

FAIRFAX PLANNING COMMISSION MEETING MINUTES
VIA TELECONFERENCE DUE TO COVID-19
THURSDAY, OCTOBER 15, 2020

Call to Order/Roll Call:

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

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

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

APPROVAL OF AGENDA

Chair Green stated he would like to discuss agenda item #4 prior to #3. Commissioner Fragoso supported that suggestion.

M/s, Fragoso/Gonzalez-Parber, motion to approve the agenda and hear item #4 prior to item #3.
AYES: Clark, Fragoso, Gonzalez-Parber, Newton, Swift, Chair Green
NOES: Rodriguez

PUBLIC COMMENTS ON NON-AGENDA ITEMS

There were no comments.

CONSENT CALENDAR

There were no Consent Calendar items.

PUBLIC HEARING ITEMS

- 1. 1620 Sir Francis Drake Boulevard; Application #20-9**
Continued consideration of a request for a Use Permit and Design Review permit to convert an existing 1,573 sq. ft., 2 story commercial building into a residential duplex; Assessor's Parcel No. 001-235-11; Highway Commercial (CH) Zone; Joyce and Arthur Chartock, applicants/owners; CEQA categorically exempt per Section 15301(a) and (e).

Principal Planner Neal presented the staff report. She discussed the four options and noted the applicants are not interested in undertaking any of them and are in the process of trying to sell the site. They would like to obtain approval for a residential unit on the upper floor and retain the office

use on the ground floor. She noted the following corrections to Resolution No. 2020-09: 1) Finding #5 should read: "Approval of the Use Permit...contained *or set forth in the 2010-2030 Fairfax...*"; 2) deletion of finding #8; 3) Finding #9 shall read: "Therefore, there is no longer a need for a Design Review Permit or a Fence Height Variance".

Commissioner Newton asked if staff plans to consider a longer termed approach or solution to the issue of housing needs in Fairfax. She was frustrated they could not grant a Conditional Use Permit for a duplex given the language in the General Plan about infill development and development near transit hubs. Principal Planner Neal stated the Town should do what is recommended in the General Plan and change the zoning to Central Commercial (CC). Planning Director Berto stated the Town will be doing a “deep dive” into housing issues for the next couple of years.

Commissioner Swift referred to the Resolution, page 5, the paragraph under “Now therefore be it resolved” and stated the reference to Design Review, a Fence Height Variance, and a Parking Exception should be deleted.

Commissioner Rodriguez referred to the Resolution, Finding (1)(b) and the goal of affordable housing and asked if the size of this unit and the fact that it is a duplex would make it “affordable”. Principal Planner Neal stated staff was basing this assertion on the small size and location (commercial zone) of the unit.

Commissioner Clark stated when she thinks about affordable housing she thinks about it as deed restricted housing that is offered at a lower rent in exchange for a tax credit. They can address the RHNA numbers head-on and they do not need to fudge the number by using smaller units to count towards that affordable threshold.

Commissioner Rodriguez noted this site is not identified in the Housing Element as an affordable site.

Commissioner Newton noted Goal LU-8 seeks to create affordable housing opportunities.

Chair Green stated he did not think the property owners had a 50-year affordable housing dedication in mind.

Commissioner Fragoso stated this is an opportunity for “moderately affordable” housing and the RHNA numbers included “moderate” income level units as well as “low” and “very low” income units.

Principal Planner Neal noted this property is part of one of the “housing sites” in the Housing Element. The Housing Element indicates that all the Highway Commercial Zone Districts, with includes the project site, be rezoned to Central Commercial which would allow housing units by right on the second floor.

Mr. Arthur Chartock, applicant, made the following comments:

- This is a complex issue.
- It is a matter of money and they decided to go the easy route.

Chair Green Opened the public hearing but there were no public comments.

Chair Green closed the Public Hearing.

Commissioner Newton provided the following comment:

- She did not feel strongly about leaving in or eliminating Finding (1)(b).

