

FAIRFAX PLANNING COMMISSION MEETING MINUTES
FAIRFAX WOMEN'S CLUB
THURSDAY, OCTOBER 17, 2019

Call to Order/Roll Call:

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

Commissioners Present: Norma Fragoso
Esther Gonzales-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/Gonzalez-Parber, motion to approve the agenda.

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

ABSENT: Green

PUBLIC COMMENTS ON NON-AGENDA ITEMS

There were no comments.

CONSENT CALENDAR

There were no Consent Calendar items.

PUBLIC HEARING ITEMS

1. 50 Cypress Road; Application #19-14

Request for a Conditional Use Permit and Design Review Permit for a substantial remodel and minor addition to a single-story dwelling. Additional scope includes demolition of interior walls to reconfigure interior layout; installation of new windows and doors; repair/replacement of siding; installation of new type "A" fire rated roof; installation of sprinklers; construction of new deck off addition; and, a voluntary seismic upgrade; Assessor's Parcel No. 003-201-23; Residential Single Family RS-6 Zone District; Charles Cross, applicant; Charles and Nopparat Cross, owners; CEQA categorically exempt per Section 15301(a), (d), (e)(1), and (f).

Assistant Planner Spencer presented the staff report.

Commissioner Rodriguez asked if staff was asking the applicants to place the parking in the rear yard. Assistant Planner Spencer stated the driveway was in the side yard setback and staff was trying to keep the parking out of this setback.

Commissioner Rodriguez stated the staff report talks about new landscaping but there was no landscaping plan in her packet. Assistant Planner Spencer stated there was a plan page at the back of the plan set that was approved by the Ross Valley Fire District and contained the vegetative management/landscaping plan.

Chair Swift opened the Public Hearing.

Mr. Charlie Cross, applicant, made the following comments:

- They would like to add 227 square feet to the house, reconfigure the existing structure, enhance the circulation and usable space, and improve the neglected building.
- The completed structure will be the same one-story with the same elevation of the original house.
- The expansion will not encroach on any setbacks or adversely affect any neighbors.
- He has communicated with most of the neighbors and has not heard any opposition.
- The requested finished project will be 3-bedrooms and 2-baths for a total of 1,416 square feet and a 318 square foot deck attached to the rear of the house.
- They wish to retain the original character of the house and improve the neighborhood.

Commissioner Gonzalez-Parber asked if the existing garage was being replaced in-kind. Mr. Cross stated "yes".

Commissioner Kehrlein stated she was at the site and it looked like some improvements had already been started. Mr. Cross stated they have a permit for the foundation. Commissioner Kehrlein asked if they considered making the garage wider to satisfy the parking requirements. Mr. Cross stated they were told this would not be allowed because of the original structure being located in the setback.

Commissioner Fragoso asked why the garage could not have been expanded into the rear yard. There is only 10' at the narrowest point between the corner of the garage and the corner of the deck. She asked if the cars would back in. Mr. Cross stated "no" but they would not be able to pull two cars in at the same time. The architect is confident this configuration meets the turning requirements.

Chair Swift closed the Public Hearing.

Commissioner Rodriguez provided the following comments:

- She asked about expanding the detached garage and why it would be more nonconforming. Assistant Planner Spencer stated the detached garage already encroaches into the side and rear setbacks. They would be expanding an already nonconforming structure. Commissioner Rodriguez asked how the expansion would be making it more nonconforming. Senior Planner Neal stated there would be more building within the required rear setback than currently exists.
- This is a sensitive design and a modest expansion.
- She supports the application.
- She suggested the following changes to the revised resolution: 1) Condition #1 shall include language that requires native landscaping; 2) Attachment B, the color styles and materials, shall be attached to the resolution; 3) Condition #2 should include language that requires that the lighting fixtures be consistent with the architectural style and downward directed or shielded.

Commissioner Fragoso provided the following comment:

- She referred to the detached garage and stated it would create a more pleasant space for the applicants on the new deck without having two cars parked out there.

Commissioner Kehrlein provided the following comments:

- She supports the building and improvements.
- She is struggling with the parking.
- This is a long driveway and it does not make sense to disrupt the site in order to adhere to the parking requirements. It seems like they are “paving paradise to put up a parking lot”.
- She asked if the Town has ever approved tandem parking situations similar to this.

Commissioner Newton provided the following comments:

- The property line is angled so the distance between any expanded garage area and the back property line gradually gets bigger as you expand it out.
- She asked about affordable options for parking surfaces that are not gravel. Commissioner Fragoso stated there are some nice “paver and grass” combinations.

