

FAIRFAX PLANNING COMMISSION MEETING MINUTES
FAIRFAX WOMEN'S CLUB
THURSDAY, JULY 18, 2019

Call to Order/Roll Call:

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

Commissioners Present: Norma Fragoso
Philip Green
Mimi Newton
Michele Rodriguez
Cindy Swift (Chair)

Commissioners Absent: Esther Gonzalez-Parber
Laura Kehrlein

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

APPROVAL OF AGENDA

Principal Planner Neal stated the first two applicants have requested a continuance.

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

PUBLIC COMMENTS ON NON-AGENDA ITEMS

There were no public comments on non-agenda items.

CONSENT CALENDAR

There were no Consent Calendar items.

PUBLIC HEARING ITEMS

- 1. 402 Scenic Road; Application #19-09**
Continued consideration of a request for a Conditional Use Permit, Design Review, Setback, and Parking Variance for an unpermitted bedroom, bathroom, storage room and for a 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).

M/s, Newton/Green, motion to continue this item off calendar but within the next 90 days.
AYES: Fragoso, Green, Newton, Rodriguez, Chair Swift
ABSENT: Gonzalez-Parber, Kehrlein

- 2. 80 Crest Road; Application # 19-10**

**Request for a Conditional Use Permit for unpermitted improvements to a single-family residence including a sitting room, and a Height Variance for a fourth unconditioned story that includes storage, wine cellar and ½ bath with miscellaneous improvements; Assessor’s Parcel No. 002-152-32; Residential Single-Family RS-6 Zone; Verle and Marene Sorgen; applicants/owners; CEQA categorically exempt per Section 15301(e)(2)(A)
Note: The applicant requested to continue this public hearing item to the August 15, 2019 Planning Commission meeting.**

M/s, Green/Fragoso, motion to continue this item at the applicant’s request to the August 15th Planning Commission meeting.

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

ABSENT: Gonzalez-Parber, Kehrlein

3. 390 Cascade Drive: Application #19-11

Request for a Conditional Use Permit, Design Review, Setback and Parking Variance for an unpermitted living room, hallway and bathroom addition to a single-family residence and for conversion of a storage room over a garage to an office and bathroom; Assessor’s Parcel No. 003-101-33; Residential Single-Family RS-6 Zone Graham Irwin, Architect; Joey and Stacie Shepp, owners; CEQA categorically exempt per Section 15301(e)(2)(A).

Principal Planner Neal presented the staff report. She noted the following correction to the red-lined version of the resolution: 1) On page 2, the first paragraph, second line, the following should be removed, “The addition is at the rear of the existing structure and is not visible from the street while...”; 2) On page 4, under the first “Whereas”, #1, the following should be eliminated: “This approval...*and the portions of the rear deck...*”; 3) On page 5, the Ross Valley Fire Authority should be changed to the Ross Valley Fire *Department*.

Commissioner Newton asked about the parking issues. Principal Planner Neal stated the code requires staff to examine parking when a project constitutes a 50% remodel. The applicant either has to comply with the requirement for three spaces or get a Variance from the Commission. The Town Code does not allow tandem parking. She is of the opinion that the applicant can provide the third space in the front yard.

She referred to the resolution and recommended an additional condition: “The two, new parking spaces shall be included in the plans prior to issuance of the Building Permit”.

Commissioner Rodriguez asked about the parking requirement for a second unit above a garage. Principal Planner Neal stated they would need four spaces.

Chair Swift opened the Public Hearing.

Mr. Graham Irwin, architect, made the following comments:

- He submitted a vehicle routing plan and a petition from nearby neighbors expressing no objections.
- They have been working hard with staff and he is a bit dismayed at the staff’s recommendations.
- There are a couple of major changes that he was not aware of- tearing down part of the building and the location of the other parking space.
- He indicated that it is his understanding that it is the common practice for the Town to approve parking structures in the easement when they cannot be constructed entirely on private property due to site constraints.
- He did not know the covered walkway was recommended for demolition. It does not extend into the public pathway easement.
- The lot is narrow and anything they would build would be subject to a variance.