Commissioner Rodriguez provided the following comment:

- She agreed with Commissioner Newton’s comment about Finding (1)(b).

Commissioner Clark provided the following comment:

- She thanked staff and the applicant for the elegant solution.

Commissioner Fragoso provided the following comments:

- She appreciated legal counsel's thorough investigation into the options.
- She is disappointed they are not able to accommodate a well-established member of the business community.
- There is a dire need for moderate housing in the community
- She understood why the property owners did not want to prolong this ordeal.

Commissioner Swift provided the following comment:

- She was fine with leaving Finding (1)(b) in the resolution.

Chair Green provided the following comment:

- He suggested leaving Finding 1(b)(1) in the resolution. It creates a record in support Goal LU-8.

Commissioner Gonzalez-Parber provided the following comment:

- She agreed with Chair Green. The word "opportunities" is the key to leaving it in.

M/s, Rodriguez/Swift, motion to approve Resolution 2020-09 with the following modifications: 1) On page 2, Finding #5 should read: "Approval of the Use Permit...contained *or set forth in the 2010-2030 Fairfax...*"; 2) On page 2, Finding #8 shall be deleted; 3) On page 2, Finding #9 shall read: "Therefore there is no longer a need for Design Review Permit or a Fence Height Variance"; 4) On page 5, the paragraph under "Now, Therefore be it resolved", the reference to Design Review, a Fence Height Variance, and a parking exception should be deleted.

AYES: Clark, Fragoso, Gonzalez-Parber, Newton, Rodriguez, Swift, Chair Green

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

2. 5 Woodland Road; Application #20-11

Request for Hill Area Residential Development, Encroachment, Excavation, Tree Removal, Variance and Design Review permit for a 2,588 sq. ft. single-family residence and 576 sq. ft. detached 2-car garage; Assessor's Parcel No. 003-053-10; Residential Single Family RS-6 Zone; Jeff Kroot, architect; Lindsay and Chris Bolter, owners, CEQA categorically exempt per section 15303 (a) and (e), 15305(a), and (b) and 15332.

Principal Planner Neal presented the staff report. She is recommending the following conditions: 1) A lighting plan shall be submitted with the Building Permit application subject to Planning Department review that all light fixtures used on the exterior of the building will be Dark Sky compliant; 2) An arborist report shall be provided prior to the issuance of the Building Permit; 3) Prior to the issuance of a Building Permit the applicant shall provide a biologist report. Staff discovered yesterday that the story poles have not been erected so the Commission is unable to make a decision tonight. The Commission should hold the Public Hearing and continue the application to the next meeting.

Commissioner Swift referred to page 5 of the staff report, under Retaining Wall Height Variance, and asked if the first sentence should read "1 foot to 11.5 feet in height.." Principal Planner Neal stated "yes".

Commissioner Rodriguez referred to the Miller Pacific Report dated July 8, 2020 and asked if the neighbors had talked about securing the easement. Principal Planner Neal stated "no" and explained the civil drainage matter between the two downhill property owners. Commissioner Rodriguez asked if that affects the review of the drainage plan and the recommendation. Principal Planner Neal stated "no" and referred to the September 21st email from Mr. Michael Jewett.

Commissioner Rodriguez referred to the Stormwater Control Plan dated January, 2020 and had a question about the table entitled "Description of Drainage Areas". Principal Planner Neal stated this question should be directed to the applicant's engineer or the Town Engineer.

Chair Green had a question about the maintenance of the drainage system . Principal Planner Neal stated maintenance usually included an annual cleaning of the system. Chair Green asked if this was absolutely critical to the system. Principal Planner Neal stated “yes”.

Commissioner Gonzalez-Parber asked if a color/materials board was submitted. Principal Planner Neal stated it was included in the staff report. She displayed them to the Commission. Commissioner Gonzalez-Parber asked that the applicant submit a color photograph (8 ½ X 11) of the sample board for the next meeting.

Chair Green opened the Public Hearing.