Commissioner Gonzalez-Parber provided the following comments:

- It takes a big commitment to do a seismic upgrade.
- This is a very narrow lot with a long driveway and the reality is that people are going to park in the driveway in the setbacks.
- They might want to consider putting in a two to three foot buffer between the parking space and the property line on the side.
- There are some missed opportunities that are a result of this rigid parking code.
- Rotating the garage 45 degrees would have provided a better use since they could then back out and perhaps avoided the setbacks.
- This is a good example of a conflict with the code and “reality”.
- She supports the project.

Commissioner Newton provided the following comments:

- She is stuck on the landscaping plan.
- She would like to encourage the use of native plants where practical or drought-friendly, fire-resistant plants as much as possible but not make it a dictated requirement especially on this site which is not adjacent to open space where it is important to try and keep everything native.

Chair Swift provided the following comment:

- She referred to Commission Rodriguez’s condition about the use of native plants and stated she would not mind if the property owners wanted to plant more fruit trees and is in a developed neighborhood where other people have fruit trees, ornamentals and other non-native species.

M/s, Rodriguez/Newton, motion to approve Resolution No 2019-18, using the amended cover sheet, with the following changes suggested by Commissioner Rodriguez: 1) Condition #1 shall add Attachment #B, the color styles; 2) L-01 shall encourage the use of native plants or fire-resistant, drought-tolerant plants to the extent feasible; 3) Condition #2 should include language that requires that the lighting fixtures are consistent with the architectural style of the residence and downward directed or shielded.

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

ABSENT: Green

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

2. 80 Crest Road; Application # 19-10

Request for a Conditional Use Permit for unpermitted improvements to a single-family residence including 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)(1)

Principal Planner Neal presented the staff report. She noted one correction to the resolution: On page 7, under "Now, Therefore be it Resolved", second paragraph, the words "and Height Variance" should be eliminated.

Commissioner Gonzalez asked if the fourth floor was being triggered because of the loft. Principal Planner Neal stated "yes". The loft was not like an attic loft, it has a full stairway leading to it and it is improved for living space.

Commissioner Gonzalez-Parber asked about the structural assembly of the walls and if there were cripple walls at the bottom. Principal Planner Neal stated staff did not know since there were no building plans for that area.

Commissioner Gonzalez-Parber asked if the Building Inspector would make sure all the egress codes were complied with if that space was considered by the building code as a basement. Principal Planner Neal stated it does not meet the Town definition of a basement- it has to be underground with only three feet of the walls extending above grade.

Commissioner Fragoso asked if the loft or the basement that has been developed triggered the fourth floor. The loft was originally there. Principal Planner Neal stated the tax assessor's records indicate three-bedrooms, one-bathroom, the basement, Floor 1, and Floor 2 which is the loft. Those are the three stories that the Town has approved Building Permit plans for.

Commissioner Kehrlein had a question about the Height Variance. Principal Planner Neal stated they need to look at the height of the improved structure. It was approved as a 33 foot tall structure which complied with the height limit at that time. The current height limit in the Code is 35 feet. Legalizing the lower floor would result in a 50 foot tall structure. Height is measured from grade. The Commission talked about the history of height limits. Principal Planner Neal stated there was no period in time when the code would have allowed what currently exists on the site.

Commissioner Fragoso asked if the lower piers as shown in Drawing #7 (ground level) were originally installed as support beams for the basement. Principal Planner Neal stated that would be shown on the Foundation Plan, Attachment B, page 4. It was a grid pattern of foundation and posts. Commissioner Fragoso stated Attachment B shows no ground floor- just the posts supporting the basement.

Commissioner Newton asked about the letter dated October 9th from the attorney representing the applicants. Principal Planner Neal stated she sent the Commission the response from the Town Attorney.

Chair Swift opened the Public Hearing.

Mr. Len Rifkind, attorney representing the applicants, made the following comments:

- He gave a PowerPoint presentation.
- There is photographic evidence of the house when it was built in 1973 that shows that the house was not floating up on stilts- there were original walls that go all the way down to the ground.
- He displayed a photograph of the ground floor, with two windows and walls that go all the way down to the foundation.
- The house was built pursuant to a legal Building Permit issued in December, 1972. It was finalized and signed off by the Town.
- No Height Variance is required because it is legal, non-conforming.

- The footprint has not changed.
- The wine cellar is not a “story”. It is not even 7’ tall. It existed at the time of the original construction.
- He is not sure the loft should be called a floor. It is not relevant since it is original and the wine cellar should not be counted as a floor- they do not have four stories.
- He displayed a 1973 document that was a change order from the applicant’s contractor about adding the stairs that go down to the wine cellar.
- He asked the Commission to support the Conditional Use Permit, and not require the Height Variance.

