

FAIRFAX PLANNING COMMISSION MEETING MINUTES
VIA TELECONFERENCE DUE TO COVID-19
THURSDAY, MARCH 24, 2022

Call to Order/Roll Call:

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

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

Commissioners Absent: Philip Green

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

APPROVAL OF AGENDA

Principal Planner Neal stated the applicant for agenda item #4 has asked that it be moved up in the agenda.

M/s, Newton/Swift, motion to approve the agenda with item #4 becoming item #3 and the continuation of the Consent Calendar item.

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

ABSENT: Green

PUBLIC COMMENTS ON NON-AGENDA ITEMS

There were no comments.

CONSENT CALENDAR

- 1. Senate Bill 9-related Ordinance Consideration of an Ordinance amending Fairfax Town Code adding Chapter 16.22 Urban Lot Splits and Chapter 17.049 Two Unit Projects. This Ordinance is statutorily exempt from the California Environmental Quality Act (CEQA) as an action by a city or county implementing the provisions of Government Code Sections 65852.21 and 66411.7.**

This item is being continued to the April 28, 2022 Planning Commission Meeting

PUBLIC HEARING ITEMS

- 2. 114 Forrest Avenue; Application #2022-04 Request for a Preferential Parking Permit, Tree Removal Permit and Front Setback and Minimum and Combined Side-yard Setback Variances to construct two parking spaces and relocate the front entry stairs for an existing 3-bedroom, single-family residence that currently has no parking within the Forrest Avenue right-of-way; Assessor's Parcel No. 002-191-17; RS 6 Zone; Seth and Kelly Arentsen, applicants/owner; CEQA categorically exempt per Section 15303(e)**

Principal Planner Neal presented the staff report. Staff received five letters of support for the project. She answered questions about the staff recommended Condition about the Tree Removal Permit; Ross Valley Fire Department required Conditions; construction drawings for the roadway; review of final plans by the Building Official and Town Engineer; inspections during construction; if the project is in the Wildland Urban Interface (WUI) Zone; use of fire-resistant materials; location of the stairs.

Chair Fragoso opened the Public Hearing.

Mr. Seth Arentsen, applicant, made the following comments:

- Locating the stairway in the middle would not work due to the pitch of the lot. It would be too steep.
- The stairway was approved by the Fire Department.
- They currently have to block the street to unload the car.
- The project will alleviate some of the challenges living on this street.

Mr. Joe Ball, Forrest Avenue, made the following comments:

- He lives to the east of the project.
- It will be beneficial for the neighborhood to have this extra parking.
- He supports the project.

A Forrest Avenue resident made the following comments:

- She supports the project.
- It is a safety issue for them not to have this parking.

Michael made the following comment:

- He supported the project.

Chair Fragoso closed the Public Hearing.

Commissioner Newton provided the following comment:

- She referred to the resolution and suggested the following change: 1) On page 3, Condition #8 should read "a)...e).

Commissioner Swift provided the following comment:

- She asked if Condition #15 should instead come after Condition #6.

Chair Fragoso provided the following comments:

- These spaces are helpful during an evacuation.
- This is a good solution.

M/s, Newton/Swift, motion to adopt Resolution No. 2022-06 with the following revisions: 1) The addition of the staff recommended condition regarding the arborist report cited on page 4 of the staff report after Condition #6 (with subsequent renumbering); 2) Fire Department Conditions as #16; 3) On page 3, Condition #8 should read "a)...e).

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

ABSENT: Green

Chair Fragoso stated there was a 10 day appeal period.

**3. 114 Forrest Terrace; Application #2022-05
Request for a Preferential Parking Permit, Tree Removal Permit and Minimum Front
Yard Setback, Combined Front-Rear Yard Setback, Minimum and Combined Side-Yard**

Setback Variances to construct one parking space, install an inclined lift and reorient a small portion of the front access stairway for an existing 3-bedroom single-family residence that currently has no parking; Assessor's Parcel No. 002-141-23; RS 6 Zone; Stewart Summers, applicants/architect; Nathalie Worthington, owner; CEQA categorically exempt per Section 15303(e)

Principal Planner Neal presented the staff report. She answered questions regarding review of the application by the Ross Valley Fire Department; whether Condition #16 should include language about tree #1 should it remain; requirements regarding screening of the lift; tree trimming by PG&E; if the Tree Committee could review Tree Removal Permits prior to the Planning Commission.

Chair Fragoso opened the Public Hearing.

Ms. Nathalie Worthington, owner, made the following comments:

- There is nowhere to even leave a bag at the bottom of her property.
- There is an erosion problem. The hill is sloughing off. A retaining wall will hold that side of the hill up.
- The parking problem in Fairfax is being solved on a "house by house" basis.

