

APPROVAL OF AGENDA

M/s, Fragoso/Newton, Motion to approve the agenda.

AYES: Ackerman, Fragoso, Green, Newton, Chair Kehrlein

ABSENT: Gonzalez-Parber, Hamilton

CONSENT CALENDAR

There were no Consent Calendar items.

PUBLIC HEARING ITEMS

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 the reconstruction and modification of an approximately 187-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)

Chair Kehrlein recused herself from this item. She stepped down from the dais.

Principal Planner Neal presented the staff report.

Commissioner Ackerman noted there was some prior excavation and damage to the foundation and most of the work, except for the deck, has already been done. He asked if they submitted any applications prior to the work being done. Principal Planner Neal stated the applicants could clarify this question.

Commissioner Newton referred to Resolution No. 16-22, page 2, and asked how the fine was determined.

Commissioner Green stated he did not support construction without permits but there was an undermining of the foundation that was imperative to fix. Principal Planner Neal stated the applicants did a lot of work in correcting the damage that the previous owner had caused and they fixed/converted the under floor area along with the foundation. They stayed within the footprint.

Acting Chair Fragoso stated this was an extensive amount of work done without permits.

Acting Chair Fragoso opened the Public Hearing.

Mr. Fred Devine, architect, made the following comments:

- They have gotten permits for a lot of the work that was done.
- They have done a lot of work on the house.
- They were ready to make an application for the lower area but made a decision that it was too much to have to pursue- Use Permits, etc.
- They regret not getting permits and want to get it right.
- The work is done to code.
- This is an "after-the-fact" approval.
- The construction is within the footprint.
- The carport is being added.

Acting Chair Fragoso closed the Public Hearing.

Acting Chair Fragoso provided the following comments:

- The work is well done and a significant improvement.
- She is concerned about the process- but they are paying the fine.

Commissioner Green provided the following comments:

- The project is an improvement to the house.
- He referred to page 3 of the staff report, the next to the last paragraph (“Residential structures in the neighborhood...”) and stated it should be added to Resolution No. 16-23, the fourth “Whereas”, #2.

M/s, Newton/Ackerman, Motion to adopt Resolution No. 16-23 as amended by Commissioner Green and approve application #16-28, 80 Hickory Road.

AYES: Ackerman, Green, Newton, Acting Chair Fragoso

ABSENT: Gonzalez-Parber, Hamilton

RECUSE: Chair Kehrlein

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

Chair Kehrlein returned to the dais.

2. 141 Bolinas Road; Application #16-27

Request for a Use Permit and 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 15301(k)(4).

Commissioner Ackerman recused himself from this item. He stepped down from the dais.

Planning Technician Levenson presented the staff report.

Commissioner Green asked if the shed would be painted. Planning Technician Levensen stated she did not believe so.

Chair Kehrlein opened the Public Hearing.

Mr. Scott Hochstrasser, owner, made the following comments

- He agreed with the staff report and findings contained in the resolution.
- He does not intend to paint the building- it will be stained.
- The structure will be far back in the rear yard and will not be visible.
- It will be rustic looking and fit in with the existing fence.

Chair Kehrlein closed the Public Hearing.

Commissioner Green provided the following comment:

- The project is very practical.

M/s, Green/Fragoso, Motion to adopt the resolution and approve application #16-27, 141 Bolinas Road.

AYES: Fragoso, Green, Newton, Chair Kehrlein

ABSENT: Gonzalez-Parber, Hamilton
RECUSE: Ackerman

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

Commissioner Ackerman returned to the dais.

3. 17-19 Broadway; Application #16-29

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, 15301(a).

Principal Planner Neal presented the staff report.

Commissioner Green asked about the effect of not having the grease separator. Principal Planner Neal stated the grease gets into the sewers and gums up the filtration systems. Commissioner Green asked how long they have been operating without one. Principal Planner Neal stated staff did not know- they had a temporary grease separator that was hooked up each night into the sewer. Planning Director Moore stated a temporary separator does not meet the regulations.

Commissioner Green noted several parking spaces were being used by the truck and he asked who owned these spaces. Principal Planner Neal stated the owner has divided the parcel for tax purposes into two different parcels. Planning staff is of the opinion that the parking is shared by all the uses on the site- this was the proposal for development of the Inn. The property owner wants to separate the parking and say the parking in front of the arch is for the bar and anything under the Inn is for the Inn. That is not how the application for the Inn was processed.

Principal Planner Neal discussed the two proposals, both of which have brought the accessible parking space into compliance with the code and both further reduce the parking beyond the two spaces that were originally going to be lost due to the trailer.

