3) Blackwater is...; 4) Benefits of using greywater; 5) Residential water use; 6) Why has it taken so long ? Valid concerns; 7) Ground rules for greywater re-use; 8) Ways to use greywater; 9) Simple landscape direct systems; 10) Simple pump systems.

Chair Fragoso stated she participated in the Environmental Forum of Marin's Master Class which next month will include a discussion on new codes implemented by the Marin Municipal Water District (MMWD). Planning Director Moore noted that MMWD adopted an ordinance related to greywater use that became effective on January 3rd.

The Commission thanked Ms. Berteau for her presentation.

PUBLIC COMMENTS ON NON-AGENDA ITEMS

Mr. Joshia Olivete, owner of Casa Manana, stated his business has provided healthy food and a community gather place in Fairfax for seventeen years. The business has been given 60 days to vacate its current location- the landlord wants to merge his space with the adjacent space (Yoga Mountain). He noted another tenant is also being evicted. He was concerned about the "Mill Valley-ization" of Fairfax and the influx of businesses that cater to weekend patrons. He asked the Commission to deny the use permit for the new business that would move into his space. Planning Director Moore stated staff would look into this matter right away.

Eric and Chris, Dominga Avenue, expressed support for Casa Manana. Chris was concerned about the gentrification of Fairfax.

Ms. Joy Hansen, Dominga Avenue, stated Casa Manana offers something for everyone. She stated she would hate for Fairfax to lose this business.

Mary Beth agreed with the previous comments and briefly discussed the contributions made to the community by Casa Manana.

Mr. Mason Holcomb expressed support for Casa Manana and stated rent control was not an unreasonable demand for Fairfax.

Mr. Rufus Bailey, Dominga Avenue, stated the business serves quality food at a reasonable price.

An individual stated Peri's Bar was holding a benefit show on June 12th for Casa Manana from 5:00 p.m. to midnight. The business deserves everyone's support.

Mr. Eric Warton expressed support for the business and stated the food is rejuvenating.

Consent Calendar

2. 55 Meernaa Avenue; Application #16-09: Request for a Use Permit to expand an existing, 940-square foot, 2 bedroom, 1 bathroom single-family residence by constructing a 63 square-foot closet adjacent to an existing bedroom, and install an 11-foot long retaining wall that would reach a maximum height of 4 feet: Assessor's Parcel No. 002-092-18; Residential Single-family RS 6 Zone District; Melann Mushet, applicants/owners; CEQA categorically exempt per Section 15303(e) and 15305(a)
3. 290 Tamalpais Road; Application #16-11: Request for a Ridgeline Scenic Corridor Permit to construct a 694-square foot addition and remodel an existing residence to include a second living unit on the lower level and a third bathroom, laundry room and storage area to the main unit: Assessor's Parcel No. 001-062-07; Residential Single-family RS 6 Zone; Leo den Ouden, Architect; Christopher Morrill, owner; CEQA categorically exempt Per Section 15301(e)(1).

Commissioner Newton referred to Consent Calendar item #1 and asked if Chapter 8.26 was a recent addition to the Town Code. Principal Planner Neal stated the reference should be to Chapter 8.32, Urban Runoff Pollution Prevention.

Commissioner Green referred to item #1 and stated the staff report notes that the structure includes a legal non-conforming duplex and he asked about the "non-conformance". Permit Technician Levinson stated the nonconformance was related to the lot size.

Commissioner Newton asked for the removal of Consent Calendar item #3.

M/s Hamilton/Green, Motion to remove Consent Calendar item #3 for discussion.
AYES: Ackerman, Gonzalez-Parber, Green, Hamilton, Newton, Chair Fragoso
ABSENT: Kehrlein

M/s Hamilton/Gonzalez-Parber, Motion to approve Consent Calendar item #2.
AYES: Ackerman, Gonzalez-Parber, Green, Hamilton, Newton
ABSENT: Kehrlein
ABSTAIN: Chair Fragoso

Acting Chair Green stated there a 10-day appeal period.

PUBLIC HEARING ITEMS

3. 290 Tamalpais Road; Application #16-11: Request for a Ridgeline Scenic Corridor Permit

to construct a 694-square foot addition and remodel an existing residence to include a second living unit on the lower level and a third bathroom, laundry room and storage area to the main unit: Assessor's Parcel No. 001-062-07; Residential Single-family RS 6 Zone; Leo den Ouden, Architect; Christopher Morrill, owner; CEQA categorically exempt Per Section 15301(e)(1).

Principal Planner Neal presented a staff report.