Mr. Jeff Kroot, architect, made the following comments:

- The site is about 24,000 square feet- large but constrained. It is a steep upslope.
- They chose to build at the bottom of the site for several reasons; 1) the location would minimize the destruction of the site and reduce the amount of excavation; 2) the location would place it below the neighbor to the east.
- It is a short, steep driveway.
- They tried to stretch the house horizontally.
- The design breaks up the mass as much as possible to minimize visual impact.
- The house is stepped back in several areas.
- The roof design is broken up into several different planes.
- The house would be minimally visible to the community and would not be imposing.
- The color would be a dark gray-blue.
- The trees that were removed were on the small side (5” to 6” diameter).
- He discussed the Vegetation Management Plan (Sheet 20) and Tree Protection Plan.
- He referred to the Northern Spotted Owl nesting site and stated they hired an environmental consultant. He read from the report.
- They will install the story poles in time for the next hearing.
- There is a very thorough drainage design.

Ms. Lindsay Bolter, applicant, made the following comments:

- The accessory dwelling unit (ADU) would be used by out-of-state relatives.
- They welcome the Commissions input.

Commissioner Gonzalez-Parber asked if they would consider dropping the height- even a foot might help. Ms. Bolter stated it is already a conservative height. The building is nestled into the hill.

Commissioner Gonzalez-Parber asked if they considered bringing the garage up in the direction of the shed to minimize the amount of excavation and retaining wall heights. Ms. Bolter stated the shed is located on City property and the garage cannot be located in that area. Mr. Kroot stated the proposed location is the least disruptive spot. Commissioner Gonzalez-Parber asked how the new deck on top of the garage would be accessed. Mr. Kroot stated the roof deck is the same height as the front patio and access to the deck would be from there.

Commissioner Gonzalez-Parber asked if the two parking spots in front of the property would be preserved. Principal Planner Neal stated “yes”- those were in the public right-of-way easement.

Ms. Valerie Hood, Fairfax, made the following comments:

- The names of individuals on the screen should be displayed.
- She wanted to know the difference in the number of trees that came to the Tree Committee and the actual number proposed to be cut (44). She wanted to know the kinds of trees and the diameters.
- She looks forward to seeing the story poles.
- She wondered about the amount of encroachment into the public right-of-way.

- She asked if the biology report included the hunting range of the owls.

Ms. Pamela Meig, Cypress Drive, made the following comments:

- She saw a Northern Spotted Owl at the end of her block.
- This is a small lot and she did not understand why the need to cut down so many trees.
- She was concerned about erosion and slides.

Principal Planner Neal read a letter from Ms. Formeston:

- This project would be a good addition to the community.
- The project is not intrusive and preserves most of the natural land.

Principal Planner Neal read a letter from Ms. Kylie Miller:

- She supports the project.
- Efforts were made to make the project blend into the surroundings and minimize environmental impacts.

Principal Planner Neal read a letter from Mr. Jai Flicker:

- He supported the project.

Principal Planner Neal read a letter from Ms. Jessie Stahl:

- This is a small project that is mindful of the surrounding environment
- She supports the project.

Ms. Alexis Lynch, Muriel Place, made the following comments:

- She supported the project.
- A large portion of the land will remain undeveloped.

Chair Green closed the Public Hearing.

Commissioner Rodriguez provided the following comments:

- She was concerned about the lack of an arborist report.
- There seemed to be a break in communication between the Tree Committee, the Fire Department, and the Planning Department on the topic of tree removals.
- She spoke to the Fire Marshal who stated they never discuss removals but only look at the remainder trees that may create opportunities for fire. They might recommend trimming from the ground up.
- She was concerned about the significant removal of trees associated with this project.
- She would like to understand what is happening in the public space that is benefitting the homeowner. The municipality continues to have liability in those areas.
- There could be discussions about a lot line adjustment, with an exchange of finances, as opposed to an Encroachment Permit.
- She agreed that the building height was too high and the center section could be dropped.
- She would like to discuss the status of the "separate lot".
- She sees a lot of Spotted Owls in this area.

