

FAIRFAX PLANNING COMMISSION MEETING MINUTES
VIA TELECONFERENCE DUE TO COVID-19
THURSDAY, FEBRUARY 24, 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
Kylie Otto, Attorney with BBK Law
Kara Spencer, Associate Planner

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. 51 Belle Avenue; Application #2022-02
Request for a Conditional Use Permit and Variances to construct a new 330 square foot, single-car garage addition to a 1,017 square foot home and to legalize two accessory buildings, one as an office/playroom and one as a storage building;
Assessor's Parcel No. 002-214-11; RD 5.5-7 Residential Zone, High Density District,
Peter Brandelius applicant/owner; CEQA categorically exempt per Section 15301(e)**

Assistant Planner Spencer presented the staff report.

Chair Fragoso asked if the dimensions for the garage (10 'X 29') were reflected in the current plans. Assistant Planner Spencer stated "yes". Chair Fragoso asked if fees or penalties would be imposed for the non-permitted structures. Assistant Planner Spencer stated that would be addressed at the Building Permit stage. Chair Fragoso stated the Town is not requiring the garage and she asked if the owners simply want to improve the property. Assistant Planner Spencer stated "yes".

Commissioner Jansen stated the plans identify the two structures in the back as "existing storage sheds" and the staff report calls one of them an "office/playroom". Principal Planner Neal stated this could be addressed by the applicant.

Commissioner Swift asked if either of the accessory structures have utilities. Assistant Planner Spencer stated the “office/playroom” has electricity. The other does not. Commissioner Swift asked if the Ross Valley Fire Department provided any comments. Assistant Planner Spencer stated “no”.

Commissioner Newton asked if the trigger for Commission review is proximity to the property line or a residential structure. Principal Planner Neal stated storage sheds that are 120 square feet or less in size with no electricity do not require a Building Permit but does require Planning Commission approval. Construction or modifications to the site or structures on a substandard lot requires a Use Permit and the use of the one accessory structure as an office/playroom is considered use for living space which also requires Planning Commission approval.

Commissioner Kelly asked if staff received any correspondence from the neighbors. Assistant Planner Spencer stated “no”.

Commissioner Green asked for a summary of the changes since May.

Chair Fragoso opened the Public Hearing.

Mr. Peter Brandelius, applicant, made the following comments:

- He needs a garage- a place to store a car and tools.
- His neighbor gave a lot of input to the project’s design.
- The garage has a hipped roof to minimize the vertical presence.
- The garage is set back from the front of the house and the side boundary.
- Off-street parking has been carefully considered. More than two parking spots have been provided.
- His family needs more space.
- This is a small project for a small family- but it will make a big difference.

Commissioner Jansen asked Mr. Brandelius if the existing sheds would remain. Mr. Brandelius stated “yes”.

Commissioner Kelly asked Mr. Brandelius about the proposed exterior materials for the garage. Mr. Brandelius stated it would be Hardy shingles with a Class A, 25-year roof.

Chair Fragoso asked how many cars the family has aside from the very cool 1950’s Ford truck. Mr. Brandelius stated they have three vehicles.

Chair Fragoso closed the Public Hearing.

Associate Planner Spencer stated the current plans reflect the reductions/changes recommended in March 2021.

Commissioner Jansen provided the following comments:

- The applicant has been working with the neighbors.
- The two buildings in the back are small and nobody seems to have a problem with them.
- It is not possible to reference one of the structures as an “office/playroom”- it would need interior heights, ventilation, etc. It cannot be legalized as it currently exists. This is a technicality.
- He would recommend taking the existing plans and approve the sheds with a Variance for the garage.
- Many things can be done in a shed.
- The garage is done quite well.
- The resolution needs to reflect what is in the plans.