Mr. Stewart Summers, architect, made the following comments:

- They want to save the trees. They will work with the arborist.
- They will strategically drill piers for support.
- He asked about the feasibility of extending the "hill hiker" past the property line into the right-of-way. Principal Planner Neal stated this would need to be re-reviewed by several departments. It might pose a safety concern.

Commissioner Swift asked if there were any other "hill hikers" in Fairfax. Mr. Summers stated "yes".

Chair Fragoso closed the Public Hearing.

Commissioner Newton provided the following comments:

- It would not make sense to ask the Tree Committee to take a second look at an application. She asked staff to front-load the process.
- On page 4 of the resolution, Condition #8 should read "a)...e).

Commissioner Swift provided the following comment:

- She asked about the potential to mitigate the view of the "hill hiker car" from the roadway.

Commissioner Kelly provided the following comments:

- There are some derelict funiculars around town and over time they look shabby.
- He is concerned what this one might look like ten years from now.
- He suggested including a carriage house at the bottom.
- He would like to see some screening of the "hill hiker car".

Commissioner Newton provided the following comment:

- She is in shock over the cost and would not be in favor of imposing additional costs.

Mr. Summers understood the concerns. They are right up against the right-of-way and any further improvements in terms of screening would have to be done in the right-of-way. This could be problematic. The car would be at the top of the property 90% of the time.

Commissioner Jansen provided the following comment:

- He understood the concern but did not see a problem.

Commissioner Kelly provided the following comment:

- He did not support adding a condition but suggested they follow up with the creation of a guideline for this type of “accessory structure” that is very visible from the road.

Chair Fragoso provided the following comment:

- She agreed with Commissioner Jansen.

M/s, Jansen/Newton, motion to adopt Resolution No. 2022-07 with the following revisions: 1) On page 4 of the resolution, Condition #8 should read “a)...e); 2) Add a general reference to the recommendations by the Ross Valley Fire Department that were discussed; 3) On page 5, Condition #16 should refer to Tree #1 and include the following language: “The project arborist....as possible *and to ensure that the tree protection measures recommended in the April 16, 2021 arborist report are implemented prior to the start of construction*”.

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

ABSENT: Green

Chair Fragoso stated there was a 10 day appeal period.

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

4. Short-term Rental Ordinance; Consideration of an Ordinance amending the Zoning Ordinance to include short-term rental units as permitted accessory uses in the single-family residential zones, including minimum parking requirements for short-term rentals and a definition of what constitutes a short-term rental. This item is categorically exempt per CEQA Section 15301(a)

Principal Planner Neal presented the staff report. She answered questions regarding how to deal with existing illegal units; types of complaints and the Town’s response; rentals of less than 30 days; definition of a short-term rental; use of the 2017 date; parking requirements; Council direction and suggested language; the impact to Regional Housing Needs Allocation (RHNA) numbers; owner-occupied units.

Chair Fragoso opened the Public Hearing.

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

- Short-term rentals should be subject to the Transient Occupancy Tax (TOT).
- There are probably hundreds of existing short-term rentals in Town.
- He discussed the business of buying single family residences as time-shares.

Chair Fragoso closed the Public Hearing.

Commissioner Jansen provided the following comments:

- He understood that this concept could provide financial resources for homeowners.
- Hardship is not a reason to circumvent security or safety.
- He is concerned about using a date as a way to regulate something- it is discriminatory.
- Regulations that create an advantage for long-term rentals should not be used for short-term rentals.
- The formula for parking should be the same for short-term or long-term rentals
- He is not in favor of making this difficult by enacting extra requirements.
- He would like to see a maximum allowed for the Town as a whole.
- He could not support adoption of the ordinance tonight.

Commissioner Newton provided the following comments:

- She asked about the impacts to the RHNA numbers. Town Attorney stated the RHNA numbers are theoretical based on need and the Annual Report discusses how the previous Housing Element Goals were met. An ADU is counted toward the RHNA numbers but there is no obligation to rent it- it could be used as a guest house.
- She was not sure there was a connection.
- She agreed with Commissioner Jansen about the parking issues and using the arbitrary date.
- Fairfax is a destination and she was concerned about losing housing for the sake of short-term rentals.

Commissioner Swift provided the following comments:

- The housing shortage is the reason someone can create an ADU by a Building Permit only.
- She did not want to see ADU's or JADU's rented for less than 30 days and become short-term rentals.
- She is concerned about enforcement, parking, safety, and ingress/egress.
- She did not want to be lenient in terms of parking since it affects the entire neighborhood.
- House exchanges can be done as something other than a short-term rental and outside of this process.
- She could not approve the proposed ordinance tonight.