Commissioner Newton stated Town Code Section 17.06.040(a)(2) requires an applicant to include conclusions about the impacts to the views and the view corridor- she did not see this in the staff report.

Commissioner Green discussed some suggested language changes to the resolution. He would also like to see some cad drawings for this project.

Commissioner Newton stated she had a difficult time understanding what was being proposed and reconciling the staff report, the drawings, and the project description.

Chair Fragoso opened the public comment period. There were no comments. Chair Fragoso closed the public comment period.

Commissioner Newton recommended changes in the language of the resolution.

M/s Newton/Gonzalez-Parber, Motion to approve application #16-11, 290 Tamalpais Road, subject to the findings and conditions set forth in the staff report plus the changes in the language of the resolution as suggested by Commissioners Green and Newton.

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

ABSENT: Kehrlein

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

4. 88 Meernaa Avenue; Application #16-12; Request for a Use Permit to erect 2 storage sheds on a site developed with a duplex; Assessor's Parcel No. 002-082-07; Residential RD 5.5-7 Zone; Laura Kehrlein, Architect; Delia Reid and Tom Yarker, owners; CEQA categorically exempt, per Section 15301(1)(4), 15303(e), and 15305(a).

Chair Fragoso stated she would need to recuse herself from this item since she lives within 500 feet of the subject property. She left the dais.

Principal Planner Neal presented the staff report.

Commissioner Gonzalez-Parber asked if there was a window facing the adjacent house. Principal Planner Neal stated the floor plan shows three windows on that side.

Commissioner Newton had several questions about the resolution.

Vice Chair Green opened the public comment period.

Mr. Fred Devine, architect, stated he was not the designer but prepared the application. The applicant thought he had approval from the City but had only talked to the Building Official. The applicants are sympathetic to the neighbor's concerns. He noted the concern is exacerbated by the fact that the neighbor's house is on or over the property line.

Commissioner Newton asked about the dimensions and location of the previous shed. Mr. Devine stated it was larger. Ms. Delia Reed, owner, stated the previous shed was 11' X 13' and had a hipped roof. The new sheds are 10' X 12' with a peaked roof. She would be willing to make modifications to the windows on the back of the shed.

Commissioner Ackerman asked if there would be exterior lighting on the sheds. Ms. Reed stated there would be one exterior light by the door. Commissioner Ackerman asked if the sheds would be dark at night when not in use. Ms. Reed stated "yes".

An individual stated she lives on the side of the project that would be most effected by these sheds. She acknowledged her house is on the property line. She stated she installed windows on that side of the property to increase her view of the hills. The sheds would block her views and tower over her house.

An individual distributed photographs to the Commission depicting the old sheds.

Ms. Delana Arthur stated she lives across the street. The house on the adjacent property overlooks the applicant's property. The proposed sheds fit in with the aesthetics of the property and the location makes the most sense.

Ms. Carla Fossa, 132 Meernaa Avenue, stated the applicant has put a lot of time and money into her property. The proposed project is tasteful and fits within the character of the neighborhood.

Commissioner Newton asked the applicant about moving the second shed five feet away from the existing property line. Ms. Reed stated the neighbor's concerns are with the shed that has already been erected. It would be very difficult to find an alternate location for the second shed since there is a large drainage trough that runs through the back yard. They also have a sophisticated irrigation system.

Commissioner Gonzalez-Parber asked if the sheds could be placed where the coops are currently located. Ms. Reed stated there was not enough space.

Vice Chair Green asked about the purpose of the raised wood structure/retaining wall. Ms. Reed stated there is a slight grade difference from the lawn to the gate and the shed needs to be on a completely level site.

Vice Chair Green closed the public comment period.

Vice Chair Green stated using a color other than white could lessen the impact. He has no issues with the project.

Commissioner Newton noted the applicant plans to install climbing vines.

Commissioner Hamilton stated structures near property lines pose privacy issues that can be mitigated by screening, plants, trellises, etc. The Town Codes attempt to strike a balance between the use and enjoyment of two adjoining properties. The sheds comply with Town regulations in terms of height, setbacks, etc.

Commissioner Ackerman agreed with the comments made by Commissioner Hamilton. This application meets all the requirements. He could support the project.

Vice Chair Green agreed with those comments.

Commissioner Gonzalez-Parber stated it was unfortunate that the sheds are so close to the neighboring property. It would help if the three windows on the backside could be relocated. Ms. Reed stated she could block the windows on the shed that is already built. She would work something out with the neighbors.

M/s Ackerman/Hamilton, Motion to approve application #16-12, 88 Meernaa Avenue, subject to the findings and conditions set forth in the staff report.

