

DRAFT FAIRFAX PLANNING COMMISSION MEETING MINUTES  
VIA TELECONFERENCE DUE TO COVID-19  
THURSDAY, NOVEMBER 18, 2021

Call to Order/Roll Call:

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

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

Commissioners Absent:                    Esther Gonzalez-Parber

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

**APPROVAL OF AGENDA**

Chair Newton asked if item #4 could be moved up in the agenda. Planning Director Berto stated Ms. Hamilton was notified that her presentation would be heard after item #3.

M/s, Fragoso/Green, motion to approve the agenda as submitted.  
AYES: Fragoso, Green, Jansen, Kelly, Swift, Chair Newton  
ABSENT: Gonzalez-Parber

**PUBLIC COMMENTS ON NON-AGENDA ITEMS**

Ms. Debra (Dee Lee) Benson discussed the interaction between the Planning Commission and the Tree Committee. The Tree Ordinance allows the Commission to impose reasonable conditions of approval with respect to replacement tree ratios for trees being proposed for removal due to a project.

Mr. Colin McDonald, co-founder of the Hen House Brewing Company, stated he is taking over the Iron Spring Brew Pub location.

**CONSENT CALENDAR**

There were no Consent Calendar Items.

**PUBLIC HEARING ITEMS**

1. **95 Chester Avenue; Application #21-21**  
**Request for a Preferential Parking Permit and an Excavation Permit to create two parking spaces parallel to Chester Avenue by constructing an 84 foot long, 6-foot- 6-inch tall retaining wall; Assessor's Parcel No. 001-191-09; Residential Single Family RD 5.5-7 Zone; Michael Acosta and Helen Strodl, applicants/owners; CEQA categorically exempt per section 15303(e).**

Principle Planner Neal presented the staff report.

Commissioner Green asked about the \$10,000 expense for a new vehicle parking space. Principal Planner Neal stated it was explained in Attachment B.

Chair Newton asked if the resolution should include the standard language that the Planning Commission held a duly noticed meeting, took public testimony, etc. Principal Planner Neal stated she could add it to the resolution.

Chair Newton opened the Public Hearing.

Ms. Helen Strodl made the following comment:

- Parking is becoming a problem on Chester Avenue.
- They want to get their cars off the street.

Commissioner Green asked about the cost of the project. Ms. Strodl stated they have already spent about \$10,000 and are getting bids of \$150,000 for the work.

Chair Newton closed the Public Hearing.

Commissioner Fragoso provided the following comments:

- She thanked the applicants for taking this project on.
- It will be a huge improvement to the community.

Commissioner Green provided the following comments:

- He likes the project. It is terrific.
- He wondered about tall retaining walls with a lot of earth behind them.
- There is positive feedback from the neighbors.
- He referred to the resolution and suggested the following change: 1) Add a condition saying that parking spaces created shall consist of two conforming 9' X 22' spaces required parallel to a wall or structure in accordance with Town Code Section 17.052.040(1)(2).

Commissioner Jansen provided the following comments:

- This is a good project that serves the neighborhood.
- A six foot tall wall is not that tall.
- He supports the project.

Commissioner Kelly provided the following comments:

- He is in favor of the project.
- The exposed aggregate is aesthetically pleasing.
- The project is an improvement to the neighborhood.

M/s, Green/Fragoso, motion to adopt Resolution No. 2020-24 with the following changes: 1) Addition of language about the public hearing being held; 2) Add a condition saying that parking spaces created shall consist of two conforming 9' X 22' spaces required parallel to a wall or structure in accordance with Town Code Section 17.052.040(1)(2).

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

ABSENT: Gonzalez-Parber

Chair Newton stated there was a 10 day appeal period.

## **2. 390 Cascade Drive; Application #21-23**

**Request for modifications of previously approved Conditional Use Permit, Combined Side-Yard Setback Variance and Design Review Permit for the expansion/remodel of the existing single-family residence. Modifications to the approved project include replacing the approved roof with a new roof that would be no higher than ten inches above the existing roof with extended eaves varying in length from 15 to 34 inches greater than the existing eaves, a front porch addition and replacement of exterior vinyl siding with stucco and cedar siding; Assessor's Parcel No. 003-101-33; Residential Single Family RS 6 Zone; Joey and Stacie Shepp, applicants/owners; CEQA categorically exempt per section 15301(e)(2)(A).**

Assistant Planner Spencer presented the staff report

Commissioner Swift asked when the Revocable Encroachment Permit required by the original resolution was notarized and recorded. Assistant Planner Spencer stated today.

