

DRAFT (rev) Fairfax Town Council Minutes  
Special Meeting  
Via teleconference due to COVID-19  
Wednesday, **November 18, 2020**

Mayor Goddard called the Special meeting to order at 6:30 p.m.

**COUNCILMEMBERS PRESENT:** Bruce Ackerman  
Barbara Coler  
Renee Goddard  
Stephanie Hellman  
John Reed

**STAFF MEMBERS PRESENT:** Garrett Toy, Town Manager  
Michele Gardner, Town Clerk  
Janet Coleson, Town Attorney  
Ben Berto, Planning Director  
Kara Spencer, Assistant Planner

Mayor Goddard explained the various ways the public could participate in the meeting.

Approval of Meeting Agenda and Affidavit of Posting

M/S, Reed/Hellman, Motion to approve the Affidavit of Posting and the agenda.  
AYES: Ackerman, Coler, Hellman, Reed, Mayor Goddard

Interview and Appointments

1. Interview applicants for the Climate Action Committee, the Tree Committee, and Measure F Oversight Committee; make appointments as appropriate- Town Clerk

The Council interviewed Ms. Beth Verdekal, for the Climate Action Committee. The second applicant for the Committee was not present.

The Council interviewed Mr. Tom Childers and Ms. Beth Verdekal for the Tree Committee.

Town Clerk Gardner reported the Measure F Oversight Committee interviews had been rescheduled to accommodate the applicants.

Mayor Goddard opened the meeting to public comments.

There were no comments.

Mayor Goddard closed the meeting to public comments.

The Council discussed staggered terms for the Climate Action Committee and the Tree Committee. Town Manager Toy discussed the ordinance and the nature of at-large membership.

M/S, Ackerman/Hellman, Motion to appoint Ms. Beth Verdekal to the Climate Action Committee.  
AYES: Ackerman, Coler, Hellman, Reed, Mayor Goddard

M/S, Coler/Reed, Motion to appoint Mr. Tom Childers to the Tree Committee.  
AYES: Ackerman, Coler, Hellman, Reed, Mayor Goddard

Mayor Goddard called the Regular meeting to order at 7:00 p.m.

### Regular Agenda

2. Proclamation in Honor of Ms. Norma McFadden- Mask Maker Extraordinaire- Councilmember Coler

Mayor Goddard read the Proclamation in Honor of Ms. Norma McFadden- Mask Maker Extraordinaire.

Councilmember Coler read a message from Ms. McFadden thanking the Council for the recognition.

Mayor Goddard opened the meeting to public comments.

Ms. Liz Darby, Marin County Department of Health and Human Services, thanked Ms. McFadden for her service to the community.

Mayor Goddard closed the meeting to public comments.

3. Appeal of Planning Commission action approving Hill Area Residential Development, Excavation, Design Review, and Tree Removal Permits for the expansion and remodeling of the single-family home located at 6 Walsh Lane. Categorically Exempt from CEQA under CEQA guidelines per sections 15301(e)(2)(A) (Class 1) and 15302 (Class 2)- Assistant Planner, Planning Director  
Continued from November 4, 2020

Vice Mayor Bruce Ackerman recused himself due to the proximity of his home to the project.

Assistant Planner Spencer presented the staff report.

Councilmember Hellman asked if the reference to the 93 square feet that would remain unfinished was new information. Assistant Planner Spencer stated "no". Councilmember Hellman asked staff to point it out on the plans. Planning Director Berto noted it was on the east side and was less than seven feet in height.

Councilmember Hellman asked if there was a permit for the legal nonconformity of the structure. Assistant Planner Spencer explained the nonconformities were built prior to the applicable Zoning Code Sections. That is what makes them legal, non-conforming.

Councilmember Hellman asked staff to explain how the proposed project does not increase the existing combined front and rear nonconforming setbacks even though there is an increase in height. Planning Director Berto stated that was not a trigger. Town Attorney Coleson stated the height is not already nonconforming and the proposal is within the height limit.

Councilmember Coler asked staff to display Page F2 of the plans regarding the Ross Valley Fire Department's notes on access. Councilmember Reed stated there was a 20' X 30' fire truck space shown on Page F2. Assistant Planner Spencer displayed the Fire Department notes.

Councilmember Reed asked about the square footage of the homes at the end of the street. Assistant Planner Spencer stated there was a chart in the Planning Commission staff report.

Mayor Goddard asked how much total square footage was being added outside of the original footprint of the house. Planning Director Berto stated 406 square feet.

Mayor Goddard asked about the southwest corner and the height (31'10). Planning Director Berto stated the grade drops in that area and about 20 square feet is at that height.

Mayor Goddard asked about the Marin Municipal Water District's requirements for a rainwater system. Planning Director Berto stated it was listed as a Condition of Approval in the resolution adopted by the Planning Commission.

Mayor Goddard noted the applicant and appellant had made presentations at the November 4<sup>th</sup> Council meeting, and tonight they were available for questions.

Mayor Goddard opened the Public Hearing.

Councilmember Coler asked the applicant if they intended to incorporate a graywater system into the plans. Ms. Laura Kehrlein, project architect, stated they were planning to install a valve on the washing machine and the dishwasher to allow discharge into the landscaping.

