

Town of Fairfax Planning Commission Minutes
Fairfax Women's Club
Thursday, August 20, 2015

Call to Order/Roll Call

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

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

COMMISSIONERS ABSENT: Shelley Hamilton (Vice-Chair)

STAFF PRESENT: Jim Moore, Planning Director

APPROVAL OF AGENDA

M/s, Fragoso/Ackerman, Motion to approve the agenda:

AYES: Ackerman, Gonzalez-Parber, Green, Fragoso, Kehrlein, Newton
ABSENT: Hamilton

PUBLIC COMMENTS ON NON-AGENDA ITEMS

No one from the public came forward to speak.

CONSENT ITEMS

1. **2 Fawn Ridge Road; Application # 22-23:** Request for Design Review/Ridgeline Scenic Corridor permit for a proposed 50% remodel/addition to an existing single-family residence increasing its square footage from 2,267 square feet to 3, 227 square feet including a fence height variance to relocate a portion of 6 foot tall front fence; Residential Single-family RS 6 Zone District; Assessor's Parcel No. 003-123-01; Rich Rushton, applicant/architect; Kieran and Liz Brennan, owners; CEQA categorically exempt, § 15301(e)(2)(A) and (B).

Senior Planner Neal noted a late letter of support had been provided to the commissioners. Ms. Neal responded to Commissioner Gonzalez-Parber's comments regarding the length of the project. She also responded to queries by Commissioner Fragoso about the building permit and the Deed Restriction.

A next-door neighbor said this is the Applicant's second home and they are not interested in creating a second unit. She said that she supports the project.

M/s, Fragoso/Newton, Motion to approve Consent:

AYES: Ackerman, Gonzalez-Parber, Green, Fragoso, Kehrlein, Newton

ABSENT: Hamilton

Chair Green read the appeal rights.

PUBLIC HEARING ITEMS

2. **69 Spruce Road; Application # 15-09:** Continued consideration of a request for a Preferential Parking Permit to create a 32 foot long by 9 foot wide parking space by constructing a retaining wall that will reach up to 7 feet in height. Project will also include reconstruction of the residence access stairway. The entire project will take place within the Spruce Road right-of-way along the property frontage; Residential Single-family RS 6 Zone District; Assessor's Parcel

Principal Planner Neal presented the staff report. Ms. Neal noted that the project has been continued from the April meeting due to the neighbor's concern that the project would affect their property at 71 Spruce regarding the proximity of the wall to their house and the excavation. She said that the Applicant's geotechnical report confirms there will be no negative impacts on 71 Spruce Avenue. Ms. Neal noted that the commissioners must take action tonight due to the Permit Streamlining Act. She discussed the actions that are available to the Commissioners and noted that staff's original recommendation to approve the project has not changed.

Ms. Neal discussed the removal of the name of the owner of 71 Spruce from a condition in the resolution regarding applications for tree removal permits for reasons she explained.

Commissioner Fragoso and Ms. Neal discussed tree removal. The applicant's representative confirmed the trees that are slated for removal.

In response to Chair Green, Ms. Neal said that they have not received a separate engineer's report from the owners of 71 Spruce Avenue.

Vlad Logica, Project Engineer, confirmed that the project should not affect the property at 71 Spruce. Mr. Logica confirmed his belief that the design for the foundations and retaining wall is sound.

Commissioner Fragoso commented on the geotechnical engineer's correspondence regarding the excavation and said she is comfortable with approving the project.

A neighbor who lives 30 – 40 feet away expressed her concern that the project will impact the property at 71 Spruce Road and noted that the excavation will not endanger the applicant's property. She said she does not support the project.

Commissioner Fragoso explained why the parking space is necessary and noted that other homes in the area have similar spaces.

Commissioner Gonzalez-Parber noted that the owner of 71 Spruce has confirmed the geotechnical and arborist's reports are satisfactory. She said that the engineer is responsible for the design and that she is comfortable with what has been presented.

Commissioner Kehrlein said the letter from the geotechnical engineer is excellent and that the neighboring property should be better protected than many she has seen. However, Commissioner Kehrlein suggested that the engineer's drawings are submitted to an outside agency for review.

In response to Commissioners Ackerman and Kehrlein, Ms. Neal discussed the reasons she believes the Town's plan check process at the building permit stage is adequate, when she noted that they are reviewed by an independent consultant.

Commissioner Kehrlein discussed the conditions relating to the construction process. There was general consensus that a condition should be added regarding the provision of a construction management plan.

