

FAIRFAX PLANNING COMMISSION MEETING MINUTES  
FAIRFAX WOMEN'S CLUB  
THURSDAY, JANUARY 17, 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 (arrived 7:10)  
Philip Green  
Laura Kehrlein (arrived 9:00)  
Mimi Newton  
Michele Rodriguez  
Cindy Swift (Chair)

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

**APPROVAL OF AGENDA**

Chair Swift asked staff to place the following item on the next agenda: Election of Vice Chair.

M/s, Fragoso/Newton, motion to approve the agenda as submitted.

AYES: Fragoso, Green, Newton, Rodriguez, Chair Swift

ABSENT: Gonzalez-Parber, Kehrlein

**PUBLIC COMMENTS ON NON-AGENDA ITEMS**

Commissioner Fragoso reported Sustainable Fairfax and the Environmental Forum will be sponsoring the film "Wasted" on Friday, January 25<sup>th</sup> at 7:00 p.m. at the Women's Club. The film is about food waste and the reduction of greenhouse gases.

Commissioner Gonzalez-Parber arrived at the meeting.

**CONSENT CALENDAR**

There were no Consent Calendar items.

**PUBLIC HEARING ITEMS**

**1. Discuss/consider local cannabis regulatory policy options and provide direction to staff**

Chair Swift stated Commission Kehrlein was recusing herself from this item.

Town Manager Toy presented the staff report and gave a PowerPoint presentation.

Commissioner Green referred to the appeal process and asked if it could be considered a denial of due process if it were eliminated. Town Attorney Coleson stated the final decision would be made by the Planning Commission so the process would not be redone by the Council. The Commission would need to make findings and have reasons for making selections. It would not be arbitrary. Commissioner Newton asked about the idea of having the Council grant an additional Use Permit above the cap for medical marijuana. Town Attorney Coleson stated this was discussed by staff.

Commissioner Fragoso referred to discussion item #4, cultivation for personal use, and asked if an exception could be allowed for medical cultivation (more than six plants). Town Manager Toy stated staff thought the majority of the Commission wanted to eliminate those exceptions. Commissioner Newton stated the Health and Safety Code refers to the Compassionate Use Act which includes additional plants as needed as an option. Town Attorney Coleson stated they want to find the middle ground between accommodating the needs of the individual vs. the needs of the neighborhood/community.

Commissioner Green referred to discussion item #4 which would allow six plants per lot for multiple dwelling lots and asked how that would work. Town Attorney Coleson stated the limit is per parcel and the property owner would control the parcel- it would be up to the landlord how to do this, if at all. Planning Director Berto stated staff surveyed multi-family property owners and they were unanimously opposed to allowing tenants to grow cannabis.

Commissioner Fragoso referred to discussion item #8 and had a question about the possible locations of retail businesses within the buffer zones. Town Manager Toy stated they would have to be outside the buffer zones unless the Commission wanted to create exceptions.

Commissioner Fragoso referred to discussion item #9 and asked if they will be able to discuss the required criteria for applications. Town Manager Toy stated the Commission could discuss this at an upcoming meeting once they decide what the process will be.

Commissioner Rodriguez referred to discussion item #10 and stated she was used to land use decisions being based on zoning. She was concerned about permitting this as a Business Permit in a non-zoning chapter. She asked about enforcement, case law, etc. Town Attorney Coleson stated the Planning Commission decision would be based on the Zoning Chapter (criteria, etc.) for the selection process. Once the Commission has made the selection then the Business Permit is a ministerial. She discussed an enforcement and possible revocation process via a hearing officer.

Commissioner Gonzalez-Parber referred to discussion item #8, and asked about possible impacts to the public with respect to Health and Safety Codes. She asked about current smoking regulations. Town Manager Toy explained the smoking regulations with respect to tobacco. Commissioner Gonzales-Parber stated that there should be no difference in regulating the two types of smoke.

Commissioner Newton referred to the Compassionate Use Act and stated medical users are entitled to more than six plants. The act allows a resident to grow six plants or more in his or her unit as long as it is locked and secure.

Chair Swift asked for clarification on the issue of cultivation on balconies and whether this would be considered "indoor" or "outdoor". Assistant Town Attorney Charne stated the definition in the current cultivation ordinance defines indoor as a fully enclosed and secure structure with a roof and a solid siding, which would preclude most balconies as being considered "indoor" cultivation.

