

Town of Fairfax Planning Commission Minutes  
Fairfax Youth Center  
Thursday, November 21, 2013

**Call to Order/Roll Call**

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

**STAFF PRESENT:** Jim Moore, Planning Director  
Joanne O’Hehir, Minutes Secretary

Chair Hamilton called the meeting to order at 7.05 p.m.

**APPROVAL OF AGENDA**

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

Ayes: ALL

**PUBLIC COMMENTS ON NON-AGENDA ITEMS**

No one from the public came forward to speak.

**CONSENT ITEMS**

None.

7:10 p.m.

**PUBLIC HEARING ITEMS**

1. **177 Frustuck Avenue; Application # 13-31:**  
Request for a Residential Second Unit Use Permit, Height Variance, Setback Variance and Encroachment Permit to construct a fourth story, 560 square foot residential second unit beneath a 2,093 square foot, three story, single-family residence and the required parking for the unit partially within the public right-of-way; Assessor’s Parcel No. 003-193-02; Residential Single-family RS-6 Zone; John Owens and Diana Dullaghan, applicants/owners; CEQA categorically exempt, § 15301(e), 15303(a) and 15305(a) and (b).

Planning Director Moore presented the staff report. He said that a letter had been received from a neighbor, which expressed their concern with parking problems related to the property. Mr. Moore said that he had been in contact with the owner and his attorney, and that Mr. Owens' attorney confirmed that the main issue had been the fourth floor variance.

Mr. Moore provided background information on the project. He said that the reasons staff did not support the variance for a fourth floor second unit related to precedents that could be set if an exception were made. He noted that the requests made by the applicant had previously been denied by the Planning Commission in 2009, whose decision had been upheld by the Town Council. Mr. Moore noted that Counsel would be handling a complaint by the applicant of violations to the Streamlining Act.

Mr. Moore discussed the required discretionary permits. He said that the Planning Commission would need to approve a Use Permit for the second unit, and he noted a correction to the staff report in this respect.

Mr. Moore addressed the height variance, which he said would be necessary because the Town's code imposed a 35 feet height limitation on a maximum of three stories, when the residence had been deemed to compose of four stories.

Mr. Moore also went on to discuss a side setback variance and encroachment permit. He noted that the code specifically stated that an additional parking space needed to be provided on site for a second unit, but that the proposed space would encroach the side yard setback, which the code prohibited. He noted that the granting of the height variance and side yard parking variance would be setting a precedent.

In summation, Mr. Moore suggested that, if the commissioners were able to make the findings to support the project, staff be tasked with preparing a resolution to reflect the discussions.

In response to Commissioner Kehrlein, Mr. Moore said he would defer to the Senior Planner in relation to the definition of a story. Mr. Moore discussed the previous building projects that related to the property in more detail

In response to Commissioner Green, Mr. Moore said that the Fire Department had reviewed the plans and had not commented upon the fire engine turnaround in the vicinity of the dwelling.

In response to Commissioner Ketcham, Mr. Moore noted that, to his knowledge, no fourth floor exceptions had been granted.

John Owens, applicant, discussed his application in more detail. He noted that the number of variances he had requested was not unusual, and he addressed the fourth story issue. He said that there was another four-story house near his property. Mr. Owens discussed his second unit request in relation to affordable housing, and he explained why he believed it would not constitute a special privilege if his project were approved.

Commissioner Green and Mr. Owns discussed the use of his property for business purposes.

Commissioner Ketcham and Mr. Owens discussed other properties that might consist of four stories. Commissioner Ketcham noted that the town had not approved any four-story applications.

In response to Chair Hamilton, Mr. Owens confirmed that he had brought forward the application in light of the town's need to meet additional affordable housing to which he could contribute a unit.

Chair Hamilton opened the public comment period.

Francois Ramsay, former resident of Fairfax, discussed the exceptions that she had been granted for a project on a home she formerly owned in Fairfax in relation to the project at 177 Frustuck. She noted that they had benefitted from building a second unit and that she supported the project.

Chris Lang, Canyon Road, said that he supported the project. He discussed the reasons he believed the project should be approved, which related to the need to provide affordable housing and that there were carports in the vicinity that should have required an encroachment permit.