M/s, Fragoso/Gonzalez-Parber, Motion to approve Application No. 15-09 for a request for a Preferential Parking Permit to create a 32 foot long by 9 foot wide parking space by constructing a retaining wall that will reach up to 7 feet in height with the additional condition that a construction management plan will be submitted subject to the Town Engineer's approval; that condition number 3 of the Resolution will be amended with the removal of the owner of 71 Spruce being responsible for filing any tree removal permit:

AYES: Ackerman, Gonzalez-Parber, Green, Fragoso, Kehrlein, Newton
ABSENT: Hamilton

Chair Green read the appeal rights.

- 3. 163 Lansdale Avenue; Application # 15-25**, Request for a Use Permit and Variance to construct a 592 square foot addition to a 704 square foot single family residence increasing it to a 1,296 square foot residence; Residential RD 5.5-7 Zone District; Assessor's Parcel No. 002-201-50; Eric and Anne Engert, applicant/owners; CEQA categorically exempt, § 15301(e)(2)(A) and (B).

Principal Planner Neal presented the staff report. Ms. Neal noted that the project complies with the Town's height, setback, and lot coverage requirements. Ms. Neal said that the project is subject to Design Review because it constitutes a 50% remodel. She also noted that Use Permit is required because the lot does not meet the minimum size requirement of 5,500 square feet and a width of

60 feet. Ms. Neal explained that a Parking Variance is necessary to allow a third parking space to encroach the side yard setback.

Ms. Neal said that the proposed addition will complement the architecture of the existing residence. She discussed parking, when she noted that other homes in the neighborhood have side yard setback parking. Ms. Neal said that staff believes the character of the neighborhood will not change and that they recommend approval with the findings and conditions in the staff report.

Chair Green and Ms. Neal discussed the combined setbacks, when Ms. Neal noted that they meet the required 15 feet. They also discussed the shingle siding.

Eric Engert, Applicant, discussed the proposed project. He said that the home belongs to his parents and that there might be a time when the addition is needed to provide more room for his family to provide care for his parents.

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

Vice-Chair Kehrlein and Mr. Engert discussed parking. Mr. Engert said that the parking space design would obviate the need for a curb cut.

Ms. Neal discussed the Town's requirements for a third space and she noted that the applicant could widen the driveway if is on the property without the need for discretionary permits.

Commissioner Gonzalez-Parber and Mr. Engert discussed the roof design. Commissioner Gonzalez-Parber asked if they would reconsider a different roof design for reasons she explained, including her concern that a neighbor's sunlight might be blocked. Mr. Engert discussed the reasons he favors the current roof design.

M/s, Newton/Fragoso, Motion to approve Application # 15-25 for a request for a Use Permit and Variance to construct a 592 square foot addition to a 704 square foot single family residence increasing it to a 1,296 square foot residence at 163 Lansdale Avenue:

AYES: Ackerman, Green, Fragoso, Kehrlein, Newton

NOES: Gonzalez-Parber

ABSENT: Hamilton

Chair Green read the appeal rights.

4. **53 Belmont Avenue; Application # 15-26:** Request for Design Review to demolish 2 existing units to construct a new 2,150 square foot, 3 bedroom, 2 bath, single-family residence and a 231 square foot carport on a property currently developed with 3 legal non-conforming units; Residential RD 5.5-7 Zone District; Assessor's Parcel No. 002-215-13; Andrew Sikorski, Applicant; William and Sandra Edinger, owners; CEQA categorically exempt, §15301(l)(2), § 15303(a) and 15303(e).

Principal Planner Neal presented the staff report. Ms. Neal explained that the proposal is to tear down the two smaller structures on the property and build a new home. Ms. Neal said that the proposed house will comply with the setback, height and 35% lot coverage restrictions. She said only Design Review approval is necessary and that staff believes the project meets the Town's standards for design review and is recommending approval.

In response to Chair Green, Ms. Neal confirmed that the project will result in there being two distinct houses on the lot.

In response to Commissioner Kehrlein, Ms. Neal said that the code does not require two units to be attached, to be a specific size or to be specifically located on a lot if the setbacks are met. Ms. Neal confirmed that the Fire Department reviewed the plans and they have not required a turnaround.

Andrew Sikorski, Project Designer, said they have responded to all of staff's comments during the design review process and they believe they have met the Design Review guidelines.

Chair Green and Mr. Sikorski discussed the colors of the existing house. Mr. Sikorski said the proposed colors are comparable to the existing house and that another house in the vicinity exists where the brown colors are similar.

In response to Commissioner Ackerman, Mr. Sikorski confirmed that there are tenants in the two-story building that is proposed to be demolished but not in the cottage in the rear because it has a collapsed floor.

