

DRAFT FAIRFAX PLANNING COMMISSION MEETING MINUTES  
FAIRFAX WOMEN'S CLUB  
THURSDAY, NOVEMBER 21, 2019

Call to Order/Roll Call:

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

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

Commissioners Absent:                    Esther Gonzalez-Parber

Staff Present:                                Ben Berto, Planning Director  
   Linda Neal, Principal Planner  
   Janet Coleson, Town Attorney

**APPROVAL OF AGENDA**

M/s, Newton/Green, motion to approve the agenda.

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

ABSENT: Gonzalez-Parber

**PUBLIC COMMENTS ON NON-AGENDA ITEMS**

There were no comments.

**CONSENT CALENDAR**

There were no Consent Calendar items.

**PUBLIC HEARING ITEMS**

- 1. Discussion/consideration and possible recommendation to the Town Council for adoption of both a draft Urgency Ordinance and Draft Ordinance that would update the development standards for Accessory Dwelling Units as mandated by Assembly Bill 881, sections 1.5 and 2.5 (Bloom, Stats. 2019, ch. 659); Assembly Bill 68, section 2 (Ting, Stats. 2019, ch. 655); and Senate Bill 13 (Wieckowski, Stats. 2019, ch. 653). CEQA Statutorily Exempt per Section 21080.17 and Categorically Exempt per Section 15300.2.**

Town Attorney Coleson presented the staff report and gave a Powerpoint presentation that included the following: 1) Accessory Dwelling Units (ADU's)- Bills; 2) AB 881; 3) Other bills; 4) Recommendation. She stated that the State has taken ADU regulations a huge step further, and that her firm has a task force looking at ADU laws and local regulations. A local jurisdiction's ADU regulations have to be fully compliant with State laws by January 1, 2020, or ADU proposals in that jurisdiction would only be subject to State law. There are certain things local jurisdictions can still do, but these can only be through objective development standards. An important provision in the State laws is that if any portion of local ADU regulations is found to be invalid, the entire local ADU regulations are invalid – the typical severability clause does not work.

The proposed regulations replace the Town's ADU and JADU regulations. There is an urgency ADU ordinance and a regular ADU ordinance before the Commission. The ordinances are identical except for the findings. The intent behind having both ordinances being considered concurrently is to minimize the gap between adoption of the two.

In addition to the proposed ordinance, staff has provided optional objective development standards for the Commission to consider for inclusion in the Town's proposed ADU regulations.

Staff will look at ADU applications on a case-by-case basis to make sure they are compliant. She noted Impact Fees could be charged but not for an ADU of 750 square feet or less. Impact Fees assessed on units greater than 750 square feet have to be proportional to the size of the main house.

Planning Director Berto referred to the objective development standards options and stated staff looked at what the template version of the ADU regulations did not address and what had not been eliminated by the State.

Commissioner Fragoso asked if the list of ministerial standards that could be added were included in the ordinance. Town Attorney Coleson stated they were separate. Commissioner Fragoso asked for clarification on the map that was placed on the dais. Planning Director Berto stated SB330 has an opt-out provision for high fire risk areas as designated by the State. Based on the map, Fairfax is not in a high risk area. Commissioner Green noted the red high fire area does dig into Fairfax a bit. Chair Swift asked staff to get clarification on the map.

Commissioner Kehrlein had a question about the impact of recent legislation to local fire department regulations such as requiring fire sprinklers. Planning Director Berto stated the main thrust has to do with internal conversions of existing residences to provide an ADU or a JADU. Sprinklers are required when a certain threshold is met. New, detached ADU's would need to comply with current building and fire codes.

Commissioner Kehrlein had a question about utility connection fees. Planning Director Berto stated a JADU would not require a new meter or hookup fees.

Commissioner Kehrlein referred to Exhibit A, Amendments to Town Code, page 6, Section 17.048.010, Accessory Dwelling Units, (f)(2)(3) and stated the lot coverage and FAR requirements seemed different than the Residential Zoning Standards. Planning Director Berto stated there is a corrected version that speaks to a 0.40 FAR and 0.35 lot coverage. However, an 850 square-foot ADU is allowed on any residential parcel in Fairfax.