Commissioner Newton asked Mr. Rifkind when the improvements were made to the lower floor. Ms. Sorgen stated the western wall that created the storage was added within ten to fifteen years ago.

Commissioner Kehrlein referred to the photograph of the ground floor that showed the bare studs and asked if that area has been sheetrock or if there were finished walls. Mr. Rifkind stated there was no dry wall. There is a sink and toilet near the south end because it is next to the exit door near the swimming pool. Commissioner Kehrlein asked if the storage area was unfinished. Mr. Rifkind stated “yes”.

Commissioner Gonzalez-Parber asked the applicant to describe the spaces on the ground floor. Ms. Sorgen stated the area under the east side of the house is dirt. The area to the west of that is the new part that was built because the stilts had dry rot. That area was filled in with solid walls and it has two windows. This was done 10 to 15 years ago. Mr. Verle Sorgen stated they cut the posts down and installed sheering (the west side rear wall) on the advice of a structural engineer. Commissioner Fragoso asked if the work was done with Building Permits. Ms. Sorgen stated “no”.

Commissioner Gonzalez-Parber asked about the area in the middle (next to the toilet) that is labelled “storage/shop”. Ms. Sorgen stated her husband put in some counter tops so he could use it as a shop. This area has no sheetrock but it has electrical service so the exit is not in the dark.

Commissioner Newton asked if the original wine/storage area had four walls. Ms. Sorgen stated “yes”.

Commissioner Gonzalez-Parber asked if they would consider removing the cellar and the toilet. Ms. Sorgen stated she would consider removing the toilet. The wine cellar was original and she did not see why it needed to be removed.

Chair Swift closed the Public Hearing.

Commissioner Fragoso provided the following comments:

- It appears that in 1972 the approved plans show a three-story structure that included a garage, an entry to a first floor with a living and dining room, a loft above that, and a basement floor with bedrooms, halls, and a sitting room.
- The ground level at that time was open ground or what could be considered an unenclosed crawl space. The wine cellar, in the shortest corner, is only 6 feet in height. The crawlspace was enclosed to create storage.
- The remainder of what they are now calling the ground level was unenclosed piers to the basement, the first floor, and the loft.
- Over the years the owners have started enclosing that lower ground level crawlspace because the piers were not structurally sound. They added walls for stabilization.
- The Town’s Building Code does not speak to floors but rather the overall height of a structure.
- This structure was approved at the required height at that time. It is the enclosure and development of the ground level puts it over the height limit.

Mr. Rifkind stated it was unfair and improper for the Commission to consider and rely on the legal opinion of counsel when it has not been made available to him. Principal Planner Neal gave Mr. Rifkind a copy of the correspondence from the Town Attorney.

Commissioner Newton provided the following comments:

- Her focus is on affordable housing and she asked why they should approve something that does nothing to help alleviate the housing crisis.
- She has a strong reaction to permitting a fourth story.
- She is concerned that there is no actual increase in height or additional space added to the footprint.
- In light of what the code said at the time, the building may have only been three feet higher than what was allowed (as measured from the floor of the finished area to the top of the loft).
- This particular residence is in an incredibly beautiful area and the staff report almost seems to encourage increasing the footprint on the natural environment over allowing infill of this understory area and she does not agree that is the way to develop the site.

Commissioner Gonzalez-Parber provided the following comments:

- She can see both sides. She appreciates the efforts of the applicants.
- The Building Code is there to ensure that whatever gets built is safe.
- There is no proof that this happened legally with the Town's approval and they have to go by the records that they have.
- The last time an official took a look at this site was in 1973. Codes change and get stricter.
- If they want to keep the improvements at the lowest level, they should think from "the top down". Removing the loft would eliminate the four story issue.
- They put in cripple walls to make the space safer but they have no evidence that this is safe for habitation which could happen in the future.
- She cannot reconcile the conflict and something has to give.

Commissioner Kehrlein provided the following comments:

- She asked if a tall crawlspace area under the house counts as floor area or a fourth story. Principal Planner Neal stated the area has been improved with floors, electrical, and windows that the Town has no permits for. Staff is recommending that they can keep any walls down there if the engineer indicates they are needed for stability of the building.
- She is not sure why the Town records do not show that the understory area has walls going all the way down when there are photographs showing walls.
- The building is more structurally sound with the walls. It is a safer and better building.
- The wine storage should not be counted as habitable space- it does not meet the height limit and a person could not live in that space.
- Perhaps the toilet should be removed.
- The Commission has no control over the Fire Department requirements.

