

FAIRFAX PLANNING COMMISSION MEETING MINUTES  
FAIRFAX WOMEN'S CLUB  
THURSDAY, JUNE 20, 2019

Call to Order/Roll Call:

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

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

Commissioners Absent: Norma Fragoso  
Mimi Newton

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

#### **APPROVAL OF AGENDA**

M/s, Gonzalez-Parber/Green, motion to approve the agenda.

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

NOES: Rodriguez

ABSENT: Fragoso, Newton

#### **PUBLIC COMMENTS ON NON-AGENDA ITEMS**

Mr. Rick Hamer, Fairfax, discussed how wildfires can start, how every second matters, evacuation plans, and suggested a Town-wide notification method. He stated walking away on a path should not be part of any comprehensive plan

#### **CONSENT CALENDAR**

There were no Consent Calendar items.

#### **PUBLIC HEARING ITEMS**

- 1. 402 Scenic Road; Application #19-09  
Request for a Use Permit, Setback Variance and Parking Variance for a bedroom, bathroom, storage room and stairway addition to an existing single-family residence; Assessor's Parcel No. 001-051-22; Residential Single Family RS-6 Zone District; Leo den Ouden, architect, Matthew and Jennifer MacDonald, owners; CEQA categorically exempt per Section 15301(e)(2)(A).**

Principal Planner Neal stated it was brought to staff's attention that this project was a 50% remodel and would require a Design Review Permit. This was not included in the notice so the application must be continued to the July meeting to allow for proper notification.

M/s, Green/Kehrlein, motion to continue Application #19-09, 402 Scenic Road, to the July meeting.  
AYES: Gonzalez-Parber, Green, Kehrlein, Rodriguez, Chair Swift  
ABSENT: Fragoso, Newton

## DISCUSSION ITEMS

- 2. Discussion/Consideration of an Ordinance to place time limits on incomplete, discretionary permit applications and zoning entitlements. Consideration and possible adoption of an Ordinance amending multiple sections of Fairfax Town Code Title 17, Zoning, to provide for expiration time limits on incomplete discretionary permit applications and on zoning entitlements granted by the Planning Commission. Amendments to Chapters 17.020, Design Review, 17.032, Use Permits, 17.040, General Provisions, 17.028, Variances, and 17.060, Hill Area Residential Development Overlay, are to be considered which would place a time limit on the amount of time discretionary permit applications can remain incomplete and limit the time approved discretionary permits will remain valid if not acted upon; CEQA exempt per Section 15060(c)(2), 15061(b)(3), 15378, and 15305.**

Planning Director Berto presented the staff report.

Commissioner Kehrlein stated circumstances can arise for an applicant and asked staff to clarify the process for an extension once a Planning Permit has been granted. Planning Director Berto referred to Section 17.040.110, Permit Time Limits and Extensions (B), and explained the process. The request for an extension must be done in writing. Staff determines whether the permit holder has attempted to comply (made a good faith effort) with the conditions of the permit. The extension can be up to one year. Commissioner Kehrlein asked if the applicant would have to go back to the Commission to be granted the extension. Planning Director Berto stated “no”- unless there was a policy shift (i.e. a General Plan Amendment that discourages that type of application).

Commissioner Gonzalez-Parber asked for clarification of Section 17.040.100, Incomplete Discretionary Permit Application, (2) Enforcement Cases. Planning Director Berto stated staff felt the extended time limits should be shorter in a violation situation. Commissioner Gonzalez-Parber asked if the time limit for a general application was 90 days. Planning Director Berto stated “yes”.

Commissioner Gonzalez-Parber stated some Towns will “reset the clock” whenever information is submitted or an inspection is made. This provides the applicant more flexibility. Planning Director Berto stated staff is trying to ensure that projects that have functionally been abandoned do not end up stuck in the system. Staff will give an applicant the benefit of the doubt if they see steady progress. The clock does get reset when they submit the requested information.