Barbara Cassidy, Walsh Lane, discussed her concerns about parking. She said that cars parked on both sides of the street, which made it harder for drivers to maneuver through the narrow street and hairpin turns. She also expressed concern that emergency vehicles would not be able to pass, although she said that she was not against the project.

Randall Gillett, Frustuck Ave, said that he supported the project and that the second unit would be a modern unit in comparison to some illegal second units.

Larry Bragman, Hickory Road, Councilmember, noted that he had never voted and could not vote on any projects brought before the Town Council that related to the property because he lived within 500 feet. He confirmed he was addressing his concerns as a private citizen. Mr. Bragman said that he was concerned about the addition, which did not seem to be workable due to the lack of parking. He noted that the owner used the street to park his vehicles, which took up spaces, and that the problem might get worse. Mr. Bragman discussed a deed restriction on the property, which restricted the property to three floors. He said that a previous decision had been made, which should be enforced.

Chair Hamilton commented on the fourth story addition. She said that the commissioners would need to make the findings to approve the fourth story variance. Chair Hamilton noted that she could not make the findings and that she had never done so on other fourth story projects. Therefore, she would not support the project.

Commissioner Gonzalez-Parber said that a lot of thought went into codes, which were formulated for safety purposes by different regulatory bodies. She said that the project was a safety issue and that she did not support the variance.

Commissioner Green discussed the project in relation to providing affordable housing. He noted that the town would be able to comply with the number of units mandated. Commissioner Green said that the ordinance was clear about structures not exceeding three stories and that he could not see how an exception could be granted. He also discussed his concerns about fire truck access on the street.

Commissioner Ezzet said that she could not find the basis to grant a variance for a fourth story addition. She noted that affordable housing was needed but that it should be provided within the town's codes. Commissioner Ezzet suggested that there were avenues that could be explored in order to change the town's code, but that it was not within their purview to recommend a fourth story addition.

Commissioner Kehrlein discussed her interpretation of a fourth story and the reasons she believed that the house consisted of three stories, which she discussed with Director Moore. He noted that the applicant previously argued that a variance had not been necessary because the garage and understory were attached to and were part of the house, otherwise a variance would have been necessary for the garage and storage area below.

Commissioner Ketcham discussed the character of Fairfax in relation to fourth story additions, and he said that they must honor those applicants whose previous request for fourth story additions had been denied. Commissioner Ketcham also discussed the Second Unit Amnesty in relation to bringing units into compliance that met the town's codes. He said that foregoing the requirement to install sprinklers in second units did not contribute towards the overall safety needs and values.

Vice-Chair LaMotte said that it appeared to be a great house and a great project but that the town did not allow four-story buildings. She confirmed that the town needed to provide affordable housing, but that she did not favor supporting a second unit at the expense of public safety or the town's code. She agreed with Commissioner Ketcham that it would not be fair to previous applicants, whose request for a fourth story addition had been denied, if this project were approved.

M/s, Ketcham/Green, Motion to deny Application #13-31, a request for a Residential Second Unit Use Permit, Height Variance, Setback Variance and Encroachment Permit to construct a fourth story, 560 square foot residential second unit beneath a 2,093 square foot, three story, single-family residence and the required parking for the unit partially within the public right-of-way, with the following amendments to Resolution 13-9:

**WHEREAS**, The Planning Commission held a duly noticed Public Hearing on August 15, 2013 at which time all interested parties were given a full opportunity to be heard and to present evidence; and

To be amended to read:

**WHEREAS**, The Planning Commission held a duly noticed Public Hearing on November 21, 2013 at which time all interested parties were given a full opportunity to be heard and to present evidence; and

6. The granting of a fourth story to this property would be a grant of special privilege to this site that would not be feasible to grant to property owners of up-sloping sites.

To be amended to read:

6. The granting of a fourth story to this property would be a grant of special privilege to this site and is not in character with the Town of Fairfax.

Vice-Chair LaMotte offered a friendly amendment to remove the wording that related to a fourth story addition because a fourth story would be illegal and the wording redundant. Commissioner Ketcham agreed to the friendly amendment:

6. The granting of a fourth story to this property is not in character with the Town of Fairfax.

A roll call was taken:

Gonzalez-Parber:	AYE
LaMotte:	AYE
Ketcham:	AYE
Hamilton:	AYE
Green:	AYE
Kehrlein:	NO

Motion passed 6:1.

