

DRAFT FAIRFAX PLANNING COMMISSION MEETING MINUTES  
FAIRFAX WOMENS CLUB  
THURSDAY, MARCH 21, 2019

Call to Order/Roll Call:

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

Commissioners Present:                    Norma Fragoso  
                                                     Esther Gonzalez-Parber  
                                                     Laura Kehrlein  
                                                     Mimi Newton  
                                                     Michele Rodriguez  
                                                     Cindy Swift (Chair)

Commissioners Absent:                    Philip Green

Staff Present:                                Ben Berto, Planning Director  
                                                     Linda Neal, Principal Planner  
                                                     Kara Spencer, Assistant Planner

**APPROVAL OF AGENDA**

Commissioner Fragoso asked for the possible continuation of agenda item #5 if the meeting runs late.

M/s, Fragoso/Newton, motion to approve the agenda with the possible continuation of agenda item #5 relating to fence regulations.

AYES: Fragoso, Gonzalez-Parber, Kehrlein, Newton, Rodriguez, Chair Swift

ABSENT: Green

**PUBLIC COMMENTS ON NON-AGENDA ITEMS**

There were no comments.

**CONSENT CALENDAR**

There were no Consent Calendar items.

**PUBLIC HEARING ITEMS**

1. **200 Toyon Road; Application #19-03**  
Continued consideration of a request for a Hill Area Residential Development, Encroachment, Excavation, Front Setback and Retaining Wall Height Variances and a Design Review Permit for a 2,750 square-foot single-family residence with an attached 597 square-foot, 2-car garage. The project also includes the extension of 35 feet of Toyon Road, a fire truck turn around and creation of 2 public parking spaces and an access path connecting with the existing public path to the Marin County Open Space land located southwest of the site; Assessor's Parcel No. 003-161-01, 003-171-01 through 08; Residential Single-family RS-6 Zone District; Jerry Frate, Architecture and Planning, applicant; Ben Ross, owner; CEQA Categorically exempt per Section 15301(a).

Principal Planner Neal presented the staff report. She noted this application was continued from the March 21<sup>st</sup> meeting and she listed the additional information requested by the Commission. The Tree Committee recommended approval of the removal of the proposed trees. The Open Space Committee comments are included in the packet. She noted several amendments to the resolution.

Commissioner Rodriguez referred to the biology report indicating that the Napa False Indigo is an endangered species and asked about the location of the 45 plants relative to the lot. Principal Planner Neal noted one plant was found on the open space area above the lot. Commissioner Rodriguez asked about the possible protection or relocation of these plants.

Commissioner Rodriguez asked about the species and sizes of the trees being removed. Planning Director Berto stated the site is heavily wooded and some of those trees are being removed at the recommendation of the Ross Valley Fire Authority.

Commissioner Rodriguez asked if the retaining walls would be designed at the building permit stage. Principal Planner Neal stated "yes"- there were some preliminary drawings but the actual construction drawings of the house and the road would be provided at the building permit stage.

Commissioner Newton referred to the Open Space Committee report and asked if staff has had a chance to figure out how to address some of the General Plan Goals. Principal Planner Neal stated the Commission could add anything they want to the resolution. Staff's is of the opinion that there is no way the Town could require the recommendation made by the committee. Planning Director Berto added the open space access is being preserved and enhanced with the provision of public parking.

Chair Swift asked if the applicant would be required to repair damages to the road and bring it back to what it was before. Principal Planner Neal stated "yes- it must be restored to the pre-construction condition".

Chair Swift opened the Public Hearing.

Mr. Jerry Frate, project architect, made the following comments:

- He would be happy to answer any questions.

Commissioner Rodriguez stated she saw a geo-engineering report in the packet but nothing regarding hydrology or drainage.

Mr. Dan Hughes, DDC Group, made the following comments:

- He performed the preliminary hydrology analysis and will do the final analysis when they get to the building permit stage.
- The plan is to take any storm water that lands on impermeable surfaces to dissipaters.
- They will install oversized vertical pipes that will store the water and allow it to percolate out slowly.
- The system will match the existing drainage patterns.

Commissioner Rodriguez stated the geotechnical report was very general and indicated slopes of 50% to 70% but there was no mention of any special stability concerns. There is discussion about future retaining walls but no mention of any special foundational requirements. She asked if there is a history of slides.

Mr. Hughes made the following comment:

- A full geotechnical analysis was done and was peer reviewed by the City's geotechnical consultants.

Mr. Frate made the following comment:

- The soils engineer climbed down the slope and did not find anything alarming.

Ms. Susan Grand, representing the Open Space Committee, made the following comments:

- She had a list of recommendations.
- The development is too big and should be scaled down.
- No future development of the rest of the property should occur.
- A new survey should be done by an expert on the rare Napa False Indigo.
- A study done in 2017 found there was proximity to the Spotted Owl habitat.
- Preservation of public trail and parking spaces must be ensured.
- The area is prone to landslides and wildfires.

Mr. Carl Diehl, Toyon Drive, made the following comments:

- The neighbors are concerned about the condition of the road- it is fragile and was put in about 50 years ago.
- The possibility of damage to the road and loss of access by the residents are real.
- The Department of Public Works is requiring a deposit of \$25,000- that is not enough.
- The removal of a substantial number of trees could cause instability of the hillside.

Mr. Brian McCarthy, Toyon Drive, made the following comments:

- The road is narrow and not well constructed. He is hoping it will withstand the weight of the construction vehicles.
- A \$25,000 bond for the road is laughable.
- He is concerned about the zoning of the property. It is an environmental disaster waiting to happen.
- The project flies in the face of the General Plan.
- He asked if there were protections that would keep the present zoning (one house on one parcel) in perpetuity.

Mr. Bruce McDermott, Ridge Road, made the following comments:

- He asked if the \$25,000 bond was for the road only. Principal Planner Neal stated "yes".
- He asked about the story poles- he has no idea what the project will look like from his house.
- He asked if more development would require an Environmental Impact Report (EIR).
- He asked to see the color palette.

Ms. Lynn McDermott, Ridge Road, made the following comments:

- She agreed with the comments made by Ms. Grand.
- She is concerned about protecting the environment and in particular the owl.
- It is important to get current data about the rare plants and the owls.

Mr. Rick Hammer, Bolinas Road, made the following comments:

- The open space access along the paper street has not been dedicated.
- The private section of the road should be dedicated into the public maintenance program.
- A \$25,000 bond will not go very far.

Ms. Nancy Gump, Toyon Drive, made the following comments:

- She is speaking for the owls- they need to be protected.
- This is a steep hillside and replacement trees should be planted to prevent erosion.

Chair Swift closed the Public Hearing.

Commissioner Fragoso provided the following comment:

- She asked if there was a \$25,000 cash deposit and a separate roadway damage bond. Principal Planner Neal stated “yes”.

Chair Swift provided the following comments:

- She referred to Resolution 2019-03, Condition 2(c), and asked if the cash could be used for Toyon Drive. Planning Director Berto stated this section could be amended and the word “public” could be deleted. He noted the Town has the ability to withhold the final inspection and certificate of occupancy until the roadway is restored.

Commissioner Newton provided the following comments:

- She had a question about the possibility of a shared maintenance agreement. Principal Planner Neal stated the Town does not have the authority to require this but is recommending the neighbors consider it
- She asked about the construction period if an updated survey found Spotted Owl nests and the Napa False Indigo in the vicinity. Principal Planner Neal stated they would have a very tight window to get the framing done and the foundation in. Work inside the house would probably be extended.

Commissioner Gonzalez-Parber provided the following comment:

- She referred to the Construction Plan and wanted to add another line item regarding the size of trucks accessing the road and number of trips.