Commissioner Green referred to Section 17.040.110, Permit Time Limits and Extensions, and asked what was meant by “vesting”. Planning Director Berto stated an application is considered vested after it is approved and the appeal period has expired. The applicant can then sell these entitlements and anyone wishing to prevent the project is enjoined from doing so. There are also vesting periods for building permits.

Chair Swift asked what would happen if a property owner, with vested permits, sells the property. Planning Director Berto stated there were two elements to this: 1) There are the entitlements that are received once an appeal period expires- this is something that can be sold; and 2) They need to make some sort of progress in terms of obtaining building permits and completion of the project. Principal Planner Neal stated this was currently in the code- an HRD is good for a year but the Planning Director can grant a one year extension. The time limit continues to tick even if the property is sold to someone else.

Commissioner Rodriguez asked if all other approvals (HRD, Conditional Use Permit, Variance, etc.) are vested once the applicant pulls the Final Map. She is not sure “what triggers what”. Planning Director Berto stated what they have now is a “mishmash” of whether or not those discretionary entitlements expire and how long they are valid. If the discretionary applications expire then the Subdivision Map may be still valid. Staff is trying to “synch” everything together- all the entitlement approvals extend out to the same length of time which preserves the Conditions of Approvals.

Commissioner Rodriguez referred to Attachment C, Section 17.040.110 (B)(4), Hearing on Extension, and asked if the application is stayed if the Planning Director refers it to the Commission. Planning Director Berto stated “yes, until a decision is rendered by the Commission”.

Chair Swift asked the following questions about Building Permits: 1) Do they expire?; 2) Can they be extended, and for how long? Planning Director Berto stated they are not considering building Permits tonight but he could get those answers for the Commission. Building inspections have to be scheduled no greater than six months apart to remain active. Chair Swift stated she wanted to get a better understanding of the connection between the two.

Chair Swift referred to other discretionary approvals such as sign permits and traffic impact permits and she asked if staff was planning to include those in this process. Planning Director Berto stated a sign permit would be accessory to other permits such as a Use Permit for a business. Staff wanted to focus on the major applications that the Commission typically reviews. Staff was looking at an extensive revision to the Traffic Impact Permit Section at a later date.

Chair Swift referred to the staff report and asked what would be considered “substantial progress towards completing improvements” prior to staff deeming the application expired. Principal Planner Neal stated there were a lot of homeowners that do his or her own projects and they need to call for a building inspection every six months. These time limits are dictated by the Building Code.

Chair Swift referred to the time limit for an enforcement issue and asked what would happen if 90 days were not enough. Planning Director Berto stated it would depend on how one would characterize “substantial”- the Town could enact Summary Abatement proceedings if it is not resolved over an extended period of time. Chair Swift asked if a homeowner could apply for another extension, over and above the 90 days. Planning Director Berto stated they could request an extension beyond that allowed in the proposed code from the Planning Commission.

Chair Swift asked if all extension requests require a fee. Principal Planner Neal stated a fee is not currently charged but staff was in the process of amending the Fee Schedule and may include such a fee.

Chair Swift asked about amending the Hill Area Residential Development Section. Planning Director Berto stated this process would take more time.

Chair Swift opened the meeting to public comments.

Mr. Rick Hamer made the following comments:

- This hearing was not properly noticed. It did not show up until after the agenda.
- This is an important matter and it should be continued to the next meeting.
- The time limits are too short and inconsistent with other permits.

Chair Swift closed the meeting to public comments.

Commissioner Green provided the following comments:

- He has issues with Section 17.040.110 (A), Time Limits, Vesting. He recommended the use of the term “considered” as opposed to “deemed” vested. He would like staff to work on the language.
- He agreed with Chair Swift that the term “substantial progress” is vague- this needs to be fleshed out.

Commissioner Gonzalez-Parber provided the following comments:

- Mr. Hamer made a good point.
- There should be a protocol for notifying people that a permit is going to expire.

Commissioner Kehrlein provided the following comments:

- She is a design professional and thought the 90 day expiration period for an incomplete application was too short- it should be 180 days.
- There should be a time limit on Planning Permits but code enforcement cases should have a shorter time to resubmit.

