

FAIRFAX PLANNING COMMISSION MEETING MINUTES
VIA TELECONFERENCE DUE TO COVID-19
THURSDAY, APRIL 16, 2020

Call to Order/Roll Call:

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

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

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

APPROVAL OF AGENDA

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

PUBLIC COMMENTS ON NON-AGENDA ITEMS

There were no comments.

Planning Director Berto explained there was a lag time between the two platforms being used (Zoom vs. Community Media Center Marin televised recording) to broadcast the meeting.

CONSENT CALENDAR

There were no Consent Calendar items.

PUBLIC HEARING ITEMS

- 1. 6, 8, 10, and 12 School Street Plaza: Application #19-14**
Continued consideration of a request for a Conditional Use Permit and Design Review Permit for a minor expansion to building #8 and expansion/remodel/conversion of the following 12 commercial suites into live-work units: Bldg. 6: #'s 110; Bldg. 8: #'s 8A1, 8B1, 8B2, and 8D2; Bldg. 10: #'s 10C, 10D and 10E; Bldg. 12: #'s 12B-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 stated she would need to recuse herself from this item.

Principal Planner Neal presented the staff report. She explained the changes made by the applicant. She noted the following change to Resolution 2019-17, Condition #6, the following sentence shall be added: Any existing and proposed new equipment placed on any roof shall be screened in a manner approved by the Planning Director and in a way that does not detract from the appearance of the building.

Commissioner Kehrlein asked about the status of the fence. Principal Planner Neal stated the Fence Height Variance request was not part of the application.

Commissioner Swift asked if Unit 12 C-1 was currently occupied as a live in rental. Principal Planner Neal stated she was advised by the applicants that there is no one living there. Commissioner Swift asked if Unit 12 B-2 was occupied as live/work. Principal Planner Neal stated the plans do not show a bathroom so she did not think anyone would be living in this unit. It has been withdrawn as a proposed living unit.

Commissioner Swift stated the Conditional Use Permit (CUP) applied to the twelve units in the application and asked if changes to those units needed to come back to the Commission. Principal Planner Neal stated "yes". Commissioner Swift asked if any other unit (not one of the twelve) that wanted to convert to live/work would need to be reviewed by the Commission. Principal Planner Neal stated the applicant would need to modify the existing CUP. They cannot change the floor plans presented tonight or add new live/work units without coming back to the Commission.

Commissioner Swift referred to Condition #27 of the resolution and stated the word "flare" should be changed to "fire". Principal Planner Neal stated it should read "glare".

Commissioner Fragoso referred to Condition #36 and asked why the demolition was required. Principal Planner Neal stated the bathing facilities and the kitchen comprise a living unit. Demolition would occur once the tenant moves out. The items that make it a living unit need to be removed.

Commissioner Gonzalez-Parber referred to the reference of a "700 square foot addition" and asked if they were adding 700 square feet of footprint. The demolition and proposed plans look the same. Principal Planner referred to Sheet A1, Existing Floor Plan, Building 8, and pointed out the walls come out further than the doors at 90 degree angles. Commissioner Gonzalez-Parber asked if the footprint was popping out but the roof line was staying the same. Principal Planner Neal stated "yes". Commissioner Gonzalez-Parber asked if they were adding trellises. Principal Planner Neal stated "no"- the trellises were existing.

Chair Green opened the Public Hearing.

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

- The fence has been withdrawn but they are going to reopen the stairway at the corner with an access control gate.
- Unit 12 C-1 is occupied by a massage technician and no one is living there.
- Unit 12 B-2 is occupied by a fashion designer and no one is living there.
- They understand that the Use Permit applies to twelve units and even if the percentages change that needs to be fixed.
- Condition #27 should read "flare", as in the type of device the Highway Patrol uses. This is to discourage welding.
- They have pulled the permit for the demolition work at 12 C-1.
- He referred to the 700 square footage addition and stated the footprint is not changing. They are enclosing what is currently an open patio area.
- The trellises were added in 1982. They are repairing some dry rot.

- The exit gate to Broadway could be used by a tenant in the event of an emergency. There will be a key pad on the uphill direction.