Chair Green provided the following comments:

- He is skittish about the removal of 44 trees. There are 8 trees in the actual building envelope.
- He would like to see an arborist report.
- He is not concerned about the building height but they need to get the story poles installed.
- He likes the structure. It is beautiful
- He likes the project.
- The drainage system will require a lot of maintenance.
- Owls move and fly all over the place.

Commissioner Swift provided the following comments:

- She discussed the Tree Removal Permit application and process. There were no trees tagged and the application did not indicate the full species name.
- She counted 33 trees on the application but found only 16 trees tagged during her site visit.
- She would like to see an arborist report indicating the actions requested and the reasons for the request.
- The story poles will help answer a lot of questions about the siting of the structure.

Commissioner Newton provided the following comments:

- She agreed with all the comments made by the other Commissioners.
- There is time to address all these issues.

Commissioner Gonzalez-Parber provided the following comments:

- The story poles will give her an indication of the height of the roof line.
- Stepping the house back and breaking it up was done very well.
- She questions the 9' plate height.
- The drawings do not show a roof ratio of 7:12.
- This will be a great project.

M/s, Newton/Rodriguez, motion to continue this application to the November 19, 2020 meeting.

AYES: Clark, Fragoso, Gonzalez-Parber, Newton, Rodriguez, Swift, Chair Green

4. Discussion of Preliminary Regional Housing Needs Allocation (RHNA) Methodology

Planning Director Berto presented the staff report.

Commissioner Fragoso asked if the current allocation was inclusive of the allocation for the prior eight years. Planning Director Berto stated these are additional units. He was not sure if they would get credit if they exceeded the prior allocation. Commissioner Fragoso asked about the last RHNA cycle numbers and if this goal was met. Planning Director Berto stated they have met, and actually exceeded, the overall RHNA number of 61 units, helped considerably by the Victory Village development. Most of these units were low and very low income units. The challenge is providing the moderate income level category units. Commissioner Fragoso asked for clarification on the two recommended modifications proposed for the methodology, in particular the 40% allocation factor. Planning Director Berto stated the 40% is a break out of moderate to above moderate income levels while the critical need is for low and very low income housing. Commissioner Fragoso stated they need to take a look at the projected potential housing units from the last Housing Element.

Commissioner Rodriguez asked if the concern about the methodology was that the math was wrong. They are double counting, the vacancy rate is too high, and they are using a higher head of household number. There has been a huge jump in the numbers. There is a state-wide problem of hitting low and very low income units. There needs to be a closer connection between jobs and housing to reduce greenhouse gas emissions.

Chair Green stated the Town has had difficulty convincing property owners to dedicate projects to affordable housing. He asked what happens if a jurisdiction does not meet its RHNA numbers. They have to provide some incentives.

Commissioner Fragoso referred to Chair Green's question and stated the Town is required to identify and zone for units but the Town cannot be obligated to produce them. However, there are ramifications if the Town does not produce a Housing and Community Development (HCD) certified Housing Element. She would like to see the numbers projected in the zoning for potential housing opportunity sites in order to compare the new numbers. It would make sense to come up with Inclusionary Housing requirements for new developments or an affordable housing fund in lieu of

producing units. Planning Director Berto stated it will be a serious challenge to produce a Housing Element that designates the land for the number of units. There is concern throughout the Bay Area about how realistic the numbers are.

He stated penalties could be levied for failure to meet the goals.

Commissioner Newton stated they need to know what the penalties could be and weigh that against the various options. They should identify strategies that would allow them to move forward. She also wants to understand the definitions of "housing" (ADU's, houses on trailers, "tiny homes", Teepees, etc.) and how to address fire ingress and egress issues in Fairfax. They should take a holistic approach.

Commissioner Clark was interested in how the capital "AH" affordable housing and the numbers for very low, low, and moderate income interact with each other. She asked how the Town would be responsible. Inclusionary zoning might not be a good fit for Fairfax given the type of units being developed. She wants to figure out a way to encourage the deed restricted units.