Commissioner Swift asked if the new culvert and pathway easement need to be assessed by the Town and if another Revocable Encroachment Permit would be required. Principal Planner Neal stated this drainage improvement would go through the Public Works Department and would require a new Encroachment Permit.

Commissioner Swift asked if the original siding was Hardi Board. Assistant Planner Spencer stated she could ask the applicant.

Commissioner Jansen had a question about the side yard setbacks and the eaves.

Commissioner Fragoso asked about the garage and the number of parking spaces. She does not see the three required parking spaces from before and there seems to be a deficit of two spaces.

Chair Newton opened the Public Hearing.

Mr. Joey Shepp, owner, made the following comments:

- Water flows onto their property from Pine Drive.
- They came up with a design for erosion mitigation, a pipe that transports water to an area near the garage, and a cement channelized ditch.
- The house is setback five feet from the property line on the east side and the eaves would extend 24 inches. On the other side the eaves do not have the required setback.
- They would have no problem if the ten foot easement were a part of the property.
- The original application did not propose any siding changes. They would like to remove all the vinyl and replace it with Hardi Board. They are minimizing the amount of cedar.
- He gave a PowerPoint presentation regarding the history of the project, the improved roof and drainage, and materials.
- The required parking is now provided in the front yard that was recently surfaced.

Mr. Jack Thorpe, Cascade Drive, made the following comments:

- He owns the property across from the subject property.
- He supports the project.

Ms. Allison Madden, Cascade Drive, made the following comments:

- She lives across the street.
- She is in full support of the project.

Ms. Debra (Dee Lee) Benson, Cascade Drive, made the following comments:

- She is concerned about the cedar siding, the eaves, and the culvert.
- The work looks great and she supports the project.

Chair Newton closed the Public Hearing.

Commissioner Kelly provided the following comments:

- He is in support of this modest project.
- They have gone the extra mile.
- The eaves help to keep water intrusion to a minimum.

Commissioner Swift provided the following comments:

- She would like to add a condition concerning the culvert- it shall be reviewed by Town staff and that the condition of the Encroachment Permit be added to that before the Building Permit is issued.

M/s, Fragoso/Jansen, motion to approve Amended Resolution No. 2019-12 reflecting the revised plan set dated 11-9-21 and reaffirming the original findings and conditions for the revised project approval and approval of the Conditional Use Permit, Design Review, and Combined Side-Yard Setback Variance with the following additional condition: 1) The culvert shall be reviewed and approved by the Public Works Department consecutively with the eave permits.

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

ABSENT: Gonzalez-Parber

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

### **General Plan Amendment**

#### **3. General Plan Safety Element discussion and recommendations on topics including potential changes to the text, policies, programs, and graphics; development of new Wildfire safety programs with various groups and agencies, flood protection, geologic and seismic safety, community preparedness, and compliance with SB 379 (2015) to address climate adaptation and resiliency.**

Planning Director Berto presented the staff report.

Mr. Richard James, representing EMC Planning Group, gave a PowerPoint presentation that included the following: 1) Progress and Next Steps for Town of Fairfax Safety Element Update; 2) Background; 3) Objectives; 4) Overview of changes; 5) Discussion and feedback; 6) Updates required; 7) New understanding of wildfires; 8) Consultation with stakeholders; 9) Future timepoints; 10) Community Preparedness Programs; 11) Maps updated; 12) Housing Subcommittee; 13) Effects related to Climate Change; 14) Vegetation clearance of evacuation routes; 15) New programs.

Commissioner Green asked about the use of the words “natural hazard events”. He asked what is meant by “natural” and thought it might be limiting. Mr. James stated the word could be eliminated.

Commissioner Jansen asked about the schedule for next year. Mr. James stated the final update to the Safety Element would take place in August

Chair Newton referred to the slide indicating evacuation routes and possible refuges and asked what the “X”s depicted. Mr. James stated those were gates.

Chair Newton opened the meeting to public comments.

Ms. Pamela Meigs made the following comments:

- She recommended the Town develop a list of health care professionals or people that have expertise.

- Home addresses need to be clearly marked.
- The Town should create a Disaster Council.

Ms. Debra Benson made the following comments:

- She referred to Program S-3.1.8 and stated the list of vegetation should be more descriptive.
- The list of pyrophytic trees was in the wrong section.
- Some of the undesirable trees are already listed in the Tree Ordinance.

Mr. Frank Egger made the following comments:

- He referred to the Evacuation Maps and stated they need to figure out the population for the neighborhoods.
- He was not sure how they would evacuate 2,500 people into Doc Edger Park.
- Smoke would make it difficult to see the road at night and he recommended emergency lighting and arrows.
- The staging areas are insufficient for the number of cars and people.