Commissioner Gonzalez-Parber stated Unit 10-E has a tiny kitchen (5' wide counter space) in an odd location and she asked if the applicant would consider doing some reconfiguration. The space could easily be improved. Mr. Hamer stated that unit is existing and it could be disruptive to the tenant to expand that kitchen. Commissioner Gonzalez-Parber stated it should be addressed- it is not adequate for a "live" space. Mr. Hamer stated they would be willing to increase the square footage of that kitchenette by about 40% by extending it to the room in front. Commissioner Fragoso suggested swapping out the bathroom and the kitchen. Mr. Hamer stated this could be considered.

Commissioner Kehrlein referred to Attachment B, unit 110, and asked Mr. Hamer if this unit was in the new building. Mr. Hamer stated "yes, it is in Building #6". Commissioner Kehrlein asked why this unit was selected for live/work since it seemed more appropriate as a commercial space. Mr. Hamer stated it does have a history of residential use. They have been asked to correct some unpermitted work.

Patrece Bryan sent an email with the following comments:

- She is in active litigation against the property owner as a residential tenant regarding water damage to her property.
- She opposed the granting of certificates of residential occupancy.

Ms. Lisel Blash sent an email with the following comments:

- It is exciting to see this project come forward.
- Affordable space is necessary for the people in the arts, non-profit businesses, and services that provide a vibrant Fairfax culture.
- She asked if the affordable units will remain affordable.

Chair Green closed the Public Hearing.

Commissioner Swift provided the following comments:

- The lighting plan should include Dark Sky compliancy and the lighting fixtures should point down to avoid light spillage. LED's in such a large area should be in the blue color spectrum.
- She referred to uses permitted and prohibited in the Limited Commercial (CL) Zone. A day-care facility might not be appropriate in one of the live/work units and could be added to the list of prohibited uses.

Chair Green provided the following comments:

- He agreed with Commission Swift that there were issues in terms of what the CL Zone allows.
- He referred to the Resolution, Condition #27, and stated the words "no welding is allowed" should be added.
- The concern about day-care facilities is addressed in Condition #27 (no noise, odors) but they could add wording such as "noise levels have to be reasonable". He agreed that they should expressly exclude other CL Zone uses.
- He referred to the Resolution, "Whereas", and would like to add: "The proposal is a unique home grown project from the ground up and is particularly suited to the re-purposing of the site and for its existing full time residents and to the needs of the community".
- He wants to hone in on the unique nature of the site.
- He referred to the Resolution and suggested the following changes: 1) Condition #6 should read: "Any other changes... of *any* building..". 2) Condition #9 should read: "There shall be...outside *any of* the buildings." 3) Condition #11 should read: "Any equipment...of *any* building." He supported Principal Planner Neal's additional language. 4) Condition #22 should read: "The residential....of *any* commercial building...". 5) Condition #23 should read: "The commercial...conducted in *or near* the walkways..." 6) Condition #26 should read: "No more.. of

any of the..." 7) Condition #28 should read: "Prohibited....spaces are, *including but not limited to...*". 8) Condition #33 should read: "A fire sprinkler system... entire building *campus...*".

- This is a good project.
- He is glad they have modified it so that toilets are not facing kitchen and that they are willing to make other changes.
- He applauded the owner for working with the tenants.

Planning Director Berto referred to Condition #27 and stated he was reluctant to list uses that are not allowed. It is the applicant's intent to rent to uses that would be compatible with the tenant mix including residential. He suggested the following language: "The commercial uses...adjacent neighbors, *including prohibition of uses with any of these characteristics that would otherwise be permitted in the CL Zone*". Staff would encourage the property owner to contact staff about future tenants other than ones that are clearly compatible.

Commissioner Swift provided the following comments:

- She asked how this language would affect a day-care center. Planning Director Berto stated the applicant does not plan to have any uses that entail a lot of children due to the commercial mix.
- It would be clearer to include day care centers as a prohibited use.

Chair Green provided the following comment:

- It would not hurt to add day care centers as a prohibited use.