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

ABSENT: Kehrlein

RECUSED: Chair Fragoso

Vice Chair Green stated there was a 10-day appeal period.

Chair Fragoso returned to the dais.

5. 288 Bolinas Road; Application #16-13: Request for a Hill Area Residential Development Permit, Excavation Permit and Variances to construct, expand and convert a 1,743 square-foot, 2 unit residential structure into a 2,007-square-foot, single-family residence with a 2 car garage. Project constitutes a 50% remodel under Town Code Section 17.008.020; Assessor's Parcel No. 002-022-19; Residential Single-family RS-6 Zone; Rich Rushton, Architect; Justin Morgan, owner; CEQA categorically exempt per Section 15301(e)(1), 15303(a) and 15305(a).

Vice Chair Green left the meeting at 9:20 p.m.

Commissioner Newton asked if there was a square footage maximum that would make a unit "affordable" (i.e. under 500 square feet). Planning Director Moore stated "no"- they rely on income levels established by the Federal government. There are no restrictive covenants on the unit as a rental property. However, a smaller unit would command less rent.

Commissioner Newton had a question about the parking requirements for "junior" second units. Planning Director Moore stated no additional parking would be required if the house meets the parking standards when it was built. Commissioner Ackerman asked if the present house with the second unit as it exists is deficient in parking. Planning Director Moore stated "yes, according to the current code". However, the proposal would meet the parking for a single-family house, with or without the "junior" second unit.

Chair Fragoso opened the public comment period.

Mr. Art Chartock, architect, stated this is an old existing duplex that needs work. They would like to rebuild it and have it conform to the existing aesthetics. The proposal would take better advantage of views, location, and energy savings. The owner would like to create a single-family residence but is willing to include a "junior" second unit if the Commission insists.

Commissioner Gonzalez-Parber noted the garage would encroach into the public right-of-way in an area with a lot of traffic and she asked about any proposed safety features. Mr. Chartock stated it would be truncated with some extra space. The existing condition is difficult and people would need to be careful coming out of that garage. Commissioner Gonzalez-Parber asked that something be done on a design level or some type of signage be installed. Planning Director Moore stated staff would talk to the Police Chief and Town Manager who are on the Traffic Committee.

Chair Fragoso asked how much of the garage and/or apron was on the right-of-way. Principal Planner Neal stated about five feet. Chair Fragoso asked if there would be a sidewalk. Principal Planner Neal stated "no".

Ms. Laura Barber, Bolinas Road, agreed that the traffic in that area was problematic. She was comfortable with a two-car garage. She stated a second unit could result in the addition of two cars. When the house sold the new owners poured concrete onto her property and she would like to be made aware of everything that is going on. She did not want her property to be a staging area for the construction. Chair Fragoso stated the staff report notes that certain improvements that cross property lines (decks, etc.) would be removed as part of the proposed project.

Mr. Vladimir Jagal, civil engineer, stated the garage area would be used for construction staging. He agreed that the traffic on Bolinas Road was not a good situation but the new garage will be moved towards the west and improve the current conditions.

Chair Fragoso closed the public comment period.

Commissioner Newton stated the drawings should be revised to include a "junior" second unit in an effort to increase affordable housing in Fairfax. They are losing a "unit" by the conversion of this duplex.

Commissioner Hamilton referred to Page A4.2 and noted this would require a sink and a wet bar in one of the bedrooms.

Commissioner Gonzalez-Parber stated including a “junior” second unit should be at the owner’s discretion and should not be a requirement. This would be a dangerous precedent to set.

Chair Fragoso agreed with Commissioner Gonzalez-Parber. The owners might choose to add this at a later date. She likes the plans and thought the civil work was good. She could approve it “as is”.

Commissioner Ackerman stated “junior” second units add flexibility to a home. He felt in this instance it should be at the owner’s discretion.

M/s Hamilton/Gonzalez-Parber, Motion to approve application #16-13, 288 Bolinas Road, subject to the findings and conditions set forth in the staff report plus the requirement that they stub out the plumbing to allow for a “junior” second unit in the future. Staff shall check with the Safety Committee to see if anything could be done to improve the safety for vehicles exiting the garage.

AYES: Ackerman, Gonzalez-Parber, Hamilton, Chair Fragoso

NOES: Newton

ABSENT: Kehrlein, Vice Chair Green

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

The Commission took a 10-minute break at 10:15 p.m.

DISCUSSION ITEMS

6. Discussion/consideration of results of Town on-line forum regarding short term/vacation rentals (e.g. Airbnb) and discussion of potential standards for short term/vacation rentals

Chair Fragoso stated this item would be continued to the next meeting.