- He understands the “letter of the law” but thought the recommendations were punitive.
- They would be willing to add permeable pavers in the yard as long as fences do not have to be demolished.

Commissioner Fragoso asked if this was a “safety easement”. Principal Planner Neal stated these public pathway easements might be necessary in the future as escape routes. It was not good planning to grant exceptions and create a situation that could result in the revocation of the easement and an inability to access the garage. The Town has never granted an encroachment for parking in a pathway. They have the ability to put in the parking outside the easement.

Mr. Joey Shepp, owner, made the following comments:

- They are trying to do the right thing.
- He understood the changes but said it was unfortunate because the house is beautiful the way it is.
- The idea of turning the front yard into a “parking lot” is sad because he plays ball there with his son.
- The pathway is basically a seasonal creek that gets tons of erosion. It is completely impassable.
- A revocable encroachment permit allowing the driveway to extend into the public pathway easement is a good solution.

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

- He has the following concerns about the encroachment into the public easement: maintenance; who would do the paving; private use of public property (adverse possession without tax); potential that the property will become a nuisance.
- The public needs to be protected- this should not turn into a private piece of paradise.

Commissioner Rodriguez asked about the occupancy of the detached garage and whether or not it was a second unit. Mr. Shepp stated “no- it is his office”. They sometimes use that extra room as a guest room. Commissioner Rodriguez asked what was in the garage. Mr. Shepp stated it was used for storage and laundry. They are not applying for a second unit.

Chair Swift closed the Public Hearing.

Commissioner Newton provided the following comment:

- She asked staff for their opinion about the “taxation free windfall” assertion. Principal Planner Neal stated the Town has issued encroachment permits for parking structures and have never required a fee. Planning Director Berto stated the County of Marin requires an annual renewal. Use of something on a temporary basis for access is analogous to the use of a right-of-way to access a garage. It is a modest encroachment.

Commissioner Green provided the following comments:

- A fee for the encroachment could pay for maintenance of the easement. Mr. Shepp stated he has maintained this area for three years but it is unclear who is responsible. He is happy to continue the maintenance.
- He noted this owner might not live there forever.

Commissioner Rodriguez provided the following comments:

- This is a guest bedroom and it should be processed as a second unit.
- It is a liability to have a living unit encroaching in the Town easement. There would be inadequate parking and it could be a fire hazard.
- Parking in the front yard should not be encouraged.
- She was fine with the staff recommendation with respect to the walkway.

- The resolution should stipulate the following: 1) No second unit is approved on the second floor; 2) A “No Parking” sign should be installed; 3) The blockage in the driveway should be removed; 4) A deadline for the implementation of should be included in the resolution; 5) The resolution also should include a requirement for easement maintenance.

Commissioner Fragoso provided the following comments:

- There is confusion and lack of clarity with the plans and it would be difficult to approve anything.
- Perhaps they should continue the application.
- She asked if staff was counting the garage as one parking space. Principal Planner Neal stated “yes”.
- The garage should be used for parking.

Commissioner Green provided the following comments:

- They should not create precedence by not enforcing the parking requirements.
- He would like to add the following language to the resolution as Condition 4(a): “Parking located on current grass areas shall consist at a minimum of grass permeable pavers that are two-wheel width strips”.
- He would like to add the following language to Condition #5 of the resolution: “The applicant shall be required to reasonably maintain the pathway easement”.

Commissioner Newton provided the following comments:

- She referred to the resolution, Condition #5, and asked if they should add something about requiring maintenance of the easement.
- She asked if the additional parking spaces were on the lawn. Principal Planner Neal stated “yes”.
- She noted there would be a minimal amount of fencing that would need to be removed.
- They cannot control how people utilize a garage.
- She would like to add the following language to the resolution in Condition #10: “Prior to the issuance...complied with *including removal of the overhead walkway cover addition of the parking spaces, and painting the addition to match the front of the house and garage...*”.
- She would like to add the following language to the resolution in paragraph #4: “Removal of the blockage in the driveway”.
- She noted a typographical error on pages 5, 6, and 8.

