

FAIRFAX PLANNING COMMISSION MEETING MINUTES
FAIRFAX WOMENS CLUB
THURSDAY, SEPTEMBER 15, 2016

Call to Order/Roll Call:

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

Commissioners Present: Bruce Ackerman
Norma Fragoso
Esther Gonzalez-Parber
Laura Kehrlein (Chair)
Mimi Newton

Commissioner Absent: Phillip Green
Shelley Hamilton

Staff Present: Jim Moore, Planning Director
Garrett Toy, Town Manager
Linda Neal, Principal Planner

APPROVAL OF AGENDA

Planning Director Moore asked the Commission to place agenda item #2, which staff is recommending be continued after hearing a staff report and public testimony, after items #3 and #4. In addition, staff is recommending continuation of agenda item #3 since the applicant did not submit the necessary information to staff. A decision on this application will have to be made at the October meeting due to the Permit Streamlining Act.

M/s, Fragoso/Ackerman, Motion to approve the agenda as suggested by Planning Director Moore.
AYES: Ackerman, Fragoso, Gonzalez-Parber, Newton, Chair Kehrlein
ABSENT: Green, Hamilton

PUBLIC COMMENTS ON NON-AGENDA ITEMS

Mr. Mark Bell, Dominga Avenue, stated there has been 32 violation of Peri's Use Permit since June. Every musical group except one has used amplification. Closing the back door would help mitigate the noise. He asked that the business be cited for these violations.

Ms. Kathleen Merifield, Dominga Avenue, agreed with Mr. Bell. It is very noisy between 11:00 p.m. and 1:00 a.m.

Ms. Peggy Marcino, Bridge Court, supported Mr. Bell and stated a lot of the neighbors were bothered by the noise from Peri's, particularly on the weekends.

Ms. Lynchen Bell, Dominga Court, stated the acoustics in the Women's Club were terrible. She asked staff to postpone the hearing regarding Peri's Use Permit to November because she and her husband would be out of Town.

DISCUSSION ITEMS

1. Discuss/consider policies to regulate short-term/vacation rental of residential units

Town Manager Toy presented a staff report.

Commissioner Ackerman asked staff if Airbnb would not only remit the Transit Occupancy Tax (TOT) to the Town but also provide information on which units were being used. Town Manager Toy stated he thought so but he has not had that level of discussion with Airbnb.

Commissioner Newton had questions about the contract between Airbnb and the host that was sent as an attachment. She asked staff to review any liability and insurance issues.

Commissioner Fragoso asked about the cost of a Use Permit and Business License and if there were other requirements. Town Manager Toy stated the Town would need to establish the rate for the Business License (probably about \$100). A Use Permit cost \$813. Commissioner Fragoso asked if that would require the submittal of plans. Town Manager Toy stated staff would need to figure that out.

Commissioner Gonzales-Parber asked if an illegal unit would need to be legalized in order for it to be rented on Airbnb. Town Manager Toy stated "yes". Commissioner Newton stated she did not think the address could be identified by the Airbnb listing. Commissioner Gonzales-Parber asked if the Conditional Use Permit would go through the Planning Commission. Town Manager Toy stated staff was considering something else such as an over-the-counter administrative process.

Chair Kehrlein opened the Public Hearing.

Mr. Bob Stemple, Porteous Avenue, made the following comments:

- There are probably people who are already doing this.
- There are few complaints.
- Things seem to be working smoothly.
- He wanted to make sure there was some recourse for neighbors should there be any "bad apples".
- There needs to be some consequences.

Chair Kehrlein closed the Public Hearing.

Commissioner Ackerman asked if the "streamlined Use Permit" would be a one-time thing for a particular resident. Town Manager Toy stated "yes"- but application for the Business License would be done annually.

Chair Kehrlein asked how the administrative Use Permit process would work. Planning Director Moore stated it would behoove the Town to create an intermediary step for certain Use Permits that could be administratively granted. They would still be subject to appeal. It is very laborious to bring everything to the Planning Commission.