Commissioner Kelly provided the following comments:

- He is concerned that parking requirements would dissuade people from legalizing existing units.
- He is in favor of allowing short-term rentals but regulating them will be difficult.
- The positive to these State mandates is that housing is being created. Short-term rentals should not conflict with this.
- New housing in Town should not be short-term rentals.
- There should be a way to "grandfather in" or somehow acknowledging existing conditions. This might help people come forward to legalize units.
- A huge number of short-term rentals could impact the Town. Perhaps they could add a cap to the Town, neighborhoods, or a property.

Commissioner Jansen provided the following comments:

- The essence is that housing is needed and short-term rentals are in conflict with that.
- Regulation is necessary and they need to come up with a way to control them.

Chair Fragoso provided the following comments:

- She does not want to take AUD's or JADU's and convert them to short-term rentals.
- Short-term rentals should only be allowed in a single-family home (as a swap or going on vacation).
- The Town should be talking about a "no net loss housing" policy rather than encouraging short-term rentals.
- She is not supportive of creating short-term rental opportunities out of existing rental housing that is considered affordable.
- The revenue generated from short-term rentals would not offset the cost of enforcement.
- The Town should facilitate bringing illegal second units into compliance.
- She agreed with the neighborhood safety concerns.

Commissioner Kelly provided the following comments:

- He asked if recommending a maximum number of short-term rentals per zone or neighborhood would be a land use issue. Town Attorney Coleson stated this is something she has never seen and was not sure how it would be implemented. It could be suggested to the Council.
- He is in favor of creating a regulation for short-term rentals.
- He did not support the owner occupancy requirement.

- He is not in favor of the way parking has been explained in the draft ordinance. It should mirror the Planning Code.
- He is in favor of a cap per neighborhood or zone. Different zones could have different percentages.

Commissioner Newton provided the following comments:

- She referred to the 30-day time frame and stated she could support it.
- The parking should follow the code.
- She referred to the resolution and noted a couple of misspelled words.
- She referred to the resolution, the 5th “Whereas”, and asked for clarification.
- She is ambivalent about the owner-occupied question.
- She was fine with ADUs and JADUs being included.
- She does not react negatively about limiting the number in a district or over Town.
- She does not like the January 2020 cut-off date.

Commissioner Swift provided the following comments:

- She was not in favor of having ADUs or JADUs a part of this program.
- She supported the single-family zones identified in the staff report.
- She is in favor of owner occupancy since it protects the neighborhood.
- She is not in favor of using the January 2020 date.

Commissioner Jansen provided the following comments:

- Short-term rentals are here to stay and he favors regulations.
- They should be implemented for entire houses or parts of houses that are owner occupied but not ADUs or JADUs.
- He supported the single-family zones identified in the staff report.
- Parking should follow existing zoning laws.
- Limiting the number of licenses is a good idea but difficult to enforce.

Chair Fragoso provided the following comments:

- They should be regulated somehow but not necessarily with this exact language.
- 30 days or less is correct.
- Parking requirement should follow the standard requirements.
- Preferential parking and those located in the right-of-way should not be used to meet the parking requirements.
- ADU's and JADUs whenever constructed should not be used as short-term rentals.
- This should be limited to an owner occupied primary single family residence.
- It is not helpful to use a particular date.
- She supported limiting the number of licenses.

M/s, Newton/Kelly, motion to disapprove Resolution No. 2022-05 and not recommend that the Council introduce and adopt an ordinance amending Title 17 (Zoning), Chapters 17.008 (“Definitions”), 17.052 (“Off-Street Parking and Loading Requirements”), Chapters 17.076 (“RS-75 Single-Family Residential Zone, Medium Density”), 17.080 (“RS-6 Single Family Residential Zone, High Density”), 17.124 (“UR Upland Residential Zone”), incorporating a Definition of “Short Term Housing”, Providing Parking Regulations for said Short Term Rental Use and including Short Term Rentals as Permitted Uses in All Single-Family Residential Zoning Districts given the comments and feedback provided by the Commission.

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

ABSENT: Green

MINUTES

5. Minutes from the February 24, 2022 Planning Commission meetings

M/s, Newton/Swift, motion to approve the February 24, 2022 minutes as corrected.

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

ABSENT: Green

Planning Directors Report

There was no report.

Commissioner Comments and Requests

Commissioner Newton asked when in-person meetings would occur. Town Attorney Coleson stated the Council is planning a hybrid meeting in April- the Council and staff would be in the Council Chambers and the public would be on Zoom. The Council will make a decision on how to proceed in May. Hybrid meetings might not be possible for Commissions and Boards since they are televised/broadcasted by the Community Media Center of Marin (CMCM).

Commissioner Newton asked if there have been any applications submitted for the Commission vacancy. Town Attorney Coleson stated "yes".

ADJOURNMENT

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

Respectfully submitted,

Toni DeFrancis,
Recording Secretary