Commissioner Green asked staff about the recommended procedure given the urgency. Town Attorney Coleson stated the urgency ordinance did not need to come to the Planning Commission- it was brought as a courtesy. The two ordinances need to match when taken as a package- the urgency and regular ordinance need to be exactly the same. She noted the Commission could take another look at the regular ordinance after its adoption by the Council.

Commissioner Newton asked if there was a reason for the amendment only utilizing Section 17.048.010, Accessory Dwelling Units when the existing code goes from Section 17.048.010 to Section 17.048.250. It seems odd format-wise. Town Attorney Coleson stated the idea is to replace everything that exists for ADUs and JADUs with the new model. Planning Director Berto stated they are replacing Chapter 17.048 in its entirety.

Commissioner Newton referred to Attachment A, Urgency Ordinance, page 1, the sixth and seventh "Whereas," and stated flood safety, earthquake safety, and other safety issues should be added to

the list of the threats to public safety. She did not want to “hang her hat” on impacts to property values and personal privacy that are not as significant as the housing crisis. Town Attorney Coleson stated staff was trying to make defensible urgency findings but agreed that “more is better.”

Commissioner Green asked about the foreseeable impact of this ordinance on a small town such as Fairfax. Town Attorney Coleson stated it was designed to lessen the impact but this is an unknown. It depends on how many people want to avail themselves to the new law. Planning Director Berto stated staff has received about 10 applications per year over the last 2 years and they do not anticipate this rate declining.

Commissioner Newton asked if staff has an idea about the impacts to utility and service companies such as sewer, water, etc. Planning Director Berto stated staff has not had the time to talk to affected utility companies.

Commissioner Newton stated there does not seem to be an ability to impose rent control to require affordability. Planning Director Berto agreed and noted the size of the units will determine rents.

Chair Swift asked if JADU's had to be in an owner occupied dwelling. Commissioner Newton referred to Section 17.048.010 (e)(6), which states that JADUs are subject to an owner-occupancy requirement. She had a question about open space area requirements. Planning Director Berto stated this was pertinent to multi-family development.

Chair Swift asked if the Commission could recommend approval of the urgency ordinance but review the non-urgency ordinance separately. Town Attorney Coleson stated “yes”- but it would increase the gap in time before the regular ordinance would be in effect. She thought the better course of action was to keep them together.

Chair Swift referred to the fire sprinkler requirement and asked if the primary residence did not require a sprinkler system then the ADU would not be required to have one. Town Attorney Coleson stated this applies to an attached unit. A detached unit would need to comply with current fire codes. Chair Swift asked if there were any fire regulation safety standards for setbacks. Planning Director Berto stated these were dependent on the type of construction, but that a minimum 4-foot setback would allow access for fire personnel and equipment.

Chair Swift asked if multiple residential development refers to areas in Town that have apartment buildings, duplexes, or triplexes. Principal Planner Neal stated the definition of a “multiple dwelling” is a building used by three or more families living independently of each other and doing their own cooking including apartments, group homes, and row houses. The definition for a “two-family dwelling” is a detached or semi-detached building containing two dwelling units and designed for occupancy by two families. Commissioner Kehrlein stated this corresponds with the Building Code.

Chair Swift asked if the definition for “public transit” could include a bus stop servicing a bus that stops once a week vs. a more frequent and regular schedule. Planning Director Berto stated that “public transit” as it is being applied under the new 2020 state laws applied to any bus route.

Chair Swift referred to the parking changes and stated they would be losing a lot of off-street parking. She asked if they could limit ADUs to a particular zones or portions of a zone. Planning Director Berto stated it would be difficult to say they are not allowed in a particular zone. Commissioner Newton asked if it staff could identify the zones that allow residences. Planning Director Berto stated “yes.”

Chair Swift referred to Section 17.048.010(f)(1) and asked if this has changed from 1,200 to 1,000 square feet. Planning Director Berto stated “yes.” There is no effective maximum size for conversions (interior only).

Commissioner Newton had a question about the minimum size provisions. She referred to Section 17.048.060 which provides for a 150 square foot minimum. Town Attorney Coleson stated the unit also has to meet Building Code requirements.