Commissioner Newton noted the Town recently implemented a streamlined administrative process for solar installations and staff could assess what the fee should be based on that type of workload. Planning Director Moore agreed and stated they recently implemented a similar over-the-counter process for Junior Second Units.

Chair Kehrlein asked if the neighborhood would receive a notice. Town Manager Toy stated he was not thinking of that but the Commission could recommend it. This would add to the staff workload.

Planning Director Moore noted there was a philosophical aspect to this topic- the conversion of a portion of a residential property for short-term commercial use in an era of rising rents and a lack of units. Commissioner Ackerman agreed and stated the questions are: 1) How many days a year?; 2) Full or partial house?

Chair Kehrlein provided the following comments:

- She asked for clarification regarding administrative Use Permits.
- Neighbors must have some recourse in the event of problems or complaints.
- She was concerned about a proliferation or concentration of these types of units in one particular neighborhood.

Commissioner Newton provided the following comments:

- She is not concerned about the impacts to affordable housing.
- She likes the flexibility that Airbnb provides homeowners who might need some addition income.
- She does not like the idea of noticing neighbors- "let sleeping dogs lie".
- Allowing for recourse is a good idea if issues come up.

Commissioner Frago provided the following comments:

- She agreed with Commissioner Newton- this would not be a detriment to the housing stock.
- She supported the idea of an administrative Use Permit and a Business License.
- She would like to see the ability to review and revoke.
- Modeling it after the Junior Second Unit Permit is a good idea.
- She would like to make sure the property is owner-occupied rather than having an absentee owner.
- They do not need neighborhood notice.
- The property should be insured and code compliant. This could be self-certified.
- Collecting TOT revenue is critical and should be done by Airbnb.
- She would like to start off with renting rooms vs. houses.
- TOT regulations have a maximum of 28 consecutive days.

Commissioner Gonzales-Parber provided the following comments:

- She agreed with the comments made by the other Commissioners.
- She would like to talk about the issue of tenants vs. homeowners renting out rooms at some point in time.
- She supported an over-the-counter Use Permit and requiring a Business License.
- A site visit should be part of the process.
- She supported the collection of TOT revenue.
- She was on the fence about renting the entire house- there should be recourse in the event of a "party house".
- The housing shortage is a big deal and she is on the fence as to whether or not second units should allowed to be used as short term air bed and breakfast establishments.
- She supported implementing a mechanism for reviewing and revoking permits.
- Noticing the neighborhood is not a good idea.

Commissioner Ackerman provided the following comments:

- The process should include some very clear guidelines. This was up to the Commission and Council to work on.
- He agreed with the comments made by the other Commissioners.

- He would like to avoid an entire house being rented all year round- this would tweak the rental market in a negative way.

Planning Director Moore noted the TOT limit of 28 days might not limit the Town's ability to regulate beyond the 28 days within the Airbnb construct. Town Manager Toy stated the TOT limit governs the amount the Town is allowed to collect and has nothing to do with how long something could be rented.

Chair Kehrlein provided the following comments:

- The Commission supported the requirement for an administrative Use Permit and Business License.
- The Commission supported the collection of TOT revenue.
- The Commission supported limiting the number of days to a total of six months per year.
- Some of the Commissioners supported allowing second units to be rented via Airbnb.

PUBLIC HEARING ITEMS

2. 17-19 Broadway; Application #16-29

Continued consideration of a request for a Use Permit and a Parking Variance to prepare meals for an existing commercial business in a food trailer stored in 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 stated this item has been continued.

PUBLIC HEARING ITEMS

3. 23 Broadway; Applicant #16-36

Request for a Design Review Permit for proposed exterior changes including a new color palette and the application of tile to an existing commercial building; Assessor's Parcel No. 002-171-07; Central Commercial CC Zone; Mike MacDonald, applicant; 23 Broadway FLLC, owner categorically exempt from CEQA per Section 15301(a).