Commissioner Rodriguez provided the following comments:

- She referred to Section 17.040.100 (A), Review for Completeness, the first sentence, and recommended deleting the words “and officially filed”.
- She likes what they have been talking about with respect to “resetting” expiration dates.
- She referred to Section 17.040.100 (C), and stated the sentence should end after the words “environmental review”. Planning Director Berto noted staff might realize additional information must be submitted upon review of the initial information.
- She referred to Section 17.040.110 (A), Permit Time Limits and Extensions, and recommended using the words “on-going and continual” instead of “substantial” progress.
- She referred to Section 17.040.110 (B) (2), Extensions of Time, and asked if the term “conditions of permit” could be substituted; in (3) if “circumstances” could be defined; and in (4) the words “and the expiration is stayed” should be added.

Chair Swift provided the following comments:

- She was concerned about the wording on the agenda and the public notice- they did not mention the Ridgeline Scenic Corridor Code Section.
- She supported this concept but could not support what was presented tonight.
- She would like staff to look at the zoning permits and sign permits and review those for applicability.
- She did not want to do this piecemeal.
- There should be a different time limit with respect to the enforcement piece but she was concerned that it only allows one 90-day extension. She asked staff to look at perhaps allowing two 90-day extensions.

Commissioner Gonzalez-Parber provided the following comments:

- She agreed with the comments made by Commissioner Kehrlein.
- The economy has a lot to do with how long things take.
- The Planning Director should have some discretion but 180-days would be more appropriate.
- She referred to resetting the clock and stated some jurisdictions apply fees after the third review.

M/s, Gonzalez-Parber/Rodriguez, motion to continue this item to the July meeting.

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

ABSENT: Fragoso, Newton

The Commission took a 10-minute break at 8:45 p.m.

## **Discussion Items**

There were no Discussion Items.

### **3. Minutes from the March 21, 2019, April 11, 2019, and May 16, 2019 Commission meetings**

M/s, Kehrlein/Gonzalez-Parber, motion to approve the March 21, 2019 minutes as corrected.

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

ABSENT: Fragoso, Newton

ABSTAIN: Green

M/s, Green/Gonzalez-Parber, motion to approve the April 11, 2019 minutes as corrected.

AYES: Gonzalez-Parber, Green, Chair Swift

NOES: Rodriguez

ABSENT: Fragoso, Newton

ABSTAIN: Kehrlein

M/s, Gonzalez-Parber/Kehrlein, motion to approve the May 16, 2019 minutes as corrected.

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

ABSENT: Fragoso, Newton

ABSTAIN: Green

## **Planning Director's Report**

Planning Director Berto gave an update on the crosswalk in front of the CBD shop and noted the Town Manager indicated it is a two-step process. The Town is in the process of applying for a grant to do some work at that intersection. He reported that the Town Council authorized staff to apply for SB2 grants related to housing legislation. The Marin County Planning Directors group has been discussing recent housing requirements including objective development standards, accessory dwelling units, and inclusionary housing. The group agreed that they would work on a collaborative effort in hiring consultants. They would take a work-book approach with respect to the objective development standards and look at each jurisdiction's circumstances. He will be working with the consultant on the Downtown Historic Building survey/inventory to come up with a local version of what they should be exploring. This could be rolled up into the objective development standards grant so they could hire professionals to help with this task.

## **Commissioner Comments and Requests**

Commissioner Kehrlein reported she would not be able to attend the next meeting.

Commissioner Green stated he was glad the Town improved the Parkade. He noted there were no handicapped parking spaces at the end of the lot across from the theater. Planning Director Berto stated he would mention this to the Town Manager.

Commissioner Rodriguez referred to the Downtown Historic Building survey/inventory and stated local input would be very important. She also wanted to get started on the next item on the Commission work plan. Planning Director Berto stated staff was in the process of getting an in-house computer to work on GIS tasks with the help of a consultant.

## **ADJOURNMENT**

A motion was made, seconded and unanimously approved to adjourn the meeting at 9:25 p.m.

Respectfully submitted,  
Toni DeFrancis,  
Recording Secretary