

FAIRFAX PLANNING COMMISSION MEETING MINUTES
VIA TELECONFERENCE DUE TO COVID-19
THURSDAY, JULY 15, 2021

Call to Order/Roll Call:

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

Commissioners Present: Norma Fragoso
Robert Jansen
Brett Kelly
Mimi Newton (Chair)
Cindy Swift

Commissioners Absent; Esther Gonzalez-Parber
Philip Green

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

APPROVAL OF AGENDA

M/s, Fragoso/Swift, motion to approve the agenda as posted.

AYES: Fragoso, Jansen, Kelly, Swift, Chair Newton

ABSENT: Gonzalez-Parber, Green

PUBLIC COMMENTS ON NON-AGENDA ITEMS

There were no comments.

CONSENT CALENDAR

There were no Consent Calendar Items.

Swearing in of New Commissioner

1. Swearing in of newly appointed Commissioner Brett Kelly

Planning Director Berto administered the Oath of Office to newly appointed Commissioner Brett Kelly.

PUBLIC HEARINGS

2. 85 Bolinas Road; Application #21-07

Continued consideration of request for a Sign Permit and an Exception to the 10-foot setback for a free-standing, business directory sign for the Commercial Building at 85 Bolinas Road; Assessor's Parcel No. 002-122-47; Central Commercial Zone; Bob Sanders, applicant; Harry Hunt, Bolinas Partners LLC, owners; CEQA categorically exempt per section 15311(a). (Continued from the June 17, 2021 meeting).

Principal Planner Neal presented the staff report. The Town Arborist is concerned about the 24” circumference piers and believes the work can be done in a way that would have less of an impact on the roots. She read a new Condition #2 to the draft Resolution: “The Building Permit shall be obtained from the Town after the submittal of engineered plans for the erection of the monument sign including the recommendation of the arborist on July 14, 2021 that the sign be engineered with 12” concrete footings with Simpson strong tie ornamental column bases or the equivalent post or column bases or other engineered support system that keeps the circumference of the below ground footings to 12” or less and that the electrical line be placed in an above ground conduit”. Staff removed the requirement in the resolution for an arborist report since it has been obtained. Condition #8 shall read: “Ray Moritz, the Town Arborist, shall be on site during the excavation and installation of the sign posts to ensure compliance with his recommendations contained in his July 15 2021 report.”

Commissioner Fragoso asked if the arborist report contained something about the distance of the supporting piers from the front fence. Principal Planner Neal stated the Town Arborist looked at the proposed site and a site one foot further into the Redwood grove. He is recommending placement where it is currently proposed and not closer to the Redwood trees or fence.

Commissioner Fragoso referred to page 3 of the staff report, paragraph four, and noted it should say “24 inch, and not 12-inch”.

Chair Newton opened the Public Hearing.

Mr. Bob Sanders, applicant, made the following comments:

- They are in agreement with the details of the requirements.
- They can deal with the 12” footings.
- Progress has been made.

Mr. Ray Moritz made the following comments:

- He probed the various holes and found a lot of roots in the marked positions that were closer to the tree. He found no roots of any significance in the sign mock up area.
- He supported this position for the sign.

Chair Newton closed the Public Hearing.

M/s, Fragoso/Jansen, motion to adopt Resolution No.2021-09 with all the additional information provided by the Town Arborist and entered into the record for the resolution this evening.

AYES: Fragoso, Jansen, Kelly, Chair Newton

NOES: Swift

ABSENT: Gonzalez-Parber, Green

Commissioner Swift stated she could not make the findings and thought it was too large for that location. There is space on the other side of the driveway.

Chair Newton stated there was a 10-day appeal period and the appeal fee is \$625.00

3. 403 Cascade Drive; Application #21-11

Request for a Use Permit and Design Review for a new 2 story, 1,745 square foot, 2-bedroom, 2- bathroom, single-family residence with an attached 467 square foot, two-car garage. The residence/garage will replace an existing residence on the site. APN 003-044-10; Residential Single Family RS-6 Zone; Daniel Thompson, owner/applicant; CEQA categorically exempt per Section 15301(e)(1).