Chair Swift provided the following comments:

- There is not adequate information on the condition of the waterway in the easement for the Commission to be clear about what the easement looks like and what maintenance of the watercourse will entail.
- She is comfortable with the resolution and the staff recommendations.

M/s, Newton/Green, motion to adopt Resolution No. 2019-13 with the amendments noted by Principle Planner Neal, Commissioner Green, Commissioner Newton, and the stipulation that use of the area above the garage shall not be used as a second unit.

AYES: Fragoso, Green, Newton, Chair Swift

NOES: Rodriguez

ABSENT: Gonzalez-Parber, Kehrlein

Commissioner Rodriguez recommended denial of the application because it includes a second unit that requires four parking spaces that are not shown and that the structure itself is creating a liability because it does not maintain the three-foot fire setback.

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

4. 720 Center Boulevard: Application #19-12

Request for Modification to an existing Conditional Use Permit and Design Review for an unpermitted walk-in, refrigeration unit adjacent to an existing grocery store; Assessor's Parcel No. 002-131-12; Highway Commercial CH Zone; Al Baylacq, applicant; Rich Hall, Fairfax Center Properties, owner; CEQA Categorically exempt per Section 15303(e)

Principal Planner Neal presented the staff report. She stated condition #8 should be deleted since it was a duplicate of Condition #3.

Commissioner Green asked if the unit was currently in use. The applicant responded it was not. Commissioner Green asked if the top ridge of the unit could match the color of the trim on the main building. Planner Neal stated "yes".

Chair Swift opened the Public Hearing.

Mr. Al Baylacq, applicant, made the following comments:

- He apologized for trying to put the box in without a permit.
- They have been operating without adequate refrigeration for a long time.

Commissioner Rodriguez asked why the box was not positioned adjacent to the building. Mr. Baylacq stated there was one spot next to the building where it could have been placed but it would have blocked the electrical refrigeration room. Commissioner Rodriguez asked if additional lighting would be needed. Mr. Baylacq stated "no- the dock is lit for safety already".

Commissioner Rodriguez asked about options for screening. Mr. Baylacq stated the original design calls for a sliding/rolling screen for the dock. It is not a traditional loading dock and they would rather not build a fence.

Mr. Rick Hamer made the following comments:

- There have been complaints about the business in the past but none tonight- they must be doing something right.
- He supported the application.

Chair Swift closed the Public Hearing.

Commissioner Green provided the following comments:

- This is the best health food store in the country.
- The unit would be near the trash area and he wanted to make sure it would be rodent proof.
- The unit should appear more like the building with respect to the colors. However, they do not have to have two colors.
- The 4th "Whereas" shall read: "*..painted to match the paint colors ...Roxbury Caramel...and an additional color to match the trim at the discretion of the applicant*".

Commissioner Rodriguez provided the following comments:

- She asked staff about the reference to "bicycle parking improvements" in Condition #7. Principal Planner Neal stated the reference should be deleted from the resolution.

Commissioner Newton provided the following comment:

- She could support the painting of a band but did not want to dictate that.

M/s, Fragoso/Green, motion to adopt Resolution No. 2019-14 with the deletion of "bicycle parking improvements" in Condition #7, the deletion of Condition #8, and the suggested amendment by Commissioner Green.

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

ABSENT: Gonzalez-Parber, Kehrlein

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

The Commission took a 5-minute break at 8:40 p.m.

- 5. Discussion/Consideration of an Ordinance to place time limits on incomplete, discretionary permit applications and zoning entitlements. Consideration and possible recommendation for adoption to the Town Council of “An Ordinance of the Town Council of the Town of Fairfax adding Sections 17.020.130 (“Time Limits; Extensions”) for Design Review, 17.032.100 (“Time Limits; Extensions”) for Conditional Use Permits, 17.040.100 (“Incomplete Discretionary Permit Applications”), and 17.040.110 (“Permit Time Limits and Extensions”) and amending Sections 17.028.090 (“Lapse; Renewal; Term”) for Variances, and 17.060.090 (“Time Limits; Extensions) for Ridgeline Development, and Consolidating and Revising Sections 17.072.140 and 17.072.150 (“Expiration” and (“Extension”) for the Hill Area Residential Development Overlay Zone; CEQA exempt per Section 15060(c)(2), 15061(b)(3), 15378, and categorically exempt per Section 15305.**

Planning Director Berto presented the staff report.