Planning Director Moore presented a staff report. He made a correction to the staff report.

Commissioner Gonzalez-Parber referred to the area where the tile would go and asked if it was currently stucco. Planning Director Moore stated "yes". Commissioner Gonzales-Parber asked if it would be porcelain or ceramic tile. Planning Director Moore stated it would be ceramic.

Chair Kehrlein opened the Public Hearing.

Mr. Mike MacDonald, applicant, made the following comments:

- They tried to come up with a nice design.
- The features are simple and elegant.

Chair Kehrlein asked if the tile was custom made. Mr. MacDonald stated "no"- it was a unique pattern that he found on the Internet.

Commissioner Fragoso asked about the menu and whether they plan to serve breakfast, lunch, and dinner. Mr. MacDonald explained the menu and stated they would serve lunch "taqueria style" from the back of the building. "Happy Hour" would start at 5:00 p.m.

Commissioner Newton asked if customers would enter from Mono Avenue for lunch. Mr. MacDonald stated he wanted to encourage this- he was putting some nice touches to that back area. Commissioner Newton stated she loved this idea. Commissioner Ackerman agreed.

Commissioner Fragoso asked if they plan to have any amplified music outside. Mr. MacDonald stated "no".

Chair Kehrlein closed the Public Hearing.

Commissioner Fragoso provided the following comments:

- The design is attractive.
- She favors storefront tiles. It adds to the village character.

M/s, Ackerman/Fragoso, Motion to approve application #16-36, 23 Broadway, subject to the conditions contained in the staff report.

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

ABSENT: Green, Hamilton

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

4. 145 Forrest Avenue; Application #16-35

Request for a Conditional Use Permit to renovate and expand a single-family residence by 174 square feet. Improvements would include extending the front entry to provide a porch, foyer and closet, extending the dining and living room over a portion of the existing concrete patio, adding a closet to the master bedroom and installing a new deck over a portion of the concrete patio; Assessor's Parcel No. 002-192-38; Residential RS 6 Zone; Erick Mikiten, Mikiten Architecture, applicant; Vakil Kuner, owner; CEQA Categorically exempt per Section 15301(a).

Planning Director Moore and Zoning Technician Levenson presented a staff report.

Commissioner Newton referred to the letter from the neighbor and the timing of the work on the retaining wall, parking, and roadwork and asked staff if these issues would be considered. Zoning Technician Levenson stated staff received the letter today and has not had a chance to go out to the site to determine the impacts.

Chair Kehrlein opened the Public Hearing.

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

- It is all about timing at this point.
- This is very small addition.
- The intention from the beginning of the process was to do the retaining wall and the house in one set of drawings. However, the engineer and contractor would be different so it made sense to pull it apart.
- They would like the Commission to approve the house this evening and put a condition on the retaining wall.
- They have a geotechnical engineer looking at the retaining wall.
- They have a remediation plan that would install piles behind the wall to support the driveway.
- The intermingled Redwood trees would remain in place.
- They want to start the work on the house as soon as possible.

Commissioner Fragoso asked if the retaining wall he referred to was up on top adjacent to the driveway and not at the rear of the property. Mr. Mikiten stated “yes”.

Commissioner Gonzalez-Parber asked about the length of that area. Mr. Mikiten stated it was about 30 feet.

Commissioner Newton asked Mr. Mikiten if he had a chance to read the letter from Ms. Peterson, a neighbor. Mr. Mikiten stated “no”. Commissioner Newton stated Ms. Peterson had several concerns: 1) Timing of the work of the house; 2) Repairs to the retaining wall and possible exacerbation of the existing situation from construction vehicles; 3) Parking on her property that could be damaged by construction vehicles. Mr. Mikiten stated there could be some heavier vehicles (pick-up trucks) coming to the site once or twice. Materials would be largely walked up and down. There would not be an exacerbation issue- the contractor would start that work first.

