

DRAFT FAIRFAX PLANNING COMMISSION MEETING MINUTES
FAIRFAX WOMENS CLUB
THURSDAY, JULY 21, 2016

Call to Order/Roll Call:

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

Commissioners Present: Norma Fragoso
 Esther Gonzalez-Parber
 Phillip Green
 Shelley Hamilton
 Laura Kehrlein (Chair)
 Mimi Newton

Commissioner Absent: Bruce Ackerman

Staff Present: Jim Moore, Planning Director
 Linda Neal, Principle Planner
 Katie Wisinski, Town Attorney

APPROVAL OF AGENDA

Planning Director Moore recommended to the Commission that they pull the Consent Calendar items off of the agenda and continue them to August. There was a slight glitch in the noticing procedure.

M/s, Fragoso/Newton, Motion to approve the agenda with the suggestion made by staff. The Consent Calendar items shall be continued to the August meeting.

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

ABSENT: Ackerman

PUBLIC COMMENTS ON NON-AGENDA ITEMS

Ms. Pam Meigs, Cypress Drive, discussed the recent fire in Cascade Canyon and asked if there was a Fire Storm Evacuation Plan in place. Commissioner Green stated the Ross Valley Fire Department would come out, look at the area, and schedule a meeting with the neighborhood.

CONSENT CALENDAR

1. **80 Hickory Road; Application #16-28**
Request for a Use permit to legalize a 662-square-foot, bedroom wet-bar and storage room addition to a 2,097-square-foot, 3-bedroom, 2-bath, single-family residence, including legalization of 1 parking space and associated retaining walls and an approximately 180-square-foot deck and a proposed 342-square-foot carport cover on an existing car-deck; Assessor's Parcel No. 003-191-43; Residential Single-family RS 6 Zone District; Fred Divine, applicant/architect; Karen and Carlos Morales, owners; CEQA categorically exempt, Section 15301(e)(1).

2. **141 Bolinas Road; Application #16-27**
Request for Design Review to install a 96-square-foot, 10-foot-high shed at the rear of the property; Assessor's Parcel No. 002-104-04; Central Commercial Zone; Julie Hochstrasser, applicant; Scott and Julie Hochstrasser, owners; CEQA Categorically exempt per Section 15303(e).
3. **17-19 Broadway; Application #16-29**
Request for a Use Permit and an exception to the parking regulations to prepare meals for an existing commercial business in a food trailer stored in two of the parking spaces of the business parking lot; Assessor's Parcel Numbers 002-121-23 and 24; Central Commercial CC Zone; Tony DeFrance, applicant; Gary and Amory Graham, owners; CEQA Categorically exempt per section 15301(a).

Chair Kehrlein noted these items were continued to the August meeting.

PUBLIC HEARING ITEMS

4. **Ordinance Amending the Town of Fairfax Town Code Chapter 5.052 ('Business Taxes, Licenses, and Regulations'), Chapter 7.008 ('Definitions'), Chapter 17.012 ('Zone Districts Established'), Chapter 17.020 ('Design Review Regulations'), Chapter 17.092 ('CL Limited Commercial Zone'); Chapter 17.096 ('CH Highway Commercial Zone'), and 17.100 ('CC Central Commercial Zone') and Addendum to Mitigated Negative Declaration prepared for the 2010-2030 Fairfax General Plan. The proposed ordinance affects all properties within the Central Commercial (CC), Highway Commercial (CH) and the Limited Commercial (CL) Zoning Districts, as depicted on the Fairfax Zoning Map; categorically exempt from CEQA per 14 C.C.R. Section 15301, 15303, and 15332.**

Chair Kehrlein stated individuals would have three minutes to give public testimony and five minutes if representing a larger group.

Planning Director Moore presented a staff report.

Assistant Town Attorney Wisinski gave a brief overview of the proposed Ordinance and stated it accomplishes two things: 1) Rezoning of all parcels currently zoned Commercial Highway (CH) to Central Commercial (CC) per the General Plan's direction; 2) Takes the uses (allowed and conditionally allowed) in the new revised CC District and amends them to incorporate some of the old uses allowed in the CH and some of the uses that are required per State Law.