Planning Director Berto presented the staff report.

Commissioner Fragoso asked if the applicant would need to come back to the Commission if the driveway location was not suitable and would endanger the trees. Planning Director Berto stated “yes” but staff is confident the impacts to the trees would be within reason.

Commissioner Jansen asked if the house to the east is slightly closer to the creek. Planning Director Berto stated “yes”.

Commissioner Kelly asked if a storm water detention/retention system is required. Planning Director Berto stated “yes”. The drainage plan will require a no net increase in offsite runoff. Commissioner Kelly asked if there is occasional sheet flow coming across Cascade onto the site. Planning Director Berto stated the applicant could answer this question.

Chair Newton referred to the interpretation of the Creek Setback Ordinance questioned and thought the idea of what is the top of the creek bank is subjective. She did not understand the overlay of average 100-year floodplain vs. figuring out what is the top of the creek bank. Planning Director Berto pointed out the boundary of the 100-year floodplain and noted the Town regulations say the setback is twice the depth of the bank. Since that is not defined, staff is using two times maximum creek depth during 100 year flood, measured from the 100-year flood boundary.

Chair Newton asked if staff thought about asking the applicant to apply for a Variance to the Creek Setback. Planning Director Berto stated as a general rule staff would discourage an applicant from applying for a Variance since standards and limits are there for a reason.

Commissioner Fragoso stated she did not support the suggestion by Chair Newton to ask the applicant to apply for a Creek Setback Variance.

Chair Newton opened the Public Hearing.

Mr. Daniel Thompson, applicant, made the following comments:

- He is open to raising his roof but would like to discuss it with his architect.
- Rain does not run across the road onto and through his property.
- He discussed the driveway location and how his family, over the years, has parked cars between the Sycamore trees with no adverse effect.

Chair Newton closed the Public Hearing.

Chair Newton provided the following comments:

- The language in the setback ordinance is straight-forward.
- It does not talk about the 100-year flood plains.
- There are numerous code provisions that talk about floodplain management.
- Code Section 17.048.010 talks about a buffer of 20 feet or two times the average depth of the bank.

Commissioner Fragoso provided the following comments:

- They have always gone with 20 feet back from the bank but there are different opinions about the location of the bank.
- She appreciated the analysis from the engineering group about the bank and the 100-year flood level.
- This application exceeds the 20-foot requirement of the code per this calculation.
- Changing what the current code says about the bank should not be applied to this one project.

- There is more than a sufficient creek setback for this project- more than what most of the neighbors have.

Commissioner Swift provided the following comments:

- She did not understand why staff asked Questa Engineering to determine the required setback based on the 100-year flood line. There is nothing in the code that talks about that.
- The code talks about “top of bank, 20 feet or two times the average depth of the bank, whichever is greater”.
- The surveyor identified the top of the bank and the toe of the creek.
- She did not want to arbitrarily change how the code is written.
- She likes the project- it is a great house.
- It is in the creek setback and they should be looking at a Variance.

Chair Newton provided the following comments:

- There is a topographical exhibit prepared by a land surveyor that has a line that says “top of bank”.
- It is not subjective.

Commissioner Jansen provided the following comments:

- The topographic map describes the “lay of the land”.
- The intent of the code is to have a buffer or setback for biological reasons.
- The way the code is written could create an impossible circumstance in some areas.
- He is not sure where that leaves this applicant.

Commissioner Fragoso provided the following comments:

- She referred to Figure 3 and noted the proposal is 27 feet from the top of the bank.
- The application exceeds the maximum of either number that would be obtained with either calculation.
- They should not spend more time getting into the issue of “what is the bank”.

Commissioner Swift provided the following comments:

- She is not convinced the project is outside of the setback according to the topographic map in the plans and her calculations.
- She would like to continue this application and have staff look at the numbers based on the code.

