

FAIRFAX PLANNING COMMISSION MEETING MINUTES
VIA TELECONFERENCE DUE TO COVID-19
THURSDAY, JANUARY 20, 2022

Call to Order/Roll Call:

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

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

Staff Present: Linda Neal, Principal Planner
Janet Coleson, Town Attorney

APPROVAL OF AGENDA

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

PUBLIC COMMENTS ON NON-AGENDA ITEMS

There were no comments.

CONSENT CALENDAR

There were no Consent Calendar Items.

PUBLIC HEARING ITEMS

- 1. 79 Wood Lane; Continued consideration of a request for Hill Area Residential Development, Excavation, Design Review, and Tree Removal Permits and Combined Side-Yard Setback, Parking (to park in a required side yard setback) and Retaining Wall Variances to construct a 2,210 sq. ft., 23 ft. 2 in. tall, 3-bedroom, 3 ½ bathroom, single-family residence and a detached 400 sq. ft., 2-car garage with an attached 500 sq. ft. studio, accessory dwelling unit; APN 002-062-03; Residential Single-family RS-6 Zone; Laura Kehrlein, Fredric C. Divine, Associates, applicant, Coby Friedman, owner, CEQA categorically exempt per Section 15303(a).**

Principle Planner Neal presented the staff report. She discussed the revisions made to the plans. She noted staff is recommending a condition that directs elimination of the basement from the project.

Chair Fragoso asked which side of the garage does not meet the ten-foot setback. Principal Planner Neal stated it was the west side.

Chair Fragoso referred to the recommended elimination of the basement and asked how that affects the slope and the drainage. Principal Planner Neal stated they would need to import sixty cubic yards of material to get the designed grade for the drainage system.

Chair Fragoso asked if the shaft of the elevator is required to go down to the basement area. Principal Planner Neal stated the applicants should answer that question.

Commissioner Kelly asked about the existing side yard setbacks. Principal Planner Neal stated the survey shows the existing structure right on the property line. Commissioner Kelly asked about the proposed location for the mechanical/plumbing equipment. Principal Planner Neal stated the applicants should answer that question- she does not have construction drawings.

Commissioner Green had a question about recommendation #7 on page 2 of the staff report. Principal Planner Neal stated this would enable them to center the house on the site.

Commissioner Newton had a question about the Tree Removal Permit.

Chair Fragoso opened the Public Hearing.

Ms. Laura Kehrlein, architect, made the following comments:

- She gave a PowerPoint presentation.
- She discussed the revisions.
- The mechanical equipment and solar batteries would be installed in the basement.
- The grade on the west side of the property is different from the east side. Fill is needed.

Commissioner Green asked if the owners were agreeable to the elimination of the basement. Ms. Kehrlein stated "no". Principal Planner Neal stated if the basement were to remain then she would recommend a condition that the battery back-up and solar systems should be included in the construction drawings submitted for the Building Permit.

Ms. Renu Malhotra, Wood Lane, made the following comments:

- She has seen Wood Lane flood many times.
- It is not true that the road floods only when there are obstructions of the culverts or storm drains.
- There is surface water and runoff from the hillsides.
- There have been slides and sloughing on that hillside in the past.
- The proposed parking location is right outside her kitchen window.

Ms. Heather Ford, Wood Lane, made the following comments:

- None of the revised plans substantially improve the impacts of the large, two-story wall.
- She gave a PowerPoint presentation.
- The wall would impact her privacy and sunlight.
- It would shade all three of her bedrooms.
- The revision gives some relief to her solar panels.
- The design is overbearing to the neighbors.
- She is strongly opposed to the project as proposed.

Mr. Michael Simler made the following comments:

- He supported the project.
- The review process can pose an economic burden to people who pay property taxes.
- One neighbor's complaint about the loss of sunlight is not a valid reason to stop development

An individual made the following comments:

- The development process is strenuous and difficult.
- The owner has done his due diligence and the project is not unreasonable.
- The neighbors have some valid concerns.

Commissioner Newton asked the architect and applicant to respond to the basement issues, the parking, and the location of the garage. Ms. Kehrlein stated they plan to use state-of-the-art waterproofing in the basement; the parking was previously in the front yard and they moved it to the back, with a narrow driveway based on Commissioner comment.

Commissioner Green asked if the elimination of the basement would have any effect on the neighbor's sunlight concerns. Ms. Kehrlein stated "no".

Chair Newton closed the Public Hearing.