Commissioner Rodriguez provided the following comments:

- Her opinion of this application has not changed.
- The applicant is reacting to a code infraction situation where there was illegal occupancy and illegal construction.
- This is a very patch-work project that is substandard in terms of architectural improvements, color, landscaping, control access, garbage issues, etc.
- It is not a good design.
- It is not consistent with the General Plan. The Housing Element shows a shortfall and the intent was to rezone this site Planned Development District (PDD) with a bottom density range of 20 dwelling units per acre.
- The proposal is for twelve units- four of them are less than 50% commercial with the remainder at barely 50%.
- This is an opportunity site that should be tailored to the arts in partnership with the Town.
- This would be a precedent setting project in terms of live/work.
- She recommends denial of the project.

Commissioner Fragoso provided the following comments:

- She was not sure they need to explicitly exclude child care. They are not trying to change the CL Zone.
- This is being considered under a very specific Conditional Use Permit (CUP) for the proposed development.
- The resolution clearly states that a business license must be obtained. A child care center would be governed by a stricter code and licensing process.

Chair Green provided the following comment:

- He was not sure they needed to get specific with respect to the child care center issue.

Commissioner Gonzalez-Parber provided the following comments:

- This is a great project that is organically home grown. She agreed that it is not perfect.
- This is an opportunity site.
- There are activities on the site that came about because there was a need.

- They have an opportunity to make it safe and sound. They cannot make it look like something other than what it is- a school building.
- The applicant has addressed most of the Commissions' comments.
- Complaints about a unit should to be addressed on an individual basis.
- She supports the project

Commissioner Kehrlein provided the following comment:

- She is glad that the total number of units has been reduced to twelve.

Commissioner Swift provided the following comments:

- She referred to the Resolution, the first "Whereas" and stated the date of the plans should be updated.
- She referred to the Resolution, Condition #2, and suggested the following change: "All lighting shall be dark sky compliant *to include compliance with color temperature to minimize blue rich lighting....*".

Commissioner Fragoso provided the following comments:

- She agreed this was not a great project. It is poor design, basic construction, and little attention to architectural detail.
- The problem is the illegalities and people living in unsafe and unhealthy conditions.
- The project provides some housing that is relatively affordable.
- The CUP brings the building into a better condition in terms of health and safety. The existing conditions were detrimental.
- There are benefits.
- The project gives the Town control over what would otherwise continue to be an illegal, hazardous living situation.

Chair Green provided the following comments:

- He agreed with Commissioner Fragoso's assessment.
- He understood Commissioner Rodriguez's concerns.
- This is a property that is derelict with a property owner that wants to balance his needs with the requirements that the Town is imposing.
- He could support the project.

Commissioner Kehrlein provided the following comment:

- She is glad that the total number of units has been reduced to twelve.
- This is not a perfect project.
- She agreed with Commissioner Fragoso's comments.
- They now have documentation about the site.
- The applicant responded to the Commissions' comments and provided the necessary information.

Commissioner Gonzalez-Parber provided the following comment:

- She would like to add the modifications to Unit 10-E in Condition #36 with the following language: "The kitchen area in Unit 10-E will be expanded or altered as offered by the applicant- a 40% expansion of the counter space." Planning Director stated this could be Condition #37 (#37 would become #38).

M/s, Fragoso/Gonzalez-Parber, motion to approve the conversion of twelve commercial spaces to live/work units , a Conditional Use Permit and Design Permit for application #19-14 and adopt Resolution No. 2019-17 with the following modifications: 1) The following shall be added to the fourth "Whereas": "The proposal is a unique home grown project from the ground up and is particularly suited to the re-purposing of the site and for its existing full time residents and to the