Chair Swift provided the following comments:

- She asked for clarification about the potential for additional homes on the lot. Principal Planner Neal stated the site is one piece of property and the zoning, based on the slope, would allow subdivision of only two parcels. The public path is in a public roadway easement and for anyone to acquire it would require the Town to abandon the roadway easement.
- She would like to see an updated survey regarding the Napa False Indigo and the Spotted Owls.

Commissioner Kehrlein provided the following comments:

- She referred to the color palette and asked the applicant if he would consider something other than white trim. Principal Planner Neal stated the Commission could choose the facade color and allow the Planning Director to choose a complimentary trim color.
- She would like to discuss extending the construction period to include the weekend if the new survey finds owls in the vicinity.

Commissioner Rodriguez provided the following comments:

- The application should be continued to allow submittal of the new biological surveys.
- The roadway needs to be addressed along with a recommendation about truck sizes and the bond amounts.
- She would like to see the following: 1) installation of story poles with color contrasting material to give the neighbors a better idea of possible impacts; 2) more details about drainage, grading, and slide history; 3) the resolution should be modified to address the construction period (including days), 4) more information about light glare; 5) more information about materials selection; 6) a deed restriction for the open space access; 7) a 5-year contractual requirement on the drainage system maintenance; 8) an arborist on-site prior to construction.

Commissioner Fragoso provided the following comment:

- She asked about the timing for the Permit Streamlining Act. Principal Planner Neal stated the applicant would need to consent to an extension of time for review of the project under the Permit Streamlining Act for a period not to exceed 90-days.

Commissioner Newton provided the following comments:

- She is in favor of moving the proposal to the front of the property to ensure minimal disruption to the Madrone forest and continuation of access to the public trail.
- She acknowledged that the applicant has altered the proposal in many significant ways to accommodate the concerns of the Commission.
- She shares Commissioner Rodriguez's concerns about the story poles.
- She takes the General Plan goals very seriously.
- She has concerns about the owner trying to split the property.
- This is a large house.

Commissioner Fragoso provided the following comments:

- She appreciates the modifications to the proposal. It has come a long way in terms of addressing the concerns of the Commission and the community.
- She is not concerned about having a final hydrology plan at this time. There are sufficient conditions.
- She would like to see a current survey about the endangered species.
- She is leaning towards accepting the new design as proposed but would like to see clarifications in writing.

Commissioner Kehrlein provided the following comments:

- The applicant has responded to the Commission's comments.
- She could approve the project with changes to the resolution that address the comments raised tonight including the updated reports, adding the construction hours, the roadway issues, etc.
- Staff could review the updated reports.
- She would support a continuance to get the language right.

Commissioner Gonzalez-Parber provided the following comments:

- The applicant has made significant improvements.
- It is unrealistic to try to turn everything that has been discussed tonight around in 90 days.
- The biology report can be handled by staff.
- The engineering issues have been looked at by a lot of experts.
- She referred to the color palette and stated she favored #1 and #2. The trim does not bother her.
- She would like to add an additional condition to 2(A) that would regulate the size of the construction vehicles that can access the site which would be determined by the Public Works Department.
- She is leaning towards supporting the project but would support a continuance.

Chair Swift provided the following comments:

- In 2017 the Commission was of the opinion that the location was not workable. They wanted something smaller that was closer to Toyon Drive. The applicant has done this.
- The applicant has taken prior comments into consideration prior to submitting this redesign.
- She would like updated biology and botany reports before anything proceeds.
- They could get language about the size of the trucks from the Public Works Department.
- She would be in favor of approving the project subject to changes in the resolution.

Commissioner Newton provided the following comments:

- She has strong concerns about the story poles and visibility.
- She has concerns about ensuring the preservation of the trail.
- She has concerns about future development.

Chair Swift asked the applicant if he would agree to a 90-day continuance. Mr. Frate discussed the modifications made and stated he was not sure how much more they could do.

Commissioner Rodriguez provided the following comments:

- The continuation would allow staff to update the resolution with respect to the following: 1) the Monday through Friday schedule; 2) light glare; 3) options for the material board; 4) deed restriction regarding open space access and public use; 4) 5-year contractual requirement for drainage system; 5) conditions of approval for tree preservation that would be put on construction drawings; 6) arborist should be on-site to ensure protection; 7) update of special studies for the Spotted Owl and Napa False Indigo so the Commission can accurately assess the impacts of the project; 8) story pole material at the top be more visible/reflective; 9) Public Works Department should identify truck size for roadway construction; 10) increase in escrow amount; 11) encourage applicant and neighbors to talk about entering into a maintenance agreement; 12) the next round of reports should include grading, drainage and slide information.

Commissioner Newton provided the following comments:

- The word "public" should be deleted in Condition 2(c) of the resolution.

Chair Swift asked staff about the deed restriction question. Planning Director Berto stated this should be run by the Town Attorney but he is of the opinion that they could not reasonably ask the applicant to provide this. Subdivision of the property is not foreseeable at this time and it is probably unrealistic that they would do so.

Commissioner Kehrlein provided the following comments:

- Her preference for paint colors would be brown, then green, than gray.
- She would prefer a non-white trim.

Commissioner Fragoso provided the following comments:

- She likes the brown, then the green, not the gray. She is not concerned about the trim.

M/s, Kehrlein/Fragoso, motion to approve Resolution No. 2019-03 with the following changes/amendments: 1) The body color shall be either brown or green and staff and the applicant shall decide on the trim color; 2) construction hours shall be Monday through Friday unless owl nests are discovered on the site thus limiting the months that construction can occur- the Planning Director shall allow flexibility for construction to occur on Saturdays; 3) Submittal of updated Spotted Owl and Napa False Indigo prior to issuance of a Building Permit; 4) Public Works Department recommendation regarding proposed size of construction vehicles and number of trips; 5) The word "public" should be deleted in Condition 2(c) of the resolution; 6) Drainage maintenance that runs in perpetuity.

AYES: Fragoso, Gonzalez-Parber, Kehrlein, Chair Swift

NOES: Newton, Rodriguez

ABSENT: Green

Chair Swift stated there was a 10-day appeal period.

## **2. 2020 Sir Francis Drake Blvd.; Application #19-04**

**Continued consideration of a request for a modification of a previously approved Conditional Use Permit and Design Review Permit to create a 792 square-foot outdoor dining area on the south side of the Splitrock Tap and Wheel restaurant/bike sales and repair shop; Assessor's Parcel No. 001-183-16; Highway Commercial CH Zone; Jason Faircloth, applicant/business owner; Naaim Karakabi, property owner; CEQA categorically exempt per Section 15301(a).**

Principal Planner Neal presented the staff report and listed the additional information requested by the Commission and the applicant's response to their requests.

Commissioner Fragoso asked about the hours of other similar outdoor spaces. Principal Planner Neal stated Mas Masa has a closing time of 10:00 p.m.- she has not memorized the others. She could check the files.

Commissioner Newton stated the Commission had asked if the pillars would serve as the design element for the wall around the outdoor area. Principal Planner Neal stated the pillars, the arbor, and the seating on the two closest walls add articulation.

Chair Swift opened the Public Hearing.

Mr. Jason Faircloth, applicant, made the following comments:

- He would be happy to answer any questions.
- The architect felt they had enough architectural details and removed the patio cutout. There is adequate space for fire truck access.
- The materials for the wall will match the building- light and dark gray.
- There will be a retractable canvas canopy to address the sun.
- They would be willing to turn off the outdoor lights at night.
- The actual dimensions of the extension are 42'X18' (about 792 square feet).
- The majority of bikes are parked inside, on car racks, or inside cars. They will have plenty of parking for bikes outside.
- The garage door will not be open unless they are loading or unloading per the Health Department.