Commissioner Fragoso referred to Section 13 of the ordinance, page 16, "Single Family Residential" use and asked if this was currently allowed in the CC Zone. She noted the Commission had discussed several housing units that were converted to commercial and how they should be allowed to be re-converted back to residential. Planning Director Moore referred to page 18, Additional Use Regulations, "F" and suggested the following amendment: "Notwithstanding....homes in existence *that maintain their residential character...shall be included... if they are returned to residential use* ".

Commissioner Newton asked for clarification on the issue of "flexibility" with respect to the State definitions for residential uses. Assistant Town Attorney Wisinski stated the uses are listed in the staff report (page 3, 4, & 5) with an indication of where State law dictates certain treatment of those uses. The ordinance also cites the particular State law.

Commissioner Newton asked how the Governor's proposed By Right Bill would affect the density numbers. Assistant Town Attorney Wisinski stated the proposed By Right housing legislation would require cities to provide a ministerial approval process for certain qualifying housing projects that

were meeting minimum density and affordable housing benchmarks. CEQA review would not be conducted under these ministerial approvals and cities would not be able to impose conditions. Planning Director Moore stated cities could still hold developers/contractors to defined development standards and design guidelines. Assistant Town Attorney Wisinski discussed existing Density Bonus Statutes that create pathways for developers to propose projects that have a greater density than would otherwise be allowed in exchange for the provision of affordable housing in the project. Density bonus thresholds could be met in a number of ways.

Commissioner Newton asked Town Attorney Wisinski to briefly discuss the uses that are no longer allowed under the draft ordinance. Assistant Town Attorney Wisinski listed the uses that are not permitted and added that any use not mentioned in the table is also not allowed.

Commissioner Green referred to page 15, Section 13, Commercial Uses, "Service Station" and "Limited Vehicle Service" and stated he would like to allow for the possibility of electric and hydrogen vehicles filling/service stations. Assistant Town Attorney Wisinski stated the definition of a "Service Station" refers to a "gasoline station" and not alternative fuel stations. Staff could find a way to include this but they were limited in how to parse the uses and instead need to speak to the relative impacts. Planning Director Moore stated nothing in the ordinance prohibits electric charging stations. Commissioner Green asked if they could substitute the word "gasoline" with "power/fuel". Assistant Town Attorney Wisinski stated "yes".

Commissioner Gonzalez-Parber asked Assistant Town Attorney Wisinski to briefly discuss the Table titled Limitations (L1 through L6) and Additional Use Regulations. Planning Director referred to Additional Use Regulation "D" and stated the Commission had talked about relaxing the parking requirements on units of 500 square feet or less if the underlying commercial use meets the parking requirement. Assistant Town Attorney Wisinski stated she would make that change.

Chair Kehrlein opened the Public Hearing.

Mr. Alexander Binick, representing the DeToxics Institute, made the following comments:

- He urged the Commission to delay their vote since the public has not had enough time to review the materials.
- The rezoning would affect traffic and parking.
- Adoption of a Downtown Plan should precede this rezoning.
- He discussed the large apartment project in Corte Madera (former Wincup site) and a three-story project proposed for San Anselmo.
- He had questions about the Density Bonus Law and the proposed By Right legislation.
- He was worried about unintended consequences that would reduce the quality of life in Fairfax.

Ms. Patty Patterson, Scenic Road, made the following comments:

- She operates a business on Bolinas Road.
- She had a question about the location of the CH Zone.
- They need to make room for gas stations and auto repairs shops.

Mr. Josiah Luis, owner of Casa Manana, made the following comments:

- This is a complicated issue.
- The ordinance does not create a "village character"- taking away retail space would destroy it.
- Small, family-owned businesses define a town- not medical offices.

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

- He sees major problems with the ordinance- it is very confusing.