needs of the community”; 2) The date of the plans in the first “Whereas” shall be changed to March 5, 2020; 3) Condition #2 shall read: “All lighting shall be dark sky compliant *to include compliance with color temperature to minimize blue rich lighting...*”. 4) Condition #6 should read: “Any other changes... of *any building..*”. “Any existing and proposed new equipment placed upon any roof of any building shall be screened in a manner approved by the Planning Director in a way that does not detract from the appearance of the building”. 5) Condition #9 should read: “There shall be...outside *any of the buildings.*” 6) Condition #11 should read: “Any equipment...of *any building.*” “Any new equipment place on any roof shall be screened”. 7) Condition #22 should read: “The residential...of *any of the commercial building...*”. 8) Condition #23 should read: “The commercial...conducted in *or near the walkways...*” 9) Condition #26 should read: “No more.. of *any of the...*” 10) Condition #27 shall read: The commercial uses...adjacent neighbors, *including prohibition of uses with any of these characteristics that would otherwise be permitted in the CL Zone*”. 11) Condition #28 should read: “Prohibited...spaces are, *including but not limited to...*”. 12) Condition #33 should read: “A fire sprinkler system... entire building *campus...*”. 13) A new condition #37 shall be added to read: The kitchen counter space and storage area for unit 10-E will be expanded, as offered by the applicant, by at least 40%. The previous Condition #37 shall become Condition #38.

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

NOES: Rodriguez

RECUSED: Newton

Commissioner Rodriguez stated she voted “no” because the project is precedent setting, the commercial portion is 50% or less, is low quality design, is of little benefit to the Town, and does not comply with the Housing Element.

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

Commissioner Newton returned to the meeting.

2. 181 Meernaa Avenue; Application #20-1

Request for a Conditional Use Permit and Excavation Permits to expand and remodel the 1,199 square foot first floor of an existing 1,455 square foot single-family dwelling by 123 square feet to create a 1,322 square foot primary residence. The primary residence would be located above a proposed ADU addition to the ground floor (ADU exempt from any Planning Commission action per Fairfax Ordinance 844). A two-car carport is proposed under the ADU addition, requiring a second driveway subject to approval of a variance from the Town Council; Assessor’s Parcel No. 002-162-20; RS-6 Single-Family Residential Zone, High Density; Stephen LaDyne, applicant, Gerdes Family Trust, owner; CEQA categorically exempt per Section 15301(a) and (e)(1).

Commissioner Fragoso stated she would need to recuse herself since she lives in the vicinity of the subject property.

Principal Planner Neal stated staff realized this afternoon that this item was not properly noticed with respect to a Tree Permit Application. The application should be continue to the May 21st meeting.

Commissioner Kehrlein asked if the Tree Committee has reviewed the Tree Permit Application. Principal Planer Neal stated “yes, and they made a recommendation”.

Commissioner Rodriguez asked if they could separate the application and discuss the other items. Principal Planner Neal stated the Town Attorney recommends against that.

M/s, Newton/Swift, motion to continue Application #20-1,181 Meernaa Avenue, to the May 21st Commission meeting.

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

RECUSED: Fragoso

Discussion Items

3. Discussion Objective Design and Development Standards

Planning Director Berto presented the staff report. He noted the collaborative venture with ten other jurisdictions to develop these standards has continued via Webinars due to the Coronavirus. There is a survey posted on the Town Website. He briefly discussed the Historic Assessment process and stated staff will be submitting a Request for Proposal (RFP) to architectural historian firms soon. He asked the Commission to appoint two Commissioners to the ad hoc subcommittee. The subcommittee would select the historic consultant and provide feedback on the proposed schedule and tasks. Staff will reach out to the community for help in this process.

Commissioner Newton asked if the subcommittee would include members of the community. Planning Director Berto stated “yes”.

Chair Green volunteered to serve on the subcommittee. Commissioner Fragoso also volunteered and stated she has a background in design and historic programs.

Commissioner Swift asked if the Town is meeting its Regional Housing Needs Assessment (RHNA) goal and asked for an update. Planning Director Berto stated he would provide those figures but noted the Town is looking great in terms of the “low” and “very low” numbers.

Commissioner Swift referred to the community engagement plan and asked if it would be extended due to the shelter in place. Planning Director Berto stated “yes” since they will need to come up with alternative formats for outreach, etc.

Commissioner Rodriguez asked if there would be a staff level and Commission discussion prior to the public outreach program and the creation of an ordinance. Planning Director Berto stated the consulting firm has created a timeline and list of tasks. He is open to Commission direction about the elements. This is one of the benefits of having a subcommittee who can report back to the Commission. He would be scheduling the subcommittee meetings very soon.

Chair Green opened the meeting to public comments.

There were no comments.

Chair Green closed the meeting to public comments.