Commissioner Newton referred to the current code with respect to a shed and the allowable height limit on a slope. Principal Planner Neal stated the code limits accessory structures to fifteen feet in height, measured from natural grade, and one story. However, State law allows a height of sixteen feet.

Commissioner Fragoso asked if an ADU, proposed as an additional story to a property with more than one story, would be governed by the overall height in the Zoning Ordinance. Commissioner Rodriguez stated the non-conformity would require a Conditional Use Permit. Planning Director Berto stated it would depend on the type of non-conformity. Chair Swift stated an attached ADU could not be higher than the existing primary dwelling. Town Attorney Coleson agreed it would have to be the same height.

Chair Swift asked why the ADU processing fees was included in the Ordinance and not the Fee Schedule Resolution. Planning Director Berto stated this is required under the State statute in order to charge a fee. The amount has been determined to cover processing costs.

Chair Swift asked if Impact Fees could not be charged for anything less than 750 square feet. Town Attorney Coleson stated "yes." Planning Director Berto discussed the rationale behind Impact Fees including Traffic Impact Fees. They are used to off-set development impacts, for example the cost of an intersection improvement.

Chair Swift opened the Public Hearing.

Mr. Mark Bell, Dominga Avenue, made the following comments:

- He asked about the rear setback. Town Attorney Coleson stated State law says that a jurisdiction cannot require a setback greater than four feet.
- He asked if an ADU could be up to 50% of the existing house square footage and if there was a size limit. Commissioner Newton stated "yes," and she explained them.
- He asked if a permit was no longer needed to cut down trees to accommodate an ADU. Planning Director Berto stated no permit will be required.

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

- This is "one size fits all" legislation which would not work well on hilly areas.
- Natural hazards need to play a bigger role.
- Development and parking will go rampant with few restraints and no replacement or new parking required for properties within ¼ mile of any bus stop.

Chair Swift closed the Public Hearing.

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

Commissioner Newton provided the following comments:

- She was taking a big-picture approach to her comments and recommendations.
- This is difficult to understand because there is no reference to the codes that they are relying on as the basis for the new ordinance. Staff will need to provide the Council with more information.

Commissioner Green provided the following comments:

- He could not believe that what he was reading was real.
- He shares Commissioner Newton's frustration.

Chair Swift provided the following comments:

- She understands the urgency but agrees with Commissioner Newton.
- She asked the Commission to comment on looking at the Urgency Ordinance now and reviewing the other ordinance at a later date.

Commissioner Rodriguez provided the following comments:

- The two ordinances are duplicative. She asked if there was an Urgency Ordinance that could be adopted that would stay the State ordinance to allow them time to comment. Town Attorney Coleson stated “no”. The Commission could take several meetings to review the regular ordinance. She recommended that they let both go ahead and amend the regular ordinance at some time in the near future. The regular ordinance is needed in the event that the Urgency Ordinance Findings are legally challenged and fail.

Commissioner Fragoso provided the following comment:

- Not adopting the regular ordinance along with the Urgency Ordinance would leave the Town open for three to four months with the possibility that they would have no ordinance.

Commissioner Green provided the following comments:

- He agreed with Commission Fragoso.
- He would like to include the standards contained in the November 21<sup>st</sup> memorandum.
- They can make amendments next year.

Commissioner Fragoso provided the following comment:

- She referred to the November 21<sup>st</sup> memorandum, page 2, (f)(8)(A), and asked if they could include a requirement for native trees or water conservation. Planning Director Berto stated it does state that the replacement trees shall be native.

Commissioner Newton provided the following comments:

- She would like to add historical protection of trees and structures over a certain age.
- She referred to the November 21<sup>st</sup> memorandum, page 1, (f)(7)(A), regarding materials and colors and asked if that was consistent with keeping Fairfax quirky. Chair Swift asked if there was delineation between attached and not attached ADUs. Planning Director Berto stated “no.”

Commissioner Kehrlein provided the following comments:

- It would be difficult to match roof slopes given the 16-foot height limit. A flat roof or mansard would probably be used. The language could say “roofs should be compatible.”

Commissioner Newton provided the following comments:

- Staff was suggesting concrete, measurable standards that cannot be applied on a discretionary basis.
- She would prefer that the units do not match in style, etc.