- The two gas stations and the car wash along Sir Francis Drake Boulevard would no longer be legal.
- Small, retail businesses on the first floor would be pushed out by tech and office businesses.
- A number of Fairfax's oldest buildings would be bulldozed for a couple of low-income units and high rental condominiums.
- A Historical Preservation Ordinance should be adopted.
- They need an ordinance to protect small-town businesses from evictions.
- He asked the Commission to continue this ordinance.

Mr. Nicolo Calderrero, Frustuck Avenue, made the following comments:

- The Governor's proposed legislation strips out the ability of local authorities to control density.
- A philosophical discussion is missing (size, density, etc.).
- There are a lot of hidden rental units that make up the effort for low-cost housing- this should be encouraged.
- Increasing the size of small cities does not cover the cost of services- the more they grow, the less they can provide.
- All the efforts in legislation since 1968 to increase and make development easier has not resulted in any appreciable affordable housing.

Mr. Fritz Dern, Olema Road, made the following comments:

- The last workshop regarding the Downtown Plan discussed the potential for development along Olema Road and at the Christ Lutheran Church but these projects are not being discussed tonight.
- People need to be well informed.
- Allowing 22 units at 10 Olema Road is not sustainable and will make that road dangerous. He wants to know what the plan is for this property before it is rezoned.
- The Planning Commission is the gatekeeper for the community.

Ms. Wynn Corwin, Fairfax, made the following comments:

- She thanked the Commission for putting a lot of thought into the ordinance.
- She has not had a chance to look at all the issues.
- She asked the Commission to hold off on voting tonight.
- She asked if water, fire, traffic issues have been addressed.
- Not requiring a unit to have a parking space is a big mistake.

Ms Diane Hoffman, Fairfax, made the following comments:

- It seemed like the staff was not on the same page and the Commission should not vote tonight.
- This ordinance is so draconian.
- She had a question about the sale of an existing, non-conforming business.
- She referred to the recent petition regarding rezoning.
- She is opposed to intense rezoning.

Mr. Eric Leland, Dominga Avenue, made the following comments:

- These issues are being talked about at the local retail businesses.
- It is time to step back and talk about how to grow as a community.

Ms. Miriam Weinstein, Oak Tree Lane, made the following comments:

- She asked if there was some way to get State representatives to recognize that these are "one size fits all" regulations that have no reality in existence.
- She would like the "noose" taken off of small towns.

- She asked if the agreement between the County of Marin and the Federal Government was still in place- it requires all affordable housing developments to do outreach to low-income minorities in adjacent counties.

Ms. Diane Purdue, Scenic Road, made the following comments:

- She heard about the meeting today.
- The issue is confusing.
- Developers getting special treatment and maintaining a “village” feeling do not go together.
- She is not in favor of rezoning to add more units.
- She asked why Fairfax belongs to the Association of Bay Area Governments (ABAG) and whether or not the Town could succeed.
- Fairfax has a right to remain a small town.
- Traffic is already a problem.
- Natural resources are finite- the number of homes in Fairfax should also be finite.

Ms. Suzuki Katie made the following comments:

- She is concerned about changes that could endanger the counter-culture nature of Fairfax.
- She is worried about homogenized redevelopment plans for the Town.
- Changes in zoning should be agreed upon by the majority of residents.

Ms. Sue Burn, Mono Avenue, made the following comments:

- She asked the Commission to hold off on voting tonight given the volume of information.
- She asked where cars would go when units were built downtown.
- There is no parking available for this multitude of units.

Ms. Denise Larson, Scenic Road, made the following comments:

- Parking and traffic has gotten horrendous over the past several years.
- Any plans should look at the overall issues.
- Senior housing will have individual living there who drive.

Mr. Mason Holcomb made the following comments:

- He encouraged the Commission to move away from their focus on aesthetics and focus more on social values.
- He is in favor of rent control in Fairfax.

Ms. Michelle Simonson, Park Road, made the following comments:

- She is completely confused about what is being proposed.
- She asked for a list of pros and cons and would like people to be able to vote on the issue.
- She asked the Commission to put off a decision.

Mr. Mark Hammerman, Fairfax, made the following comments:

- There have not been any comments in favor of the proposal. The Commission should consider that when voting tonight.
- He moved to Fairfax from St. Louis and has grown to love the Town.