Chair Swift referred to indoor cultivation and the definition of "enclosed and secured structures" and asked if indoor cultivation has to be secured within the residence or if the residence itself as a whole would fit the bill. Assistant Town Attorney Charne stated there is some ambiguity in the statute and

the Town could decide to treat the locks on the front door as being “locked and secured for the residence”. They could also decide that the plants should be in a locked room.

Chair Swift opened the Public Hearing.

Mr. Lew Tremaine, Sir Francis Drake Boulevard, made the following comments:

- The Commission had expressed interest in allowing microbusinesses – they should be allowed.
- He urged the Commission to require that dispensaries are microbusinesses. This helps the retailer cut out the middle man.
- It might be a good idea to allow an appeal process whereby an applicant who is not selected could ask the Council to add one more business.
- Commissioner Newton is correct about medicinal cultivation. It is based on the individual’s need.

Lauren, Fairfax, made the following comments:

- She is hoping they do not adopt an ordinance requiring people to grow indoors.
- She wants to grow her medicine in the sun in her backyard.

Ms. Bridget Clark made the following comments:

- She urged the Commission to read a recent article in the New Yorker about cannabis.
- Fairfax is an adult-centric Town that does not enforce smoking regulations.
- Many parents and educators have urged the Council to not allow a shop in Town- it would normalize cannabis even more.
- She discussed some negative public health and safety issues that could result from cannabis use.
- A traffic study should be required.

Ms. Beverly Brewster, Cascade Drive, made the following comments:

- She is a pastor in Sleepy Hollow and a lot of the “tweens” and teens in her parish come to Fairfax for recreation.
- She agreed with the comments made by Ms. Nelson about the negative effects on mental health from cannabis use.
- Many residents did not want to walk down the streets of Fairfax and smell other people’s marijuana smoke.

Ms. Jazzy Garretty made the following comments:

- She discussed some recent news articles about how big companies would be running the retail sales of cannabis.
- Big alcohol and tobacco companies are investing heavily in the cannabis industry.
- There have been no studies of cannabis products with greater than 15% THC.
- Flavored marijuana products should be banned in Fairfax.

Chair Swift closed the Public Hearing.

Commissioner Green asked if microbusinesses could be highly regulated. Town Manager Toy stated the Council decided to not allow commercial cultivation, one of the four microbusiness categories, leaving the retail, distribution, and manufacturing categories. They need to discuss this further.

Chair Swift asked for comments on cultivation on balconies (outdoor growing).

Commissioner Fragoso provided the following comments:

- The current ordinance allows cultivation on balconies if it is well screened.
- She agrees with the current standards.

Commissioner Green provided the following comments:

- In general, he is not in support- it is too visible.
- It would depend on the screening.

Commissioner Newton provided the following comments:

- She would not limit outdoor or indoor growing (up to six plants) but would build in an exception for people under the Compassionate Use Act.
- She noted people could have six plants and 28.5 grams for personal consumption.

Commissioner Gonzales-Parber provided the following comments:

- She supported growing on a balcony if it is screened and has no odor.
- She would allow an exception if someone has a legitimate, medical reason.

Chair Swift asked for comments about outdoor restrictions for growing including the prohibition on parcels within 200 feet of any public or private preschool, elementary, or middle school (a buffer).

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

- They are in favor of the current regulations- keep the buffer.

Commissioner Newton provided the following comment:

- It is not necessary as long as it cannot be seen from the public right-of-way.

Chair Swift provided the following comment:

- She was in favor of removing the buffer- the other requirements are sufficient.

Commissioner Fragoso provided the following comment:

- She referred to discussion item #6 and stated 1,000 square feet might be sufficient.

Chair Swift asked for comments about parking standards.

Commissioner Newton provided the following comments:

- She was amenable to them if they are going to open up the retail requirements to the CC, CH, and potentially the CL Zones.
- She is not sure why they would add additional parking to an area if they are going to limit it to the areas in the State buffer zone. This would basically "regulate the business out of Town".

Commissioner Green provided the following comments:

- He agreed with Commissioner Newton.
- There were basically two possible areas where you could have an adult-use dispensary.

Planning Director Berto stated the Commission could ask for a traffic and parking study since this could be the only recreational retail outlet in Marin for some time. He agreed there were limited locations due to the buffer.

Chair Swift asked for comments on types of businesses, retail store fronts, delivery only- the numbers.

Commissioner Fragoso provided the following comment:

- She supported one adult use retail, one adult use delivery, and one medical.

Commissioner Gonzalez-Parber provided the following comments:

- They need competition.

- The traffic impact report is vital.
- She supported two retail, two delivery, and one medical.