Commissioner Ackerman stated everyone should have a strong interest in the retaining wall being taken care of properly. Driving piles in the ground next to the roots of Redwood should be done carefully. The construction of the house is probably more straightforward. Mr. Mikiten acknowledged the retaining wall and the construction of the house were two, separate projects- nothing that happens on one would affect the other. The nexus that is being created between the two is to ensure that the retaining wall is remediated and made safe. Commissioner Ackerman stated it was unfortunate critical information about the wall was not provided in a timely manner.

Commissioner Gonzalez-Parber asked for clarification about the topography of the site. She asked if there was parking or just roadway on Forrest Avenue directly below the turn-around. Mr. Mikiten stated it was roadway.

Mr. Vakil Kuner, property owner, made the following comments:

- He has live at the property for about one year.
- The nature of the retaining wall (permitted or unpermitted) was not disclosed. It is not unclear that it is unpermitted. Whatever it is, it does not work.
- He loves the site although it has presented some unpleasant surprises. It has a lot of issues.
- He is committed to repairing the retaining wall and the foundation of the house.
- There is a fair amount of work being done under the seams.
- He does not believe there is any imminent danger from the retaining wall.
- The retaining wall along the driveway is fine.
- The following work would be done first- level the house, repair the foundation, and repair the retaining wall.
- The Redwood trees seem to be fine. He is inclined to protect them.
- He originally wanted to separate the two projects (retaining wall vs. house) but now thinks it might be better to combine them into one project.
- The critical thing is the timing.

Commissioner Gonzalez-Parber asked about the deck over the existing concrete patio. Mr. Kuner stated he was advised that it did not need to be permitted- it is over an existing concrete patio and is 12” high. Principal Planner Neal asked if the deck would be attached to the house or freestanding. Mr. Kuner stated it would be freestanding. Principal Planner Neal stated it would not need a permit if it is not attached to the house and is not over 30” above the ground. However, the property is substandard in size and the deck is part of the project.

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

- Several of the neighbors share her concerns.
- She has no problem with the remodel plan.

- She asked why they were moving the hot tub from the middle to the end of the deck. This would pose a privacy issue. She asked about the height of the proposed privacy screen.
- She is concerned about the retaining wall.
- The applicant was asked for plan regarding the wall in January. The applicant submitted them to staff yesterday. This makes her wonder if they intend to do the wall first.
- The wall is failing and the trees are in danger.
- She is concerned about damage from construction vehicles.

Planning Director Moore noted the pre-application process stated in January. He pointed out they have no record of a permit for the sub-standard retaining wall along the driveway. The cost of remediating this driveway is unknown yet the applicant wants to start the remodel of the house. The driveway and the house are tangentially linked. These two projects are intertwined and should not be bifurcated. Staff is recommending a continuance. Principal Planner Neal noted there is a drainage swale that runs past the Redwood trees and the wall- it carries a lot of water when it rains.

Chair Kerhlein asked if the lot was subject to the HRD Permit. Principal Planner Neal stated “no” since it was not a 50% remodel on the hillside- however, it is in a Landslide Hazard Zone. Staff normally recommends referral to the Town Engineer but the applicant decided not to follow that course. Anywhere cars will drive is considered, by staff, a driveway.

Commissioner Gonzalez-Parber agreed that safety is a primary issue. She asked if the Commission could add a condition that construction on the house shall not start until the retaining wall permit is issue. Planning Director Moore stated “yes” but staff would not know if the Commission needs to review the wall until they receive a design.

Commissioner Fragoso asked if staff had any idea how long it would take to come back for the permit on the wall. Principal Planner Neal stated staff does not have a design- it has to be created and sent to the Town Engineer and perhaps the Town Arborist. Excavation cannot occur between October 1st through April 1st (at the discretion of the Town Engineer). Mr. Mikiten stated they could get a design for the wall in a matter of days. They are not trying to skirt any requirements.

