

Town of Fairfax Planning Commission Minutes
Fairfax Women's Club
Thursday, December 18, 2014

Call to Order/Roll Call

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

COMMISSIONERS PRESENT: Esther Gonzalez-Parber
Philip Green
Shelly Hamilton
Brannon Ketcham (Chair)
Laura Kehrlein (Vice-Chair)
Shelby LaMotte

COMMISSIONERS ABSENT: Roxanne Ezzet

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

APPROVAL OF AGENDA

Senior Planner Neal explained that staff had recommended continuance of the item at 164 Willow Avenue, with the applicant's agreement, because the Open Space Committee notified staff, today, that they had not had the opportunity to review the documents in the packet and produce their own report. She explained that there was a program in the General Plan that allowed the Open Space Committee to review projects on vacant parcels that are adjacent to their own property, and that they owned the parcel adjacent to 164 Willow. Ms. Neal confirmed that they will provide a report for the next meeting.

Planning Director Moore explained why staff overlooked the parcel, which had not been included in correspondence sent to property owners by an intern in 2013. He said that parcels adjoined to those owned by the Open Space Committee are listed generically in the appendix under the Open Space section of the General Plan, but that the individual parcels are not identified by their APN numbers. He said that staff would prevent a future oversight by adding the parcel numbers to the appendix.

M/s, Kehrlein/LaMotte, Motion to continue the item at 164 Willow Avenue to the meeting of January 15, 2015 and approve the Agenda as amended:

AYES: All

PUBLIC COMMENTS ON NON-AGENDA ITEMS

No one from the public came forward to speak.

CONSENT ITEMS

1. **23 Claus Drive; 14-43:** Request for a Use Permit to construct a 192 square foot artist studio and half bathroom in the rear yard; Assessor's Parcel No. 001-221-10; Residential Single-family RS 6 Zone District; Kenneth Vincent, applicant; Linaya Forster, owner; CEQA categorically exempt, § 15303(e).
2. **407 Forrest Avenue; 14-46:** Request for a Use Permit and Variance to construct a 320 square foot freestanding pedestrian deck in the rear yard; Assessor's Parcel No. 002-091-04; Residential Single-family RS 6 Zone District; Gary Scozzafavi, applicant; Chae Sukyoung; owners; CEQA categorically exempt, § 15303(e) and 15305(a).

M/s, Green/Kehrlein, Motion to approve Consent:

AYES: All

Chair Ketcham announced the appeal rights.

PUBLIC HEARING ITEMS

3. **127 Dominga Avenue, 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 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).

Senior Planner Neal presented the staff report, when she provided background information on the project. Ms. Neal noted that the Planning Commission approved a Use Permit and Setback Variances 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 on March 20, 2014.

Ms. Neal explained that the applicants now wished to relocate the laundry area into previously unimproved basement area and convert the remaining 299 square foot unfinished basement into a finished conditions space. However, Ms. Neal noted that the ceiling heights of the conditioned area would fall 4 inches short of the 7 feet ceiling height required by the Building Code for areas used as living space. Ms. Neal said that a Use Permit is still necessary and she explained why staff had been able to support the previous project, which included the reason that the project had not increased the existing conditioned space already being used as living space and is being taxed by the County as such.

Ms. Neal noted that the new request for approval of the conditioned space would result in an increased FAR (floor area ratio) when the dwelling was already at the maximum FAR allowed by the Code. Furthermore, although the area could be deemed storage space because the ceiling heights do not meet the Building Code, Ms. Neal said that staff believed the low ceiling height is not enough to deter the occupiers from using the area as living space. Staff could, therefore, not

make findings to support that part of the project. Staff therefore recommended approval to relocate the laundry room to the unfinished basement, but deny the request for a Use Permit to convert the remainder of the basement to living space.

Chair Ketcham and Ms. Neal discussed the FAR, which Ms. Neal said staff believed would be at .48 if the project were approved with the conditioned space.

In response to Commissioner LaMotte, Mr. Moore noted that, although the Planning Code did not prohibit conditioned space with a ceiling height below 7 feet from being used as living space, the Building Code did prohibit such space as being used for living space. Mr. Moore said that the Zoning Ordinance must comply with the building code and, therefore, the space could not be considered as habitable.

Commissioner Green and Ms. Neal discussed the building work that has been done since the building permit was issued.

Stephen Grabham, Architect, explained that they had not raised the house to a height that would allow a basement ceiling height of 7 feet because the basement would have been considered livable space. He said that the area is used for storage and they thought it would be beneficial to have more light and ventilation in the basement, and that their intention was not to create habitable space or create a second unit. Mr. Grabham said that the additional basement windows improve the design of the house.

Chair Ketcham and Mr. Grabham discussed the ceiling height in the unconditioned basement space.