Mr. Jim Bitter, Mill Valley, made the following comments:

- What is happening in Fairfax is happening throughout the country.
- Staff should be telling the public where these mandates are coming from- the Regional Needs Housing Assessment numbers, the Complete Streets Program, etc.

Kirsten made the following comments:

- She does not agree with the proposal.
- She agreed with the other comments made.
- She understood the mandate for affordable housing.
- The current zoning laws are pretty good.
- The Commission should delay this decision.

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

- She lives in the hills and will not be able to ride a bike downtown if there is no parking.
- Why are they voting for all this stuff before the workshop happens?
- The Commission should wait before voting.

Nancy, San Anselmo, made the following comments:

- Fairfax remains the only “town” in Marin County. It is unique.
- The Commission should educate the public about the RNHA numbers, PDA’s, TOD’s, Complete Streets, etc.

Ms. Robert Anthes, Fairfax, made the following comments:

- After the October 29, 2015 meeting, she sent the Council and staff a letter with four question and did not get a response.
- This decision should be postponed.
- It was important to maintain local control.

Mr. Michael Macintosh made the following comments:

- This process has been undertaken correctly.
- He is concerned they are avoiding a full-blown EIR by amending a pre-existing one.
- The average household in Marin County generates 11.7 car trips per day- additional housing would exacerbate the congestion.
- The proposed ordinance is not good for the Town and he does not support it.

Mr. Joe Franazack, Pacheco Avenue, made the following comments:

- He asked if there was a reason to change the zoning now given the possible impacts of the Governor’s proposal.

Chair Kehrlein closed the Public Hearing.

Chair Kehrlein asked staff to respond to the public’s questions.

Assistant Town Attorney Wisinski provided the following comments:

- The Density Bonus statute is already on the books- rezoning does not affect whether or not a developer qualifies. The proposed rezoning would impose caps where no caps currently exists.
- An existing business whose use was not permitted by the new ordinance would not be forced out by the rezoning. If an existing business owner wanted to sell or transfer his or her business to a new operator then the use would continue. However, the new owner would not be able to expand the use.
- She does not see a reference to 20 units/acre in the staff report but rather a notation that the Mitigated Negative Declaration for the General Plan anticipated a minimum of 20 units/acre in the CC District. Rezoning a 4.5 unit/acre maximum would substantially reduce that.
- Retail space would still be a permitted use under the proposed ordinance- office use would be allowed in the rear of buildings and conditionally permitted in the storefront.
- Possible rezoning of 10 Olema Road is a separate issue and is not part of this process.

- The General Plan was amended in 2012 and the Housing Element was amended in 2015 to indicate they are going to rezone the CH parcels to CC. This was done, in part, to satisfy the RHNA numbers. The Zoning Code must conform to the General Plan. There is also language in the General Plan about revising the CC District to protect the “village character”.

Planning Director Moore provided the following comments:

- He acknowledged that this is a complicated process. There is an incredible overlay of regulatory requirements.
- He acknowledged that traffic and parking are a mess- the document tries to create options for housing, parking, and traffic.
- He clarified that a 500 square foot unit would not require parking as long as the underlying commercial meets the parking requirements. The intent is to incentivize people to build smaller units without being burdened by the parking requirements.
- The Town Center Plan process is parallel to this process but they are two separate actions called for in the General Plan.
- Staff vetted the Governor’s proposed legislation.
- The CEQA process reviewed the capacity for utilities (water, trash, sewage, etc.)- this draft ordinance has fewer impacts than the previous one.

Commissioner Gonzales-Parber provided the following comments:

- She thanked everyone for attending tonight’s meeting but she is concerned there is a disconnect.
- The proposed ordinance attempts to expand the “village” feel and reduce the previously approved housing.
- She wondered how communication could be improved.

Commissioner Fragoso provided the following comments:

- The process is complex but not “rocket-science”.
- There is misinformation that people are buying into.
- This process has nothing to do with the Governor’s proposed legislation.
- This process has nothing to do with the Town Center Plan-it is a separate process.
- This is not a housing policy document with the exception that a commercial property could build a small apartment upstairs.
- The only uses no longer allowed would be formula businesses, “big-box” stores, new gas stations, and warehouses.
- They are encouraging pedestrian walkways, improved streets, and architectural character that is in keeping with what exists.