Mr. Rick Hammer made the following comment:

- He supported the proposal and urged the Commission to approve it expeditiously.

Chair Swift closed the Public Hearing.

Commissioner Gonzalez-Parber provided the following comments:

- She is glad to see the changes.
- The proposal is close to the drive isle and they might want to add a rail or horizontal cables.
- She supported the proposal.

Commissioner Kehrlin provided the following comments:

- She appreciated the additional changes. Her concerns have been addressed.
- This is a terrific proposal and a great addition to the building.

Commissioner Rodriguez provided the following comments:

- The applicant has done a great job bringing back plans that the Commission was looking for.
- She would like to see some tiles, a mural, or some greenery on the wall facing outward.

Commissioner Newton provided the following comments:

- She is in favor of the proposal.
- There could be design elements other than tile for the outer side of the cement wall. The Planning Director should have discretion to discuss options with the applicant.
- She appreciates the clean, minimal design elements that have been proposed.

Chair Swift provided the following comments:

- She agreed that the gray walls need something to break them up. This can be discussed between the Planning Director and the applicant.
- She would like to add a condition to have the lights off over night.

- The seating (first two sets of seats with the backs) could be extended to the table portion.

Commissioner Fragoso provided the following comments:

- She appreciates the efforts made by the applicants.
- Matching the existing blasé and sterile building does not do much for her.
- The design is lacking.

M/s, Rodriguez/Gonzalez-Parber, motion to approve Resolution No. 2019-04 with the following modifications: 1) Condition #2 shall indicate that the exterior lights shall be turned off at closure; 2) Condition #1 shall indicate that there shall be a safety barrier for children installed per the Planning Director's review; 3) The exterior wall shall be modified with some type of visual element (wall tile trim, mural, greenery, bike graphics) subject to the Planning Director's approval.

AYES: Gonzalez-Parber, Kehrlein, Newton, Rodriguez, Chair Swift

ABSTAIN: Fragoso

ABSENT: Green

Chair Swift stated there was a 10-day appeal period.

The Commission took a 5-minute break at 9:45 p.m.

### **3. 18 Meerna Avenue; Application #19-05**

**Request for a Use Permit to convert an existing 237 square-foot, 1-car carport to a 237 square-foot, 1 car garage on a site developed with a single-family residence; Assessor's Parcel No. 002-036-29; Residential RD 5.5-7 Zone; Christopher Schrader, applicant; Marianna Caplan, owner; CEQA categorically exempt per Section 15303(e).**

Principal Planner Neal presented the staff report.

Commissioner Fragoso asked if she should recuse herself from this item. Principal Planner Neal looked at the map and stated "no" (she was out of the 300-foot radius).

Commissioner Newton had a question about the revised resolution. Principal Planner Neal stated staff wanted to add a condition that all exterior lighting shall be dark sky fixtures, directing the light downward and avoiding any unnecessary light seepage. Commissioner Newton made a correction in the resolution title.

Chair Swift opened the Public Hearing.

Mr. Christopher Schrader, applicant, made the following comment:

- He would be happy to answer any questions.

Chair Swift closed the Public Hearing.

Commissioner Rodriguez provided the following comment:

- She supported the application with the changes to the resolution that have been identified.

Commissioner Newton provided the following comment:

- She asked the Commission if this was the type of application that should be at the discretion of staff.

Commissioner Kehrlein provided the following comment:

- She asked staff if this type of application was on their list of applications that should not require the Commission's attention. Planning Director Berto stated "yes".



Commissioner Gonzalez-Parber provided the following comments:

- The windows are a great addition.
- She supports the project.

M/s, Newton/Rodriguez, motion to approve Resolution No. 2019-05 with the following changes: 1) Removal of the letter "I" in the title; 2) The modification to #16 as suggested by Principal Planner Neal, "Any new exterior lighting shall be dark sky compliant, be shielded from direct offsite illumination and direct light downward and be subject to approval by the Planning Director prior to issuance of the building permit"; 3) Deletion of Condition #17.

AYES: Fragoso, Gonzalez-Parber, Kehrlein, Newton, Rodriguez, Chair Swift

ABSENT: Green

Chair Swift stated there was a 10-day appeal period.

#### **4. 251 Scenic Road; Application #19-06**

**Request for a Hill Area Residential Development, Design Review, Encroachment, and Combines Side-Yard Setback Variance to construct a 2,172 square-foot, 3 bedroom, 2 ½ bathroom, single-family residence with an attached 2-car carport; Assessor's Parcel No. 001-121-50; Residential Single-Family RS-6 Zone; Bryan Murdock, Murdock Architecture, applicant; David Boesel, owner; CEQA categorically exempt per Section 15303(a), 15305(a) and (b).**

Principal Planner Neal presented the staff report. The Town Engineer would like some additional analysis of the soil make up since the applicant is planning to locate the drainage system below the slope stability wall. Staff is recommending that the project building plans be reviewed and approved by the Town Engineer. She noted the following revisions to the resolution: 1) A correction to a date; 2) Condition #1 shall specify that the tree removal is approved as shown on Page A1.0 which is dated January 8, 2019; 3) Addition of the following condition: "The surveyor shall mark the location of all the property lines in the field and the northwest and southeast side of the property line shall be fenced to keep persons accessing the project site from trespassing on the properties at 245 and 255 Scenic"; 4) Addition of the following condition: "Prior to issuance of the Building Permit the property owner shall prepare an easement granting the Town access for maintenance of the crib wall to a strip of land to be jointly determined by the Town Engineer and the Building Official"; 5) Addition of the following condition: "The recordation of a drainage system maintenance agreement at the County of Marin that will include an exhibit showing the location of all the drainage improvements and setting forth a schedule for maintenance".

Commissioner Kehrlein stated this section of Scenic Road was very narrow and she asked about requiring extra parking for a Fire Department turnout. Principal Planner Neal stated this was not a requirement of the Fire Department.

Commissioner Rodriguez referred to slope instability and the history of landslides and asked if drainage and hydrology issues were reviewed in addition to the foundational system. Principal Planner Neal stated there is a drainage plan in the large set of plans that should be read in conjunction with the studies. The Town Engineer is satisfied with what it being proposed. The only difference of opinion is the location of the drainage dissipation system (above or below the wall). The Town Engineer wants to see more information on the soils if they plan to locate the system below the wall.

Chair Swift asked how the application would change based on the results of the slope stability analysis and whether or not it would have a large impact to the project. Principal Planner Neal stated "no" - it would simply determine the location of the system.

Chair Swift opened the Public Hearing.

Mr. Bryan Murdock, applicant, made the following comments:

- He gave a PowerPoint presentation that included some added 3-D images.
- They agree with the staff report.
- They have a construction schedule that would address road closures.
- He gave the color chips to the Commission.
- The site plan showed the front setback well beyond the bin wall.
- The massing is defined by the parking which is pushed all the way to the front of the property.
- The first level is parking and the entry hall; the second level is the living area; the lowest level is all the bedrooms.
- They have broken up the materials and the side wall massing to provide articulation.
- The texture on the gray walls is vertical board and batten; the accents where the stairs are located is a beige, horizontal e-groove siding; the belly is a gray, smooth base panel. The colors will break up the massing.
- The windows on the west side are smaller to mitigate privacy concerns. The sills are more than 6 feet high.
- They have minimized the windows on the east side.
- The front of the house is screened by a Redwood grove. It will not be visible or produce a "lantern effect" from across the canyon
- They are using the "cake effect" to break up the massing and to step the structure down the hillside.
- The slide at the bin wall was the major slide that occurred and added to the scarp that was at the bottom of the site. They came up with a slope stability wall solution.
- Tie backs and piers are one of the options open to them- there are multiple solutions
- The roadway is narrow which adds to the difficulty of the site.
- They will build a platform as a part of Phase I that will allow them to build a portion of the parking deck. This will be the staging area.
- There is not a lot of excavation aside from the drilled piers. Most of the house is sitting on top of grade.
- He discussed ways they would minimize the number of cars on site including construction workers carpooling to the site.
- They estimate about eight road closures, no more than two to three hours.
- They will put together a tree protection plan.
- Access to the downhill side for maintenance is through the house.
- He would be willing to put the dissipater uphill or downhill from the wall.