Commissioner Green provided the following comments:

- He agreed with Commissioner Jansen.
- These are not conditioned buildings.
- He referred to the Resolution and suggested the following conditions: 1) The garage shall be shortened; 2) No wood shingles shall be used.
- He referred to the resolution and stated any reference to the office/play room and accessory building should be followed by the words in parenthesis "Accessory Structures". This defines it.
- He referred to Conditions #4 and #5 and asked if the timing should be stated. Principal Planner Neal stated "no"- that is left up to the Building Official.

Commissioner Kelly provided the following comments:

- Setbacks are required for safety reasons.
- He is concerned about the garage being so close to the neighbors.
- Exterior materials should be fire resistant.
- The roofing material is a concern.

Commissioner Swift provided the following comments:

- She asked if these accessory structures must be identified by their use. Principal Planner Neal stated accessory structures are allowed to be used for parking and storage without requiring a Use Permit. Living spaces need a Use Permit whether they are conditioned or not.
- She referred to the resolution and suggested the following changes: 1) On page 4, the application should be corrected; 2) On page 5 there will have to be some renumbering after Condition #17; 3) On page 5, Condition #19, the reference to the site location in the WUI should be deleted; 4) On page 7, the last paragraph should read "February" and not "April".

Commissioner Jansen provided the following comment:

- The resolution should stipulate that the office/playroom (living space) needs to be brought up to code. Principal Planner Neal stated the garage and storage structures could be referenced in Condition #9.

Commissioner Newton provided the following comments:

- They should be consistent in the resolution.
- The 118.5 square foot structure should be identified as an "accessory living space/office/playroom" and the 72 square foot structure should be identified as a storage shed in the beginning of the resolution and then as "accessory structures" throughout.
- Condition #9 should state that if the 118.5 square foot structure cannot be used a living space then it should revert to a storage shed.

Chair Fragoso provided the following comments:

- There are tight constraints in Fairfax.
- The neighbors across the street were very supportive.
- Garages in that neighborhood are adjacent to or behind the house.

M/s, Newton/Green, motion to adopt Resolution No. 2022-01 with the following revisions: 1) On page 1, in the first "Whereas:", reference to the office/play room and accessory building should be followed by the words in parenthesis "Accessory Structures"; 2) On page 4, Condition #9 shall reference the garage and the two accessory structures; 3) On page 4, #12 will have the correct application number; 4) On page 5 renumbering shall occur.

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 8:30 p.m.

2. 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. 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)

Town Attorney Coleson presented a staff report.

Attorney Otto presented a PowerPoint presentation that included the following: 1) SB9 Lot Split; 2) No SB9 Lot Split; 3) Urban Lot Splits- Restraints on Town Standards; 4) Urban Lot Splits- Qualifications; 5) Two-Units-on-a-Single-Lot Projects; 6) General Plan Consistency; 7) Recommended Modifications; 8) Recommended Action.

Town Attorney Coleson and Attorney Otto answered questions regarding whether the Town is required to allow Accessory Dwelling Units (ADU) and Junior Accessory Dwelling Units (JADU) if someone already has two units; multifamily ADUs ; if the Planning Commission provided input to the Urgency Ordinance; if the Commission's suggested changes would be presented to the Town Council; if the 20-foot requirement is determined by the State; would SB9 apply to a zone that allows duplexes as a Principal Use; are SB9 projects subject to Ross Valley Fire Department requirements; definition of primary dwellings vs. an accessory structure to the primary dwelling; Fire Hazard Mitigation Measures; are there differences between the proposed ordinance and the Urgency Ordinance; was there specific direction from Town Council; the timing of the ordinance adoption; how to apply "Fairfaxian" standards; if affordability restrictions could be imposed; if a voter initiative could undo these requirements; how this ordinance interacts with the Objective Development and Design Standards (ODDS) that are in the works; what is specifically prescribed by SB9; setbacks specified in the statute vs. the ordinance; height limits; unit standards; what is considered a complete application; the use of obscured glass.

Chair Fragoso opened the meeting to public comments.

Kate made the following comments:

- She asked about the fire evacuation criteria and the required twenty-foot requirement.
- Very few people will do this.