Councilmember Reed asked the applicant if they had considered other methods. Mr. Kehrlein stated they would be happy to look at going above and beyond the minimum requirements.

Ms. Sharab Bogan, Walsh Lane, opposed the project. The design and size did not fit in with the neighborhood and would create parking issues.

Ms. Lynn Yetter opposed the project, and stated that building a five-bedroom home eliminated housing for seniors, a couple, or a small family.

Mr. Frank Egger, speaking for Save Fairfax, urged the Council to approve the appeal and allow the applicant to reapply for a smaller structure. He discussed his interpretation of the Town Code. He was concerned about "ex parte communications."

Mr. Christof Bessler stated Walsh Lane was a small neighborhood and the design of the project did not fit into the neighborhood.

Ms. Valerie Hood opposed the project. She was concerned about water shortage and fire evacuation.

Ms. Pamela Meigs urged the Council to consider the character of the neighborhood and grant the appeal.

Mr. Larry Bragman supported the appeal. He stated the unfinished area should be added to the Floor Area Ratio (FAR) calculation, that the entire structure was nonconforming, and any expansion required a Variance. He also stated that the project includes a second story addition of approximately 400 square feet which requires a variance under Fairfax Town Code 17.028.130.

Ms. Sandra Stamos opposed the project as too big and was concerned about impacts to traffic and parking.

Mr. Rick Hamer supported the appeal and the creation of a Design Review Board.

Ms. Ling Shien Bell supported the appeal. The house was out of character and too big.

Karen stated there should be a compromise. She stated the house did not fit the neighborhood.

Ms. Mahoney Neal supported a compromise. She was concerned for the neighborhood.

Mr. Morgan Hall, appellant, stated the Code states that a discrepancy cannot be increased. He stated a basement must counted as floor area whether or not it is habitable and that put it over the FAR. He discussed the County Assessor records regarding the lower level.

Ms. Deborah Benson stated the project did not fit into the neighborhood and that was a basis for denial. She was concerned about the excavation.

Ms. Laura Kehrlein, project architect, stated the project meets the Zoning Codes and provides parking and a fire-safe structure. She urged the Council to review the facts presented in the staff report and the Town Attorney's memorandum, deny the appeal, and uphold the Planning Commission's approval of the project.

Mayor Goddard closed the Public Hearing.

Councilmember Coler stated Councilmembers are permitted to meet with the applicants during the site visit and the Council disclosed their visits at the public hearing on this matter. The existing structure is a fire hazard and a blight on the neighborhood. The project did not need any Variances. The Commission followed the Design Review guidelines. The project is within the size and height limits. The legal, nonconforming elements are not being exacerbated and are grandfathered in. The unfinished area should not count towards the FAR. Coler emphasized that in order to grant the appeal, the Town Council would have to make Findings.

Councilmember Reed agreed the existing structure is in a dilapidated state. He was concerned that the project is much bigger than the other houses on the street, and that Walsh Lane is a ten-foot-wide private road with no on-street parking. The project complies with all the words in the Code, but Design Review is about the "look and feel" of a project. He would like to see a compromise that the neighbors could live with.

Councilmember Hellman asked for clarification of the Code with respect to a second story addition/alteration. Town Attorney Coleson stated she did not view this as a second story and is of the opinion that the alteration is in conformance. Planning Director Berto stated it complied with the Zoning standards and does not require a Variance.

Councilmember Hellman stated she had concerns about parking, evacuation, and preserving the character of the Town. She stated the project did not fit in - it was larger in floor area and higher than homes in the neighborhood.

Mayor Goddard stated there were Findings that need to be made that clearly define a decision. The existing structure is a fire hazard. The project does not look like the other houses on Walsh Lane but there is an eclectic mix of designs in the neighborhood. The house is big, but there will be minimal disturbance of the natural features. The project is creating off-street parking. There are no visual or privacy impacts. The project meets all the sections of the Code. She liked the design and materials.

Town Attorney Coleson stated there was a resolution denying the appeal in the packet. It would take three votes to pass a resolution. Granting the appeal would require the Council make Findings, so the matter would need to be continued for the findings to be incorporated in a resolution that would be brought back to the Council at the next meeting. A tie vote constitutes "no action" and the decision of the Planning Commission would stand unless there was a subsequent motion for continuance.

Councilmember Coler made a motion to deny the appeal.  
Mayor Goddard seconded the motion.  
Councilmember Hellman voted no.

At 10:04 p.m. the Council took a break.

The Council reconvened at 10:21 p.m.

Town Attorney Coleson noted there was a motion on the table with one no vote and reminded the Council that if Councilmember Reed voted no, the appeal would be denied and the Planning Commission approval would stand unless there was a further motion to continue the matter and it was approved with three votes.

M/S, Coler/Goddard, Motion to deny the appeal.  
AYES: Coler, Mayor Goddard  
NOES: Hellman, Reed  
RECUSED: Ackerman

Motion failed due to the tie.

M/S, Hellman/Reed, Motion to continue the appeal to the December 16th meeting.  
AYES: Hellman, Reed  
NOES: Coler, Mayor Goddard  
RECUSED: Ackerman

Town Attorney Coleson stated the decision of the Planning Commission approving the project application stands.

Mayor Goddard adjourned the meeting at 10:30 p.m.

Respectfully submitted,

Toni DeFrancis,  
Recording Secretary