In response to Commissioner Fragoso, Mr. Sikorski said that the homeowner will give the tenants sufficient notice.

Commissioner Gonzalez-Parber and Mr. Sikorski discussed modifications to the windows and floor plan. Mr. Sikorski said it is possible to change the door sizes and window placement, and he discussed the reasons why the present floor plan is desired.

Commissioner Gonzalez-Parber discussed the massing and style of the proposed dwelling. She suggested design changes to the windows, which she thought would more in keeping with the windows of the main house.

Ms. Neal discussed the Design Review language. She noted that a proposed design should complement other structures in the neighborhood and that there did not appear to be a single type of architecture in the neighborhood. Ms. Neal said the site is sufficiently large that the two dwellings will appear to be on separate lots.

Chair Green said he did not favor the slope of the carport roofline and suggested it be lowered.

Vice-Chair Kehrlein discussed her concerns about the carport's roof design and its location, and she commented on a bedroom window that does not appear to meet egress requirements. Vice-Chair Kehrlein suggested an alternative location for the carport. Mr. Sikorski explained the reasons why he disagreed with the proposed location.

Vice-Chair Kehrlein discussed potential plans for separating the two dwellings by way of a fence or plantings.

Greg Goldin, Blu Homes, said he would be happy to work with staff on the issues discussed. Ms. Neal suggested the commissioners be more specific about the changes to the design or request a continuance.

Chair Green opened the public comment period.

Cassidy DeBaker, 145 Lansdale, discussed her concern that a residence is being demolished, rather than being rehabilitated. She commented on the historic character of the neighborhood, which she said should be respected.

Chair Green closed the public comment period.

Commissioner Gonzalez-Parber commented on the design and said she would like to see a landscape plan. Overall, Commissioner Gonzalez-Parber said she supports the project but that she would favor a continuance.

Vice-Chair Kehrlein suggested an alternative location and expressed concern for the shed roof design for the carport, which she believes is out-of-scale with the dwelling.

Chair Green discussed his concern regarding the carport roofline, although he said he would not favor a continuance.

M/s, Gonzalez-Parber/Fragoso, Motion to continue to the meeting of September 17, 2015, Application # 15-26, a request for design review to demolish 2 existing units to construct a new 2,150 square foot, 3 bedroom, 2 bath, single-family residence and a 231 square foot carport on a property currently developed with 3 legal non-conforming units at 53 Belmont Avenue, with the following design change recommendations:

1. The style of windows, carport design and siding should be more in keeping with the historic character of the neighborhood;
2. That a landscaping plan shall be submitted;
3. Buffering between the two dwellings shall be provided.

AYES: Ackerman, Gonzalez-Parber, Fragoso, Kehrlein, Newton

NOES: Green

ABSENT: Hamilton

5. **15 Scenic Road; Application # 15-27:** Request for a Use Permit and Variance to convert an existing storage building into a 297 square foot guest bedroom with a full bathroom but no kitchen facilities including expanding the onsite parking to provide 3 spaces within the side yard setback; 001-146-03; Residential RD 5.5-7 Zone District; Jay Sherlock, applicant/architect; Anthony Hoerber and Gwen Gordon, owners; CEQA categorically exempt, § 15303(a).

Principal Planner Neal presented the staff report. Ms. Neal discussed parking, when she noted the applicants have a single parking space. She explained the proposal, which is to extend parking further back on the property and widen the driveway to create three spaces that are required for a single-family home.

Ms. Neal discussed the discretionary permits. She explained that a Use Permit is necessary because the code does not allow accessory structures to be used as living space by right. Ms. Neal discussed the findings that need to be made should the commissioners approve the project.

Ms. Neal said the proposal is to increase the number of bedrooms in the main dwelling and proposed structure from 4 to 5 and the number of bathrooms from 3 to 4. Ms. Neal discussed other 5-bedroom dwellings in the area, which she noted tend to be smaller with fewer bathrooms. She said that staff believes the granting of a Use Permit can be construed as granting a special privilege, which she discussed. Furthermore, Ms. Neal said the owner already has substantial use of their property and parking is limited in the neighborhood.

However, Ms. Neal said that, if the commissioners approve the project, staff suggests the bathroom is limited to a half-bathroom so the space is less likely to be used as a guest bedroom. She noted that a deed restriction for this purpose has been added to the conditions of approval. Ms. Neal noted that there is already a request to place the third parking space in the side yard setback that is prohibited by the code.

Planning Director Moore noted that (if the commissioners determine they would be granting a special privilege), they could choose to approve the project with a half-bathroom without a deed restriction, or a full bathroom with a deed restriction, which he discussed.