Commissioner Green provided the following comments:

- He has supported two all along- whether medical or adult, delivery based or an open shop.
- There should be up to two permits (locations) available, including the current one.

Commissioner Newton provided the following comments:

- She does not agree with having limits on any of this.
- She supported the highest maximum cap possible. If limited, allow three retail, three delivery, and three medical.

Commissioner Rodriguez provided the following comment:

- She agrees with Commissioner Green.

Chair Swift provided the following comment:

- She supported one of each- three maximum.

Chair Swift asked for comments on the buffer zones.

Commissioner Gonzalez-Parber provided the following comments:

- She supported the State buffer zone of 600 feet.
- She would like to add parks to the list.

Commissioner Fragoso provided the following comment:

- She supported the buffer zones, including for delivery.

Commissioner Green provided the following comments:

- The buffer zone should be maintained but there could be an application for an exception for a delivery only business.
- It should be reviewed on a case-by-case basis.

Commissioner Newton provided the following comments:

- She is in favor of getting rid of the buffers.
- Uses should be allowed in CH, CC, and CL Zones.

Commissioner Rodriguez provided the following comment:

- Maintain the buffer.

Chair Swift provided the following comments:

- She would do away with the buffers for youth centers and day cares.
- She would like to look at the school buffer zones in relation to potential places that could be a fit.
- Delivery only could be feasible in areas near a day care, youth centers, or parks.
- Uses should be allowed in the CL Zone.

Chair Swift asked for comments on whether cannabis businesses should be allowed in the CL Zone.

Commissioner Gonzalez-Parber provided the following comments:

- No to retail.

Commissioner Fragoso and Rodriguez provided the following comments:

- No.

Commissioner Green, Newton, and Chair Swift provided the following comments:

- Yes.

The Commission took a 10-minute break at 9:00 p.m.

Commissioner Kehrlein arrived at the meeting.

**2. 407 Cascade Avenue; Application #18-21**

**Request for a Design Review and Use Permit for a new, 2-story, 3-bedroom, 2 ½ bath 2,255 square-foot residence with an attached 500 square-foot garage on a level 6,362 square-foot vacant lot. Continued from December 20, 2018 Planning Commission meeting. Assessor's Parcel No. 03-044-09, Residential RS6 Zone District; Shawn and Allison Madden, owners/applicants; CEQA categorically exempt per Section 15301.**

Planning Director Berto presented the staff report. He referred to page 2 of the staff report and stated the proposed height is now 25'9" and not 24' 9".

Commissioner Green asked if the plans indicated dark sky friendly lighting. Planning Director Berto stated "yes".

Chair Swift had a question about the overall reduction in the size of the garage. Planning Director Berto stated it was 200 square feet. Chair Swift asked if the height of the front yard fence was an issue. Planning Director Berto stated "no"- it is four feet high.

Chair Swift referred to the title of Resolution No. 2019-01 and asked that the word "amended" be deleted.

Chair Swift opened the Public Hearing.

Mr. Shawn Madden, applicant, made the following comment:

- They have gone above and beyond the recommendations.
- They reduced the height by one foot, dropped the eave height down a foot, provided a more earth-tone color palette, and included common names of plants on the landscape plan.
- He had a discussion with the eastern neighbor- he is not opposed to the project.
- They are building a standard home that is well within the guidelines.
- The shade studies indicate there are no direct lighting impacts.

Ms. Allison Madden, applicant, made the following comment:

- The height of the landscaping on the eastern side would be maintained at about five feet.
- One tree has been added to the front landscaping- it would get ten to fifteen feet high.
- The other shrubs range in height from four to five feet.

Chair Swift closed the Public Hearing.

Commissioner Gonzalez-Parber provided the following comments:

- She thanked the applicants for their efforts.
- The changes are a great improvement.
- She is fine with any of the colors presented.
- She supported the project.

Commissioner Fragoso provided the following comments:

- The applicants have addressed all the major concerns.
- She likes the way they set the building back and have broken up the solid mass.
- A four foot fence seems small given the way the property slopes up from the driveway.

- She referred to the color palette and stated she was happy with color scheme B (SK-02), C (SK-03) or D (SK-04).
- She is happy with the project.

Commissioner Green provided the following comments:

- This is a beautiful project and would be a terrific addition to the neighborhood.
- He referred to the color palette and stated he likes SK-01 or SK-02.

Commissioner Newton provided the following comments:

- She appreciated the revisions.
- She likes color scheme SK-01 but would be happy with any of them.