Chair Green stated Fairfax will need to overcome its real physical constraints.

Commissioner Gonzalez-Parber asked if the issue of reducing the minimum square footage for housing or infilling what is already here had been discussed. She asked if the Building Code for the minimum requirements were changed would that result in opportunities. Planning Director Berto stated he thought so. The idea of vertical mixed-use has been discussed and has a lot of support. He noted the small units are the most affordable and the most in demand.

Chair Green asked if a deed restriction has to be recorded for a property to qualify for the RHNA numbers. Planning Director Berto stated this is being discussed. There is a clear connection between the size of a unit and the amount of rent.

Chair Green opened the meeting to public comments.

Ms. Valerie Hood made the following comments:

- They need an accurate census.
- There are people living in the hills and in vans and she wondered if they are being counted.
- The issues of water and evacuation should be talked about.

Jessica Green made the following comments:

- Existing underutilized properties where few people reside in large homes can be turned into low income housing.
- The power grid does not seem to be able to handle the number of people already living here.

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

- According to ABAG and the Metropolitan Transportation Commission (MTC) ADU's and Junior ADU's do not count as units.
- The State is basing the number of new units need on what they claim is the State-wide shortfall.
- Over 400 of California's 482 cities did not meet the last RHNA cycle requirements. Fairfax did.
- The majority of Fairfax is in the Wildland Urban Interface (WUI) Zone.
- Evacuation is a huge issue.

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

- The latest demographics have people leaving California.
- There were evacuation and water issues.

Chair Green closed the meeting to public comments.

Commissioner Newton stated the Town needs to address the issue of empty homes in Fairfax, the taxing of units used for short-term rentals, and doing an inventory of those units.

Commissioner Rodriguez asked about the timing on this issue. She would like to hold a public workshop to discuss these issues.

Chair Green asked about the punishment if the Town does not meet the RHNA numbers. Planning Director Berto stated the Town Attorney could give a more detailed answer. It would start with penalties if the Housing Element is not in compliance.

3. Consideration of a digitized/georeferenced Zoning Chapter 17.060 Ridgeline Development Visual Resources Map

Planning Director Berto presented the staff report. He discussed why, as currently defined, the 100-foot vertical scenic corridor does not work. He discussed a series of options outlined in the staff report.

Commissioner Rodriguez supported the map as depicted in Attachment "A". She gets nervous using the Hydrology Map as the basis for making decisions on elevational changes. They need to stick with the original intent of the maps. She still questions the interpretation of the methodology that is being used. She stated Section 17.060.020 defines a "major ridge" but Attachment "B" appears to be excluding major ridges. The issue has been "mucked up" and complicated by applying the 100-foot vertical and 150-foot horizontal buffers. There is a lot more work to be done and she would like this issue to go back to the Open Space Committee and the public.

Planning Director Berto clarified that any area with the red line surrounded by green was, for mapping purposes, a major ridge.

Commissioner Swift stated that having parcels on the low valley floors be subject to the Ridgeline Scenic Corridor Ordinance was not the intent. The intent, according to the code, is to preserve the scenic resources. The code talks about significant view corridors and visually significant areas. These are the valued areas. She is confused about the application of the 150-foot horizontal and the 100-foot vertical. She is confused about the road they are going down. She asked about the 1973 Ordinance (#352) and asked for some historical background.

Planning Director Berto visually explained the 100-vertical foot and 150-horizontal foot measurements.

Commissioner Fragoso stated she agreed with staff's general assessment that there is a major overreach occurring and they should not be considering the flatlands as part of the ridgeline. She referred to the staff report and stated she agreed with Options #1 and #2. She agreed with the idea of coming back and having a fuller discussion on this issue. She would like to see some simple sketches. They could have a joint meeting with the Open Space Committee.

Commissioner Gonzalez-Parber asked if the Town has ever considered doing a 3-D model of the topography. Planning Director Berto stated "not to my knowledge". Staff can come up with a shaded map that will provide a good indication of the hills, ridges, flats, etc. He could also come up with a cost of a 3-D map.