Commissioner Green asked if the notion of “resetting the clock” was addressed- he is against the concept. Planning Director Berto stated a “clock reset” would address the expiration of an application. Commissioner Rodriguez stated this was addressed in Attachment B, page 2, Section 17.040.110, Permit Time Limits and Expirations, (B)(3) and (5).

Commissioner Newton stated the Commission needs to be aware of the impacts to existing permits.

Commissioner Green asked if notice was sent to old permit applicants. Planning Director Berto stated staff sent notices to everyone with an incomplete application.

Commissioner Rodriguez referred to Attachment B, Section 17.040.110, Permit Time Limits and Expirations, (B) (3), the last sentence and asked for clarification of the language. Planning Director Berto stated it should read: “...based upon a finding *that* a change..” Commissioner Green suggested the following language: “...a change in the *laws, codes, and other* circumstances...”. Principal Planner Neal suggested the following language: “... Planning Director can make or *approve* minor modifications...”.

Commissioner Fragoso stated if the code changes, the application, once in process and deemed complete, would not be required to change. Planning Director Berto agreed- it would be subject to the regulations in effect at the time of completion and/or approval.

Chair Swift stated Section 17.040.100, Incomplete Discretionary Permit Applications, (A) (2), Enforcement cases, was increased from 30 days to 60 days with a possible 90 days extension. She asked what would happen if an individual, in good faith, could not comply. Planning Director Berto stated it would depend on how close the applicant was to the “finish line”. If the Director makes a determination that an application has expired, that decision could be appealed to the Commission. Commissioner Rodriguez stated this pertains to a permit application and not the physical construction. Chair Swift asked what would happen after the 90 days. Planning Director Berto stated staff would work with the applicant if it was something out of his or her control.

Chair Swift stated the staff report talks about allowing an applicant to resubmit an application with a modest fee and she asked if this could apply to enforcements. Planning Director Berto stated there is usually a mandatory inspection surcharge. Commissioner Newton stated there is always the discretion whether or not to bring about enforcement.

Chair Swift referred to Section 17.040.110, Permit Time Limits and Expirations, (B) (3), and asked for examples of “minor modifications”. Principal Planner Neal stated an example would be a change in window sizes.

Chair Swift opened the Public Hearing.

Mr. Rick Hamer made the following comments:

- The enforcement provision with respect to peoples circumstances needs to be explored- people get sick, old, etc.
- He was not sure how “big of a monster this is”
- He agreed with Commissioner Newton- they need to know how many people this will affect.

Chair Swift closed the Public Hearing.

Commissioner Newton provided the following comments:

- She referred to incomplete application time limits and stated they should create a procedure that allows the applicant to submit a request for an additional 90 days that would be granted automatically. A request shows they are paying attention. Commissioner Fragozo liked this idea.
- She referred to Attachment “C”, Section 17.040.100 (A) (1), General Time Limit, and stated the 180 days should be changed to 90 days and they should add another clause saying “unless an additional 90 day extension was requested prior to the expiration of the original 90 days”.
- The applicant could give himself or herself an additional 90 days by virtue of submitting a request.
- The Planning Director could go beyond the 180 day total and grant an additional year.
- The real problem is when you get beyond a year.

Commissioner Fragozo provided the following comment:

- She agreed with Commissioner Newton’s suggestion for discretionary permit applications but not enforcement cases.

Commissioner Green provided the following comments:

- He agreed with Commissioner Newton’s suggestion for 90 days and then another 90 days.
- This keeps people on their “toes”.

Chair Swift provided the following comments:

- Ninety days might be too short and it might be more reasonable to allow 180 days.
- She cannot see requiring an applicant to submit a request at 90 days that would be automatically approved. It is overkill.
- She supports the objectives but stated they need to go back into the other code sections (variances, etc.) so there is compliance within the code sections. Planning Director Berto agreed and stated this task will not get buried in the “to-do” list.
- She wants to see the Variance Code Section changed to match the suggested language.