Commissioner Rodriguez provided the following comments:

- Her position has not changed from the last meeting where this was discussed.
- This is the largest of the fourteen homes cited on page 4 of the staff report and is almost 900 square feet larger than the majority of the homes.
- She would vote “no” due to the overall size of the building.
- It is a social equity issue. Larger homes leads to an increase in home sizes throughout the neighborhood which increases the costs of ownership and decreases affordability.

Chair Swift provided the following comments:

- They applicants have gone over and above what has been asked of them.
- She does not like color scheme SK-01 (too dark). She likes SK-03 and SK-04 but is fine with them selecting a color in concert with staff.
- She supports the project.

Commissioner Kehrlein provided the following comments:

- She does not like SK-01 and likes SK-02.
- She referred to the resolution, 4<sup>th</sup> “Whereas”, 7<sup>th</sup> paragraph, and stated the word “accessible” should be changed. Planning Director Berto stated they could change the wording to: “The on-site parking *meets code requirements* and will have.....”

M/s, Green/Fragoso, motion to adopt Resolution No. 2019-01 with the elimination of the word “Amended” in the Resolution title and the wording suggested by Planning Director Berto. Staff will determine the color with the applicants.

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

NOES: Rodriguez

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

### **3. Tree identification, protection and health assessment training in preparation for additional Planning Commission discretionary authority set forth in recently amended Town Code Chapter 8.36, Trees.**

Planning Director Berto presented the staff report.

Mr. Ray Moritz, Town Arborist, gave a PowerPoint presentation that included the following: 1) Example of site/drainage plan; 2) Tree surveys/surveyor’s locations of trees; 3) Tree diameter ground level (DGL) vs. diameter breast height (DBH); 4) Proximity to development; 5) Strategies; 6) Majority of roots located in upper 3 feet of soil; 7) Structural root system and tree stability; 8) Tree protection measures; 9) Trunk protection; 10) Soil armoring; 11) Tree health/structure assessment; 12) Tree survey; 13) Co-dominant stems. He discussed the need for Tree Protection Plans (TPP), site and grading plans, plans that include where materials will be stored, the location of utilities, and a good arborist report. He answered questions from the Commission.

The Commission thanked Mr. Moritz for his presentation.

**4. 308 Cascade Drive; Application # 19-01**

**Request for a Use Permit and Variance for a 120-square foot accessory structure for accessory living space (meditation, yoga, art studio) adjacent to an existing single-family residence: Assessor's Parcel No. 003-121-29; Residential Single-family RS-6 Zone; Hope Johnson and Enrique Aguirre Aves, applicants/owners; CEQA categorically exempt per Section 15301(4), 15303(e) and 15305(a).**

Principal Planner Neal presented the staff report.

Commissioner Fragoso asked if Town regulations require that accessory structures be unconnected to the main house. Principal Planner Neal stated "yes"- otherwise it would be considered an addition to the main house. Commissioner Fragoso asked if a pool house, tool shed, or greenhouse required a permit. Principal Planner Neal stated "yes" if it had electrical or plumbing. An accessory structure under 120 square feet does not require building permits unless they have electrical, plumbing, or require excavation. Commissioner Fragoso asked if they would be allowed to install a sink. Principal Planner Neal stated they are not asking for one.

Commissioner Gonzalez-Parber asked if there would be electrical. Principal Planner Neal stated "yes".

Commissioner Fragoso noted Marin Municipal Water District (MMWD) is requiring a back flow prevention device for the sprinkler system and she asked if that was necessary. Principal Planner Neal stated this was a standard condition.

Chair Swift opened the Public Hearing.

Ms. Hope Johnson, applicant, made the following comments:

- The house is small. They need a quiet space to do yoga and art.
- They cannot add another room to the house- it is on a slope.
- They are limited in the location. The other side of the yard is used for a garden.
- They tried to minimize the impact to the neighbors and the trees.
- The design conforms to the feel of the neighborhood.
- The structure is part of a kit design and can be put together in a couple of weeks.
- The structure is at least 60 feet away from any of the neighbor's properties.
- She had a question about the fire sprinkler requirement.
- The color will be olive-green, similar to the house.
- They are adding a deck to the front of the structure so it can be accessed. There will be steps up to the side of the structure.
- The roof will be metal.

Mr. and Mrs. Perkins, Cascade Drive, made the following comments:

- She lives next door.
- She has objections to the structure- the height, invasion of privacy, and the lights that will shine down into her property through the glass windows.
- It is oriented directly at her house with twelve feet of windows.
- Most of the structure is above the six foot fence line because it sits at the top of the lot.
- The structure was built without permits.