Mr. Mark Bell made the following comments:

- Hydrological studies were done in 2005 and he hoped they would not be repeated.
- People trying to get out of Town during a fire would not stop at Doc Edger Park.
- An additional 300 units as required by ABAG is unrealistic and unconscionable.

Chair Newton closed the meeting to public comments.

Chair Newton asked for comments about additional factors that should be included in the Safety Element.

Commissioner Jansen provided the following comments:

- This is a difficult task.
- One thing mentioned but not emphasized is the issue of parking. It is already difficult in the hillsides and could hinder an evacuation.
- The legality of a parking space is sometimes unclear.
- The parking chapter needs expansion.
- The term “as funding becomes available” is true for everything and should be deleted.
- He referred to Program S-3.1.3.10 and stated the responsibility should be with the Town and the Police Department since it relates to parking.

Commissioner Green provided the following comments:

- He agreed with the comments about parking.
- He recommended that the document not include limiting language. The language should be broader.

Commissioner Fragoso provided the following comments:

- The maps, including the legends, are difficult to read.
- The narrow two way streets, along with the “one-way out” streets, should be assessed for emergency egress.
- She wondered how the rehabilitation of the Ross Fire Station would affect Fairfax.

Chair Newton provided the following comments:

- She agreed with a number of the public comments including a review of the Town Hall issues and the culvert.
- Evacuation at night should be reviewed to diminish the possible chaos.

Chair Newton asked for comments on the roles of groups such as FireWise, the Marin Wildfire Protection Agency (MWPA), etc.

Commissioner Green provided the following comment:

- He thanked and supported these groups.

Commissioner Jansen provided the following comments:

- There is an increased interest in fire protection and participation in these groups.
- They should become a part of the fabric of these documents.

Chair Newton asked for comments on other revisions or new programs that should be incorporated into the Safety Element.

Chair Newton provided the following comments:

- She is concerned about the ability to perform the programs outlined.
- The issue of prioritization is key.
- Minimizing risk is very important.
- The goals should be something more than inspirations and need to be implementable.
- They need to “roll up their sleeves” and figure out how to optimize resources.

Commissioner Green provided the following comments:

- He referred to S-3.1.2.8, Development of a Defensible Space Vegetation Program, and noted it should be a community activity and could be fun.
- Volunteerism could be the key to successful programs.

Commissioner Fragoso provided the following comments:

- Inspections and evaluations of home landscapes are critical.
- She wondered if some of the programs could be combined- there seemed to be some duplication.
- She asked if this would be an appropriate place to discuss the development of micro grids for Fairfax.

Commissioner Green provided the following comments:

- There is a cross over in terms of the Housing Element trying to comply with Regional Housing Needs Assessment (RHNA) requirements and the Safety Element trying to mitigate hazards.
- The maps are relevant to the Housing Element.

Chair Newton asked for comments on how the Safety Element should guide and coincide with the Housing Element.

Commissioner Jansen provided the following comments:

- He agreed with Commissioner Green.
- The driving force is the Safety Element.

Chair Newton provided the following comments:

- The Safety Element should trump the RHNA requirements.
- She did not want to put the “cart before the horse”.

Planning Director Berto asked the Commission to send his or her top ten Safety Element Programs to staff as soon as possible. They could break it down into topics such as fire, flood, geologic, etc.

**4. Equity Related Text Amendments: Discussion/consideration of a Resolution recommending to the Town Council that it amend the General Plan to include equity**

**related text amendments specifically replacing the word “Character” with non-substantive but more specific descriptions of the intended meaning of the word throughout the 2010-2030 Fairfax General Plan; CEQA Exempt: The wording clarifications are exempt from CEQA because they will not change the context and purpose of the Fairfax General Plan, only the text.**

Planning Director Berto presented the staff report.

Ms. Shelly Hamilton gave a PowerPoint presentation that included the following: 1) Character of our community; 2) Start of the journey; 3) Our journey- many voices; 4) Historical journey; 5) General Plans, Land Use & Planning; 6) Community character in the General Plan.

Commissioner Fragoso asked why they would undertake an amendment to the Housing Element now. Commissioner Swift stated the current Housing Element does not include the references that would be recommended for change. The comments made by Ms. Hamilton are on the other elements of the General Plan.

Chair Newton stated she did not want to send to the Town Council a red-lined General Plan that includes an outdated Housing Element. It should be replaced with the current Housing Element.

Chair Newton noticed there are other mistakes or odd things in the proposal that should be edited.

Chair Newton opened the Public Hearing.