Commissioner Fragoso and Ms. Neal discussed parking in relation to the number of bedrooms.

Mr. Moore noted that the property is situated in a non-WUI, less than 30% slope, area and that, ironically, the sprinkler system requirements are relaxed for detached second units.

In response to Commissioner Fragoso, Ms. Neal said that the accessory structure would need a kitchen, an additional parking space and separate water and electrical meters if it were converted to a legal second unit.

In further response to Commissioner Fragoso, staff said they would need to research whether an outdoor bath or shower could be installed.

Commissioner Ackerman and staff discussed the possibility of the accessory structure being converted to a junior second unit. Mr. Moore noted that the town has not yet codified junior second units.

In response to Commissioner Newton, staff clarified the parking proposal.

Commissioner Fragoso and staff discussed modifications to a third bedroom in the main house.

Director Moore noted that junior second units are intended to be part of a main structure and the Town has not yet codified junior second units.

Jason Sherlock, Project Architect, said their intention is to legalize the structure. Mr. Sherlock confirmed they will remove the kitchen to ensure there is a connection to the main house but he requested the applicants are allowed a full bathroom because the occupier would need to walk across the yard to use a bathroom in the main house. Mr. Sherlock requested his clients not sign a Deed Restrictions for reasons related to devaluing their property. He discussed the reasons why they would not be granted a special privilege if the project were approved, and noted that the space will create affordable housing for an extra person. Mr. Sherlock noted that the lot is large, they are not adding additional space and he confirmed they are trying to legalize the accessory structure and bring it up to code. He discussed the reasons his clients are not able to create a second unit.

Chair Green opened the public comment period.

Brandon Barber said the project makes sense because it will provide affordable housing and that it is an appropriate project for Fairfax. Mr. Barber said he supports the project.

Jenny Cannon, 17 Scenic, said that she lives next door and that she supports the project. She said it would provide additional parking, which is a plus for the neighborhood.

Jason Richardson, 20 Napa Avenue, said he supports the project because the applicants are legalizing the structure in a way that benefits the neighborhood.

Delores Cordell said she used to live at 15 Scenic and 9 Scenic. She noted there are other 4 and 5 bedroom houses in the neighborhood, including standalone units with bathrooms that have been approved by the Planning Commission, and that the project will provide affordable housing. Ms. Cordell discussed the reasons she believes the gate, which staff believes will block access to the new parking space, should remain in its current location. She said she supports affordable housing.

Mr. Sherlock explained that they believe the gate should remain in its current location for aesthetic reasons. Mr. Moore noted the detail on the plan.

True Heitz, 20 Scenic, said the current owners have made the property beautiful. She said she supports the additional parking.

John Reed, 36 Scenic, Councilmember, speaking as an individual citizen who lives in the vicinity, said he supports the project and is familiar with the building. He said it is commendable to legalize the structure. He discussed the Fire Department's requirements for sprinkler systems. Mr. Reed supports the project and said it provides additional parking and he commented on the gate.

Chair Green closed the public comment period.

In response to Chair Green, Ms. Neal discussed the position of the gate. Ms. Neal said she has observed that such gates deter drivers from getting out of their car, opening the gate and returning to the car to drive through and park. Chair Green suggested the installation of an electric gate as a condition of approval.

Chair Green and staff discussed the structure in relation to affordable housing. Ms. Neal noted that the code does not stipulate what constitutes affordable housing and Mr. Moore noted that it would be adding to the housing stock, which he discussed. Chair Green discussed his concern that the structure might be used as an illegal second unit.

Commissioner Newton asked staff to elaborate on their concern that a full bathroom should not be installed in the structure. She noted that it is legal to rent a room in a home. In response, Ms. Neal said that she has seen many detached structures being used as a separate unit, which raises parking concerns. She noted that a neighbor has made a complaint and staff remains concerned it might be used as a separate unit. Ms. Neal noted that there are other properties in the town that have accessory structures that can easily be converted to living space, so she asked the commissioners to make findings to ensure they would not be granting a special privilege should they approve the project.

Commissioner Gonzalez-Parber said that she supports the project but that it is their duty to uphold and interpret the code. In response to Commissioner Gonzalez-Parber, Ms. Neal said that, in order for the accessory structure to be considered a legal second unit, it would need a kitchen, bathing facilities, four parking spaces (or a variance to void the need for four spaces), and separate gas and water meters.

Staff discussed the difficulties of converting the space to a legal second unit for rent. Ms. Neal noted that a Use Permit is necessary because the structure is not attached to the house. She discussed the difficulties of approving the permit.