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

- He asked the Commission to approve the plans for the house conditioned upon the design and approval of the wall.

Commissioner Fragoso asked what would happen if the work on the driveway and pad were more extensive and they could not get construction vehicles up to work on the house.

Mr. Kuner provided the following comments.

- He was prepared to take that risk.
- He agreed to hold off on construction of the house until the wall was approved.
- The house leveling and retaining wall should be done at the same time.
- However, they could do the wall first if that is the wish of the Commission.
- His biggest concern is not being able to do anything until April or May of next year.

Chair Kehrlein closed the Public Hearing.

Commissioner Fragoso provided the following comments:

- She agreed with the staff position.
- She read from the letter from the geotechnical consultant regarding how to address the repair of the wall.

- She recommended the applicant's get the Design Review plans for the wall submitted as soon as possible.
- With any luck, there will not be any rain that would preclude them from doing their construction work.
- She would like to see some screening for the hot tub or a better location. Mr. Mikiten stated there would be an 8' privacy fence.
- She asked the applicant to work with the neighbor.

Commissioner Ackerman provided the following comments:

- He supported the staff recommendation to keep the project as one and continue it to next month.
- The Town Arborist should also be involved.

Commissioner Gonzalez-Parber provided the following comments:

- She did not think they would be able to "beat the rain" unless the Town gave them special permission.
- There are too many unknowns right now that make this messy.
- They are asking the Town to take a risk on their behalf.
- They will need to use that driveway to get up to the house.
- She has no problems with the design.
- She referred to the concrete patio and the deck asked if the concrete would be removed. Mr. Mikiten stated "no"- they would build on top of it to get a level exit from the house to the deck.

Commissioner Newton provided the following comments:

- A lot of this is complicated for people who do not do this for a living.
- She would like to give the applicant the benefit of the doubt that there was a misunderstanding about whether or not to link the two "projects".

Chair Kerhleim provided the following comment:

- She noted they were taking out the fireplace and installing a wood stove. She asked if wood stoves were allowed. Senior Planner Neal stated she would have to check on that and report back.

M/s, Gonzalez-Parber-Ackerman, Motion to continue application #16-35, 145 Forrest Avenue, until an application and design for the retaining wall is submitted and reviewed by the Town Engineer and Town Arborist.

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

ASENT: Green, Hamilton

MINUTES

5. Minutes from August 18, 2016 Planning Commission regular meeting.

M/s, Newton/Fragoso, Motion to approve the minutes of August 18, 2016 as corrected.

AYES: Ackerman, Fragoso, Newton, Chair Kehrlein

ABSTAIN: Gonzalez-Parber

ABSENT: Green, Hamilton

PLANNING DIRECTOR'S REPORT

Planning Director Moore reported the Town Council recently discussed the draft ordinance to convert Highway Commercial (CH) to Central Commercial (CC) and came away with some questions, observations, and requests of staff. The Town Council decided to kick the ordinance

back to the Commission. After that happens, the Council will hold a joint meeting with the Commission to go through the ordinance. The Commission discussed some of the issues.

Planning Director Moore reported he turned in his resignation this morning effective December 2nd (his birthday!). He will attend two more Commission meetings. He thanked the dedicated staff he has worked with over the years.

COMMISSIONER COMMENTS AND REQUESTS

Commissioner Ackerman discussed the “disinformation campaign” going on about some of the proposed plans being discussed in Fairfax. He was concerned that it is a “sea of fear and divisiveness”. He thanked Planning Director Moore for his dedication to the Town and his years of service.

Commissioner Newton stated she would like to do a presentation to the Commission about the Open Space Committee as soon as possible.

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 10:34 p.m. Respectfully submitted,

Toni DeFrancis,
Recording Secretary