Mr. George Pickering, Tamalpais Road, made the following comments:

- The project would impact his next door neighbor.
- Stabilization of the hill should take his neighbor's trees into account.
- He is sure that engineering could solve the problems.

Mr. Alan Peterson made the following comments:

- He lives next door to the project.
- The architect has created a pretty design and it looks fantastic.
- He is concerned about the stability of the hillside between the two houses.
- The house is located in the middle of a slide.
- He hoped drainage from the site could be worked out safely.

Mr. Mark English, Scenic Road, made the following comments:

- He lives next door.
- He agreed with Mr. Peterson.
- The design is beautiful.

- He has issues with the house being located on an historic slide.
- He is concerned about impacts to his property.

Ms. Stephanie McCaffrey, Scenic Road, made the following comments:

- She is shocked that someone would build on this “unbuildable lot”.
- The project would go on for 14 months- during the rainy season.
- This is a very aggressive engineering project.

Ms. Julia English, Scenic Road, made the following comments:

- She is depending on the Commission to understand the special geology that makes up Fairfax.
- She wanted to make sure the neighbors were safe.

Mr. Scott Bowman, Scenic Road, made the following comments:

- He is shocked that this is happening- it is an unbuildable lot.
- The house is ugly.
- There will be a “lantern effect” toward his house.
- He is apprehensive about the traffic the project will generate.
- This part of Scenic is one-way and he was skeptical about contractors observing this restriction.

Chair Swift closed the Public Hearing.

Commissioner Gonzalez-Parber provided the following comments:

- Building on this site is bold and brave.
- She appreciates the way they have broken up the massing.

Commissioner Kehrlein provided the following comments:

- This project has been thoroughly reviewed.
- It is a difficult site.
- The applicant has provided all the necessary information.

Commissioner Rodriguez provided the following comment:

- She asked about the extent of the analysis regarding drainage and stability of the hill with respect to the areas beyond the site property lines. Principal Planner Neal stated they have designed a drainage and foundation system that engineers believe will make the site more stable.

Commissioner Fragoso provided the following comment:

- She had questions about the safety of the properties below. Mr. Murdoch stated he could not speak to the properties below but the slope stability wall should provide some security. The amount of excavation would be insignificant.

Commissioner Kehrlein provided the following comment:

- She asked if this would be an on-grade wall. Mr. Murdoch stated it would be dug in and but it would not be a retaining wall- it is a slope stability wall. It would follow the grade.

Chair Swift provided the following comment:

- She would like to add some signage to make sure workers follow the one-way restriction.

M/s, Kehrlein/Gonzalez-Parber, motion to approve Resolution No. 2019-06 with the amendments and corrections as outlined by Principal Planner Neal and Chair Swift’s suggestion about signage subject to approval of the Police and Fire Departments.

AYES: Fragoso, Gonzalez-Parber, Kehrlein, Chair Swift

NOES: Newton, Rodriguez

ABSENT: Green

Commissioner Rodriguez stated she was in opposition and would recommend denial. The house should be smaller because she has concerns about the size of the house and its impacts on the hydrology, geology and potential slides on the site.

Commissioner Newton stated she was in opposition mostly because of the drainage issues.

Chair Swift stated there was a 10-day appeal period.

## **DISCUSSION ITEMS**

### **5. Discussion on fence regulations regarding permitted materials**

Chair Swift stated she would like to continue this item to the next meeting.

### **6. Minutes from the January 17, 2019 Planning Commission meeting**

M/s, Kehrlein/Newton, motion to approve the minutes from the January 17, 2019 meeting as corrected.

AYES: Fragoso, Gonzalez-Parber, Kehrlein, Newton, Rodriguez, Chair Swift

ABSENT: Green

## **Planning Director's Report**

Planning Director Berto reminded the Commission to turn in his or her Form 700 to Town Clerk Gardner as soon as possible. Staff is working on addressing the Commission's questions about the cannabis issue and would like to bring this to the Council in May. It would take two-thirds of the Commission (five) to recommend a resolution to the Council. The Commission might need to hold a Special Meeting. He stated he would poll the Commission about dates.

## **Commissioner Comments and Requests**

Commissioner Gonzalez-Parber asked for an update on the Parkade Project. Planning Director Berto stated it is proceeding at a good pace. He is not sure when the resurfacing would occur. He discussed the removal of some of the Liquid Amber trees. Commissioner Kehrlein stated the Tree Committee would be discussing the replacement of the eight trees that were removed at its next meeting. Commissioner Fragoso stated there are grant opportunities through the Transportation Authority of Marin (TAM) for replacement of the electric vehicle chargers in the Parkade.

Chair Swift asked about the status of the Downtown Historic Building survey/inventory. Planning Director Berto stated staff would report back at the next meeting. Work is being done by the consultant.

Chair Swift asked about for an update on the Commission's prioritization workshop. Planning Director Berto stated the Council recently held a Goal Setting Retreat and came up with a list of priorities. Chair Swift stated she would like to start making progress on this.

Commissioner Rodriguez noted the Council retreat agenda included how to streamline meetings. She asked if the Commission should also discuss this issue.

## **ADJOURNMENT**

A motion was made, seconded and unanimously approved to adjourn the meeting at 11:15 p.m.

Respectfully submitted,

Toni DeFrancis,  
Recording Secretary

DRAFT FAIRFAX PLANNING COMMISSION MEETING MINUTES  
FAIRFAX WOMENS CLUB  
THURSDAY, APRIL 11, 2019

Call to Order/Roll Call:

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

Commissioners Present:                    Norma Fragoso  
                                                      Esther Gonzalez-Parber  
                                                      Philip Green  
                                                      Michele Rodriguez  
                                                      Cindy Swift (Chair)

Commissioners Absent:                    Laura Kehrlein  
                                                      Mimi Newton

Staff Present:                                Ben Berto, Planning Director  
                                                      Linda Neal, Principal Planner  
                                                      Garrett Toy, Town Manager  
                                                      Janet Coleson, Town Attorney

**APPROVAL OF AGENDA**

Chair Swift stated the discussion item regarding fence regulations could be addressed in the Planning Director's report.

M/s, Fragoso/Green, motion to approve the agenda with the discussion item included in the Planning Director's report.

AYES: Fragoso, Gonzalez-Parber, Green, Chair Swift

NOES: Rodriguez

ABSENT: Kehrlein, Newton

Commissioner Rodriguez stated inclusion of the discussion item in the Planning Director's report would not allow any feedback from the Commission.

**PUBLIC COMMENTS ON NON-AGENDA ITEMS**

There were no public comments.

**CONSENT CALENDAR**

There were no Consent Calendar items.