Chair Swift asked about the lighting. Principal Planner Neal stated there is no outdoor lighting shown on the plans but they do need lighting along the pathway.

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

- He would like the Commission to allow for a future sink and hose bib outside. This would help the firefighters in this WUI Zoe.

Chair Swift closed the Public Hearing.

Commissioner Green provided the following comments:

- He was concerned about the light shining into the neighbor's home. They need to do something about this impact.
- He does not like the fact that the structure is two feet within the rear setback. It should be moved back two feet.
- Homeowner's who plan to build need to consult with Town officials.
- He objects to the project.

Commissioner Kehrlein provided the following comments:

- It is possible to adjust the placement of the structure without too much trouble. The support structure is independent of the pre-fab unit
- It should be moved out of the rear setback.
- The neighbor's concerns should be mitigated.
- She could not approve it in its current location.

Commissioner Gonzalez-Parber provided the following comments:

- She asked what was supporting the structure in the front. Mr. Aves stated it was on piers. Repositioning the structure would require pouring new ones
- They might be able to pivot or rotate the structure.
- Privacy is an issue. Ms. Aves stated there would be one or two small lights that would shine down at the entrance.
- She could approve a continuance so the applicants could come up with a solution.

Commissioner Newton provided the following comments:

- She agreed with Commissioner Gonzalez-Parber.
- They should work with the neighbors and come back with a revised proposal.

Commissioner Green provided the following comment:

- A continuance would be acceptable.

Commissioner Rodriguez provided the following comment:

- She agreed with the comments made by the other Commissioners.

Commissioner Frago provided the following comments:

- She referred to page 2 of the resolution, third paragraph, and noted the reference to an "addition underneath the existing garage" should be deleted.
- They should consider blinds for that solid wall of glass.

Chair Swift provided the following comment:

- She urged the applicants to work with staff on possibly rotating the building and the other issues that have been brought up.

Principal Planner Neal asked the Commission if they were concerned with the setback.

Commissioner Kehrlein, Green, and Chair Swift provided the following comments:

- The setback was an issue.

Commissioner Gonzalez-Parber, Fragoso, and Newton provided the following comments:

- The setback was not an issue.

Commissioner Rodriguez provided the following comment:

- She could not respond until she saw the revised plan.

M/s, Gonzalez-Parber/Green, motion to continue the application for 308 Cascade Drive to the next regular meeting to allow the applicants to look at the setback and privacy issues.

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

NOES: Rodriguez

The Commission took a 5-minute break at 11:20 p.m.

### **Discussion Items**

There were no discussion items.

### **5. Minutes from the December 20, 2018 meetings.**

M/s, Newton/Gonzalez-Parber, motion to approve the December 20, 2018 minutes as corrected.

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

ABSTAIN: Green

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

Planning Director Berto reported there is a League of California Cities Planning Commission Conference scheduled for March 6 through 8<sup>th</sup> in Long Beach. He thanked Commissioner Rodriguez for sending the Weblink to the American Planning Association National Conference scheduled for Friday, April 11<sup>th</sup> through the 15<sup>th</sup>. The election of the Vice-Chair will be held at the February meeting. The Town Council will discuss maximum house size and the PDD amendment issues at the next meeting. Staff has deemed the Marinda Heights (a.k.a. Wall Property) application complete and the next step will be to send out Requests for Proposals (RFP) to environmental consulting firms. Once this selection is made, staff will be holding a scoping session. Commissioner Fragoso asked staff to post an update on this process on the Town Website. Planning Director Berto reported Commissioner Kehrlein's position on the Tree Committee will be replaced by an at-large member appointed by the Council. The Commission thanked Commissioner Kehrlein for her years of service.

Chair Swift asked if the Commission would be holding a Special Meeting in January. Planning Director Berto stated "no" but maybe in February.

### **Commissioner Comments and Requests**

Chair Swift stated she wanted to review the Commission priorities set at last year's workshop including historical buildings survey, etc.

Commissioner Green stated he would be interested in the Vice-Chair position.

Commissioner Newton referred to the Marinda Heights (a.k.a. Wall property) application and asked about the process for the Commission. Planning Director Berto stated the Commission would be involved in the scoping session. It will be a while until the Commission gets to the “nuts and bolts” of the review of the application.

## **ADJOURNMENT**

A motion was made, seconded and unanimously approved to adjourn the meeting at 11:40 p.m.

Respectfully submitted,

Toni DeFrancis,  
Recording Secretary