Commissioner Fragoso provided the following comments:

- The General Plan has language about consistency with the architectural character and style. Principal Planner Neal stated that was too subjective.
- The word “preserve” could be used instead of “match.”

Commissioner Green provided the following comment:

- He suggested the following wording: “The roof slope must be compatible with that of the primary dwelling.”

Chair Swift provided the following comment:

- She suggested deleting (f)(7)(B) regarding roof slopes.

The Commission agreed to deleting (f)(7)(B) regarding roof slopes and leaving (f)(7)(A) and (C) as is.

Commissioner Rodriguez provided the following comment:

- She had a question about the November 21<sup>st</sup> memorandum, (f)(7)(D), and stated the reference to 30 feet or less should be changed to 4 feet or less.

Commissioner Kehrlein provided the following comment:

- She referred to (f)(7)(D) and stated there is an egress issue and noted egress window sill height cannot be higher than 42 inches off the ground.

Planning Director Berto stated the idea was to preserve privacy for neighbors of second-story ADU's, and an egress window would have to be further away from the property line. He asked for some sort of compromise- they need an affirmative vote from 5 Commissioners. He suggested changing it from 30 feet to 10 feet with a requirement for obscured glass. Chair Swift stated that was too complicated. She asked if it could remain 30 feet but remove the reference to the sill height.

Commissioner Newton provided the following comment:

- She suggested the following wording: "All second story windows....and located six feet or less from the property line shall *either* have ...finished floor, *or obscured glass, as long as such conforms with the Building Code.*"

Commissioner Kehrlein, Green provided the following comments:

- They supported this wording.

Commissioner Rodriguez provided the following comments:

- She was not sure they have required this on other applications that have been submitted.
- She did not support this wording.

Chair Swift provided the following comments:

- She did not like the six foot distance and would like something further away.
- This might be something they look at in the future.
- She wanted to move things along.
- She would like to address vegetation management plans in the future.

The Commission supported the wording suggested by Commission Newton with a change from six feet or less to ten feet or less.

Commissioner Rodriguez provided the following comments:

- The section regarding environmental issues should be beefed up. They should add the ridge, flooding, the creek, etc.
- She referred to the November 21<sup>st</sup> memorandum, (f)(8), and stated she would rather go from a 35-inch box trees down to 24-inch box until they can figure out what they are dealing with.

Commissioner Newton provided the following comments:

- She would like to prevent the removal of Heritage trees. Principal Planner Neal handed the Commission a table defining Heritage trees. Commissioner Newton stated this should be included in both sections- Section 17.048.010, (f)(9) and (10).
- Protected trees that are not Heritage trees could be addressed under the Historic Requirements Section (f)(10).

Chair Swift provided the following comments:

- Historical protections are talking about buildings.
- All of the tree regulations should be under the Landscape Requirements Section (f)(9). Commissioner Green agreed.

Commissioner Newton provided the following comment:

- She asked if AB881 had any reference to historic protection status. Chair Swift stated it talks about the Historic Registry of Buildings. It does not speak to landscaping at all.

Commissioner Newton provided the following comments:

- She referred to (f)(9)(A) and suggested requiring two replacement trees that are the same size as the one removed. Chair Swift asked if that could be considered putting up a “roadblock.” Town Attorney Coleson stated it must be something that is reasonably attainable.
- She would support a 36-inch box tree for protected trees.
- She suggested a 10:1 replacement ratio for Heritage trees.

Chair Swift provided the following comment:

- She would like to go with what is written and review this in the future to make it stronger.

Commissioner Green provided the following comments:

- A 36-inch box tree is significantly more expensive than a 24-inch and they are trying to foster ADUs.
- He supported a 24-inch replacement tree.

Planning Director Berto stated that the idea was to promote good design that minimized removal of protected or heritage trees. Discretionary review of such tree removals will not occur. In cases where trees were to be removed, large replacement trees would be required.

Commissioners Newton and Kehrlein provided the following comment:

- They are good with a 36-inch box tree.