**PUBLIC HEARING ITEMS**

**1. 147 Pine Drive; Application #19-07**

**Request for a Use Permit to construct a 345-square-foot living room addition and a 355-square-foot deck addition to an existing 2,374-square-foot, single-family residence; Assessor's Parcel No. 003-043-19; Rheanna LaRoche, Designer, Chris and Julie Gatty, owners; CEQA categorically exempt per Section 15301(e)(1).**

Principal Planner Neal presented the staff report.

Commissioner Green noted one of the photographs shows an odd black hose and he asked if there were any drainage issues. Principal Planner Neal stated the applicant could address that question. She did not think the addition would alter the drainage.

Commissioner Rodriguez asked about the height of the other homes in the area. Principal Planner Neal stated they looked similar. At the time these houses were built the height limit was different in Fairfax.

Commissioner Rodriguez had a question about the staging of the construction materials- the plans indicated they would be "elsewhere". Principal Planner Neal stated the applicant could address that. Materials cannot be in the right-of-way or on a neighbor's property unless an arrangement is made.

Commissioner Rodriguez stated some prior applications have triggered conversion of the carport to a garage and she asked about this application. Principal Planner Neal stated the requirement is to bring parking up to current standards if the application is adding a bedroom or is a 50% remodel.

Chair Swift opened the Public Hearing.

Mr. Christopher Gatty, applicant, made the following comments:

- The deck area is in the middle of the house and never used.
- They need office space.
- The black tube was a part of some sewer lateral work.
- They plan to use the same siding.
- Level one is the master bedroom, level two is where the majority of the work will occur, and level three is the kitchen area.

Ms. Rheanna LaRoch, designer, made the following comments:

- They had originally thought about adding a third bedroom but it was not cost effective
- They scaled the project back.
- They are not touching any of the stairs.
- The materials will be kept on site but not next to the building.

Chair Swift closed the Public Hearing.

Commissioner Green provided the following comments:

- This project is a good idea.
- It could be dangerous as it exists with respect to fire prevention.

Commissioner Gonzalez-Parber provided the following comment:

- The project would be an improvement.

Commissioner Fragoso provided the following comments:

- There is a minimal amount of usable outdoor space.
- Replacing the deck being converted to living space makes sense.

Commissioner Rodriguez provided the following comments:

- Three light fixtures on that small deck are too many. She would like to amend Condition #16 to approve one fixture.
- She supports the application.

Commissioner Green provided the following comment:

- Lighting on a deck is critical and there should be at least two.

Chair Swift provided the following comment:

- The light fixtures on the deck would be "dark sky" and pointed down.

Chair Swift reopened the Public Hearing.

Mr. Christopher Gatty, applicant, made the following comments:

- He is fine with doing fewer lights- two lights might be good.
- They do not plan on having high wattage lights out there.

Chair Swift closed the Public Hearing.

Commissioners Fragoso, Rodriguez, Gonzalez-Parber, and Green provided the following comments:

- They supported two fixtures on the deck.

M/s, Rodriguez/Fragoso motion to adopt Resolution No. 2019-07 with the following amendments: 1) Condition #1 shall be amended to read that the building materials and colors shall match existing and there is no approval for a third bedroom; 2) Condition #16: "Plan A1.1 shall indicate there will be two "dark sky compliant" fixtures on the decks.

AYES: Fragoso, Gonzalez-Parber, Green, Rodriguez, Chair Swift

ABSENT: Kehrlein, Newton

Chair Swift stated there was a 10-day appeal period.

**2. Consideration of an Ordinance for zone change amendments to Chapter 17.110 and Sections 17.138.310 et seq. of the Fairfax Municipal Code related to cannabis. The Planning Commission will consider revisions to cannabis regulations pertaining to medical dispensaries, certain commercial cannabis uses including retail storefronts and retail delivery, and non-commercial cannabis cultivation.**

Planning Director Berto presented the staff report and gave a PowerPoint presentation.

Commissioner Fragoso referred to the existing medical dispensary and asked if the medical retail component is being counted as one business and the adult retail delivery is counted as another. Planning Director Berto stated a location that includes side-by-side businesses, even if separated, would be considered one business location.

Commissioner Fragoso asked for clarifications to the exceptions. Planning Director Berto stated that an exception can be requested to the limit on the number of plants that can be grown at a location or an exception can be requested to the circumference of the buffer area. Commissioner Fragoso asked if the allowance for 18 plants was what the State suggests. Planning Director Berto stated the State does not have such a provision.

Commissioner Green asked if the Town could regulate the concentration of THC. Planning Director Berto stated staff would like to get a recommendation from the Commission on this issue. Commissioner Rodriguez stated she also asked about this issue along with marketing to children. Planning Director Berto stated the State is talking about taking action on banning flavored products.

Commissioner Gonzalez-Parber stated she has some serious concerns and has changed her mind about adult use retail. However, she wants to move this along to the Council. Town Attorney Coleson stated staff is looking for a recommendation from the Commission and concerns can be noted.



Chair Swift opened the Public Hearing.

Mr. Don Carney, Mountain View Road, made the following comments:

- He commended Commissioner Gonzalez-Parber on doing her homework and trying to protect the community.
- He is disappointed that Fairfax did not offer a public health presentation.
- Lancet reports that high grade THC can create a psychotic break in developing adolescent minds.

Chair Swift closed the Public Hearing.

Chair Swift wants the Commission to address holdovers from the last meeting. She referred to Chapter 17.110: "Cannabis Uses" and asked for comments on parking standards as they relate to delivery vehicles.

Chair Swift provided the following comments:

- The State does not treat delivery vehicles for cannabis the same as any other kind of retail operation. They are required to be un-marked, have a GPS for tracking, they cannot leave goods unattended in the vehicle unless in a lockbox, etc.
- She is concerned that a delivery vehicle would be parked on the street or in the proximity of the business and the employee would need to carry product to and from the business to the vehicle. This is a security issue.
- It would be appropriate to have parking requirements for any delivery vehicles.

Commissioner Rodriguez provided the following comment:

- She supported Section 17.110.040(C), "Cannabis Retail Uses", as written relating to parking requirements.

Commissioner Green provided the following comments:

- State regulations on delivery vehicles are tight regarding the need for sealed containers.
- He is no longer pushing for an additional parking space for a business that has a delivery component.

Commissioner Fragoso provided the following comments:

- They should keep the industrial use parking standards for delivery only.
- She supported the draft as written.

Commissioner Gonzalez-Parber provided the following comment:

- She supports the draft as written.

Chair Swift asked for comments on cultivation and the exception on the number of plants that could be grown.

Commissioner Green provided the following comments:

- It depends on whether it is outside or inside cultivation. Research tells him someone would need about 18 inside plants to be the equivalent of 6 outside plants.
- He suggested no more than 18 plants for inside cultivation.
- They need to consult with a physician to find out how much a patient might need.
- He would support no limit on inside cultivation but a limit for outside cultivation.
- The exception should be on a case-by-case basis depending on patient need, the location of the property, etc.

Commissioner Fragoso provided the following comments:

- She understood Commissioner Green's train of thought.
- Eighteen mature plants in a small home could be a hazard if they are using grow lights and heat lamps.
- She could support no specific number for the exception based on a certain situation subject to the Town Manager's discretion. She recommended deleting the 18 plant limit contained in the ordinance..
- The language could refer to "based on medical need and the health and safety conditions on that property... the number allowed could be at the Town Manager's discretion".

Commissioner Green provided the following comments:

- Eighteen plants would be like a "Christmas tree lot".
- Not having a number might be a better way to do this- administrative discretion was a better idea.

Commissioner Gonzalez-Parber provided the following comments:

- There should be administrative discretion.
- It could be more than 6 and up to 18.
- A more general description of an allowance would be acceptable.

Commissioner Rodriguez provided the following comment:

- She supported the staff recommendation.