Commissioner Green and Mr. Grabham discussed the purpose of the original permit. Mr. Grabham said that they wanted to add a bathroom and rectify the stairs to the basement, which were dangerous. They discussed the conditioned space and the laundry facilities. Mr. Grabham confirmed that the ceiling height of the basement is sufficient to meet the Building Code for a laundry room.

Commissioner Gonzalez-Parber and Mr. Grabham discussed the reasons for conditioning the space, which included allowing light and air and prevent the space getting musty for storing antiques.

Chair Ketcham and Mr. Grabham discussed the space. Chair Ketcham said that, while he believed the intent of the applicant's request is legitimate, he is concerned that a new owner might have a different objective.

In response to Commissioner Hamilton, Ms. Neal said that if the space were limited to one ceiling light and the walls finished with no windows, it should be possible to consider the basement uninhabitable space.

In response to Chair Ketcham, Ms. Neal said that if they could make the findings to approve the project, staff would recommend that the space be deed-restricted. She confirmed that staff could not make the findings for the FAR.

Commissioner Hamilton and Mr. Grabham discussed actions his client might be willing to undertake to ensure the space remained uninhabitable. Mr. Grabham said his client would sign a Deed Restriction and restrict the electrical and sheetrock. He said their intention is to create a pleasant, bright, light space for storage.

Ms. Neal noted that the additional windows make the space inviting for use as a habitable space.

Vice-Chair Kehrlein said that by using two different types of materials on the exterior of the house (shingle for the bottom part and stucco for the top), the additional windows are rendered unnecessary design features.

In response to Commissioner Gonzalez-Parber, Mr. Grabham said that the conditioned space had not been included in the Title 24 documents.

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

In response to Commissioner Hamilton, Ms. Neal confirmed that staff included conditioned space as part of the FAR, and that staff considered the proposed project as conditioned, livable space. She said that staff believes findings could be made to approve the project if the space was reduced to a condition that would not make it attractive for living space and would therefore not count towards the FAR.

Chair Ketcham noted that there were other properties in Fairfax where similar conditions existed.

Commissioner Green said he believed that the Code should be enforced. He said that he was leaning toward a denial and agreed with staff that the conditioned space should be rendered unconditioned to the point of being uninhabitable because it exceeded the allowable FAR and did not meet the Building Code.

Mr. Moore noted that people could easily live in space that does not meet the height requirements of the Building Code. Furthermore, during the construction period, staff allowed some latitude for technical issues by allowing the washing area to encroach the unfinished area, which had not been approved by the Planning Commission. However, Mr. Moore explained that windows were being framed out that had not been part of the application, and he confirmed that staff does not believe the additional windows should be allowed because it makes the substandard living area in the basement a more attractive place for people to inhabit.

Commissioner Gonzalez-Parber said that she is comfortable approving the washing facilities for the unconditioned basement area, but is not comfortable with approving the conditioned space because the ceiling height is substandard and it would exceed the FAR. Furthermore, there would be just one parking space on-site after substantially increasing the living space. Commissioner

Gonzalez-Parber also thought that other structural changes might be necessary if the conditioned space were included in the Title 24 report.

Commissioner LaMotte discussed her concerns. She noted that space would be increased without the need to add to the footprint and that it would be a good improvement. However, FAR is important to adhere to, and the fact that an increase in the FAR is being requested when the applicant is already at the limit does not feel comfortable for the neighborhood. Commissioner LaMotte discussed her concern that findings could be made by removing windows, which she discussed. Ms. Neal noted that the applicant could be requested to restore the dwelling to the condition for which it was originally approved.

Chair Ketcham said that the requested FAR increase is hard to justify and the windows change the condition of the space that was originally approved.

Commissioner Hamilton expressed concern that the FAR rules are not specific about what constitutes conditioned space. She also discussed her concern about a precedent being set and the difficulties in making the findings to approve the project.

Chair Ketcham opened the public comment period so that Mr. Grabham could express his concern that the Code did not prohibit a basement window. Chair Ketcham closed the public comment period. Mr. Moore noted that the conditions of approval for the previous application stated that the project must be constructed in accordance with the plans approved. He said that the windows had not been included on the plans, including a window that then existed, and so permission needed to be sought from the Planning Commission for the modifications.

Vice-Chair Kehrlein suggested that the windows on the north side be removed, since they would not detract from the design of the house, and that she would support a small window on the east elevation that was the size of the one that previously existed. She did not wish to set a precedent by allowing extensive conditioning.

General discussion took place amongst staff and commissioners about the way forward. There was general consensus that FAR is a problem and that the relocation of the laundry room to the unconditioned space is acceptable. Staff suggested that the item be continued to offer the applicant the opportunity to make recommended changes to the plans, to which there was general consensus amongst the commissioners.