Commissioner Rodriguez provided the following comments:

- She is concerned about the community engagement plan.
- Initially there was going to be Commission participation in an Open House with multiple workshops, etc.
- Community members are very vocal and want to be involved.
- She wants to move this item along.

Commissioner Fragoso provided the following comments:

- She asked for clarification on the role and responsibilities of the subcommittee.
- She asked if the subcommittee would be responsible for the community participation process. Planning Director Berto stated “no”.

Commissioner Rodriguez provided the following comments:

- She asked for details about the Historic Assessment. Planning Director Berto stated it would involve the identification of “place types”, survey work, assessment of buildings and other features, development of an engagement plan with local volunteers, recommendation of options and tools to protect existing resources, and the development of objective development standards.
- She asked for the definition of “historic resources”. Planning Director Berto stated there were seven criteria used by the Secretary of the Interior.
- She stated physical buildings were one thing but there were also cultural resources to consider.

Commissioner Swift provided the following comments:

- The General Plan discusses cultural resources such as a mural, etc.
- One of the outcomes she was looking for would be to identify and understanding the State and Federal requirements and what in the community would benefit from designations and be protected in the future.

Chair Green provided the following comments:

- There were overlays to this- private organizations that certify buildings and government identification of buildings that can force standards on historic buildings.
- They need to identify the buildings and then approach the owners about Federal or State designations.
- There is a lot of information about Fairfax that can be obtained through third parties (Fairfax Historic Society, etc.).

Commissioner Fragoso provided the following comments:

- Designation of a building was not a simple thing- it takes a long time and can be costly.
- The owners are often not willing to abide by the restrictions.
- The cultural elements and the social fabric of Fairfax can be used as development standards without having to designate something on the National Register.
- There are different levels of designations that can be used such as historically significant, architecturally significant, or eligible for designation. There is quite a bit of leeway.
- Designation on the National Register should not necessarily be the goal.

Chair Green provided the following comments:

- The issues brought up by Commissioner Fragoso could be discussed by the subcommittee.
- They do not want to throw property owners into a deep pit of regulatory morass.

Commissioner Newton provided the following comment:

- She asked if staff would reach out to community members as a resource. Planning Director Berto stated “yes” and he would welcome feedback from the Commission or community members.

It was the consensus of the Commission that Chair Green and Commission Fragoso will serve on the ad hoc subcommittee.

The Commission took a 5-minute break at 9:45 p.m.

Minutes

4. Minutes from the February 20, 2020 Commission meeting.

M/s, Newton/Swift, motion to approve the February 20, 2020 minutes as corrected.

AYES: Fragoso, Gonzales-Parber, Kehrlein, Newton, Rodriguez, Swift

ABSTAIN: Chair Green

Planning Director's Report

Planning Director Berto asked Commissioners if they would be interested in getting business cards. They come in handy during site visits. Several Commissioners responded "yes". He reported on the successful passage of Measure C and the creation of the Fire JPA. The Fire Subcommittee has not met due to the shelter-in-place requirements. Fire Chief Weber has confirmed that an evacuation study would be performed. He discussed how these issues are affected by recent State housing legislation. Commissioner Fragoso referred to Measure C and asked "what's in it for Fairfax". Planning Director Berto stated there were a lot of things that will involve Fairfax. Commissioner Swift is the Commission representatives to the Fire Subcommittee and would be reporting to the Commission.

Commissioner Comments and Requests

Commissioner Fragoso asked if Measure D passed. Commissioner Newton stated there were over 60% "No" votes and under 40% "Yes" votes.

Commissioner Swift asked staff to report back on the status of the Accessory Dwelling Unit (ADU) Amnesty Program and when the Commission would be discussing short-term rentals. Planning Director Berto stated he would check with Town Manager Toy who would be making the presentation.

Commissioner Newton thanked the staff "in front of and behind" the scenes and the Community Media Center of Marin (CMCM) for producing tonight's Zoom meeting. Chair Green noted there were no glitches! Planning Director Berto stated staff is working on making these productions as participatory as possible.

Chair Green discussed the COVID-19 pandemic and noted "this too shall pass".

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 10:20 p.m.

Respectfully submitted,

Toni DeFrancis,
Recording Secretary