Chair Swift asked for comments on Section 17.110.310, "Medical Cannabis Administrative Exception" (F) and asked if the ten day appeal period was sufficient and how the public would be notified.

Commissioner Fragoso provided the following comment:

- The decision would be in writing.

Chair Swift provided the following comments:

- She was concerned that the neighbors or the public would not be aware of the approval of the exception and would not be able to meet the 10 day appeal period. Town Manager Toy stated staff has not experienced any applications under the current provisions or any problems so far, and he suggested they leave it as is. This is a typical "wait and see" situation.

The other Commissioners did not have a concern with the appeal period.

Commissioner Green provided the following comment:

- He referred to Section 17.110.320 "Medical Cannabis Administrative Exception" (B), and asked how "verification" would equate to a physician's recommendation. Town Attorney Coleson explained staff's rationale. She stated staff would work on the language.

Commissioner Fragoso provided the following comments:

- The "elephant in the room" was the number of locations.
- The existing medical cannabis retail, medical cannabis delivery, and adult retail delivery are all considered one because they are in the same location.
- If they go with what is proposed (two retail locations) then that means only one other location could come operate in Town but they could provide all 3 types of cannabis sales - medical retail, adult retail and retail delivery.
- She thought about approving two or three locations but realized one could be doing all three types of business. She is reconsidering whether she agrees with two or it should be left at one.

Town Attorney Coleson noted there was a lot of discussion about the need for competition. The future will probably see a "morphing" into one thing- just retail.

Commissioner Green provided the following comments:

- Allowing just one business would create a monopoly. Competition and creativity are a good thing.
- They need to allow for a minimum of two.

Commissioner Rodriguez provided the following comments:

- She supports reducing the number to one.
- Fairfax does not need to be on the cutting edge providing the first cannabis retail storefront in Marin- there are too many unknowns.

Town Attorney Coleson stated Chapter 17.004.100(D) of the Municipal Code talks about amendments to the Zoning Code. The recommendation of any amendment to this title shall be by resolution of the Planning Commission carried by the affirmative vote of not less than two-thirds of the total voting membership (five). She referred to Chapter 17.004.110(E) which refers to matters where the Council has asked the Commission to weigh in on an issue. She referred to Chapter 17.004.110(F) which states that if the recommendation of the Commission is to disapprove the proposed action (do not have the five affirmative votes) then the resolution is forwarded to the Council as unapproved. She recommends that the Commission take a vote.

Commissioner Gonzalez-Parber provided the following comment:

- She asked when the Commission would be able to reconsider this if it is sent to the Council unapproved. Town Attorney Coleson stated the Council would have a number of meetings before the ordinance went into effect and if the Commission wanted to review certain provisions then there was a way they could do that.

Commissioner Green provided the following comment:

- He referred to Chapter 17.110.230(A) and asked staff to rewrite the first sentence. Town Attorney Coleson suggested the following: "A medical...cannabis delivery service *as a permitted use*..."

M/s, Green/Swift, motion to adopt Resolution 2019-08 with the following changes to the ordinance: 1) Deleting the limit of the exception; 2) Leave the parking as is; 3) Amend the language in Chapter 17.110.230(A) to read: "A medical...cannabis delivery service *as a permitted use*..."; 4) Ask staff to work on clarifying the language in Chapter 17.110.310(B) regarding requirement to get a physician's recommendation for a medical exception.

AYES: Green, Chair Swift

NOES: Fragoso, Gonzalez-Parber, Rodriguez

ABSENT: Kehrlin, Newton

Planning Director Berto referred to Chapter 5.56, "Cannabis Businesses" and presented a staff report and a PowerPoint presentation.

Town Attorney Coleson referred to the criminal history background check and stated staff is recommending that the Police Chief not be required to use any discretion. Town Manager Toy stated the language would be as follows: "The Police Chief shall review and report if the criminal history of the applicants, owners, and managers meet the minimum criteria pursuant to Section 5.56.080."

Commissioner Gonzalez-Parber asked about the triggers for the traffic report. Planning Director Berto stated if staff believes it is possible or likely that the business will generate more than 100

average daily traffic trips over the prior business, then it would trigger the need for the Traffic Impact Permit (TIP) process.

Chair Swift referred to Section 5.56.080 "Minimum Criteria for issuance of a permit" and asked if staff looked into what the Alcoholic Beverage Control Board (ABC) does in terms of former felons. Town Attorney Coleson stated she spoke to ABC and found out there is some discretion in their regulations. Some cities are willing to issue permits if the applicant can meet the State requirements.

Chair Swift referred to Section 5.56.090 "Operating Requirements" (D)(13) and stated the language was unclear. Planning Director Berto stated the intent was to make it clear that the permittee was responsible for the actions of employees on or about the premises.

Commissioner Green provided the following comment:

- He referred to Section 5.56.090 "Operating Requirements" (D)(12) and stated he would like to add "iv." that would say "The commission of repeated offenses of any type", for example, it could refer to multiple traffic offenses

Commissioner Rodriguez provided the following comments:

- She recommended the use of common language throughout as opposed to "legalese", for example, "common law", "nolo contendere", "preponderance of evidence", etc.
- She referred to Section 5.56.080 "Minimum Criteria for issuance of a permit" and stated she was not that concerned about dishonesty and deceit because it is not as clearly defined as an arrest for controlled substances.
- She referred to Section 5.56.090(5) "Consumption" and asked if that included body oils or creams.
- She referred to Section 5.56.100, "Term of permit and renewal procedure"(C) and stated 120 days was a long time for a business to wait for notification.

Commissioner Fragoso provided the following comments:

- The applicant's business plan should have an assessment of anticipated traffic.
- They are moving in the right direction.

Chair Swift asked for comments on the Draft Scoring Criteria document.

Commissioner Rodriguez provided the following comments:

- They should look at how to take all the sub-bullets and quantify them under the point total.
- She was not sure how the individual doing the scoring would reach a conclusion.

Commissioner Green provided the following comments:

- Security issues should be added.
- Submittal of a business plan would be a plus.
- He referred to "Public benefits", bullet #7, and suggested business may consist of donating to prevention or addition programs.
- He discussed a brochure that the Town could produce and ask dispensaries to display regarding "safe consumption of cannabis".

Commissioner Fragoso provided the following comment:

- Some type of "weight" should be added to the sub-categories.

Chair Swift provided the following comments:

- She referred to the rating system, (i), bullet #4 and had questions about how to define "innovative".

- She stated some of the requirements were vague and confusing, for example what ‘consistent with the Fairfax community’ means
- The “social equity” requirement could be considered restrictive.

## **PUBLIC HEARING ITEMS**

### **3. Discussion of fence regulations regarding permitted materials.**

Chair Swift noted this item would be discussed during the Planning Director’s report.

## **MINUTES**

### **4. Minutes from the March 14, 2019 and the March 21, 2019 Commission meetings**

M/s, Gonzalez-Parber/Fragoso, motion to approve the March 14, 2019 minutes as corrected.

AYES: Fragoso, Green, Chair Swift

NOES: Rodriguez

ABSENT: Kehrlein, Newton

ABSTAIN: Gonzalez-Parber

M/s, Fragoso/Green, motion to continue the March 21, 2019 minutes for clarification.

AYES: Fragoso, Gonzalez-Parber, Kehrlein, Newton, Rodriguez, Chair Swift

ABSENT: Kehrlein, Newton

## **PLANNING DIRECTORS REPORT**

Planning Director Berto reported a resident had expressed concern about particular types of fences that might not fall within current regulations. Something needs to be affixed to the ground to be considered a “structure” that can be regulated. The concern, if it has to do with fire safety, should be directed to the Ross Valley Fire Authority. Staff could bring this back for discussion by the Commission at a future meeting. He reported the Town Council deliberated on maximum house size and decided to continue the item to its Special Meeting scheduled for April 23<sup>rd</sup>.