Chair Fragoso provided the following comments:

- The applicant mentioned there is an issue with potential future disability.
- Raising the elevator to a different level could become an accessibility issue.

Commissioner Green provided the following comments:

- Overall the owner has bent over backwards to accommodate a lot of the requests.
- There is no guideline that requires access to light, vision, etc.
- They have done a good job in the redesign- a lot of thought has been put into it.

Commissioner Jansen provided the following comments:

- He agreed with Commissioner Green.
- The architect and owner have done the best they could in responding to the concerns.
- There are many two-story homes on this street that are close to the neighboring houses.
- These lots tend to be very narrow.
- They applicants have addressed the shade issue.
- Creating a basement that does not require importing soil is smart.

Commissioner Kelly provided the following comments:

- He agreed with the other Commissioners.
- They made revisions that are good for the neighborhood.
- The shorter, lower street façade and pulling the front porch to the street rather than having cars in that location makes for a better design.
- The new design is a better scale.
- Moving the ADU above the garage is a good site response- it will decrease the bulk of the house.
- He is concerned about the drainage from the site and is not sure how the water will be retained on the site.

Commissioner Newton provided the following comments:

- The sunlight issue should be weighed by the Commission.
- The applicant has made some progress.
- She was concerned about the drainage.

Commissioner Swift provided the following comments:

- She is concerned about the drainage. A hillside retention system should be completed and signed off on before any other aspects of the building site are worked on.

Commissioner Green provided the following comments:

- He supported Commissioner Swift's recommendation about the hillside retention system.
- We all have to live with shade in the winter.

Commissioner Jansen provided the following comment:

- He asked if the civil engineering of the drainage system and solar installations were governed by the Building Department. Principal Planner Neal stated “yes”.

Chair Fragoso provided the following comments:

- She summarized the information on page 7 of the staff report.
- She could make the findings to approve the basement and the fill that is taken from the basement and disbursed on the site to create the necessary slope that will enhance and improve the drainage.
- The owners and the architect have gone a long way to address the concerns.

Commissioner Swift provided the following comments:

- She referred to the resolution and recommended the following revisions: 1) On page 10 the Conditions should be renumbered; 2) On page 2, under Excavation Permit, the reference to the removal of the basement should be deleted; 3) On page 3, under Tree Removal, it should read: “*The trees proposed for removal (one Olive and one Apple)....*”; 4) The addition of a Condition that the retention on the hillside be completed and approved before any other work is done on the project; 5) On page 10, Condition #53 should read, “A drainage system.... *A copy showing that the agreement was actually recorded* shall be provided...”; 6) The basement plans should be submitted to include the solar batteries as part of the mechanical systems.

Commissioner Kelly provided the following comment:

- He referred to the resolution and stated he would like to add the following condition: “The Town Engineer shall review the site water retention plan and details including the hillside runoff, the roof drainage, and calculations for the sump pump flows prior to issuance of the Building Permit”.

Commissioner Jansen provided the following comment:

- He referred to #4 of Commissioner Swift’s recommendations and stated it was not possible.

Chair Fragoso provided the following comments:

- She agreed- it should be left up to the Town Engineer to determine at what point each of the elements should be completed.
- The Town Engineer would inspect and approve each phase of completion.

Principal Planner Neal suggested the following wording: “The parking structure, the ADU, and drainage behind the rear retaining wall shall be built as a first part of the project”.

Commissioner Jansen provided the following comments:

- We should not be dictating the building methodology. Leave it to the contractor.
- Requiring a contractor to do something first before something else could cause a lot of problems and cost consequences.

M/s, Newton/Green, motion to adopt Resolution No. 2022-01 with the following revisions: 1) On page 10 the Conditions should be renumbered; 2) On page 2, under Excavation Permit, the reference to the removal of the basement should be deleted; 3) On page 3, under Tree Removal, it should read: “*The trees proposed for removal (one Olive and one Apple)....*”; 4) On page 6, Condition #12(a) shall read: “The geotechnical engineer...completed project *and review the schedule and plans at each phase of the projects construction* and submit....” and add the language suggested by Commission Kelly about the details and calculations about the sump pump; 5) On page 10, Condition #53 should read, “A drainage system.... *A copy showing that the agreement was actually recorded* shall be provided; 6) The basement plans should be submitted to include the solar batteries as part of the mechanical systems.

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

Chair Fragoso stated there was a 10 day appeal period.