Commissioner Fragoso asked if there were records of the engineering work recommended ten years ago for the piers. Principal Planner Neal stated "no- there were no permits for that work".

Commissioner Rodriguez provided the following comments:

- They are reviewing a Building Permit and a set of plans that relate to a series of inspections and a final for a structure.
- The addition of the stairs to the wine cellar was done after the final for the Building Permit.
- The change order from the contractor is not proof of a permit, modification, or re-inspection.
- It is up to the applicant to provide evidence that they have received a modified plan set, building permit, inspections, and a final for the shop change, the structural changes, and the electrical and plumbing work. When this proof cannot be submitted it creates issues related to fire and other instabilities. It is a liability.

- She supports the staff recommendation.
- She is concerned that structural posts were removed and a cripple wall was put up. Without the advice of a structural engineer they might come up with a resolution that might not work or be feasible. However, these are details that staff could handle.
- She referred to the resolution and suggested the following: 1) Additional information should be added to one of the “Whereas”; 2) A timeline for completion should be added to the Conditions of Approval.

Commissioner Fragoso provided the following comments:

- She agreed with the comments made by the other Commissioners.
- She is concerned that there was no permit or inspection of the structural fix.
- She is concerned that if the Commission suggests they rip out all the ways they might be ripping out some of the support.
- The Town Engineer or one paid by the applicant should do an assessment prior to removing the walls and the improvements.
- She would prefer that the footprint of the structure be maintained as opposed to building out into the environment if they know the structure is sound.
- The structure does not meet the height limit given the improvements at the ground level.
- She supports the staff recommendations.

Chair Swift provided the following comment:

- She supported the staff recommendations.

Commissioner Newton provided the following comments:

- She understood the concern about the integrity of the structure or the integrity of the structure after removal of the existing improvements on the lowest level.
- She suggested the following changes to the resolution: 1) On page 1, the fourth “Whereas” shall read: “... has made the following findings: *Provided the fourth story is abated* the project conforms...”; 2) On page 2, Conditional Use Permit (1) shall read: “*However, granting approval..*”; 3) On page 2, Conditional Use Permit (4) shall read: “Approval of the Conditional Use Permit *with the plans modified as described above* will maintain...”. “Approval of the Conditional Use Permit *as modified as described above* will...”. 5) On page 4, Whereas (10) shall read: “Any changes....set of plans *other than those reflected in this resolution...*” “Any construction...of Application 19-10 *other than in accordance with this resolution...*”; 6) On page 7, MMWD (30) shall read: “All the District’s.. *in effect...*”.

Principal Planner Neal suggested the following changes to the resolution: 1) On page 3, Whereas (1), shall read: “This approval....ground floor foundation area *shall be removed*”; 2) “The application... *and completing the work within six month or extended with approval of the Planning Director*”.

Chair Swift provided the following comment:

- The date in the second Whereas on page 1 of the resolution should read October 17, 2019.

M/s, Rodriguez/Newton, motion to adopt Resolution No. 2019-13 with the following changes: 1) On page 1, the date in the first Whereas shall be changed to October 17, 2019; the fourth “Whereas” shall read: “... has made the following findings: *Provided the fourth story is abated* the project conforms...”; 2) On page 2, Conditional Use Permit (1) shall read: “*However, granting approval..*”; Conditional Use Permit (4) shall read: “Approval of the Conditional Use Permit *of plans described above* will maintain...”. “Approval of the Conditional Use Permit *as modified in accordance with above* will...”. 3) On page 3, Whereas (1), shall read: “This approval....ground floor foundation area *shall be removed*”; (2) “The application... *shall be completed within six month or modified by the Planning Director*”; 4) On page 4, Whereas (10) shall read: “Any changes....set of plans *other than those in this resolution...*” “Any construction...of Application 19-10 *in accordance with this*”.

resolution..."; 5) On page 7, MMWD (30) shall read: "All the District's.. *in effect...*"; the reference to a Height Variance in the last sentence shall be deleted.

AYES: Fragoso, Gonzalez-Parber, Newton, Rodriguez, Chair Swift
NOES: Kehrlein
ABSENT: Green

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

The Commission took a 10-minute break at 9:18 p.m.

