

Town of Fairfax Planning Commission Minutes
Fairfax Women's Club
Thursday, March 19, 2015

Call to Order/Roll Call

Chair Green called the meeting to order at 7:05 p.m.

COMMISSIONERS PRESENT: Roxanne Ezzet
Philip Green (Chair)
Shelley Hamilton (arr. 7.08 p.m.)
Laura Kehrlein (Vice-Chair)

COMMISSIONERS ABSENT: Esther Gonzalez-Parber

STAFF PRESENT: Garrett Toy, Town Manager
Jim Moore, Planning Director
Linda Neal, Principal Planner
Joanne O'Hehir, Minutes Secretary

APPROVAL OF AGENDA

M/s, Ezzet/Kehrlein, Motion to approve the agenda:

AYES: Ezzet, Green, Hamilton, Kehrlein
ABSENT: Gonzalez-Parber

PUBLIC COMMENT

No one from the public came forward to speak.

CONSENT ITEMS

1. **116 Scenic Road; Application # 15-04:** Request for a Preferential Parking Permit to create an off street parking space along the frontage of the property and to redesign/relocate the front entry stairway; Assessor's Parcel No. 001-112-23; Residential Single-family RS 6 Zone District; Mark Predum, applicant/owner; CEQA categorically exempt, §15301(4).

Chair Green suggested an addition to the Conditions of Approval that related to the owner maintaining parking in a safe and sanitary manner. In response, Ms. Neal said she thought it unnecessary because the language is part of the preferential parking ordinance, and their privilege would be removed if they were not in compliance.

2. **136 Manor Road; Application # 15-05:** Request for a Use Permit and Variances to construct an 80 square foot bathroom addition to a 1,116 square foot, 3 bedroom, 1 bath,

single-family residence; Assessor's Parcel No. 001-122-13; Residential RD 5.5-7 Zone District; Richard Gilards, applicant/owner; CEQA categorically exempt, 15301(e)(1) and 15305(a).

Commissioner Hamilton noted a minor amendment to the size of the lot in the staff report.

3. **32 Porteous Avenue; Application # 15-06:** Request for a Use Permit to construct a 338 square foot, master bedroom/bathroom addition to a 1,383 square foot, 2 bedroom, 1 bath single-family residence and install a sauna and hot tub in the backyard; Assessor's Parcel No. 002-041-04; Residential RD 5-7 Zone District; Ann Bool, applicant/designer; Marianna Caplan, owner; CEQA categorically exempt, 15301(e)(1).

M/s, Hamilton/Ezzet, Motion to approve Consent:

AYES: Ezzet, Green, Hamilton, Kehrlein
ABSENT: Gonzalez-Parber

Chair Green read the appeal rights.

PUBLIC HEARING ITEMS

4. **Pilot Parking Permit Program** – Discussion/consideration of a resident requested proposed pilot parking permit program in the downtown neighborhoods south and southeast of Broadway and Bolinas including Napa, Dominga, Inyo, Mono, Main, Summer Avenue, a portion of Forrest Avenue, Wessen and Court Lanes, Bridge Court and a portion of Creek Road.

Town Manager Toy presented the staff report. He explained that in 2014, the Town Council were given a petition from residents in the downtown areas that includes Napa, Dominga, Inyo and Mono, requesting overnight parking. Last month, the Town Council requested staff to investigate the feasibility of overnight parking. Mr. Toy discussed the community engagement forum that has been established on the Town's Website and noted that 240 letters were sent to residents in the neighborhoods affected, which asked them to post their comments on the website.

Mr. Toy said that a forum was held this evening, when four residents participated. He said that staff would like to hear from the Commissioners if they have comments on the pilot scheme.

Commissioner Ezzet and Mr. Toy discussed the feedback.

Commissioner Hamilton invited Mr. Toy to explain the benefits of the forum for residents who might be watching the meeting.

Mr. Toy discussed the pilot program and said that residents are invited to visit the Town's website, register with the community forum and provide feedback on the program. He said that the Town

would be able to confirm where the registrant lived, and that there were other ways of providing feedback, such as through a PDF file or e-mail correspondence.