Commissioner Newton provided the following comments:

- She referred to page 3 of the staff report under Environmental Review and asked if the findings listed should be placed in the Commission’s Resolution No. 2019-20. Planning Director Berto stated “yes.”
- She referred to Findings #1 and asked if this finding was saying that there are no existing primary dwellings that are not already built in sensitive environments.

Chair Swift provided the following comments:

- She asked how this applied to an unimproved lot. Principal Planner Neal suggested the following wording: “On a lot already developed with a primary dwelling or on a site located within an approved subdivision that is already served by a developed infrastructure”.

Commissioner Newton provided the following comment:

- She asked if State law says that these units are not subject to CEQA. Planning Director Berto stated “yes.” Town Attorney Coleson stated it was a ministerial approval. The intent of the legislation is to promote the construction of ADUs.

Chair Swift provided the following comments:

- She asked if they could adopt the Resolution without the CEQA Findings Section. The Town Council could adopt the Findings. Planning Director Berto stated a developer could attack the recommendation because the necessary CEQA Findings were not made and the local ordinance could be declared null and void.

Commissioner Green provided the following comment:

- He referred to Finding #2 and stated there will be cumulative impacts.

Commissioner Rodriguez provided the following comments:

- She asked if they could use another CEQA Section and use an exemption instead of an exception. Town Attorney Coleson stated when making CEQA Findings they should not limit it to one or two- they should include everything that is applicable. She understood the concerns of the Commission but reiterated the need for an ordinance that is legally defensible.

Commissioner Newton provided the following comments:

- Finding #1 should be revised.
- Finding #2 makes no sense.
- She referred to Finding #4 and stated the General Plan does make reference to scenic resources. Planning Director Berto stated staff would take a look at this.
- She referred to the Urgency Ordinance, page 1, first "Whereas" and stated "City" should be changed to "Town". The seventh "Whereas", and suggested the following language: "Whereas the approval...personal property, and *safety including emergency evacuation, fire safety, flood, landslides, earthquake, utility impacts.*" Commissioner Green suggested including the following language: "*including, but not limited to.*"

Commissioner Rodriguez provided the following comments:

- She referred to Section 17.048.010 (c) Definitions and stated this section should be expanded to include height measurements, multi-family, primary dwelling, trees, and efficiency unit. The areas listed in Sections (c)(4)(B) and (C) were too big. Commissioner Newton stated that was from the Health and Safety Code. Town Attorney Coleson stated that section should remain.
- She referred to Section 17.048.010 (g)(2)(B)(h) and stated the word "legal" should be added. Town Attorney Coleson stated it was not limited to legal nonconforming units.

Commissioner Newton provided the following comments:

- She asked if the document should state that these provisions supersede other code provisions that might say something different. Commissioner Green stated they could add the following language to the Purpose Section: "This is intended to replace all the old sections." Principal Planner Neal stated Section 3 of the Ordinance covers that. Commissioner Newton stated she was concerned about the cross reference to other sections. Town Attorney Coleson stated staff would add the language suggested by Commissioner Green.
- She referred to page 3, Section 17.048.010 (d)(A) and stated it should say: "Only one ADU *and* JADU..." Town Attorney Coleson stated this refers to a conversion but she will check this language.

Commissioner Rodriguez provided the following comments:

- She referred to Section 17.048.010 (d)(A) and (B) and asked why the references to setbacks were not consistent (maximum vs. at least vs. sufficient).
- She referred to Section 17.048.010 (d)(C) and asked how staff came up with the 25% figure. Town Attorney Coleson stated that was State law.

Commissioner Newton provided the following comments:

- She referred to Section 17.048.010 (e)(1) and asked staff to identify the specific zones in Town that this would apply to.
- She wanted to encourage consideration and criteria relating to water, sewer, traffic, public safety in any zone that allows a residence.

Chair Swift provided the following comment:

- She is not sure she wanted to see ADUs in business zones.

Commissioner Kehrlein provided the following comment:



- She referred to Section 17.048.010 (d)(2)(B), and asked if they had to specify the processing fee amount which could be subject to change. Town Attorney Coleson stated they want the fee to be effective on January 1<sup>st</sup> which does not give them enough time to amend the Fee Schedule. It can be pulled out and placed in the Fee Schedule at a later date.