- 3. 6, 8, 10, and 12 School Street Plaza: Application #19-15**
Request for a Conditional Use Permit and Design Review Permit for a minor expansion to building #8 and conversion of the following 14 commercial suites into live-work units: Bldg. 6 #'s 110, 270 and 280; Bldg. 8 #'s 8A2, 8B and 8D; Bldg. 10 #'s 10C, 10D and 10E; Bldg. 12 #'s 12B-1, 12C-1, 12C-2, 12D-1 and 12D-2; Assessor's Parcel No. 002-112-13; Limited Commercial CL Zone; Fred Ezazi, applicant/owners; CEQA categorically exempt per Section 15301(a) and (e)(1) and 15303(c).

Commissioner Newton recused herself from this item due to personal interest.

Principal Planner Neal presented the staff report.

Commissioner Gonzalez-Parber had a question about the location of the fence. Principal Planner Neal stated it would start northwest of the two story structure on the corner of School Street and Broadway follow around the corner on Merwin. She asked the Commission to look at the large site plan.

Commissioner Kehrlein asked if the chain link fence at the top of the slope on Merwin would remain. Principal Planner Neal stated the applicant could answer this question.

Commissioner Rodriguez referred to page 6 and had a question about the chart and how the International Property Management Code limits the number of persons allowed to live in a unit. She asked about the number of units identified in this Housing Element "identified housing site". Principal Planner Neal stated at least nine. Commissioner Rodriguez asked if any of the units would need to be affordable. Planning Director Berto stated "no". Commissioner Rodriguez asked if there was any mechanism that could be used to obtain an affordable housing project on this site. Planning Director Berto stated it is difficult to mandate affordable housing without an inclusionary/affordable housing requirement. The Town is in the process, in conjunction with other Marin County jurisdictions, in developing such a code. Commissioner Rodriguez asked if they could require an affordability aspect, without an inclusionary ordinance, if the property were rezoned to Planned Development District (PDD). Planning Director Berto stated that would be difficult since utilizing the PDD designation can be problematic.

Chair Swift referred to the staff report, page 2, the first sentence of the sixth paragraph and asked for an explanation. Principal Planner Neal stated staff has received complaints over the years about people living on the property. Chair Swift asked if the Fire Department prepared a report about the two fires that occurred on the property. Planning Director Berto stated it was determined that the units in question had been being used as residences. Chair Swift asked about the International Property Management Code and its relevance. Principal Planner Neal stated this code is used to determine how much space was needed per person for a bedroom. Chair Swift asked how many people live there now. Principal Planner Neal stated that was a question for the applicant. Chair Swift had questions about accessibility issues. Principal Planner Neal stated that would be addressed during the Building Permit stage. Chair Swift referred to the staff report, page 8, #17 and

asked about off-site catering and food preparation. Principal Planner Neal stated they would have to comply with Building and Health Department regulations. The Commission could prohibit this use. Chair Swift asked if there was any division between the office/ work and live space or if it was all one space. Principal Planner Neal stated some are one space and some are separated- there is no requirement for complete separation.

Commissioner Fragoso referred to Suite 10-C, page A-1 (existing floor plans) and stated the allowance was for three bedrooms and four inhabitants. The plans did not show any bedrooms. Principal Planner Neal stated the Town has no way to control whether the rooms are used for bedrooms but there has to be approved safety exits if the rooms could be used as bedrooms. The "dining room" could be used as a bedroom. Commissioner Fragoso asked if the suite could have a hot-plate if no kitchen was identified. Principal Planner Neal stated the Building Code would require a hard-wired cooking surface. Hot-plates would not be allowed. Commissioner Fragoso asked if there would be a fine to legalize the existing units. Principal Planner Neal stated "yes- they would pay the permit fee plus 50% of that fee".

Commissioner Gonzalez-Parber referred to Sheet A-2, Building 6, Suite 270 (second floor) and asked if this is an example of a space that would have the same egress/ventilation requirements of a bedroom. Principal Planner Neal stated she would need to ask the Building Official about these details.

Chair Swift opened the Public Hearing.

Mr. Rick Hamer, representing the applicant, made the following comments:

- Commercial tenants have been living on the property for a long time in a "work/live" situation.
- The number of people living at the property varies- it is usually between 10 to 20 individuals in the 14 units addressed in the permit. Nine units are currently being lived in.
- There are 36 total units on the property all governed by a commercial lease.
- The fence would provide safety.
- The owner is willing to put in necessary egress windows in every partitioned space identified by the Town.
- They plan to bring in a consultant to do a lighting plan.
- The owner will resolve any un-permitted work installed by tenants over the years.
- They plan to implement a lease addendum that is specific to live/work and will address conditions #11-18, 24-27, and 29. Condition #19 is already in place, #21-23 are designated in the plans. He referred to item #28 and stated there was established landscaping.
- The chain link fence will be replaced with the proposed metal fence.
- They are looking at a residential occupancy of one to three.
- The current rental level falls in the moderately affordable class as defined in the 2015 Housing Element.
- The separation of spaces are indicated in the plan- a living area is not to be used for commercial purposes and the work area is to be used for work. These areas are not always divided by a wall.
- Kitchen areas are identified in the plans and will be hard-wired.
- Some of the remodels will comply with ADA requirements but the residential portions will not be subject to ADA.
- The manager's unit will not change.