Planning Director Berto discussed the issue of subjectivity and stated the criteria suggested by several of the Commissioners would penalize what they are trying to do, which is avoid building in the 100-year flood plain.

Commissioner Swift provided the following comment:

- The remedy for this is to ask the applicant to apply for a Creek Setback Variance.

Chair Newton provided the following comments:

- She asked the Commission if they could make the Creek Setback Variance Findings.
- They could craft a resolution approving the application without the need for the application to come back to the Commission.

Commissioner Swift provided the following comments:

- She was not sure this could be done from a legal perspective.
- She thought the Commission would look favorably upon a Variance request.

Commissioner Fragoso provided the following comment:

- She supports the project and could approve it as is.

Commissioner Jansen provided the following comments:

- He liked the suggestion made by Chair Newton but stated the underlying issue is a legal one.
- They need to do this properly- a Variance is the way to do it.
- He likes the project and supports it.

Commissioner Kelly provided the following comments:

- He agreed with Commissioner Jansen.
- He did not want to set a precedent.
- He is in favor of the project.
- His main concern with the property is the runoff into the creek.
- He is having a hard time evaluating the property without a landscape plan and an indication of the pervious vs impervious area exists. He would like this addressed down the road.

Commissioner Fragoso provided the following comment:

- She asked staff to address at a later date what would happen if this were an SB 35 project.

M/s, Swift/Kelly, motion to continue this application to the August 19th meeting to address the Creek Setback and request for a Variance and a Landscape Plan that indicates the ratio of pervious to impervious material on the site.

AYES: Jansen, Kelly, Swift, Chair Newton

NOES: Fragoso

The Commission took a 5-minute break at 9:00 p.m.

**4. 335 Forrest Avenue; Application #21-13
Request for Wall Height Variance and Encroachment Permit for an approximately 13-foot tall retaining wall along an existing parking area to support the currently unstable adjacent hillside between the existing parking and single family residence above it; Assessor's Parcel No. 002-141-28; Residential Single Family RS-6 Zone; Trevor Vantrease, Westward Builders LLC, applicant, CEQA categorically exempt per section 15303(e).**

Principal Planner Neal presented the staff report.

Commissioner Jansen asked if the structure was partially in front of the neighboring property. Principal Planner Neal stated the "I" beam is in the right-of-way along the neighbor's property frontage - this is allowed by code. The neighbors have been notified.

Chair Newton opened the Public Hearing.

Ms. Morand, owner, made the following comment:

- This is an important project and helps to keep the street safe.

Chair Newton closed the Public Hearing.

Commissioner Swift provided the following comment:

- She referred to the resolution, page 3, Conditions of Approval #14 and #15 and stated they seem to be in conflict. Principal Planner Neal stated Condition #14 should read: "Any changes...approval by the *Planning Commission*". Condition #15 could be eliminated.

Commissioner Jansen provided the following comment:

- He understood the need for this project.
- There are some things missing in the elevations.
- The stairs are omitted in the drawings along with the location of the landing.
- There is an existing concrete retaining wall that is not shown.
- The safety fence on top of the wall terminates prior to the end and the neighbors do not have a safety fence. He was not sure how that would work. Principal Planner Neal stated this was reviewed by the Building Official who said it was fine.
- He asked if the new wall, at that connection point, is the same height as the existing concrete wall. Principal Planner Neal stated she thought it was pretty close.
- The drawing needs to be updated with all this information.
- There is a tree that sits where the concrete wall and other wall will meet up and it might need attention.

Principal Planner Neal asked if Commissioner Jansen would like to add a condition requiring that the project plans are reviewed and approved by the Town Engineer prior to issuance of a Building Permit. Commissioner Jansen stated he could support this. Principal Planner Neal referred to the tree and suggested the following condition: "If the final Building Permit plans require the removal of the tree the project shall return to the Planning Commission".