Commissioner Fragozo provided the following comments:

- She would like to focus on time limits on planning application submittals that go beyond expiration dates.
- She wants to move forward.

Commissioner Newton provided the following comments:

- She agreed with Commissioner Fragozo.

- She would need more time to look at specific language in the other code sections and could not move forward with that tonight.

Commissioner Green provided the following comments:

- He agreed with Commissioner Fragoso.
- This work is foundational and he would like to move on.
- He referred to the second “Whereas” in the ordinance and stated it should read: “... granted by the *Planning Commission*.”
- He referred to Section 17.040.100, (A), and stated the words “request” and “extension” should be capitalized.
- He referred to Section 17.040.100, (B), and stated it should read: “...subject to *full* payment of applicable fees...”.
- He referred to Section 17.040.110, (A), and stated it should read: “... the permit holder has 1) actually obtained a Building Permit..., 2) has actually commenced..., 3) or has recorded...”.
- He referred to Section 17.040.110, (B), and stated it should read: “ Upon... to *become* vested”.
- He referred to Section 17.040.110, (B)(3), and stated it should read: “When granting an extension, the Planning Director may *approve* or make...finding a change in the *laws, codes, or other* circumstances...”. Planning Director Berto stated staff could not legally direct a change on an already approved application but could make some “quid pro quo” suggestions.
- He referred to Section 17.040.110, (B)(5), and stated it should read: “If a Building Permit, or *other permits, are* issued...”. He asked for clarification on this paragraph. Planning Director Berto explained how it would apply to Subdivision approvals.

Commissioner Newton provided the following comments:

- She asked if they have decided what to do about the 90 vs. 180 days issue. Chair Swift stated she supported 180 days.
- She referred to Section 17.040.100, (A)(1), and stated it should read: “An incomplete... Director grants *a one year extension*.”
- She referred to Section 17.040.110, (B)(3), and stated it should read: “If the Planning Director... the Planning Director may extend the permit for a maximum period of one *additional year*..”.

M/s, Newton/Green, motion to adopt Resolution No. 2019-15 to recommend to the Town Council adoption of the ordinance as amended by the Commission.

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

ABSENT: Gonzalez-Parber, Kehrlein

Discussion Items

There were no Discussion Items.

6. Minutes from the June 20, 2019 Commission meetings

M/s, Green/Rodriguez, motion to approve the June 20, 2019 minutes as corrected.

AYES: Green, Rodriguez, Chair Swift

ABSENT: Gonzalez-Parber, Kehrlein

ABSTAIN: Fragoso, Newton

Planning Director’s Report

Planning Director Berto reported the Council discussed the cannabis regulations at its last meeting. The Commission would be evaluating applications and assigning a numeric score per the criteria and make a recommendation to the Council. The Council is scheduled to hear and perhaps act on the first reading of the ordinance in August. The adoption would take place in September and the

ordinance would take effect in 30 days (October). This would give the Commission three months to finalize the scoring criteria. The Marinda Height Project (a.k.a. Wall Property) is in the Environmental Impact Report (EIR) stage. Staff is working on the EIR consultant selection process with ratification expected at the September Council meeting. The Commission would hold a Special Meeting to conduct a public scoping session. Staff will be working with a GIS consultant on updating and digitizing the 45 year old General Plan Resource Maps. The Commission would have the opportunity to comment on this project. Senate Bill 2 provides funding for local jurisdictions to do planning with respect to housing. The Council has authorized staff to apply for this grant funding for objective development standards, accessory dwelling units, and inclusionary housing requirements. This program will be vetted by the Commission with multiple hearings. He will be discussing changes in the language that deals with the Political Reform Act and Conflict of Interest regulations at an upcoming meeting.

Commissioner Comments and Requests

Commissioner Newton asked about the status of the Historic Preservation Survey. Planning Director Berto stated it has been proceeding slowly and the consultant is looking for more volunteers. The SB2 grant funding would help with this endeavor.

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 10:35 p.m.

Respectfully submitted,

Toni DeFrancis,
Recording Secretary