

DRAFT Town of Fairfax Planning Commission Minutes
Fairfax Women's Club
Thursday, February 21, 2013

Call to Order/Roll Call

COMMISSIONERS PRESENT: Barbara Coler
Laura Kehrlein
Brannon Ketchem
Peter Lacques (arr. 7.10 p.m.)
Shelby LaMotte (Vice-Chair)

COMMISSIONERS ABSENT: Shelly Hamilton (Chair)
Morgan Hall

STAFF PRESENT: Jim Moore, Planning Director
Linda Neal, Senior Planner
Sean Kennings, Consultant

APPROVAL OF AGENDA

Vice-Chair LaMotte assumed the Chair.

M/S, Ketcham/Coler, Motion to approve the agenda with the continuance of the item at 696 Cascade to the meeting of March 21, 2013, and to move 305 Scenic Road to the first public hearing item.

AYES: All

ELECTION OF CHAIR AND VICE CHAIR

The election of Chair and Vice Chair was postponed to the meeting of March 21, 2013 when more commissioners should be present.

PUBLIC COMMENTS ON NON-AGENDA ITEMS

No one from the public came forward to speak.

CONSENT ITEMS

There were no consent items.

PUBLIC HEARING ITEMS

- 1 **305 Scenic Road; Application # 10-28:** Request for a Variance and a Modification of a previously approved Hill Area Residential Development and Design Review permits for a fourth story, storage and mechanical equipment room; Assessor's Parcel No. 001-052-07; Residential Single-family RS 6 Zone; Michael and Marjorie McLennan, applicants/owners; CEQA categorically exempt 15301(e).

Senior Planner Neal presented the staff report, when she provided background information on the project. Ms. Neal explained that the lower floor of the residence had been increased in height to the degree that it could be considered a fourth story. She said that it had been done without approval and for which the applicant now sought a variance. She discussed the reasons that staff could support the project with the provision that a Deed Restriction be put in place restricting the lower level to non-living space.

Commissioner Lacques joined the meeting.

Commissioner Ketcham and Ms. Neal discussed the layout of the plans.

Chair LaMotte and Ms. Neal discussed the necessity of a height variance. Ms. Neal noted that the overall height of the dwelling complied with the code but the height of the lower floor exceeded the code.

Applicant, Michael McClennan, discussed the reasons why he believed the lower story should not be considered a fourth story, and the reasons for the design, which he said related to the level of the land. Mr. McClennan confirmed that it would not be developed into living space.

Commissioner Ketcham and Mr. McClennan discussed the size of the lower story.

Commissioner Kehrlein and Ms. Neal discussed the additional space in relation to the floor area ratio and the code. Ms. Neal discussed the reasons why it did not qualify as a basement.

Commissioner Lacques suggested that the ceiling height could be lowered and Mr. McClennan discussed the unfeasibility of such a plan.

Ms. Neal discussed options for the way forward and the reasons she believed that a precedent could be set should the commissioners approve the project based on the mechanical area being deemed similar to garage space.

Planning Director Moore suggested that a raised floor could alleviate the access issues at the back. He said that by reducing the head height of the lower level, the creation of a fourth story could be avoided and the design could comply with the original design.

Ms. Neal discussed the reasons that the lower story had been considered a fourth story under the town's code.

Commissioner Lacques discussed the reasons he believed it would be difficult to convert the lower story to living space but that he would be wary of approving a project that could set a precedent.

Commissioner Ketcham noted that the commissioners had denied similar projects that had been deemed to consist of four stories, so he would support a denial.

Commissioner Kehrlein said that there appeared to be a lot of extra expense involved based on a technicality. Commissioner Kehrlein said that the exterior impact should be considered more important.

Commissioner Coler discussed her concern that a precedent could be set. She said she would support the project if the elevation were changed to conform to the code.

The public comment period was opened and then closed when no one came forward to speak.

M/s, Ketcham/Coler, Motion to deny Application # 10-28, a request for a Variance and a Modification of a previously approved Hill Area Residential Development and Design Review permits for a fourth story, storage and mechanical equipment room at 305 Scenic because the granting of a variance would constitute a special privilege because the developed space would be considered a fourth story; it would increase the floor area beyond the floor area ratio; the applicant has substantial use of the site without the addition of a fourth story.

AYES: All

Chair LaMotte read the appeal rights.

- 1. Resolution No. 13-01, 711 Center Boulevard, (Fair-Anselm Shopping Center) Creek Bank Restoration, Initial Study and Mitigated Negative Declaration; Application # 12-27:** Initial Study, Mitigated Negative Declaration and Creek Setback Variance to allow construction of a retaining wall and creek bank stabilization project within the required creek setback replacing an existing failing wall and stabilizing a compromised section of bank underneath Fair-Anselm Shopping Center and along the rear of the western parking lot; Assessor's Parcel No. 002-131-14; Central Commercial CC Zone District; Michael Watkins, Ballard and Watkins Construction Services, applicant; Fairfax Properties, LLC, owners.