Commissioner Kelly provided the following comments:

- He agreed with Commission Jansen's concern about missing details.
- He asked if the existing connecting concrete wall is owned by the neighbors. The project includes placing a bolt into the neighbor's wall. Principal Planner Neal stated the neighbors have not expressed concerns to staff but connecting the proposed wall to the neighboring wall will require an easement and the Town Engineer should examine whether it is appropriate for the project wall to connect to a neighbor's wall. They might need to find another way to tie back into the hill. These are preliminary plans.

Commissioner Jansen provided the following comment:

- He suggested two conditions: 1) The Building Permit submittal should include the extent of both walls in plan and elevation and be reviewed and approved by the Town Engineer including the connection to the existing walls and extent of lighting and safety fencing; 2) Removal of existing tree on the west side of the property requires permission from the Tree Committee.

Commissioner Swift provided the following comment:

- She referred to the resolution and suggested the reference to "improved parking" be eliminated.

M/s, Fragoso/Jansen, motion to adopt Resolution No.2021-15 with the following revisions: 1) Condition #14 should read: "Any changes...approval by the *Planning Commission*"; 2) Condition #15 should be eliminated; 3) The Building Permit submittal should include the extent of both walls in plan and elevation and be subject to review and approval of the Town Engineer including the connection to the existing walls and extent of lighting and safety fencing; 4) Removal of existing tree on the west side of the property requires permission from the Tree Committee; 5) The reference to "improved parking" in the resolution title shall be eliminated.

AYES: Fragoso, Jansen, Kelly, Swift, Chair Newton

ABSENT: Gonzalez-Parber, Green

Chair Newton stated there was a 10-day appeal period and the appeal fee is \$625.00.

MINUTES

5. Minutes from the May 27, 2021 and June 17, 2021 Planning Commission meetings

M/s, Fragoso/Jansen, motion to adopt the May 27, 2021 as submitted and June 17, 2021 Planning Commission minutes as corrected.

AYES: Fragoso, Jansen, Swift, Chair Newton

ABSENT: Gonzalez-Parber, Green

ABSTAIN: Kelly

Planning Directors Report

- **Housing Element, Safety Element, Land Use Element, and Objectives Design and Development Standards Update (ODDS)**

Planning Director Berto asked the Commissioners to let him know at the next meeting if they wish to receive paper or electronic packets. He reported the September 16th Commissioner meeting will be held in-person (live!). Staff met with the ODDS Subcommittee and the consultants on July 8th to discuss how to modify the draft tool kit to reflect Fairfax's unique characteristics. Many of the zones indicated in the tool kit would not be appropriate for Fairfax. Staff would like to get something on the books as soon as possible. Staff is planning to present a Draft Ordinance to the Commission at its Special Meeting on July 29th. He reported progress is being made on the Housing Element, Safety Element, and Land Use Element updates. He encouraged everyone to check out the Fairfax Speaks.com platform on the Town Website. Staff will be implementing an outreach engagement push in July and will be working with the Chamber of Commerce, the Fairfax Library, businesses, etc. One of the focuses of the current Housing Element update is to further fair housing goals. He noted the Town recently sent an appeal of the Regional Housing Needs Allocation (RHNA) numbers to the Association of Bay Area Governments (ABAG) citing various criteria including fire, evacuation issues, the jobs/housing imbalance, etc.

Commissioner Swift asked about the Housing Element update timeline and if the work is up to date. Planning Director Berto stated they were probably one month behind schedule.

Commissioner Swift asked if the appeal to ABAG was filed by the deadline. Planning Director Berto stated "yes". Commissioner Swift asked staff to post the appeal on the Town Website.

Commissioner Swift asked about the intent of the August 12th meeting. Planning Director Berto stated they would be looking at housing site options, strategies, etc.

Commissioner Comments and Requests

Chair Newton discussed her "doddle poll" and suggested getting together on August 12th for a photo shoot.

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 10:30 p.m.

Respectfully submitted,

Toni DeFrancis,
Recording Secretary