## **COMMISSIONER COMMENTS AND REQUESTS**

Commissioner Rodriguez asked staff what was next on the Commission Work Plan. Planning Director Berto stated they could discuss this in conjunction with the budget discussions. The Marinda Height (a.k.a. Wall Property) project will be going active in the near future. The Commission will take the lead on a scoping session once the EIR consultants are selected.

Commissioner Gonzalez-Parber stated she did not remember the Commission approving the exterior paint color for Café Lotus. Principal Planner Neal stated exterior color changes are no longer under the Commission’s purview. Chair Swift stated this should be added to the list of items for Commission discussion.

Commissioner Gonzalez-Parber thanked staff on their hard work on the Cannabis Ordinance.

Chair Swift stated the Commission reviewed an application for a project at 251 Scenic that was subsequently reviewed by the Council for a Variance to the driveway width. She wanted the code changed so that type of variance is approved by the Commission. Principal Planner Neal stated that was on the “to do” list.

Chair Swift noted staff does not always include all the information in the Commission packet when items are continued. Planning Director Berto asked the Commission to hang onto that information and bring it to the next meeting when items are continued.

Chair Swift asked about the progress made on the historical downtown survey. Planning Director Berto stated the consultant was working on getting volunteers. Some progress is being made.

Commissioner Rodriguez stated she would like the Commission to discuss how to streamline meetings and improve decision making. Commissioner Gonzalez-Parber stated the process has improved but there was a lot of minutia that can be handled off-line. Planning Director Berto stated staff would be happy to make suggestions on how to run meetings more efficiently.

## **ADJOURNMENT**

A motion was made, seconded and unanimously approved to adjourn the meeting at 10:15 p.m.

Respectfully submitted,

Toni DeFrancis,  
Recording Secretary

DRAFT FAIRFAX PLANNING COMMISSION MEETING MINUTES  
FAIRFAX WOMENS CLUB  
THURSDAY, MAY 16, 2019

Call to Order/Roll Call:

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

Commissioners Present:                    Norma Fragoso  
                                                     Esther Gonzalez-Parber  
                                                     Laura Kehrlein  
                                                     Mimi Newton  
                                                     Michele Rodriguez  
                                                     Cindy Swift (Chair)

Commissioners Absent:                    Philip Green

Staff Present:                                Ben Berto, Planning Director  
                                                     Linda Neal, Principal Planner  
                                                     Kara Spencer, Assistant Planner

**APPROVAL OF AGENDA**

M/s, Fragoso/Newton, motion to approve the agenda as submitted.  
AYES: Fragoso, Gonzalez-Parber, Kehrlein, Newton, Rodriguez, Chair Swift  
ABSENT: Green

**PUBLIC COMMENTS ON NON-AGENDA ITEMS**

Mr. Rick Hamer, Fairfax, stated the Town has two ordinances that protect people who rent and call Fairfax "home". He asked the Commission to question whether or not a project reduces affordable housing. He is concerned about reducing the number of dwelling units, including live/work spaces, in Fairfax. Central Fairfax should not become a "playground" for outsiders.

Chelsea, local hairstylist, spoke about choosing love, humanity, and peace over hate, greed, and profit. She supported the growth of medicinal cannabis businesses and was opposed to the fear-based, anti-cannabis stance taken by some people.

Ms. Cathy Taylor stated she runs a not-for-profit organization that helps patients with cancer and thought opening a cannabis business in Town would be a great way to fund this project. The Town seems to be re-litigating old arguments about cannabis and its negative effects. She has done everything "by the book" and they deserve a chance to operate this business.

Commissioner Newton asked staff to forward any documents presented during Open Time to the Town Council.

Kevin, Scenic Road, stated there was a storm drain that was diverting water onto his property and causing damage and erosion.

**CONSENT CALENDAR**

There were no Consent Calendar items.

## PUBLIC HEARING ITEMS

### 1. 306 Scenic Road; Application #19-08

**Request for a Use Permit and Variance to construct a 7- to-9-foot tall retaining wall along approximately 28.5 feet of the western property line adjacent to an accessory dwelling unit under construction on a site developed by a single-family residence; Assessor's Parcel No. 001-051-19; Residential Single Family RS-6 Zone District; Selander Architects, Krystin Rubin and Karen Heisler, owners; CEQA categorically exempt per Section 15301(e)(1) and 150303(e).**

Assistant Planner Spencer presented the staff report. She distributed a revised resolution.

Chair Swift opened the Public Hearing.

Mr. Ernie Selander, architect, made the following comments:

- While clearing vegetation for the accessory dwelling unit (ADU) they discovered that the cut that was made in the past was much deeper than they had imagined.
- They want to construct a wall to retain this steep cut and restore an angle of repose that would protect the driveway above it.
- This would be a good improvement for the property and the community at large.

Commissioner Rodriguez noted there were two retaining walls- one in the back and a lower one in the front, with the water retention system being placed in between. She asked if they could move and lower the height of the proposed wall if they did not need the retention system. Mr. Selander stated they are putting the wall in a place where they can create an angle of repose above the wall.

Mr. Rick Hamer, Fairfax, made the following comments:

- He did not see an engineer's stamp on the drawing that was submitted.
- This is a tall retaining wall and the construction is not "text book".

Mr. Ernie Selander, architect, made the following comments:

- This is a planning set of drawings.
- They will submit engineering drawings once the application is approved.

Chair Swift closed the Public Hearing.

Commissioner Fragoso provided the following comments:

- She does not have an issue with the concept.
- She is concerned that there is a discrepancy in the information contained in the documents (one wall vs. two walls).
- One document in the packet discusses "the potential for instability due to the steep nature of the underlying geologic conditions".
- The engineer should approve the plans for the foundation work and the construction of the wall that is retaining the cut area below the neighbor's driveway.
- She has a problem with approving what has been presented.

Commissioner Kehrlein provided the following comments:

- They could add the following condition: "Engineered plans are to be submitted and approved by the Town Engineer prior to issuance of the Building Permit".
- Condition #1 could be amended to say that a Building Permit must be applied for and structural calculations for the retaining wall must be included.



Commissioner Rodriguez provided the following comments:

- She agreed with Commissioner Fragoso.
- The premise of the staff position is that there is a geologic hazard but it is not supported by the material in the packet.
- There is a description of how the wall is supposed to help retain the cut and stabilize the slope.
- She fails to see what the health and safety danger was that would trigger the need for a retaining wall and in particular one of this height.
- She could not support the application.

Commissioner Gonzalez-Parber provided the following comments:

- The Commission is being asked to approve a variance to the height of the retaining wall.
- The Building Permit would be at the discretion of the Town Engineer and require structural details, drawings, calculations, etc.
- She could approve the application.

Commissioner Newton provided the following comments:

- She referred to page 1 of the Resolution, Conditional Use Permit Findings (1), and stated it relates to a grant of special privilege.
- She understood Commissioner Rodriguez's concern about the lack of information about possible health and safety risks that would justify the increased height. Planning Director Berto stated this was not the crux of the application- the height is simply tied into the evaluation of the slope and the cut.

Commissioner Fragoso provided the following comments:

- She does not have sufficient information to make a decision. They do not even have a "back of the napkin" sketch of what it would look like. Commissioner Gonzales-Parber explained where the retaining wall diagram was located.
- There is no finding regarding the requirement of a nine-foot retaining wall.