Commissioner Ezzet said that these types of programs can be effective and she supports the pilot program. She described the benefits of the program and thought it might encourage residents to use their garage for parking.

Chair Green and Mr. Toy discussed the scheme. Mr. Toy said that residents would be allotted a number of permits per household and if a car parked on the street overnight did not have a permit, a ticket would be issued. He noted that it is a pilot program, and that the issue will be addressed more closely within the Town Center Plan, which has a downtown parking component.

In response to Commissioner Hamilton, Mr. Toy said that they do not have an end date for the pilot program and Commissioner Ezzet recommended 6 months.

Mr. Toy and Vice-Chair Kehrlein discussed the night hours when street parking would be illegal. Mr. Toy said the hours could be changed.

Chair Green opened the public comment period.

Steve Ardito, Inyo, discussed the petition they gave the Town Council. They thought that the parking hours of midnight to 6 am should be permitted and suggested that parking is limited during the daytime to between 2 – 4 hours. Mr. Ardito said that the nighttime parking hours might discourage late-night inebriated patrons because they would need to move their cars outside the neighborhoods and encourage a better quality of life for the people who live there.

Chair Green closed the public comment period and commented on his belief that that the pilot program seems very worthwhile after hearing Mr. Ardito's comments.

Commissioner Hamilton said that there appeared to be a parking issue and a community behavior issue. She discussed whether limiting parking should be used as a tool to curb antisocial behavior, but agreed that limiting the parking hours is the right tool for addressing a parking problem. Overall, she agreed that the pilot program should go forward.

Mr. Toy said that the purpose of the pilot program is to address a parking issue and that the Police Department address antisocial behavior. However, he said that residents believe that restricting street parking will help curb antisocial behavior.

M/s, Hamilton/Kehrlein, Motion to recommend that the Town Council consider the development of a pilot parking permit program, allowing staff to flush out the details for further consideration by the Planning Commission.

AYES: Ezzet, Green, Hamilton, Kehrlein
ABSENT: Gonzalez-Parber

5. **127 Dominga Avenue; Application # 14-46:** Continued consideration of a modification of a previously approved Use Permit and Setback Variances to convert 299 square feet of the 598 square foot basement area into a finished conditioned space; Assessor's Parcel No. 002-025-06; Residential RD 5.5-7 Zone; David Grabham, G-Family Construction, applicant; Krishna Tyne, owner; CEQA categorically exempt, § 15301 and 15305(a).

Principal Planner Neal presented the staff report. She noted that a Use Permit and Setback Variances had been approved by the Planning Commission on March 20, 2014 in order to allow the house to be lifted to bring the existing basement area living space into compliance with the building code ceiling heights and add a full bathroom.

Ms. Neal said that the applicant applied for a request to relocate the laundry area and convert 299 sq. ft. of the remaining unfinished basement area into a finished conditioned space with windows and a ceiling height of 6 foot 8 inches. Ms. Neal noted that the ceiling height would be 4 inches short of the 7 foot ceiling height that is required by code for areas used as living space.

Ms. Neal explained that the Planning Commission had difficulty making the findings to approve the modifications at their meeting on December 18th, 2014, and so they continued the project to give the applicant time to confer with their client to see if they were able to modify the design to enable the Planning Commission to make a determination. Ms. Neal noted that the applicant must meet the required Use Permit findings, which she discussed. Ms. Neal noted that the proposal would expand a residence that already had a maximum FAR, a bedroom and bathroom over a detached garage and lot coverage of 38%, in addition to two bedrooms and two bathrooms in the main house. She said that the lot is substandard in size with substandard parking, possessing just one space when two are necessary for a single-family residence. Ms. Neal noted that the proposed basement modifications would allow the property to comfortably house additional residents, which will impact street parking. She said that staff could, therefore, not support the findings to approve the project and advised the Planning Commission to deny the project by approving the Resolution.

Ms. Neal noted that letters of support had been received from the neighbors.

In response to Chair Green, Ms. Neal confirmed that the applicant had not complied with any of the recommendations made by the Planning Commission at the last meeting.