Commissioner Frago asked which spaces were designated for the residential use. Principal Planner Neal stated that was not specified.

Commissioner Newton asked if the owner of Casa Manana would need a Conditional Use Permit to operate a food truck anywhere in this area. Planning Director Moore stated any outside activity in the Central Commercial District requires a Use Permit.

Commissioner Green asked if the Health Department has inspected this facility. Principal Planner Neal stated he would need to ask the applicant.

Commissioner Ackerman asked the applicant to discuss the plan to work with the owner of Casa Manana.

Commissioner Frago referred to the disabled parking space near the front door of the Inn and asked if it was the appropriate size. Principal Planner Neal stated "no". Commissioner Frago noted one of the parking spaces for the Inn has been converted to storage. Principal Planner Neal stated both plans restore that parking space.

Commissioner Newton asked about the process for allowing the applicant to re-submit an application without having to pay additional fees. Principal Planner Neal stated the current proposal is very different from the original. She discussed the requirements of the Permit Streamlining Act.

Commissioner Newton asked if the Commission could waive the fees. Principal Planner Neal stated "no"- only the Town Council could waive fees.

Chair Kehrlein opened the Public Hearing.

Dr. Tony DeFrance, applicant, made the following comments:

- He thought they could bring in food from the outside since they are zoned for a restaurant.
- The food truck has been operating since August, 2015. They stopped operations on July 5th.
- They have a Health Department Certificate of Operation for the food trailer.
- They have complied with the grease trap requirement. It is portable.
- They have an appointment with a plumber and the sanitary agency tomorrow morning regarding the grease trap.
- They submitted plans for parking.
- They want to bring in the owner of Casa Manana to work for them as an employee.

Commissioner Ackerman asked about the hours of operation and who could be served- bar and hotel patrons only, etc. Dr. DeFrance stated the hours of operation for the food truck would be 5:00 p.m. to midnight. They would be serving food only in the confines of the bar (17-19 Broadway). There will be no take-out.

Commissioner Newton asked the applicant if he was amenable to a continuance to allow the Commission more time for review. Dr. DeFrance stated "yes".

Chair Kehrlein asked Dr. DeFrance if he considered adding a kitchen to the existing structure. Dr. DeFrance stated he received two bids in excess of \$250,000 to build a kitchen addition- it must be a commercial kitchen and the proximity to the hotel requires special venting.

Mr. Garry Graham, owner, made the following comments:

- He urged the Commission to make a pro-business decision.
- The owner of Casa Manana is excited to work with them.
- The food truck has been operating for one year with no complaints.
- They received a prior recommendation of approval in July and were given 30 days to fix the parking.
- They will work on the parking issue with staff and the Inn.
- Disapproval would threaten two businesses in Town.
- He asked the Commission to give them a chance to team up with Casa Manana.
- He started the business in 1984 and named it 19 Broadway. It has been voted the Best Music Venue in Marin.

Mr. Lew Tremaine made the following comments:

- This item should be continued.
- The applicant is offering the owner of Casa Manana an opportunity to get a new foothold in the community- they are not throwing him a "life-line".
- The applicant has decided to comply with the July 21st recommendations including the parking requirements.

Chair Kehrlein closed the Public Hearing.

Commissioner Newton provided the following comments:

- She suggested a continuance to allow the applicant to work with staff to clarify the proposal.
- She would like to hear the proposal next month.

Commissioner Ackerman provided the following comments:

- He agreed with the suggestion made by Commissioner Newton.
- There are a lot of moving parts. This is a complicated issue.
- Staff had a problem receiving all the materials and information that had been requested.
- The food truck was in operation, without a permit, for quite a while.
- Compliance with the Health Code was marginal.
- He is not usually of the opinion that parking should be a big issue. However, there are ongoing issues in the downtown with parking spilling out into the neighborhoods.
- He is happy to see the possibility of 19 Broadway and Casa Manana working together.

Principle Planner Neal clarified they were not able to go back to the July resolution recommending approval because that resolution was written for a variance for only two parking spaces. The proposal has changed in order to comply with ADA requirements- it now reduces on-site parking by three parking spaces. No resolution has been written for this proposal. Planning Director agreed that there were a lot of unanswered questions.

Commissioner Fragoso provided the following comments:

- She agreed with the comments made by staff.
- There were no approvals in July- simply recommendations that were based on conditions that were not complete.
- The Town Council and Planning Commission are very supportive of the local businesses.
- She would be more comfortable if all the State and County requirements were met.
- The plans should clearly identify the parking requirements.
- She is somewhat supportive of the idea of a food truck and understands the difficulties of building a kitchen.
- A condition should be added with respect to the cleanliness of the area where the food truck would be located.
- She would be delighted if this provided an opportunity for the owner of Casa Manana to continue to work in Town.
- She would like to see this application come back to the Commission quickly in a clean format.