Chair Hamilton read the appeal rights.

8:15 p.m.

## **MINUTES**

2. Minutes from the September 19, 2013 meeting and the October 17, 2013 meeting

M/s, Ketcham/LaMotte, Motion to approve the minutes of September 19, 2013 with the amendment of the name “David Creasy” to “David Parisi” wherever it appeared in the item concerning 2001 Sir Francis Drake Blvd:

AYES:	Ezzet, Hamilton, Ketcham, LaMotte
NO:	None

M/s, Green/Ketcham, Motion to approve the minutes of October 17, 2013 with the following amendments:

“Gomez-Parber” to be amended to “Gonzalez-Parber” wherever it appeared in the draft minutes; the removal of the following paragraph on page 2 of the draft minutes:

“Ms. Fairchild asked if there were going to be any new lighting on the rear addition that might impact neighbors”;

That on page 4, the beginning of paragraph 5, “Al Baylacq, of the Good Earth, informed the Commission that they fence a fence extension.....” be amended to read:

“Al Baylacq, of the Good Earth, informed the Commission that a fence extension.....”, and;

That on page 7, paragraph 4 “.....that the noise at the Good Earth now starts at 5 AM instead of 3 AM like it is supposed to.....” be amended to read:

“...that the noise at the Good Earth now starts at 3 AM instead of 5 AM like it is supposed to....”

AYES: All

8:25 p.m.

## **PLANNING DIRECTOR’S REPORT**

Planning Director Moore reported that the town’s Housing Element had been passed by the State of California. He discussed the sites that had been identified as being suitable for affordable housing.

Mr. Moore discussed three second units with regard to the Second Unit Amnesty Ordinance. He discussed the town’s desire to encourage second units.

Mr. Moore confirmed that the town had received a state grant to undertake a survey for the Parkade in relation to the General Plan.

Mr. Moore said that he had contacted the Public Works Director at San Anselmo, Sean Condry, with regard to the lights at the intersections on Sir Francis Drake Blvd and Butterfield Road and Willow Avenue, which were managed by San Anselmo. He said that San Anselmo had received a grant for aerial synchronization and would address these intersections.

Commissioner Ketcham and Planning Director Moore discussed an exposed gravel area at the excavation site of the gas station on Sir Francis Drake Blvd that concerned problems that the rain might cause. Mr. Moore said he would ask the Public Works Director and Town Manager to address the potential problem.

Chair Hamilton, Vice-Chair LaMotte and Commissioner Green commended Planning Director Moore for his work on affordable housing.

8:45 p.m.

## **DISCUSSION ITEMS**

### 3. Review of the General Plan Matrix

Planning Director Moore provided background information on the Matrix. He briefly discussed the items listed under the first year, and suggested that the commissioners might care to review those in year 2 at their convenience.

Mr. Moore noted that some of the elements had already been completed but that it would be impossible to implement the five hundred programs in the General Plan. He said that he would like the commissioners to choose those they feel would be the most important.

9 p.m.

### 4. Presentation of the Draft Climate Action Plan

Planning Director Moore said that the Town Council were scheduled to discuss the Draft Climate Action Plan at their next meeting. Mr. Moore said that a recommendation would be made to the Town Council that they establish a climate action committee and that two members of GPIC (General Plan Implementation Committee) would make regular reports to the Town Council.

Bruce Ackerman, Chair of GPIC, discussed biodiesel with Commissioner Green in relation to Land Use and Transportation. Commissioner Green requested an analysis of biodiesel to be included in the Draft Climate Action Plan, and Mr. Moore said he would ask the Fire Department for their views on the possibility of using biodiesel for their trucks.

Commissioner Ketcham and Mr. Ackerman discussed the participation of residents in clean energy. Mr. Ackerman discussed green house emissions and how they were calculated.

## **COMMISSIONER COMMENTS**

Commissioner Ezzet identified some crosswalk lights that were not working.

Commissioner Green identified an area of sidewalk that he considered to be in a dangerous state. In response, Planning Director Moore said that the sidewalk would be included in the improvements scheduled as part of the Town Center Plan.

## **ADJOURNMENT**

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

Respectfully submitted

Joanne O'Hehir