Ms. Pamela Meigs made the following comments:

- She did not feel comfortable about a small group of people’s desire to “wipe out character”.
- Changes do need to be made to update the document.
- The original process of updating the General Plan was inclusive and should be used again if major changes are to be made.
- What’s the rush?
- She suggested working on a Diversity Element.

Mr. Mark Bell made the following comments:

- There are real things that can be done to encourage diversity.
- He does not support the proposal.
- He agreed with Ms. Meigs- the Town should form a committee.

Mr. Debra Benson made the following comments:

- She has no problem with the term “village character”.
- A Town wide poll should be taken.
- The intent is to eliminate racial injustice but it is creating divisiveness.
- There should be room for differing opinions.

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

- He did not support removing the words “small town character” and “village atmosphere”.
- He asked if the purpose of the language changes is to urbanize Fairfax.
- The Town needs to do one General Plan amendment.

Ms. Ling Shien Bell made the following comments:

- She agreed with the comments made by Ms. Benson.
- Maintaining a “village character” is not an evil thing to do. That is the style of the Town.

Chair Newton closed the Public Hearing.

Ms. Hamilton stated racial equity is an urgent matter- it is overdue and late. The process can be taken in “bite sized” pieces.

Commissioner Green provided the following comments:

- There is no “other side of the tracks” in Fairfax.
- The following question needs to be answered: Why are we selectively protecting the character of only certain communities and what specifically is the nature of the “character” we are choosing to preserve.
- He would like to see the crossed out and new language next to each other.
- Some of the changes do not make sense and need legal review.
- They could amend the General Plan with the correct Housing Element and the addition of a paragraph explaining the intent of the language.

Chair Newton provided the following comments:

- They need to make a decision tonight.
- The Town Attorney has determined that the changes are not substantive.

Commissioner Fragoso provided the following comments:

- She has mixed feelings.
- She does not have a problem with the words “character” or “village-like”.
- She opposed the removal of the word “aesthetic”.
- She asked how much it moves the needle to change these words.
- Removing racial restrictions on deeds and providing affordable housing would move the needle.

Commissioner Swift provided the following comments:

- The current General Plan was developed with public meetings and a lot of public participation.
- The public comments indicate a feeling that this is rushed.
- There is no legal clock that needs to be met.
- She could not recommend moving this forward to the Council.

Commissioner Jansen provided the following comments:

- Racial justice is important and urgent.
- Ms. Hamilton’s efforts are laudable.
- This has not been done in the right way
- The word “character” does not in itself establish racial injustice.
- He cautioned that replacing words and names could falsify history.
- This process needs more community input and time.

Commissioner Kelly provided the following comments:

- This is an issue that needs to be championed.
- He agrees with the comments made by Commissioner Jansen.
- He did not agree with the wholesale replacement of words.
- He cannot support the proposal.

Chair Newton provided the following comments:

- She is hesitant to impose her white privileged view.
- There is a problem with the majority making decisions that have a detrimental effect on the minority.
- The thoughtfulness of the process justifies the recommendation for approval.

Commissioner Green provided the following comments:



- It is not a great idea to redline a word out of an agreement and then present it without a response from the other side.
- The word “character’ might have been overused when the document was created.
- The public needs to take a look at this.

M/s, Jansen/Swift, motion to send a negative recommendation on these particular changes to the Town Council.

AYES: Fragoso, Green, Jansen, Kelly, Swift

NOES: Chair Newton

ABSENT: Gonzalez-Parber

## **MINUTES**

### **5. Minutes from the October 21, 2021 Planning Commission meetings**

M/s, Fragoso/Swift, motion to approve the October 21, 2021 minutes as corrected.

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

ABSENT: Gonzalez-Parber

### **Planning Directors Report**

#### **6. Status Update: November 20 Housing Element Workshop, SB 9 Ordinance**

Planning Director Berto presented a staff report. The public workshop will be held from 2:00 p.m. to 6:00 p.m. Staff will be using a planning tool called “Plan Fairfax Housing” that helps to determine public preference. He emphasized that pre-registration is not required and the workshop is intended to be interactive. He discussed SB9 that will allow for the potential to divide lots and put a duplex on each lot. The Town Council will discuss an Urgency Ordinance that would allow the Town to retain some local control

### **Commissioner Comments and Requests**

Commissioner Swift asked if there was a decision on how the Town will address the General Plan Conservation Element. Planning Director Berto stated staff is in the early stages of planning for this.

## **ADJOURNMENT**

A motion was made, seconded and unanimously approved to adjourn the meeting at 11:03 p.m.

Respectfully submitted,

Toni DeFrancis,  
Recording Secretary