Commissioner Fragoso asked about the rents (\$2,200 for 600 square feet) and noted all but one or two of the proposed 14 units fall in that category. She asked if they would be willing to provide some lower income rental prices, at least for the smaller units. Mr. Hamer stated most of the units have an established rental price. The smaller units would rent for substantially less than \$2,000.

Commissioner Kehrlein asked about the purpose of the fence since there were other access points. She asked how they could secure the property when there were major access points that need to be open. Mr. Hamer stated the intent is to have people come “through the front door”.

Commissioner Gonzalez-Parber asked why they wanted to install the fence at the retaining wall and not push it back to the blacktop. Mr. Ezazi stated he wants to keep people from jumping off the wall. Principal Planner Neal stated they were limited to a four foot high fence anywhere within ten feet from the street frontage- a five foot fence moved back would require a variance.

Lake made the following comment:

- Setting the fence back three feet from the wall would result in a landscape maintenance problem.

Chair Swift closed the Public Hearing.

Commissioner Rodriguez provided the following comments:

- She sees the building as an artist enclave which is core to the economic development of Fairfax.
- This site is a major thoroughfare for the library, ballfield, etc.
- It has historically been occupied by low income artists.
- The plans do not reflect a live/work project and do not give them the mainstay of what is there- affordable housing and support of artists.
- The plans do not show the degree of ingress/egress, kitchens, bathrooms, etc.
- The landscaping could be enhanced and they could delete the fence idea.
- She does not support the application.
- She would like staff to start on an Inclusionary Ordinance.

Commissioner Fragoso provided the following comments:

- She agreed that the plans are lacking a level of detail.
- She understood they were trying to fix an illegal situation and make safety improvements.
- She is supportive of a live/work situation but not at unaffordable levels.
- Landscaping, rather than fencing, could provide security.

Commissioner Kehrlein provided the following comments:

- It looked like the fence could be pushed along Broadway to the edge of the parking lot pavement and she was not sure she could make the Fence Height Variance Findings.
- She liked the concept and felt it could solve some of the Town’s problems.
- She would like more information on the proposed rents. These units should qualify for low-income.
- She could not support the fence on the retaining wall- it could be moved back.
- She supported a continuance.

Commissioner Gonzalez-Parber provided the following comments:

- She supported the concept- it is a great idea.
- She would like to see more detail in the kitchens in terms of the location of the sink, the refrigerator, the stove, etc.
- She had a problem with the ratio of living space vs. commercial and would like to use the California Residential Building Code instead of the IPMC in terms of size, etc. She would be comfortable with a 50/50 ratio. Commissioner Kehrlein stated there is a “live/work” section in the Building Code and it is considered a residential designation.
- Now is the time to set the standard for future “live/work” spaces.
- She would like to see a method of designating the number of persons allowed per unit (per square footage, per room, etc.).
- She would like to see where the bedrooms are located, a furniture lay-out, etc.

- She likes the fence style but a five-foot fence on that tall retaining wall would feel unfriendly to people walking on the sidewalk. She could support a five-foot fence if it were pushed back. They could put in a service gate if they decided to put it closer to the cars.
- She could not support the proposed design and supported a continuance.

Chair Swift provided the following comments:

- She is concerned with the live/work concept. They are trying to take care of a building situation that has people living there unpermitted.
- The General Plan talks about a zoning designation that would allow live/work residential units in the Central Commercial (CC) Zone. It is not discussed in the CL Zone.
- There is nothing in the code that addresses live/work at all.
- They have not done anything about the size of spaces.
- There has not been enough research to come up with a concept that works for the community.
- She is not comfortable looking at this application without looking at the broader live/work type of zoning.
- She asked if there was a way to mitigate any hazards on the property wait on the live/work aspect until they do more research.
- She would like to see ordinances from other communities.

Commissioner Rodriguez provided the following comment:

- She agreed with Chair Swift's concerns about taking a broader approach.
- She reiterated that she would like to see staff develop an Inclusionary Ordinance.

