

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