M/s, LaMotte/Green, Motion to continue Application # 14-46, a request to modify 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 at 127 Dominga Avenue to the meeting of January 15, 2015:

AYES: All

5. Continued consideration for recommendation to the Town Council of a draft Ordinance adding a new Town Code Section to the General Zoning Regulations, Chapter 17.040, regulating formula businesses and restaurants in the Highway Commercial CH Zone Districts, the Central Commercial CC Zone Districts, the Limited Commercial CL Zone Districts, the Commercial Service CS Zone Districts and the Planned Development PDD Zone Districts; CEQA exempt, 14 C.C.R. § 15061(b)(3).6.

Planning Director Moore noted that the staff report had been revised since the last meeting, which he then presented. Mr. Moore discussed the changes to the draft Ordinance that the Planning Commission had requested at the previous meetings on September 25, 2014, and October 30, 2014.

The main changes made at the September 25th meeting included the endorsement by the Planning Commission to convert the Highway Commercial zone to Central Commercial. Mr. Moore noted that the main changes made at the October 30th meeting incorporated the inclusion of the Formula Business Ordinance as being essential to the Town of Fairfax, and a request to revise the draft Ordinance that applied to all applicable commercial zones. Subsequently, the Town Attorney confirmed that this should also apply to the Planned Development District, which does not preclude commercial projects. Mr. Moore noted that the changes he discussed had been made to the Ordinance.

Commissioner Hamilton thanked staff for returning with the changes and commented on the consistency of the language, which she said worked very well.

The commissioners made minor amendments and corrected minor errors in the draft Ordinance. Commissioner Green commented on the language that related to the definition of formula restaurants. He thought that the language should mirror the language concerning formula businesses, which he discussed. Amendments were made to the language concerning the definition of formula restaurants following discussion amongst the commissioners and staff.

Commissioner Green commended staff for the Draft Ordinance.

M/s, LaMotte/Kehrlein, Motion to approve a resolution recommending to the Town Council a draft Ordinance adding a new Town Code Section to the General Zoning Regulations, Chapter 17.040, regulating formula businesses and restaurants in the Highway Commercial CH Zone Districts, the Central Commercial CC Zone Districts, the Limited Commercial CL Zone Districts, the Commercial Service CS Zone Districts and the Planned Development PDD Zone Districts with the recommended changes by the Commission as follows: Eliminate Section 8, line 132 through 137, addition of the phrase in line 69 and 70 into line 74 with respect to creating parallel construction between the formula business and the formula restaurant definitions and other typing errors that were previously articulated:

AYES: All

6. **Sign Ordinance Amendment:** Continued consideration for recommendation to the Town Council of a draft Ordinance amending Town Code Chapter 17.064, Signs, to include regulations for non-commercial signs; CEQA exempt, 14 C.C. R. § 15061(b)(3).

Planning Director Moore presented the staff report, which he said is similar to the previous staff report. He noted that Commissioner Green had made friendly amendments to the Sign Ordinance with which staff is in agreement. Mr. Moore then invited comments and discussion, after noting that the commissioners should be comfortable with the terms.

Commissioner Hamilton noted a minor error she perceived under Section 17 that concerned non-commercial signs, which did not contain the word “temporary”. Ms. Neal explained that the word was omitted because non-commercial signs could be allowed under the same circumstances as commercial signs, which could be either temporary or permanent. They also discussed an item under the Design Criteria section, when Commissioner Hamilton discussed her concerns. Minor amendments were made to the language regarding temporary and commercial signs in the section.

M/s, LaMotte/Hamilton, Motion to approve Resolution No. 14-14 with the noted clarifications in Section 17.064.140 Design Criteria: Change the word “commercial” to “permanent” in No. 1; add the word “temporary”, to read “all temporary non-commercial signs” in No. 2.

Ayes: ALL

MINUTES

7. Minutes from the November 20, 2014 meeting:

M/s, Green/Ezzet, Motion to approve the minutes of November 20, 2014.

AYES: Gonzalez-Parber, Green, Hamilton, Ketcham
ABSTENTION: Kehrlein, LaMotte

DISCUSSION ITEMS

8. Zoning Ordinance: Issues list creation/update

There was general consensus that the clarification of FAR and conditioned space should be added to the list.

ELECTION OF CHAIR AND VICE-CHAIR

M/s, LaMotte/Hamilton, Motion to elect Commissioner Green as Chair.

Ayes: ALL

The election of a Vice-Chair was postponed to the meeting of January 15, 2015, when it was hoped that Commissioner Ezzet would be present.

PLANNING DIRECTOR'S REPORT

Planning Director Moore said that he would provide a report on the forum held on School Street Plaza and 10 Olema, and the Joint Committee Meeting of November 20, 2014, for the Consent calendar at the first Town Council meeting in January.

Mr. Moore asked Chair Ketcham to attend the Planning Commission meeting on January 15, 2015.

COMMISSIONER COMMENTS AND REQUESTS

The commissioners thanked Chair Ketcham for his services to the town on the Planning Commission.

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 9:15 p.m.