Commissioner Green provided the following comments:

- None of this is cookie-cutter or coming down from any other higher organization.
- This is a homegrown ordinance.
- This is being done the “Fairfax way”.
- He acknowledged that the traffic density was terrible.
- They need to maintain the Town character.
- He is inclined to recommend approval of the ordinance to the Town Council.

Commissioner Hamilton provided the following comments:

- This process has been going on for some time including updating the General Plan and Housing Element. Planning is an on-going process.
- Changes are happening to the Town even though they have not expanded that much over the last 10-20 years.

- Change can happen “to us” or they can facilitate that change. This is one of the tools that would help them guide that change.
- They need to continue the process.

Commissioner Newton provided the following comments:

- Staff has done an incredible job.
- She asked if there would be a downside to putting off the decision to August. Planning Director Moore stated “no”.
- She is concerned about the Governor’s bill.
- She asked staff for better maps.
- The public deserves more time to digest the information.

Chair Kehrlein provided the following comments:

- She would like to have more time to review the document.
- She wants this to be the best document they can put together.

Commissioner Gonzales-Parber asked Planning Director Moore to talk about the next steps. Planning Director Moore stated the Commission would make a recommendation to the Town Council via a resolution. The Town Council would hold at least two publically noticed meetings (first reading and then second reading of the ordinance). Once adopted at a normally scheduled meeting, the ordinance would go into effect 30 days after adoption. The Town Council can hold as many meetings as they wish and edit the document along the way. They can also send the document back to the Commission if there were any substantial changes.

Commissioner Green had questions about the potential impacts to the Governor’s proposed bill. Assistant Town Attorney Wisinski stated if the bill passes it could be bad for local governments since it is an attempt to roll back local land use authority.

Chair Kehrlein asked for a poll of the Commission on whether or not they wanted to continue this item. Commissioner Gonzalez-Parber stated she is confident that the draft ordinance reflects what the public is asking for. Commissioner Fragoso stated she would be comfortable moving this along to the Council. Commissioner Green and Commissioner Hamilton agreed. Commissioner Newton stated she would like to the review for another month. Chair Kehrlein stated the consensus of the Commission was to pass the ordinance on to the Council.

Chair Kehrlein asked the Commission if they had any specific comments.

Commissioner Green provided the following comments:

- He asked if language could be added to the resolution that states when an existing business owner wanted to sell or transfer his or her business to a new operator then the use could continue. Assistant Town Attorney Wisinski stated this is a general principal of law but language could be added specifying that currently existing uses that are rendered non-conforming by adoption of the ordinance would be granted legal non-conforming status with all rights. It was the consensus of the Commission to add such language.

Commissioner Hamilton provided the following comments:

- She referred to Section 13, page 15, “Automobile washing”, “Vehicle/equipment repair”, and “Service Station” and stated these uses should be allowed with a Conditional Use Permit. Assistant Town Attorney Wisinski stated one single electric charging station would be allowed but multiple charging stations would be prohibited unless it was an accessory use. Commissioner Green stated they need to make provisions for multiple charging stations. He asked if a restaurant could install a couple of charging stations. Assistant Town Attorney

Wisinski stated the Commission could include this as an accessory use. It was the consensus of the Commission to allow charging stations as a permitted, accessory use. It was the consensus of the Commission to allow "Vehicle/equipment repair" and "Limited vehicle service" with a Use Permit, and subject to Additional Use Regulation B, but not allow "Automobile washing" or "Service Stations".

Commissioner Newton provided the following comments:

- She referred to page 18, "Additional Use Regulations", D, and noted they were trying to incentivize the creation of an affordable unit. She is comfortable with this provision. It was the consensus of the Commission to amend the language to say "Notwithstanding... *there shall be no additional parking* requirement for each residential unit that is 500 square feet or less *if the underlying commercial use meets its parking requirements*".