Mina made the following comments:

- She asked if it was too late to oppose this.
- She asked how parking would be addressed.

Mr. Frank Egger, representing Save Fairfax, made the following comments:

- It would be impossible to establish leach lines for two units on a 1,200 square foot site.
- Fairfax should adopt the Cal Fire Wildland Urban Interface Zone Map and include it as an exhibit to the ordinance along with the Private Road Ordinance.
- Rent control should be added to Accessory Dwelling Units (ADUs)
- He supported the 20-foot road width requirement for evacuation purposes.

Mallory made the following comments:

- She asked if these units could be used as Airbnb's.
- She supported affordable housing.

Kirsten made the following comments:

- She asked about enforcement of the owner-occupancy requirement.
- She wanted Fairfax to fight this.

- She supported affordable housing.

Ling Shien Bell made the following comments:

- She is concerned about the owls. They need a lot of space.

Mark Bell made the following comments:

- Fairfax should fight SB9- it is probably unconstitutional.
- It is a violation of civil rights- Fairfax is in a fire zone.

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

- She agreed with Mr. Bell- Fairfax should join the fight.
- Enforcement will be a problem.
- Fairfax is a one-way in and one-way out location.

Chair Fragoso closed the meeting to public comments.

The Commission took a 5-minute break at 10:30 p.m.

Commissioner Swift provided the following comments:

- She cannot recommend the ordinance tonight.
- She has concerns about inconsistencies in the ordinance.
- Landscaping under the “urban lot split” section was not clear.
- She is concerned about some of the Fire Hazard Mitigation Measures.
- Fairfax has very narrow roads that are one-way in and one-way out.
- The sections pertaining to deed restriction recordings are inconsistent.
- The Creek Setback Requirements should be included in some areas.
- She would like this item continued to the next meeting

Commissioner Green provided the following comments:

- This ordinance is pretty good overall.
- Some clarifications are necessary. He has some questions about meaning of the language.
- He agreed with the suggestion for a continuation.

Commissioner Jansen provided the following comments:

- SB9 allows a relatively large building on a small lot to spread out horizontally- this is typically not good.
- The setbacks should not be reduced.
- They should incentivize home owners to make the structure as compact as possible.
- This is in direct conflict with the height and daylighting restrictions. Height restrictions should be removed.

Commissioner Newton provided the following comments:

- She has a number of concerns but is not sure about the solutions.
- She is focusing on environmental protection, safety of residents, and affordability.
- She understood that not all residents will take advantage of the new law but this makes it possible.
- She wants to see allowances for smaller units.

Commissioner Kelly provided the following comments:

- He asked if a property owner could split a lot and divide it amongst his or her heirs. Town Attorney Coleson stated it would depend on what the zoning allows.
- He supported the idea of using ratios of built vs. open space.
- He liked the idea of smaller units.

Chair Fragoso provided the following comments:

- She disagreed with the ten-foot setback and asked if the norm could be lot coverage instead.
- She would like the Commission to further discuss some of the issues.
- There is no reason to rush this.
- She was concerned they were wasting their time working on the Objective Development and Design Standards (ODDS).
- They might be able to achieve the intent of the law.
- She would like to incorporate standards that protect residents in the WUI, etc.
- There are at least 300 existing unpermitted second units in Town that could be “grandfathered” in and counted towards the RHNA numbers.

Town Attorney Coleson asked the Commission to send comments before March 10th.

M/s, Newton/Green, motion to continue this item to the next available meeting.

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

MINUTES

3. Minutes from the January 20, 2022 Planning Commission meetings

M/s, Newton/Swift, motion to approve the January 20, 2022 minutes as corrected.

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

Planning Directors Report

There was no report.

Commissioner Comments and Requests

Commissioner Swift asked when the Accessory Dwelling Unit Ordinance would come before the Commission. Principal Planner Neal stated she did not know.

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 11:22 p.m.

Respectfully submitted,

Toni DeFrancis,
Recording Secretary