Commissioner Rodriguez provided the following comments:

- She referred to Section 17.048.010 (d)(3)(B)(i) and asked that this be reworded.
- She referred to Section 17.048.010 (e)(3) and stated 30 days does not feel adequate. Town Attorney Coleson stated staff was looking at a month-to-month tenancy and not a lease.
- She would like to consider an inclusionary requirement that is linked to the County Housing Element low income rate. Commissioner Fragoso agreed.

Commissioner Newton provided the following comments:

- She referred to Section 17.048.010 (e)(4) and stated they should look at the possibility of conveyances in the future. Commissioner Rodriguez stated she would add “unless they met the subdivision requirements.”
- She referred to Section 17.048.010 (e)(5) and had a question about the septic system provision and asked if it included composting or incinerating toilets. Principal Planner Neal stated “no.” Commissioner Newton stated hooking up to sewer could be cost prohibitive and they should look at alternatives down the road.
- Her vision is to go with a big-picture strategy and how to address the cost issues related to creating affordable housing.
- She referred to Section 17.048.010 (e)(7) and made some minor edits.

Commissioner Green provided the following comment:

- He liked the existing language about prohibiting separate conveyances.

Commissioner Rodriguez provided the following comments:

- She referred to Section 17.048.010 (e)(6)(D) and stated the word “non-profits” should be added at the end.
- She referred to Section 17.048.010 (f)(7) and asked if they could add health and safety concerns related to streets not meeting standards. Town Attorney Coleson stated staff explored this.

Commissioner Green provided the following comment:

- He referred to Section 17.048.010 (f)(7)(B)(ii) and suggested using the word “or” instead of “and.”

Commissioner Newton provided the following comments:

- She referred to Section 17.048.010 (f)(7)(B)(iv)(v) and asked if Fairfax had on-street parking permits or established car share vehicle stops. Planning Director Berto stated “no.”
- She asked if this State legislation was exempt from the Federal Endangered Species Act.
- She would like to prohibit the taking of federally protected species or habitats. Planning Director Berto stated the CEQA thresholds were lower than the NEPA thresholds. Staff would look into citing the pertinent Federal laws.

Planning Director Berto stated there was a minor revision related to Section 5 of the Urgency Ordinance and the regular ordinance that had to do with the Town’s policy on publications.

Commissioner Newton read the revision.

M/s, Newton/Fragoso, motion to adopt Resolution No. 2019-20 as amended by the Commission and staff.

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

ABSENT: Gonzalez-Parber

The Commission took a 5-minute break at 11:45 p.m.

Commissioner Rodriguez left the meeting.

## **DISCUSSION ITEMS**

### **2. Status update on HRD Permit zoning amendments and mapping**

Planning Director Berto presented the staff report.

Chair Swift asked about the changes that were made to the attached ordinance. She referred to the first "Whereas" and stated the reference to watershed areas should be deleted.

## **MINUTES**

### **3. Minutes from the October 17, 2019 Commission meeting**

M/s, Kehrlein/Fragoso, motion to approve the minutes of October 17, 2019 as corrected.

AYES: Fragoso, Kehrlein, Newton, Chair Swift

ABSENT: Gonzalez-Parber, Rodriguez

ABSTAIN: Green

Commissioner Fragoso left the meeting.

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

There was no report.

### **Commissioner Comments and Requests**

Chair Swift reported the Sonoma State University Annual Planning Conference will be held on February 1, 2020.

Chair Swift noted the Commission had questions about The Lodge at the last meeting and she asked staff if they followed up. Planning Director Berto stated the areas in question fall within the jurisdiction of the Town of San Anselmo.

Chair Swift had a question about the presentation about recent housing legislation scheduled for the December Council meeting. She asked for a copy of the PowerPoint presentation.

Commissioner Newton stated there were numerous economic opportunities with respect to the housing crisis including the Bay Area Housing Finance Authority, the Enhanced Infrastructure Financing Districts, and community land trust tax exemptions. Financial incentives are the key to the Town's success in having impacts on the housing crisis.

## **ADJOURNMENT**

A motion was made, seconded and unanimously approved to adjourn the meeting at 12:10 a.m.

Respectfully submitted,

Toni DeFrancis,  
Recording Secretary