The Commission took a 5-minute break at 9:05 p.m.

Town Attorney Coleson recommended the Commission continue item #4 to the next meeting- it is not time sensitive.

M/s, Swift/Green, motion to continue agenda item #4 to February 24th.

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

- 2. 765 A Center Blvd; Request for a determination from the Planning Commission whether or not the proposed combination restaurant/brewery pub business, “West County Pub Fairfax, CA. Henhouse”, constitutes a Formula Business and requires the approval of a Formula Business Conditional Use Permit from the Planning Commission; APN 002-131-14; Highway Commercial CH Zone District; Collin McDonnell, CEO of Henhouse Brewing, applicant, Rich Hall, Fairfax Center Properties, LLC, owner; CEQA categorically exempt per Section 15301(a)**

Principal Planner Neal presented the staff report

Commissioner Newton asked about the timing of the application and Commission decision. Town Attorney Coleson stated it was a “snapshot in time”- when the application is submitted. They have two existing establishments and the question is whether or not this makes them a formula business right now. Commissioner Newton asked if answering “yes” to any one of the five questions/factors makes it a formula business. Town Attorney Coleson stated “yes”.

Commissioner Jansen noted the information in questions #2 and #5 (interior of the building and signage) are unknown to the Commission. Principal Planner Neal stated that information would be provided by the applicant.

Chair Fragoso opened the Public Hearing.

Mr. Collin McDonnell, owner, made the following comments:

- He thanked staff for guiding them through the permitting process.
- He believes they are not a formula business. They do not want to be one.
- He discussed the company’s mission including volunteerism.
- They want to create a “community gathering place”.
- The interior design is very different from the other locations.

Commissioner Green asked if they were planning to serve Hen House Beers and others. Mr. McDonnell stated he does not plan to serve other people’s beers but there is a possibility that they will serve other Hen House beers and other brands in the future. He plans to do some experimentation at this location. Commissioner Green asked if they would be serving wine or liquor. Mr. McDonnell stated “yes” to the wine and “no” to the liquor. Commissioner Green asked if they would use the same logo at this location. Mr. McDonnell stated this location would have unique logos and branding.

Commissioner Jansen asked if they plan to brand the Hen House Beer at this location. Mr. McDowell stated the beer is very distinctive and he discussed the technique. The brewer will be able to improvise on styles.

Ms. Debra (Dee Lee) Benson made the following comment:

- They have to be careful about setting a precedent.

Chair Fragoso closed the Public Hearing.

Commissioner Kelly provided the following comments:

- Brand identity makes a business a “formula business” not the appearance of a particular space.
- This rings true here.

Commissioner Jansen provided the following comments:

- He understood how different this new facility would be.
- He agreed with Commission Kelly- the branding is the core of the business.
- He did not want to set the wrong precedence.

Town Attorney Coleson stated no matter what the words “formula business” means to a Commissioner they are constrained by the definition in the code.

Commissioner Green provided the following comments:

- There seemed to be a lot of similarity in the proposed and current signage designs.
- The Commission looks to the future in its decisions and they need to be careful about setting precedence.
- He would have less trouble with the branding if the hen house logo used at other locations were not used here.
- He referred to questions/factors #1 through #6 on page 4 of the staff report. He answered “yes” to #1, “not sure” to #2, “no” to #3, “no” to #4, “yes” to #5, “maybe not” to #6.

Commissioner Swift provided the following comments:

- She did not see this application as a formula business per the code.
- This is the first restaurant for this applicant.
- There are no standardized menus, ingredients, food prep, uniforms, or features.

Commissioner Newton provided the following comments:

- She referred to questions/factors #1 through #6 on page 4 of the staff report. She answered “yes” to #1, “no” to #2, “no” to #3, “no” to #4, “can work around that” to #5, “no” to #6.

Commissioner Jansen provided the following comments:

- He referred to questions/factors #1 through #6 on page 4 of the staff report. He answered “no” to #1, “yes” to #2, “no” to #3, “no” to #4, “yes” to #5, “no” to #6.
- His answers are conservative because he does not want to set a precedent.

Commissioner Kelly provided the following comments:

- He referred to questions/factors #1 through #6 on page 4 of the staff report. He answered “yes” to #1, “no” to #2, “no” to #3, “no” to #4, “yes” to #5, “yes” to #6.

Chair Fragoso provided the following comments:

- This is a brewery with the Hen House label.
- This is a formula business and should be reviewed as such.