David Grabham, Applicant, discussed the ceiling height, the intended use of the space and the FAR. He noted that people are using garages for storage space, as is his client who intends moving her belongings into the storage facility they are requesting be conditioned. Mr. Grabham believes they have minimized the size of the windows, and he noted that they have neighborhood support for the project. He said that it would improve the architectural value of the neighborhood and set a high standard of good craftsmanship. Mr. Grabham said his client would sign a deed restriction, and that they do not wish to remove the windows and electrical work because the space will be rendered unsafe and uninhabitable.

Commissioner Hamilton said that she is perplexed that the applicant is not able to provide an alternative to the proposal that was last presented. She noted that the commissioners had continued

the project on the understanding that changes would be considered and had provided the applicant with direction. In response, Mr. Grabham said they had contacted various city planners and determined that they allow conditioned spaces under 7 feet.

Chair Green said they are bound by the FAR and height limits and cannot approve illegal conditioned space. He noted that the dwelling is small and is on a small lot. Chair Green said that the space does not need many windows if it used for storage and that limited lighting should suffice.

Ms. Neal noted that another applicant had been required to remove windows, electrical work and lower their ceiling height for similar reasons.

Tyna Krishna, owner of 127 Dominga, said that she is not requesting just a conditioned storage area, but a place to house art and antiques. She said that the contents of her garage will be stored in the space and she noted that her garage has three windows and is well lit. Ms. Krishna said she would like to park her car in the garage and that she needs lighting in her storage area.

In response to Chair Green, Ms. Krishna said that she does not intend displaying her antiques.

Chair Green opened and then closed the public comment period when no one came forward to speak.

Commissioner Ezzet discussed the Use Permit findings. She discussed the background of legal-nonconforming lots and noted that Use Permits have been issued for developments on lots that are too small. Commissioner Ezzet discussed the findings that related to this project and suggested that a deed restriction could be used to restrict the basement from becoming livable space as they do not want a precedent to be set.

Commissioner Ezzet and Ms. Neal discussed parking, and Ms. Neal noted that there is room at the front of the property to provide a second space.

Commissioner Hamilton noted that the previous discussions included the increase in FAR and the need to provide more parking. She said that a lot of time had been spent discussing alternative options relating to lighting, windows and parking, and the applicant has not proposed any accommodations. Commissioner Hamilton said the commissioners must consider how future property owners might use the space, not just the present owner. Commissioner Hamilton said that she liked the windows but they did not address the fact that they could enable the space to be easily converted to livable space without the necessary parking compliance. She noted that there is an option to lower the ceiling height, leave the basement unfinished and still use it for storage.

Chair Green noted that they had rules that they needed to adhere to and that the applicant could still return with a different design, such as a single window, for example.

Vice-Chair Kehrlein said that the windows are a problem for the future, which is the reason she suggested a single window would be acceptable, and she noted that the ceiling height is under 7 feet. Ms. Neal confirmed the space has no sheetrock.

Ms. Neal discussed the findings for approval and noted that staff's preference is for the project to go forward as originally approved. She noted that the applicants could appeal the project to the Town Council or provide an alternative design. Ms. Neal said that action must be taken to conform to the Permit Streamlining Act.

In response to Mr. Grabham, Commissioner Hamilton suggested he consulted the minutes of the previous meeting to determine the kind of window that would be suitable.

Planning Director Moore noted that guidance provide by the commissioners is not a guarantee of approval and noted that the applicant has already constructed beyond what was intended.

M/s, Hamilton/Kehrlein, Motion to deny Application No. 14-46, modification of a previously approved Use Permit and Setback Variances to convert 299 square feet of the 598 square foot basement area into finished conditioned space at 127 Dominga Avenue by adopting Resolution No. 14-17:

AYES: Ezzet, Green, Hamilton, Kehrlein
ABSENT: Gonzalez-Parber

Chair Green read the appeal rights.