Commissioner Rodriguez provided the following comments:

- What is the purpose of the retaining wall?
- Is there a geologic nexus between the height, the location, and the wall?
- The purpose as defined by the packet is to support two water tanks in order to capture rain water and irrigate landscaping.
- There is no information saying there is a geologic hazard.
- If they shifted the wall they could lower the height and potentially comply with the wall height limit.

Chair Swift provided the following comments:

- She asked staff about the location of the scarp- is it where the ADU is located? Assistant Planner Spencer stated "yes"- the cut had been there for years.

Principal Planner Neal explained the property is in a Landslide Hazard Zone as identified in the Salem Howes Maps and the Fairfax Slope Stability Map. This means that if you do not have bedrock for a cut that steep but rather have the typical Franciscan Formation Soils (slate, shale, etc.) found in Fairfax it will not be stable unless you lay it back to a 2:1 slope. They could lay it back but it might put them off the property. The second wall is intended to break up the visual appearance of the first wall- it is more like a 4-foot high concrete fence. The variance is for the wall that is needed to retain the un-retained slope that is not bedrock.

Commissioner Newton provided the following comments:

- She asked how much leeway they could give the Building Department to address the Commissioners concerns.

- She did not want to make a “Federal case” out of something that, if done properly, was pretty straightforward.

Commissioner Rodriguez provided the following comment:

- She could support the application given Senior Planner Neal’s description of what is happening on the site.

Chair Swift provided the following comments:

- She supported the application.
- Neither of the retaining walls will be visible from the property above or the roadway.

Principal Planner Neal suggested the following language be added to Condition #1: “A Building Permit must be applied for that includes structural calculations and engineered plans that shall be reviewed and approved by the Town Engineer prior to issuance of the Building Permit”.

Commissioner Newton provided the following comment:

- She referred to the resolution, page 4, under “Now, Therefore be it Resolved” and asked that the Use Permit number (#19-08) be included in the first paragraph.

M/s, Newton/Gonzalez-Parber, motion to approve Resolution No. 2019-09 with the addition to Condition #1 as recommended by Principal Planner Neal and the modification recommended by Commissioner Newton about the inclusion of the Use Permit number.

AYES: Gonzalez-Parber, Kehrlein, Newton, Rodriguez, Chair Swift

NOES: Fragoso

ABSENT: Green

Chair Swift stated there was a 10-day appeal period.

## DISCUSSION ITEMS

### **2. Discussion of draft work program including potential Zoning Ordinance “clean-up and internal consistency” code amendments**

Planning Director Berto presented the staff report. In August, 2018 the Town Council recommended the Commission prioritize the following programs: 1) Objective Development Standards for Housing; 2) Marinda Heights Subdivision of the Wall Property; 3) Cannabis Regulations; 4) Maximum Residential Size. Staff is looking at grant programs from the State for work on the Objective Development Standards. The environmental review process will start soon on the Marinda Heights Subdivision (a.k.a. Wall Property). This will be a very interactive process which would include the public, the Commission, consultants, the applicant, and staff.

Commissioner Newton asked about the Council’s recent Closed Session meeting regarding the Wall Property. Planning Director Berto stated staff did not participate in that meeting. However, the Mayor reported at the meeting that the Council declined to purchase the easternmost property (10 acres) that links up to Ridgeway Avenue. Commissioner Fragoso asked if there was a proposal that a certain amount of that open space would be granted to the Town. Planning Director Berto stated the current proposed project has about 93 acres of the total 100 acres in permanent open space.

Chair Swift stated most of the work program items listed were in progress. She asked if staff sees the staff report items as the work program for the next fiscal year. She noted the Commission also prioritized the downtown historical analysis, possibly looking at a new Lighting Ordinance, reviewing the Ridgeline Development Guidelines, and updating the Visual Resources Map. She asked where those items fit in. Planning Director Berto stated the department recently hired an additional staff member, Assistant Planner Spencer, and this will allow staff to start undertaking those items,

including the Zoning Amendments. He noted that Zoning Amendments can take on a "life of its own". Potential amendments including limiting the length of time a development application can remain incomplete, the length of time all discretionary approvals remain valid, and the length of time construction-related approvals remain valid. These items have been discussed at a staff level and are considered to be clean-up items and not controversial. Staff will start to bring those to the Commission for review. The downtown historical analysis would be incorporated into the objective development standards. Chair Swift asked when staff would be submitting a work product to the Commission. Planning Director Berto stated hopefully halfway through the upcoming fiscal year. Education and outreach is important and a good starting point would be a Historic Context Statement. He referred to the Ridgeline Development Guidelines and the Visual Resources Map and stated staff plans to digitize the maps

Commissioner Fragoso asked if there was an informal scope of work or an outline for the downtown historic analysis. Planning Director Berto stated he would come back in June with more details. Commissioner Newton volunteered to help with this task.

Commissioner Fragoso stated she would also like to discuss the Zoning Map vs. General Plan Map conformity issue in the near future. Commissioner Newton stated she would like the Commission to make recommendations on these conformity changes in the next fiscal year.

Commissioner Rodriguez stated her priorities would be the staff recommended Zoning Amendments, the cultural resource historic preservation, the Ridgeline Guidelines, and the Visual Resources/General Plan Maps.

### **3. Minutes from the April 11, 2019 Commission meeting**

Commissioner Gonzalez-Parber stated she would like to watch the video to get clarification on something she said at the April 11<sup>th</sup> meeting.

M/s, Gonzalez-Parber/Fragoso, motion to continue the April 11, 2019 minutes.

AYES: Fragoso, Gonzalez-Parber, Rodriguez, Chair Swift

ABSENT: Green

ABSTAIN: Kehrlein, Newton

### **Planning Director's Report**

Planning Director Berto reported he, along with Commissioner Rodriguez, attended several sessions of the National Planning Conference held in San Francisco. He reported Assistant Planner Spencer has been working on new Conflict of Interest Maps for the Commissioners since the State has adjusted the law as it pertains to public officials. Previously there was a 500-foot limit but there are some new wrinkles pertaining to 500-feet vs a 1,000-foot limit for certain projects. The map also includes a list of addresses. He will be presenting this information to the Commission soon.

### **Commissioner Comments and Requests**

Commissioner Fragoso reported she would not be able to attend the June 20<sup>th</sup> Commission meeting.

Commissioner Gonzalez-Parber stated it was pointed out to her that the Bolinas Road crosswalk by the CBD store was very dangerous. She asked if flashing beacon lights, similar to the ones on Center, could be installed. Planning Director Berto stated he would talk to the Town Manager and report back.

Commissioner Rodriguez stated one of the more relevant sessions she attended at the Planning Conference had to do with the "sharing economy"- the AirBNB home regulation topic. The speaker

was of the opinion that rental growth rates were significantly increasing as a result of AirBNB units. Revenue can be as much as \$20,000 per year. However, there could be a loss in Transient Occupancy Tax (TOT) revenue. The other interesting session had to do with the different types of impact fees that jurisdictions can levy. She stated she obtained some new objective standards that were being reviewed by the City of Lafayette. She gave a copy to staff. It includes the following four sections from which applicants can obtain points; 1) Open space; 2) Creeks and landscaping; 3) Parking and circulation; 4) Height and scale. It is a way to incentivize projects.

Chair Swift asked if staff had responded to the recent inquiry about 7 Olema Road (rip rap). Planning Director Berto stated staff was aware of the rip rap and will talk to the Public Works Department.

## **ADJOURNMENT**

A motion was made, seconded and unanimously approved to adjourn the meeting at 9:55 p.m.

Respectfully submitted,

Toni DeFrancis,  
Recording Secretary