Commissioner Swift provided the following comments:

- A formula restaurant is something that has the same exact menu at all of its locations.
- She did not see any standardized features.
- There is nothing that talks about a logo.
- Nothing has been identified as potential signage.

M/s, Green/Jansen, motion that the Commission has determined that this project is a Formula Business.

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

NOES: Swift

- 3. 765 A Center Blvd.: this item will only be heard if the Planning Commission determines that the proposed restaurant/brewpub business described above constitutes a Formula Business in accordance with Town Code 17.040, Article II, Formula Businesses and Restaurants in Zones Allowing Commercial uses.**
Request for a Formula Business Conditional Use Permit to operate a combination restaurant/ brew pub in the same location as the Iron Springs Restaurant and Brew Pub; APN 002-131-14; Highway Commercial CH Zone District; Collin McDonnell, CEO of Henhouse Brewing, applicant; Rich Hill, Fairfax Center Properties LLC, owner; CEQA categorically exempt per Section 15301(a)

Commissioner Newton recused herself.

Principal Planner Neal presented the staff report.

Commissioner Swift asked how the indoor live music would be addressed. Principal Planner Neal stated they have a Use Permit for live music. Town Attorney Coleson stated Conditional Use Permits run with the land. All the requirements and conditions must be met. There can be multiple Use Permits layered on top of one another.

Chair Fragoso opened the meeting to public comments.

Mr. Colin McDonnell, applicant, made the following comment:

- They want to be a cool place that makes Fairfax a better place to live.

Chair Fragoso closed the meeting to public comments.

Town Attorney Coleson suggested each Commissioner discuss whether or not they can make the findings.

Commissioner Green provided the following comments:

- He referred to Findings A through F on page 3 of the staff report. He answered “yes” to A, “yes” to B, “yes” to C, “yes” to D, “yes” to E, “yes” to F.
- He is looking forward to enjoying their beer.

Commissioner Kelly provided the following comments:

- He referred to Findings A through F on page 3 of the staff report. He answered “yes” to A, “yes” to B, “yes” to C, “yes” to D, “yes” to E, “yes” to F.
- He agreed with discussion items #1 through #4 on page 3 and 4 of the staff report.

Commissioner Swift provided the following comments:

- She can make all the findings (A through F).
- She agreed with discussion items #1 through #4.

Commissioner Jansen provided the following comments:

- He can make all the findings.
- He concurred with items #1 through #4.

Chair Fragoso provided the following comments:

- She can make all the findings.

The Commission took a 5-minute break.

Principal Planner Neal read Resolution No. 2022-02.

Commissioner Swift provided the following comment:

- She noted a correction to the first “Whereas”.
- She likes the resolution as presented.
- Signage should be left up to the applicant.

Commissioner Jansen provided the following comment:

- He suggested a change to Finding B.

Commissioner Green provided the following comments:

- The signage should emphasize Fairfax.
- He suggested the following Conditions: “The signage will include the name West County Pub featuring Hen House Brews” or “The applicant will endeavor to prevent its signage in Fairfax from appearing to be too similar to the signage at the other locations”.

Chair Fragoso provided the following comments:

- She wants the sign to be creative with some local flavor.
- She supported the signage proposed in the application.

M/s, Green/Jansen, motion to adopt Resolution No. 2022-02 with the correction cited by Commissioner Swift and the change to Finding B suggested by Commissioner Jansen.

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

RECUSE: Newton

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

Commissioner Newton returned to the meeting.

4. Senate Bill 9-related Ordinance Review and make recommendations to the Town Council on a non-urgency ordinance regulating the land division and development of single-family residential properties pursuant to recently enacted Senate Bill 9 (Government Code Sections 65852.21 and 66411.7)

Chair Fragoso stated this item has been continued to the next meeting.

MINUTES

5. Minutes from the December 16, 2021 Planning Commission meetings

M/s, Newton/Swift, motion to approve the December 16, 2021 minutes as corrected.

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

ABSTAIN: Green

Planning Directors Report

There was no report.

Commissioner Comments and Requests

Commissioner Swift reported there is an upcoming League of California Planning Commissioners Academy in San Ramon.

Chair Fragoso asked staff if the Commission would be reviewing the issue of outdoor eateries prior to the Council. Principal Planner Neal stated she would pass this on to the Acting Town Manager.

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 11:16 p.m.

Respectfully submitted,

Toni DeFrancis,
Recording Secretary