- 6. 164 Willow Avenue; Application # 14-47:** Continued request for a Hill Area Residential Development Permit, Excavation Permit, Design Review, Encroachment Permit and Variance to construct a 1,192 square foot, three bedroom, 2 ½ bath, single-family residence, including a 2 car garage; Assessor's Parcel No. 001-193-13; Residential RD 5.5-7 Zone District; David Grabham, G-Family Construction, applicant; Kalman Zeiger, owner; CEQA categorically exempt, 15303(a) and 15305(a) and (b).

Principal Planner Neal presented the staff report, when she provided background information on the project. She discussed the changes the applicant had made to the plans in accordance with direction provided by the commissioners at their meeting on January 15, 2015.

Ms. Neal said that the peer review arborist report indicates that moving the housing 7 feet closer to the front property line and 10 feet away from the oak tree in the rear will significantly improve the chances of maintaining the tree's health. The arborist also viewed the two oak trees on the neighbor's property to ascertain if she agreed with the recommendations in the arborist's report. She indicates that mitigation measures taken during construction should minimize negative impacts.

Ms. Neal noted that the relocation of the house has resulted in the need for a variance to provide a tandem parking guest space, which she discussed. She also noted that the driveway retaining wall

height will be reduced by 2 feet to 8 feet. Ms. Neal discussed the addition of planting beds along the southern driveway retaining wall, in which it is proposed that vines are grown to soften the streetscape of the dwelling.

Ms. Neal said that a construction traffic plan has been provided.

Ms. Neal discussed the impacts that would occur if the width of the house were reduced by 2 feet to comply with the 20 foot side setback. She noted that the dwelling would have greater side yard setbacks than other dwellings in the neighborhood.

In conclusion, Ms. Neal said that staff believes that the applicants have complied with the commissioners requests and they can make findings for the parking variance. Ms. Neal confirmed that staff recommends the project is approved by adopting Resolution No. 14-16.

Chair Green noted that the oak tree in the rear should be saved, and there is the benefit of the front retaining walls being shorter. He noted that a condition should be added to the Conditions of Approval noting that construction material should not be removed from the site before 9 a.m.

Planning Director Moore noted that the height of the house has been lowered 2 feet, and Ms. Neal said that the volume of excavation has been reduced.

David Grabham, Project Designer and Contractor, noted that they have not maximized the FAR; that they want a small home and they have worked with staff to fit within the parameters of the Town's codes. He said that they believed they are not asking for too much and that they want to build beautiful homes.

Commissioner Ezzet said that they did a fantastic job of addressing the concerns discussed, including moving the house and softening the front walls and Chair Green noted that it is rare for a builder to move a whole house to maintain a tree.

Richard Holland, 176 Willow, explained why he believes the lot is narrower than shown on the deeds. He said that people do not oppose a dwelling being built, but that the applicant needs to build within a smaller envelope. He believes that if the variance is granted, they will find that the house will be closer to the neighbors than they thought and that it would be good if the home could be built without variances. Mr. Holland asked if there could be one day a week when construction did not occur.

Liz Harris, 160 Willow Ave, provided materials to staff and the commissioners. She said that she appreciates some of the concerns have been addressed, but she said that a boundary dispute exists, which she discussed, and that the surveyor is not local.

Ms. Harris asked if the applicant would take responsibility if the mitigation measures to protect the oak trees on her property do not work. She suggested that an arborist should monitor the mitigation measures while excavation is taking place and she discussed her privacy concerns regarding windows on the first floor and second floor.

Victor Harris provided a copy of their Deed of Grant to staff and the commissioners. He said that the applicant's survey does not magically change the 1907 map on which their property description is based and that the fence has been in place for 30 years. He discussed documents he would like drafted to protect his property and damages should his property be affected by construction.

Ruth Horn, 11 Upper Ridgeway, said she was speaking on behalf of a neighbor and she noted that the property is of interest to the Open Space Committee. She said the neighbor is also concerned about the encroachment, and she said they have not been consulted, which she discussed. Ms. Horn wanted to know how long construction should take, if the project is approved, and she discussed the problems caused by the construction of another property in the area.

Todd Statz, 69 Willow, requested clarification of construction times and asked if there could be one day a week when work did not take place.