Chair LaMotte recused herself from the meeting because she had a professional interest in the project. Commissioner Ketcham assumed the Chair.

Planning Director Moore introduced Planning Consultant Sean Kennings. Mr. Moore discussed provided background information on the project and explained how the discussions should proceed and the determination that needed to be made by the commissioners.

Consultant Kennings presented his report. He discussed the construction of the new wall and protection of the riverbank, and he said that construction time was anticipated to be approximately 2 months. They hoped that construction could begin in August, which would be in the driest season, and that construction would take place 9 a.m. – 5 p.m., Monday through Friday only. Mr. Kennings said that the construction works would comply with the zoning laws and the General Plan. He noted that the new wall would also prevent further creek erosion down stream. Mr. Kennings went on to discuss the Mitigated Negative Declaration.

Commissioner Lacques and Mr. Kennings discussed the effect on the creek by the construction in relation to fish and wildlife. Mr. Kennings noted that the creek would be at its lowest level and he discussed mitigation measures that had been drawn up. They discussed soil contamination, which Mr. Kennings noted was not in the area of construction.

Mr. Moore discussed the area of contaminated soil, which he said had occurred northeast from the area of the project.

Commissioner Coler said that the monitoring plan should include mitigation measures to protect the workers should contaminants be found in the area of construction, which she discussed with Mr. Kennings.

Commissioner Coler discussed her concern regarding the lack of mitigation measures that related to hydrology and altering the watercourse. In response, Mr. Kennings said that they had been addressed by the conditions of the permit from the California Department of Fish and Wildlife.

Commissioner Coler expressed a desire that it be made part of the mitigation measures and she discussed the crafting of suitable language with Ms. Neal.

Rich Dowd, Project Manager, discussed the project, which he said would greatly enhance the current conditions and the flow of water in the creek. He noted that all relevant agencies had been contacted and they did not have any issues complying with the requests of the California Department of Fish and Wildlife.

Mr. Dowd discussed PCEs. He said that extensive studies had not revealed contaminants in the area where the work was proposed. In response to the hydrology issue raised by Commissioner Coler, Mr. Dowd said that they would not be working in the stream bank and would not want to alter the stream, but they would comply with the addition of a mitigation measure.

Mr. Dowd addressed the construction time, which he said had been especially chosen during months of low flow and in a season when birds should not be nesting.

Michael Watkins, Project Manager, said that the work should be completed by October, and that the design was careful. He added that there would not be a great deal of excavation and that the likelihood of soil getting in the creek would be small.

Commissioner Lacques and Mr. Watkins discussed the contaminated areas.

Rich Hall, owner, discussed the studies relating to ground water and soil. He said that PCEs were not present in either and that the studies showed that it was highly unlikely they would penetrate the soil in the area of construction.

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

Commissioner Coler and Ms. Neal discussed the language in the resolution.

M/s, Coler/Kehrlein, Motion to approve Resolution No. 13-01 approving the Creek Setback Variance and recommending the Town Council approve the initial study and mitigated negative declaration to allow construction of a retaining wall and creek bank stabilization project underneath Fair-Anselm Shopping Center and along the rear of the western parking, with the following amendments:

Policy S-2.1.1.1 shall be amended to read: “Development and land useThe creek repair has been designed using the best available hydrologic information and will promote the best practices to stabilize a failed creek wall and also to protect adjacent development in an environmentally sensitive manner”;

And also with the additional following measures:

1. BIO-2 The project sponsor must enter into a Lake and Streambed Alteration Agreement with the California Department of Fish and Wildlife and, if required, implement a creek diversion, dewatering and fish capture and relocation plan as described in the letter from the Department of Fish and Wildlife, dated 1/28/13.
2. Under a new heading “Hydrology and Water Quality”, add Mitigation Measure “HYDRO-1”. The project sponsor must enter into a Lake and Streambed Alteration Agreement with the California Department of Fish and Wildlife and implement a creek diversion, dewatering and fish capture and relocation plan as described in the letter from the Department of Fish and Wildlife, dated 1/28/13.
 1. Under a new heading, "Hazards and Hazardous Materials" add Mitigation Measure HAZ-1: In the event that tetrachloroethene (PCE) gas is detected during the construction process, the project proponents shall halt all work and retain the services of a qualified hazardous materials consultant to develop the appropriate remediation plan to reduce PCE levels to less than significant levels.

AYES: All

4. **150 Bolinas Road; Application # 13-02:** Request for a Use Permit to operate the existing 7-11 convenience store for 24 hours per day on Friday, Saturday and Sunday; Assessor’s Parcel No. 002-101-13; Central Commercial CC Zone District; Richard Mathews, Property Owner; Raj Uppal, Business Owner/Applicant; CEQA categorically exempt, § 15303(c).

Senior Planner Neal presented the staff report. She provided background information on the previous application that related to extended open hours. Ms. Neal discussed the current application and noted that staff could make the findings to support the project for the reasons laid out in the staff report.