Commissioner Green provided the following comments:

- There is a current health and pollution situation (grease trap) and the food truck should not be allowed to continue to operate.
- Information must be submitted to staff in a timely basis.
- Some of the exhibits are ambiguous.
- They need to comply with all regulations.
- He supported a continuation.

Chair Kehrlein provided the following comments:

- Her main issue with the application is the food truck itself- they should be temporary and not a permanent use.
- Health codes are strict with respect to the disposal of grease, number of sinks, lighting levels, etc.
- The parking issue can be worked out.
- Remodeling inside the building will not be easy.
- She could support an addition to the side of the building.
- Serving food as a part of this business is a great idea.

Commissioner Fragoso provided the following comments:

- She liked the idea of a small addition to the building- this would give them a long-term facility.

Principle Planner Neal asked the applicant to sign an agreement for a 90-day extension of time due to the Permit Streamlining Act. The applicant signed the agreement.

M/s, Newton/Fragoso, Motion to continue application #16-29, 17-19 Broadway, for up to 90 days. Staff shall work with the applicant to bring the application back to the Commission as soon as possible.

AYES: Ackerman, Fragoso, Green, Newton, Chair Kehrlein

ABSENT: Gonzalez-Parber, Hamilton

4. 20 Cypress Drive; Application #16-31

Request for a Use Permit to enclose the front porch of a single-family residence to create a dining room; APN #003-202-04; Residential Single-family RS 6 Zone; Wendy Kirk-Scalise, applicant/owner; CEQA categorically exempt per Section 15031(a).

Principal Planner Neal presented the staff report.

Commissioner Green referred to page 2 of the resolution, item #2, and suggested adding some limitations on the hours and days for construction vehicles since the neighborhood is pretty tight and the street space is limited. Principal Planner Neal stated the Commission could add that as a condition.

Chair Kehrlein opened the Public Hearing.

Ms. Wendy Kirk-Scalise, owner, made the following comments:

- She has an open front porch that she would like to enclose with windows and an entryway so she can have a dining room.
- Parking has never been a problem and should not be an issue.

Commissioner Ackerman agreed that parking is not an issue in this area. He would advise the owner to think about insulating that room.

Commissioner Green stated this is a brilliant design. He asked the owner if she has considered solar. Ms. Kirk-Scalise stated "yes" but her finances are limited at this time.

Commissioner Green referred to the resolution, "Miscellaneous Conditions", and stated the following condition should be added as a boilerplate, permanent condition: "The applicant is encouraged to install or seek to install solar power when feasible per the Fairfax Town Code".

Chair Kehrlein closed the Public Hearing.

M/s, Newton/Fragoso, Motion to approve Resolution No. 16-26 to allow the enclosure of a 132-square-foot porch at 20 Cypress Drive with the addition of the condition suggested by Commissioner Green.

AYES: Ackerman, Fragoso, Green, Newton, Chair Kehrlein

ABSENT: Gonzalez-Parber, Hamilton

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

5. 29 Broadway; Application #83-UP-32

Clarification of what types of occasional private uses are permitted by Use Permit #83-UP-32, approved on June 16, 2016, in the outdoor back-yard area of the bar; Central Commercial (CC) Zone; Charles Peri, applicant/owner; CEQA Categorically exempt per Section 15301.

Principal Planner Neal presented the staff report. She noted that the Commission was not making any decisions tonight but rather clarifying its prior decision. The application with respect to the usage of the side patio will be brought back to the Commission for further discussion sooner than the six-month review.

Commissioner Fragoso asked for clarification on whether or not the Commission approved acoustic music with vocal amplification. Principal Planner Neal stated that applied to the patio.

Commissioner Ackerman stated he had assumed that the back-yard area would be used infrequently- once a month on average. The usage could occur more frequently during the summer months than in the winter due to weather conditions.

Commissioner Fragoso stated she understood that there would be one event per month with a maximum of twelve per year and that the music would be acoustic and not amplified.

Chair Kehrlein opened the Public Hearing.

Mr. Adam Jefferson, manager, made the following comments:

- The backyard area is typically not used in the winter.
- In the spring and summer the area is used for parties, weddings, etc.
- The area is used about twelve times per year.
- He has made it clear to everyone that music must stop at 8:00 p.m.
- They need to come to an agreement about what "acoustic" means.
- They have broken any laws with respect to the Noise Ordinance.

Chair Kehrlein asked if the backyard was only reserved for special events or open at other times. Mr. Jefferson stated he does not necessarily rent it out but rather lets people use it for special events.