Chair Green referred to page 2 of the staff report, and the statement about "applying the regulations to whichever map encompasses the most area and parcels in question". He asked how that would work. Planning Director Berto stated staff could layer these maps in a GIS program and add that language (whichever layer reaches out the furthest from that ridge). Chair Green noted there needs to be clarity for an applicant while providing the Town the ability to enforce its regulations.

Chair Green opened the meeting to public comments.

Jessica Green made the following comments:

- The staff report was convoluted and hard to understand.
- She was not able to reference the maps on the website.
- She asked “Why now?”

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

- He asked if the Marinda Oaks Ridgeline Scenic Corridor ridges were considered “minor”. This would give the current developer an advantage.
- The ridgelines are highly visible from many parts of the downtown.
- The idea of a 3-D map is intriguing.

Ms. Valerie Hood made the following comments:

- She could not access the maps on the website.
- She is trying to visualize what they are talking about.
- She agreed with the comments made by Mr. Egger.
- This issue needs a lot of discussion.

Mr. Mark Bell made the following comment:

- He was able to access the maps.

Ms. Debra (“Dee Lee”) Benson made the following comments:

- She easily found the link to the maps in the agenda packet.
- The “major” and “minor” ridgelines were relative.
- She asked if it were possible to choose some points on the major ridgelines and put up some story poles.
- The existing Ridgeline Ordinance has protected the ridgelines for a very long time.

Chair Green closed the meeting to public comments.

Commissioner Newton provided the following comments:

- She agreed with the comments made by Commissioner Rodriguez and Mr. Egger.
- They should hold public workshops before changing the Zoning language.
- They need to take time and do it right.
- She liked the idea of a 3-D map.
- She liked the idea of digitized, georeferenced maps.
- She questioned the use and reliance on the hydrologic maps to determine the ridgelines.
- The ordinance defines “major ridges” as the ones on the map. This is very straightforward.

Chair Green provided the following comments:

- He did not want to make a decision tonight since there are too many questions.
- It would be helpful to have a depiction of an example property that has been granted a permit and how that process happened.
- He understands the 100-foot vertical and 150-foot horizontal concept.
- He did not think they could make a recommendation tonight.

Commissioner Swift provided the following comments:

- She agreed with Commissioner Newton.
- The interpretation of the 100-foot and 150-foot concept and how it is applied is not clear.
- There are too many questions.
- This needs further discussion.

Commissioner Rodriguez provided the following comments:

- They need to figure out how the ordinance is being applied.

- This is an important exercise but she questioned whether or not it should be a Commission priority.

Planning Director Berto stated staff would come back with more information.

MINUTES

4. Minutes from the September 17, 2020 Commission meeting.

M/s, Swift/Rodriguez, motion to approve the September 17, 2020 minutes as corrected.

AYES: Clark, Fragoso, Newton, Rodriguez, Swift

ABSTAIN: Gonzalez-Parber, Chair Green

Planning Director's Report

Planning Director Berto reported staff hired an architectural resources consultant to do the reconnaissance survey and historic inventory work. A number of jurisdictions in Marin collaborated on simplifying the process for the creation of accessory dwelling units (ADU's). A Webinar is scheduled for November 5th that will explain the process. Staff will be presenting a draft of objective design and development standards sometime soon.

Commissioner Comments and Requests

Commissioner Fragoso asked staff for a tentative schedule of items for Commission review for the next three or four months.

Chair Green stated while walking around Fairfax he has seen a lot of people not wearing masks. He would like to see a banner across Sir Francis Drake Boulevard asking people to wear masks. This creates a dangerous situation and it should not be treated lightly.

Commissioner Rodriguez stated there will be an increase in air traffic (planes) over Marin because of a project called Next Generation being undertaken by SFO. Paths are being changed to increase efficiency.

Chair Green thanked staff for the incredible work!!

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 11:27 p.m.
Respectfully submitted,

Toni DeFrancis,
Recording Secretary