In response to Commissioner Lacques, Ms. Neal said that no additional information had been gathered since the previous application and the Police Department had no further concerns. She noted that the only difference in the current application was that the hours had been scaled back.

In response to Commissioner Ketcham, Planning Director Moore noted that the commissioners were reviewing a new application.

Steven Byers, Applicant's Representative, discussed the previous appeal to the Town Council. He then went on to say that the applicant would agree to all the previous requests of the commissioners, such as the provision of lighting, and that they would meet the costs of a high sound wall.

Planning Director Moore noted that the sound wall had not been included with the plans but that it could be added as a condition of approval, which he discussed.

Commissioner Coler and Mr. Moore discussed the parking spaces that were proposed to be chained off at certain times and a correction was made regarding the time in the staff report.

Chair LaMotte opened the public comment period.

Misty Moreno, Park Road, discussed the proposed sound wall in relation to their bedroom window. She noted that the parking spaces had not been chained off as had been discussed, and that the back beeps of the delivery vehicles were still causing a problem. Ms. Moreno discussed the opening hours in relation to the town code and the ways in which the quality of their lives had been affected when the shop had been allowed to open all night. She also discussed trespassing on her property.

Peter Morena, Park Road, discussed the problems caused by the shop being open all night long. He said they want to open all night because of profit, not because they would be providing a service to residents. Mr. Moreno said that a sound wall would not solve any problems.

Mr. Moore said that staff did not have a problem with a sound wall structure rising to 10 feet rather than 8 feet.

Chair LaMotte closed the public comment period.

Commissioner Lacques expressed his concern with regard to extending store hours. He said that it impacted the immediate neighbors and he thought that a sound wall would not be in character with the area, in addition to not solving all the issues involved with the store being open all night long. He said that the longer store hours would attract traffic, noise and disturbance. He noted that there was another store open fairly nearby if a resident needed Aspirin at 2 am.

Commissioner Coler said that while she was empathetic to the neighbor's concerns, she would be inclined to support the extended open hours because the store provided the town with revenue and that she would prefer people to walk from the bars down town if they needed cigarettes, rather than driving to the other store that would be open all night.

Commissioner Ketcham said that he again raised the question of whether Fairfax aspired to be a 24-hour town. He noted that there were inadvertent problems such as providing extra lighting that irritated the neighbors, which were supposed to avert a certain use. Furthermore, he said that the sound wall would not solve all the problems associated with the store being open all night.

Commissioner Kehrlein said that she also questioned whether the location was appropriate for a 24-hour use business. Furthermore, she said that the sound wall would not be an aesthetically pleasing solution to the problem and that she would not be inclined to support the application.

Chair LaMotte said that she agreed with Commissioner Ketcham about whether Fairfax would want to be a 24-hour town. Furthermore, she believed that a 10-foot high sound wall would not be appropriate for the town. Chair LaMotte believed that the quality of down town would be affected by trying to mitigate all the problems associated with allowing a store to remain open all night.

Commissioner Coler said that she did not believe the wall would fit in visually and that she was leaning towards denying the application.

Commissioner Ketcham expressed his appreciation of the work the planning staff undertook and he noted that staff had made findings in support of the extended opening hours. However, he said that he did not believe the town should be open 24-hours per day.

M/s, Kehlrein/Lacques, Motion to deny Application # 13-02, a request for a Use Permit to operate at the existing 7-11 convenience store for 24 hours per day on Friday, Saturday and Sunday at 150 Bolinas Road based upon the following findings:

1. Significant complaints from the adjacent property regarding impacts from the business, including noise, excessive lighting, trespassing and urination on their private property that could be attributable to the business, which cannot be adequately or reasonably mitigated.
2. The business has been operating profitably for 20 years without being open between the hours of midnight and 6 a.m. on any day of the week.
3. That the sound wall would not be consistent with the character of the town;
4. That a business that is open for 24 hours per day is not appropriate for a property that abuts a residential neighborhood.

AYES: All

Chair LaMotte announced the appeal rights.

MINUTES

5. Minutes from the meeting of September 20, 2012 and November 15, 2012

M/s, Coler/Lacques, Motion to approve the minutes from the meetings of September 20, 2012 and November 15, 2012 with the following amendments:

Page 5, second paragraph of the minutes of September 20, 2012 should be amended to read: "Director Moore stated that the meeting she described will be occurring with his report to the Town Council which will be requesting authorization to start implementing the parklette program".

Page 3, paragraph 5 of the minutes of November 15, 2012: "custom" should be amended to "customers".

AYES: All

PLANNING DIRECTOR'S REPORT

Planning Director Moore said that he had no items he wished to discuss.

DISCUSSION ITEMS

There were no discussion items scheduled for this meeting.

COMMISSIONER COMMENTS AND REQUESTS

It was announced that Commissioner Lacques had attended his last Planning Commission meeting. Commissioner Coler and other the commissioners extended their best wishes.

ADJOURNMENT

A motion was made, seconded and unanimously passed to adjourn the meeting at 10.20 p.m.