Chair Green said he is leaning towards staff's recommendation for a half-bathroom, citing the parking issue as a problem. He noted that an additional parking space will be created.

Mr. Moore commented on the apparent lack of parking in the neighborhood.

In response to Commissioner Kehrlein, Ms. Neal said the structure is considered a legal permitted structure in its current state because there has been a shed in the location before setback regulations were introduced.

Commissioner Gonzalez-Parber said she would favor a half-bathroom and a type of electrified gate.

Chair Green said he had considered rejecting the application because he was concerned that it might be used as an illegal second unit. However, he noted that neighbors are supporting the project and that anyone who is opposed should have attended the meeting. He said he supports the project with the half-bathroom.

Commissioner Ackerman said he concurs with the other commissioners; that he supports a half-bathroom and that the neighbor who might have filed a complaint should be present.

Chair Green opened the public comment period to allow the owner, Gwen Gordon, to speak. Ms. Gordon discussed her concern that they might not find a good tenant if they are limited to a half bathroom. She said that they were reported because a tenant lived in the unit, and that they have had a tenant who did not like using the bathroom in the main house. She said they are counting on being able to use the structure as habitable space.

Mr. Sherlock said that people use such structures for rental units, regardless of it being illegal. He said the structure will not have a kitchen and that it is not feasible for the occupant to walk across the yard to use a bathroom in the main house.

Chair Green closed the public comment period.

Chair Green noted that the applicants could use the structure as an office and rent a room in their house. He discussed his concern about approving the project in relation to the code. Mr. Moore noted that the structure would lend itself to a junior second unit, for reasons he explained, and noted that an ordinance is being considered.

Commissioner Newton noted that the ordinance does not specifically state the addition of a bathroom constitutes a second unit. She said that if the Town does not want a bedroom with a full bathroom separate from the main house, it should be stated in an ordinance.

Ms. Neal noted that the code states accessory structures should not be used as living space; that such structures can be used for certain uses and that findings must be made that a special privilege is not being granted if the Use Permit is approved. She says that staff believes the problem is a lack of parking.

General discussion on the way forward ensued regarding the Deed Restriction for the half-bathroom and a gate.

M/s, Ackerman/Gonzalez-Parber, Motion to approve Application #15-27, a request for a Use Permit and Variance to convert an existing storage building into a 297 square foot guest bedroom with a half -bathroom but no kitchen facilities including expanding the onsite parking to provide 3 spaces within the side yard setback at 15 Scenic Road, including the condition of a deed-restricted half-bathroom and the installation of an electric or remote-controlled gate in the location of the current gate should the applicants choose not to remove the gate:

AYES: Ackerman, Fragoso, Green, Gonzalez-Parber
NOES: Kehrlein, Newton

Chair Green announced the appeal rights.

MINUTES

6. Minutes from the June 18 and July 16, 2015 meeting.

M/s, Fragoso/Newton, Motion to approve the minutes from the meeting of June 18, 2015 with minor amendments:

AYES: Ackerman, Fragoso, Green, Gonzelez-Parber, Newton
ABSTAIN: Kehrlein

M/s, Fragoso/Newton, Motion to approve the minutes from the meeting of June 18, 2015 with minor amendments:

AYES: Ackerman, Fragoso, Kehrlein, Newton
ABSTAIN: Gonzalez-Parber, Green

DISCUSSION ITEMS

7. Review list of top items identified to be updated in the Town Code.

Planning Director Moore provided an update on the priority list.

PLANNING DIRECTOR'S REPORT

Planning Director Moore noted that a special Council Meeting has been scheduled for a 2-hour ethics training session. He noted that another reading of the ordinance regarding the solar permit streamlining process will take place at the next Town Council meeting.

Mr. Moore said that the Town has received a conditional letter of approval from HCD regarding the Housing Element. He noted that the Town must adopt the Zoning Ordinance by January 31,

2016, and he discussed the reasons that a clause in the Emergency Shelter Ordinance must be changed.

He noted that a final forum on the Housing Element should take place at the end of September to discuss changing the zone Commercial Highway to Central Commercial. Mr. Moore said that a traffic forum has been targeted for the last week in October

Mr. Moore discussed the ordinance relating to permit streamlining that will be discussed at the next Council Meeting. He suggested that a planning commissioner be delegated to attend the meeting.

COMMISSIONER COMMENTS AND REQUESTS

In response to Commissioner Ackerman, Mr. Moore noted that Rachel Guinness will be attending a meeting in September to discuss junior second units.

Commissioner Newton noted that residents do not need to attend public meetings and that they can express their opposition to a project in writing.

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 11 pm.

Respectfully submitted,

Joanne O'Hehir