Commissioner Green provided the following comments:

- He does not see anywhere in the ordinance that prefers offices to any other particular use as was asserted by some of the public. Offices should be in the back of a storefront or the top floor.
- He does not see any need to change the office designations. Chair Kehrlein stated an office use would need a Use Permit for the street frontage. Commissioner Hamilton referred to page 17, L-2, and suggested adding the following language: "...the proposed use (1) is compatible with the existing character and uses *in store frontages in the area as articulated in Section 17.100.101 (Purpose)*". Assistant Town Attorney Wisinski proposed an additional finding: "The proposed use activates the storefront usage in a way similar to a retail use".
- He would also like to see in L-2 a brief outline of the A-F findings that need to be made in Section 17.032.060. The Commission agreed.

It was the consensus of the Commission to approve Planning Director Moore's amended language to page 18, "F": "Notwithstanding...homes in existence *that maintain their residential character...shall be included... if they are returned to residential use* ".

Assistant Town Attorney Wisinski referred to page 8, under "Community Uses", and stated "Cultural Institution" could be removed since this is already included in the code. Commissioner Hamilton asked that it not be removed- everything in the table should be found in the Definitions Section.

Commissioner Newton made a motion to continue this item subject to submittal of the revisions by staff. There was no second on the motion and the motion failed.

M/s, Green/Fragoso, Motion to adopt the Resolution #16-25 and recommend to the Town Council adoption of an Ordinance Amending the Town of Fairfax Town Code Chapter 5.052 ('Business Taxes, Licenses, and Regulations'), Chapter 7.008 ('Definitions'), Chapter 17.012 ('Zone Districts Established'), Chapter 17.020 ('Design Review Regulations'), Chapter 17.092 ('CL Limited Commercial Zone'); Chapter 17.096 ('CH Highway Commercial Zone'), and 17.100 ('CC Central Commercial Zone') and Addendum to Mitigated Negative Declaration prepared for the 2010-2030 Fairfax General Plan. The proposed ordinance affects all properties within the Central Commercial (CC), Highway Commercial (CH) and the Limited Commercial (CL) Zoning Districts, as depicted on the Fairfax Zoning Map, as amended by the Commission and staff tonight.

AYES: Gonzalez-Parber, Green, Hamilton, Chair Kehrlein

NOES: Newton

ABSENT: Ackerman

MINUTES

5. Minutes from April 28, 2016 special meeting, the May 19, 2016 regular meeting, the May 26, 2016 special meeting, and the June 16, 2016 regular meeting.

M/s, Green/Newton, Motion to approve the minutes of May 19 as submitted and June 16, 2016 as corrected. The minutes of April 28, and May 26, 2016 are continued due to lack of a quorum
AYES: Gonzalez-Parber, Green, Hamilton, Newton
ABSTAIN: Hamilton (for the June 16th minutes)
ABSENT: Ackerman, Fragoso

PLANNING DIRECTOR'S REPORT

Planning Director Moore stated staff recently implemented "real time" editing at the meetings for better transparency. He referred to the recent application approved by the Commission for a single-family home off of Oak Manor Drive and noted the property owner would be meeting with the Open Space Committee next Tuesday. He read Policy OS 1.4.1 and Program OS 1.4.1.2 of the Open Space Element of the General Plan. He noted Principal Planner Neal maintains an inventory of all the parcels contained in the appendix and a system of identifying them when necessary. He reported staff sent a letter to the applicants of the Christ the Victor project that the application is incomplete. Staff met with the representatives yesterday. He reported the second workshop regarding the Town Center Plan has been rescheduled from August 6th to Saturday, October 1st. He continues to search for a firm to facilitate the workshops.

COMMISSIONER COMMENTS AND REQUESTS

Commissioner Newton asked for an opportunity at an upcoming meeting to address the Commission on Open Space policies and the Conservation Element. Commissioner Hamilton stated this could be a standard part of the Commission agenda with Commissioners reporting on various topics.

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 11:31 p.m.
Respectfully submitted,

Toni DeFrancis,
Recording Secretary