Commissioner Gonzalez-Parber provided the following comments:

- She also agreed with Chair Swift's concern but stated she was conflicted- this could take years to adopt an ordinance.
- They are trying to address a situation that exists and make it safe.
- This is a homegrown issue and she would like to continue the application.

Commissioner Fragoso provided the following comments:

- They are looking at a health and safety code enforcement situation that the owner is trying to resolve. They are then trying to "slap on" the live/work design criteria.
- This is a good, first effort.
- They should address the code issues with some health and safety solutions and then move forward with a more detailed concept and proposal for the units.

Commissioner Gonzalez-Parber provided the following comments:

- She asked about a temporary solution. Planning Director Berto stated they could look at the areas designated as bedrooms and work with the applicant to correct things that are immediate safety hazards. This could be done on a staff level.
- She asked if there was an expiration date on this application.

Commissioner Kehrlein provided the following comment:

- Any future plans should include dimensions, setbacks, window sizes, etc.

M/s, Kehrlein/Gonzalez-Parber, motion to continue this item to a date uncertain.

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

RECUSED: Newton

ABSENT: Green

The Commission took a 5-minute break at 11:15 p.m.

Commissioner Newton returned to the dais.

4. Discussion/consideration and possible recommendation to the Town Council for adoption a draft ordinance incorporating the requirement for a Hill Area Residential Development Overlay Zone Permit [(Town Code Section 17.072.020(A) through (D)] into the Multi-family Residential-Senior-Residential Zone (Town Code Chapter 17.090), the Planned Development PDD District (Town Code Chapter 17.112), the Upland Residential UR-7 and UR-10 Zones (Town Code Chapter 17.124) and the Single-family Residential Master Plan SF-RMP District (Town Code Chapter 17.116) and amending the Hill Area Residential Development Overlay Zone (Town Code Chapter 17.072).

Planning Director Berto presented the staff report.

Chair Swift asked how the General Plan's Safety Hazard Map was developed. Planning Director Berto stated it was based on the County's Landslide Susceptibility GIS overlay. However, the nomenclature does not necessarily line up with the County's so staff needs to make sure the boundaries are consistent and perhaps change the titles. Staff will come back to the Commission with that.

Commissioner Rodriguez referred to the resolution and stated the first "Whereas" introduces the concepts of watersheds, floods, the WUI Zone, etc. but they are not referenced anywhere else. She asked if the only trigger was the new safety map and asked what happened to the other topic areas. Planning Director Berto stated the safety map would not be in the first version that staff is recommending. Staff is just boiling it down to landslides because that is consistent with the HRD provisions as they exist right now.

Commissioner Newton wondered about the wisdom of tying the locations to pretty old maps that are susceptible to change as conditions are altered.

Commissioner Rodriguez stated this is a hillside residential area development procedure that opens the door to ask applicants for the information needed to make a decision on a project. Those topic areas in the hillside are not just landslides- the Commission had previously discussed a list. She referred to the ordinance, Section 17.072.020, "Applicability" (A) and stated 200 cubic yards was a large amount of soil and perhaps not the right measuring method. Planning Director Berto stated staff is trying to start with what they have. He agreed that the other topics of concern were valid. This is an interim measure and gets something that the Town needs on the books.

Chair Swift referred to the first "Whereas" in the resolution and stated the reference to the WUI Zone and watershed areas could be deleted since they were not applicable. She noted the maps were difficult to read and certain parcels or streets were not discernable. She asked how often the maps were updated. Planning Director Berto stated his intention is to use the latest most accurate information as they move into the GIS platform. Principal Planner Neal stated the maps were very helpful since they are the key to requiring the applicant to go through the process. They would be required to submit soils/geologic information when going through the HRD process. In addition, the Town Engineer walks the site. The Town does not have the staff to constantly update these maps.

Chair Swift opened the Public Hearing.

Mr. Frank Egger, Meadow Way, made the following comments:

- This proposal directly impacts the development of the Wall property.
- The Gold Standard for determining landslide hazards is the 1974 Fairfax Area General Plan Map from the Open Space plan delineating landslide areas from a High Hazard Level 4 to a Level 1.
- Every parcel in Fairfax was mapped for landslide potential by the State Division of Mines and Geology.
- He asked why the Land Use Hazard Map was not being use.

- He asked the Commission to not include the Upland Residential Zones until the Environmental Impact Report (EIR) for the Wall property was completed.

Planning Director Berto responded to Mr. Egger's comments and stated staff's intent is to make information more accurate and comprehensive.

