

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. She does not believe that Fairfax is ready for this type of business due to impacts on traffic, crime and youth. She would like input from the Fairfax Police Department and Ross Valley Fire Department before making a recommendation to the Town 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 outdoors 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 6 or up to 18 plants with a doctor's medical recommendation.
- 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 of retail uses 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: Kehrlein, 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 23rd.

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