David Massey, 170 Willow, said he has submitted a letter about trees and wildlife, and he discussed the boundary dispute. He said his main concern is to preserve what is already there, including the oak tree and the wildlife, and he noted that the property has been a thoroughfare for wildlife for many years, which he discussed.

In response to comments, Mr. Grabham said they will not use machinery before 9 a.m. and that they usually do not work on Saturdays and will not be working on Sundays. He said that they are considering natural landscaping and not erecting a fence.

Ms. Neal said that surveys are not always required and she noted that the neighbor uphill encroaches the vacant site, which she discussed. She confirmed there is a licensed survey by a surveyor, which has been reviewed and accepted by the County's surveyor, and that the surveyor is experienced in surveying Fairfax properties. Ms. Neal noted that disagreements with the survey are a civil matter, which can be addressed by the Court.

Mr. Moore noted that there could be two conflicting surveys, and that the arbiter of where the line exists lies with a judge. He, therefore, advised against adding language that might affect a civil matter. Mr. Moore suggested a friendly amendment that construction should not take place on Sunday, and he noted that they rarely restrict people's rights on fences.

Vice-Chair Kehrlein noted that a condition states that a surveyor is required to stake the property and foundation so that the building footprint is within the recorded survey.

Commissioner Ezzet noted that construction might take longer if work cannot take place on Sundays, and she noted that the property owner has a right to develop his land. Commissioner Ezzet commended the applicant for saving oak tree and confirmed that no further conditions need be added.

Commissioner Green led a discussion on the neighbor's privacy issues with the windows. Mr. Moore noted that a fence or plantings should provide privacy for the first floor kitchen window,

which would be preferable to frosted glass. Ms. Neal noted that they have previously requested the applicant and neighbor discuss the issue and appear before the Planning Commission if agreement is not reached.

Vice-Chair Kehrlein said that she is pleased that tree protection measures will be taken and she suggested that an arborist remains on site during excavation, to which there was general agreement.

Commissioner Hamilton noted that a number of issues have been resolved, including parking, and she discussed the balance that needs to be found regarding an individual's property rights. She discussed the wording of the condition for an arborist to be on site during excavation with staff and discussed the reasons she would not recommend any condition be added regarding the neighbor's request that the applicant maintains their trees. Commissioner Hamilton agreed with natural planting at the front of the property to provide screening, and that the applicant and neighbor should meet to see if a compromise could be reached regarding privacy issues with the upstairs windows. She also agreed with the applicant's proposed hours of construction.

Ms. Neal noted that the Town has acquired property in the area that will act as a corridor for wildlife.

M/s, Ezzet/Hamilton, Motion to approve Application No. 14-47, a continued request for a Hill Area Residential Development Permit, Excavation Permit, Design Review, Encroachment Permit and Variance to construct a 1,192 square foot, three bedroom, 2 ½ bath, single-family residence, including a 2 car garage at 164 Willow Avenue by adopting Resolution No. 14-16 with the following additional Conditions of Approval:

18. That an arborist is on site during excavation;
20. That the neighbors shall meet to discuss privacy concerns on the south side and provide staff with their decision in writing prior to issuance of the permit;
21. That construction will occur 8 a.m. – 6 p.m. Monday through Friday, 9 a.m. – 4 p.m. Saturday, no work shall occur on Sunday and no excavation will be undertaken before 9 a.m.

AYES: Ezzet, Green, Hamilton, Kehrlein
ABSENT: Gonzalez-Parber

Chair Green read the appeal rights.

7. **Ordinance** Amending Town Code Chapter 17.008 ('Definitions') of the Town Code to Define "Emergency Shelters"; Amending Chapter 17.012 ('Zone Districts Established') to Establish a Public Domain (PD) Zoning District and Rezone Parcels to the PD Zoning District; Amending Chapter 17.100 ('CC Central Commercial Zoning District') to Allow Emergency Shelters as a Permitted Use; Adding Chapter 17.130 ('PD Public Domain Zoning District') to Create a Public Domain Zoning District that Includes Emergency Shelters as a Permitted Use; Adding a New Chapter 17.138 ('Regulations Applying in

Multiple Zoning Districts') to Establish Emergency Shelter Standards; and Amending the Town of Fairfax Zoning Map Accordingly