Commissioner Fragoso stated the backyard was closer to the residences and the sound would carry more- the Commission did not want any amplified/electric instruments.

Chair Kehrlein asked if bar patrons were allowed to use the backyard. Principal Planner Neal stated the occasional bar patron going out to the backyard to have a drink, talk to someone, etc. was a legal, non-conforming use. It is part of the bar. Commissioner Ackerman asked if there were speakers in the backyard. Mr. Jefferson stated "no".

Commissioner Green asked if they have ever had pre-recorded, amplified music controlled by a disc jockey in the backyard. Mr. Jefferson stated "yes" – for weddings, parties, a fashion show, etc.

Mr. Mark Bell, Dominga Avenue, made the following comments:

- He read the definition of "acoustic".
- He has no problem with acoustic music and a vocalist that is enhanced.
- It can take the Police Department up to 45 minutes to get a decibel level reading that they can use.
- There are other residents in the neighborhood that would prefer no music or unamplified music.
- There was a violation on June 25th from a disc jockey who played music until 8:40 p.m. The decibel reading was at 55-60 db.

Ms. Linshen Bell, Dominga, made the following comments:

- She would like to see some plexiglass installed to block the sound.

- She is entitled to enjoy her backyard especially during the summer.

A resident made the following comments:

- People should have some way to relax in their own homes.
- Amplified music gets distorted and is too loud.
- Allowing music in the back yard once a month during the summer is understandable.

Mr. Jefferson made the following comments:

- Use of the backyard is a very small part of the business- he would be willing to shut it down.
- He would like to come to some type of agreement.

Chair Kehrlein closed the Public Hearing.

Planning Director Moore stated the Commission has conveyed that their prior discussion was to allow non-amplified music in the backyard and allowing 12 events during the year on average. Staff will bring this issue back to the Commission prior to the January (six-month) review for possible massaging of the conditions.

Commissioner Green provided the following comments:

- He would like to look into some soundproofing for the backyard area.
- No amplification should be allowed except for the singer.
- They need to hone in on the numbers at the next meeting and eliminate any loose language.
- He asked the applicant to come back with ideas on how to ameliorate the noise levels in the backyard.

Commissioner Ackerman provided the following comments:

- He suggested turning the speakers around so they do not face the neighborhood.
- They could install some baffling on the inside of the backyard fences.

Commissioner Frago provided the following comments:

- She recalls supporting up to 12 events per year, typically one a month.
- Twelve events in six months (summer) would be two a month- this should be the maximum.
- No amplified music should be allowed in the backyard.

Commissioner Newton provided the following comments:

- She is concerned about the decibel levels.
- She would like a report from the Police Department regarding the decibel level readings and the typical response times. Commissioner Green noted perhaps a department other than Police should do the decibel level readings such as Building or Fire.
- She would like to get a better handle on the frequency of events in the backyard. There should be a monthly cap.

Chair Kehrlein provided the following comments:

- She is concerned about the maximum number of entertainers (4 to 5)- it should be a smaller group (2 to 3).

Planning Director Moore thanked the Commission for the direction and stated this item would be reviewed by the Commission before the January six-month deadline.

DISCUSSION ITEMS

There are no discussion items.

MINUTES

6. Minutes from the April 28, 2016 special meeting, May 26, 2016 special meeting, and the regular July 21, 2016 meeting.

M/s, Ackerman/Fragoso, Motion to approve the April 28, 2016 minutes as submitted, May 26, 2016 minutes as submitted, and the July 21, 2016 minutes as corrected.

AYES: Ackerman, Fragoso, Green, Newton, Chair Kehrlein

ABSENT: Gonzalez-Parber, Hamilton

PLANNING DIRECTOR'S REPORT

Planning Director Moore reported the ordinance rezoning Commercial Highway (CH) to Central Commercial (CC) would be reviewed by the Town Council on September 7th. The next Town Center Plan Workshop would be held on Saturday, October 1st from 9:00 a.m. to 1:00 a.m. The workshop would include public participation and breakout groups, all led by a facilitator. He discussed the PACE Program sponsored by the State of California that would assist homeowner in the creation of more efficient habitats (installation of photo-voltaic cells, retrofitting windows, etc.). Funds of up to \$25,000 can be obtained which would be placed on the homeowner's Property Tax bill.

Commissioner Fragoso stated there seemed to be a lot of misunderstanding about the rezoning of the Central Highway District and she asked staff to put together a flyer that clarified the process prior to the upcoming Town Council meeting.

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 10:37 p.m.
Respectfully submitted,

Toni DeFrancis,
Recording Secretary