7. Discussion/consideration of results of Town on-line forum regarding medical marijuana delivery standards and discussion of potential standards for Medical Marijuana Delivery

Town Manager Toy presented a staff report.

Commissioner Hamilton asked for clarification regarding the “in-town” vs. out-of-town” regulation issues. Town Manager Toy stated the issue was how to regulate and enforce an out of dispensary making deliveries into Fairfax.

Chair Fragoso asked if a dispensary located in Fairfax could make out-of-town deliveries. In addition, could individuals have deliveries made at any location. Town Manager Toy stated a patient could probably have a delivery made at any location.

Commissioner Hamilton had questions about enforcement of deliveries. Town Manager Toy stated enforcement would be difficult but staff would respond to complaints.

Chair Fragoso had questions about the limits to the amount of cash or product and stated there seemed to be a discrepancy to the number of ounces vs. the dollars. Commissioner Newton noted not everyone would pay with cash. Commissioner Hamilton stated it should be regulated by the number of ounces or by the value of the product on board.

Commissioner Hamilton stated it would be helpful if staff included a list of reasons and rationale for any regulations.

Chair Fragoso opened the public comment period.

Ms. Lynette Shaw, representing the Marin Alliance for Medical Marijuana, stated delivery standards put in place in the past killed the delivery service for the Marin Alliance. The rules were too onerous. There are 32 delivery services currently coming in to Fairfax, from 9:00 a.m. to 10:00 p.m. There will not be a “brick and mortar” dispensary in Fairfax for a long time.

Mr. Ryan Skelski, Executive Director of Marin Patient Access, stated there were a lot of hurdles to overcome if a business tries to comply with State regulations. There are extremely high taxes and the business cannot write off the "cost of goods sold" because cannabis is a controlled substance. These businesses have higher costs due liability issues, Worker's Compensation costs, attorney expenses, testing fees, etc. He is in favor of responsible regulations.

Mr. Omar Figueroa, Medical Cannabis lawyer, stated he has been fighting for freedom and equal rights for medical cannabis patients, farmers, and providers since 1998. He supports sound policies for delivery services and is against over-regulations. Hours for delivery service should be expanded and deliveries should be permitted in any private area. He was against requiring two people per delivery vehicle.

Mr. James Ciyer, Member Services Manager Yerba Buena (delivery service), stated there is a high degree of self-regulation and self-policing already in place.

Chair Fragoso asked if the discussion included not only dispensaries making deliveries but also growers delivering to a dispensary. Planning Director Moore stated "no"- there is a ban on commercial cultivation. Commissioner Newton asked if they could regulate deliveries from cultivators outside of Fairfax to a dispensary in Fairfax. Town Manager Toy stated this has not yet been discussed.

Mr. Patrick Crane, Cultivation Specialist for Marin Patient Access, stated they are a delivery service based out of Oakland and they deal with many of the issues being discussed. Deliveries should be allowed after 5:00 p.m. and should be allowed in private areas. He did not support the idea of requiring two delivery people per vehicle nor limiting the number of vehicles per delivery service.

Mr. Anthony Pizareli, representing Sharefax, agreed with many of the comments made. There is a market for this medicine and patients have a right to safe access.

Chair Fragoso closed the public comment period.

Planning Director Moore reiterated the comments that were made and stated staff has good direction.

MINUTES

8. Minutes from the March 17, 2016 regular meeting and the February 25, 2016 Special meeting

Chair Fragoso stated the approval of these minutes would be continued to the next meeting.

PLANNING DIRECTOR'S REPORT

Planning Director Moore stated staff is moving forward with the three workshops regarding the development of the Draft Town Center Plan. He will send out a confirmation about the dates. These are Council driven workshops but it will be noticed as a Planning Commission meeting and would include participation from the Affordable Housing Committee and the General Plan Implementation Committee (GPIC). Staff received the first over-the-counter "junior" second unit application- he will be signing off on it tomorrow.

COMMISSIONER COMMENTS AND REQUESTS

Commissioner Hamilton asked about the status of the former Chevron Gas Station site. Planning Director Moore stated he met with the owner this morning and a new application has been submitted. The plan is to remove the old gas station.

Commissioner Gonzalez-Parber asked about the status of the traffic light study (synchronizing the lights). Town Manager Toy stated the consultants looked at it and decided it could not be done due to the timing between the signals. Planning Director Moore stated he would report back next month.

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 11:30 p.m.

Respectfully submitted,

Toni DeFrancis
Recording Secretary