Planning Director Moore presented the staff report. He discussed the government code that requires the Housing Element for all towns to identify a district(s) to allow emergency homeless shelters as a permitted use without a Conditional Use Permit or other discretionary permits. Mr. Moore said that, in addition to adopting the updated Housing Element by May 31st in order for the Town to qualify for the 8-year cycle, an ordinance needs to be adopted to allow emergency shelters by right in at least one zone. Mr. Moore discussed the program in the Housing Element that has been drafted to allow for emergency shelters in the Central Commercial and Public Domain districts. Mr. Moore noted that the town has met its obligation to allow emergency homeless shelters for up to 20 people and that an application to provide emergency shelter for more than 20 people would require a conditional use permit.

Mr. Moore discussed the exhibits in the packet and the resolution.

Chair Green referred to a code section that is not included in the ordinance with regard to proximity.

In response to Commissioner Hamilton, Mr. Moore said that a member of the Town Attorney's staff crafted the language in the ordinance.

Vice-Chair Kehrlein noted that churches have traditionally provided emergency shelters and should continue to do so under the ordinance, to which there was general agreement.

Chair Green opened the public comment period.

Norma Fragoso, 74 Meernaa, said that the recommended rezoning to allow for emergency shelters makes sense.

Chair Green closed the public comment section.

Commissioner Hamilton commented on the lack of attendance for an item that is of interest to residents. She also commented on some differences between the Town Code and the tables in the Ordinance. Ms. Neal said she would have the Town Attorney address the matter.

M/s, Hamilton/Ezzet, Motion to adopt Resolution No. 15-10 recommending that the Town Council adopt the Emergency Shelter Ordinance with amendments, including adding eleemosynary institutions to Section § 17.130.030 (B), and changes recommended by the Town Attorney with regard to the tables:

AYES: Ezzet, Green, Hamilton, Kehrlein
ABSENT: Gonzalez-Parber

MINUTES

Planning Commission Meeting
Minutes of 3/19/15

8. Minutes from the January 15, 2015 Planning Commission meeting

A motion to approve the minutes was postponed due to a lack of a quorum at tonight's meeting of commissioners who were present at the meeting on January 15, 2015.

9. Minutes from the February 25, 2015 joint meeting of the Planning Commission and the Affordable Housing Committee

M/s, Ezzet/Kehrlein, Motion to approve the Minutes of February 25, 2015, with the following amendment on Page 3:

".....Commissioner Ezzet said that the State encourages diversity", amended to read:

".....Commissioner Ezzet said that the Planning Profession encourages diversity".

AYES: Ezzet, Green, Kehrlein
ABSTENTION: Hamilton
ABSENT: Gonzalez-Parber

10. **ELECTION OF VICE CHAIR AND APPOINTMENT OF TREE COMMITTEE MEMBER AND ALTERNATE**

Vice-Chair Kehrlein noted that she had attended the two previous Tree Committee hearings as the alternate and that she will continue in that capacity.

DISCUSSION ITEMS

11. Zoning Ordinance: Issues list prioritization and schedule of first meeting to start addressing zoning code amendments

The item was postponed due to the lateness of the hour.

PLANNING DIRECTOR'S REPORT

Planning Director Moore noted that a member of the Tree Committee has resigned because the Town Attorney has confirmed it is not appropriate for a councilmember to sit on the Tree Committee for reasons he explained.

Mr. Moore discussed the Draft Housing Element. He said that he would be reviewing amendments with the Mayor, tomorrow, and forwarding the document to the State on Monday. Mr. Moore said that the document should be returned in the middle of May under the statutory 60-day review period, and that a special meeting might be needed to ensure the document is adopted by May 31st.

Mr. Moore reported that Commissioner Ezzet is stepping down as a commissioner because she has moved outside Fairfax.

COMMISSIONER COMMENTS AND REQUEST

Commissioner Hamilton and Mr. Moore discussed vacancies on the Planning Commission, when Mr. Moore noted that they had received two applications.

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 10:50 p.m.

Respectfully submitted,

Joanne O'Hehir