Chair Swift closed the Public Hearing.

Commissioner Newton provided the following comment:

- She asked how the Wall property application would be impacted. Principal Planner Berto stated they were already required to go through the HRD permit process. The functional equivalent would be an EIR.

Commissioner Rodriguez provided the following comment:

- She can support the proposal but it is missing the WUI, the flood, the ridgeline, the special status species.

Commissioner Fragoso provided the following comments:

- She asked if Attachment A, page 2, incorporated the other elements discussed by Commissioner Rodriguez.
- The second "Whereas" in the resolution discusses requiring in-depth geotechnical, soils, hydrology reports.

Commissioner Newton provided the following comments:

- They need to be careful when adding the reference to the maps in the resolution and ordinance - they need to use the same terminology (i.e. 1976 Landslide Hazard Zone Map).
- The UR Zones need to be pulled out.
- She asked why they were deleting the first "Whereas" in Attachment A.
- She had several minor typographical errors.

Commissioner Kehrlein provided the following comment:

- If the WUI were included than almost every property in town would have to go through the HRD review. The Hill Area Residential Development process should not be required for small projects.

Commissioner Newton provided the following comments:

- There is some confusion. The staff report indicates the HRD process will be applied to all zones in Fairfax but in other places it indicates the review will be applied only to hillside area. Planning Director Berto stated it was potentially applicable in all residential zoning districts but it has to have a trigger- located on an unstable slope as defined by the map, or grading a certain amount of material. Chair Swift stated a flat parcel in the Cascades could be in the WUI that has no chance of sliding.

Principal Planner Neal stated each of the residential zones has flat properties and sloped properties. The original intent of the HRD Ordinance was to apply the HRD to hillsides. They want the HRD Ordinance to apply to all zones that might have residential development on potentially unstable slopes that will involve excavation amounts that might cause sliding or diversion of natural water run-off.

Commissioner Rodriguez made a motion to adopt Resolution No. 2019-19 and modify the draft Ordinance to add to Section 17.072.020, "Applicability", (A) and carry forward into every subsection that references the Landslide Map to also reference the WUI, the flood, the ridge, the special status species, and the ridgeline.

Commissioner Kehrlein was concerned that this language would trigger HRD requirements on small projects on every single parcel in town.

Commissioner Rodriguez withdrew her motion.

M/s, Kehrlein/Fragoso, motion to adopt Resolution No. 2019-19 with the following modification: 1) The reference to the WUI Zone in the first "Whereas" shall be deleted; 2) The typographical edits presented to staff by Commissioner Newton

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

ABSENT: Green

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

Discussion Items

There were no discussion items.

Minutes

5. Minutes from the September 19, 2019 Commission meeting.

M/s, Newton/Gonzalez-Parber, motion to approve the September 19 2019 minutes as corrected.

AYES: Fragoso, Gonzalez-Parber, Kehrlein, Newton, Chair Swift

ABSENT: Green

ABSTAIN: Rodriguez

Planning Director's Report

Planning Director Berto reported the Governor recently signed numerous housing bills. Staff will be coming back to the Commission in the summer with new Accessory Dwelling Unit (ADU) statutes. The Marinda Heights Project (a.k.a. Wall Property) is under review by the Town Attorney.

Commissioner Comments and Requests

Commissioner Rodriguez asked if there was new legislation that future housing applications were subject to only three Public Hearings. Planning Director Berto stated it was five Public Hearings- there were numerous shot-clocks, etc. Chair Swift asked if staff could arrange a presentation from the Town Attorney.

Commissioner Fragoso asked if a business owner could take over the sidewalks for outdoor seating or have music venues almost every night without a Conditional Use Permit (CUP). Principal Planner Neal stated "no". Enforcement is done on a complaint basis.

Commissioner Kehrlein stated there was sign painting going on at The Lodge. Planning Director Berto stated staff would follow up on all complaints. Principal Planner Neal stated staff tries to prioritize health and safety concerns.

Chair Swift asked if staff received a housing report this year. She would like a copy. She asked if staff has received any applications subsequent to adoption of the Telecommunications Ordinance. Planning Director Berto stated "no".

Chair Swift asked staff to provide the cannabis buffer maps.

Commissioner Rodriguez referred to the recent PG&E outages and asked if they have notified the Town about upcoming plans. Planning Director Berto stated he heard they have a Line Clearance Program underway. Staff will report back. Chair Swift stated they have been doing a lot of tree trimming.

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 12:05 a.m.

Respectfully submitted,

Toni DeFrancis,

Recording Secretary