

FAIRFAX PLANNING COMMISSION MEETING MINUTES  
WOMEN'S CLUB, 46 PARK ROAD  
AND VIA TELECONFERENCE  
THURSDAY, MAY 26, 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  
Brett Kelly  
Mimi Newton  
Cindy Swift

Commissioners Absent: Robert Jansen

Staff Present: Linda Neal, Principal Planner  
Janet Coleson, Town Attorney  
Kylie Otto, Attorney  
Kara Spencer, Associate Planner

#### **APPROVAL OF AGENDA**

M/s, Swift/Newton, motion to approve the agenda with the addition of the following: Commissioner Reports and Comments.

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

ABSENT: Jansen

#### **PUBLIC COMMENTS ON NON-AGENDA ITEMS**

There were no comments.

#### **CONSENT CALENDAR**

There were no Consent Calendar Items.

#### **PUBLIC HEARING ITEMS**

- 1. 217 Scenic Road; Application #22-08**  
**Request for a Conditional Use Permit to remodel a 1,788 square foot home by converting a storage area to a bathroom, raising a portion of the roof to add clerestory windows, and expanding a deck 77 square feet; no expansion of building area would occur; APN # 001-121-56; RS-6 Single-Family Residential Zone; Rich Rushton, architect; Nicholas Pavis, owner, CEQA categorically exempt per Section 15301(e)(1).**

Associate Planner Spencer presented the staff report. She answered questions from the Commission regarding whether the existing structure meets all of the zoning requirements including the height; the site plan and three different drawings; the alternate deck expansion; how far the

extension goes out from the existing deck in the central portion of the building; photographs from the adjacent property; if the proposal includes a new window above the deck;

Chair Fragoso opened the Public Hearing.

Mr. Nick Pavis, owner, made the following comments:

- The minor modifications will bring the property up to date.
- There is no intention to change windows except to lower one from waist height to floor height.
- He wanted to resolve any objections.
- His architect was adamant about meeting all the regulations.
- Nothing they are proposing is adding space or square feet.
- The new section of roof that is raising up is not part of the previous non-conformity.
- They are adding four feet of leg room to the deck.

Commissioner Newton asked Mr. Pavis if a study was on the other side of the top floor window. Mr. Pavis stated "yes". Commissioner Newton asked Mr. Pavis if he considered moving the bulk of the deck extension on the west side of the property. Mr. Pavis stated this was option was explored but the neighbor's home is pretty far away.

Principal Planner Neal stated if the Commission decided on this option then the application would need to be continued since it was not noticed for a Side-Yard Setback Variance.

Commissioner Green asked Mr. Pavis about the accuracy of one of the photographs from the neighbor.

Daniel McCormick and Mary O'Brien, Scenic Road, made the following comments:

- They are east of the proposed project.
- They have done some view studies.
- Their deck is eight feet deep.
- They have a clear view of the story poles and the large window from her shower.
- They would like the applicant to install some screening.
- The proposed deck looks into their entire downstairs.
- This is not something they have to live with at this point.

Chair Fragoso closed the Public Hearing.

Commissioner Newton provided the following comments:

- She was concerned about the sight line into the neighbor's bedroom and might prefer infringing upon the other setback that abuts a vacant lot that is used solely for parking.
- She asked if the deck could be moved to the middle (dead center).
- One of the purposes of a setback is to allow for privacy between neighbors.

Commissioner Green provided the following comments:

- The setbacks depicted in Page A2.1 are not "cast in stone". Principal Planner Neal stated it is a judgement code in terms of what side to put the minimum 5' setback on and which side to put the 15' setback on due to the ability to "combine".
- The window issue could be solved by having obscure glass at the bottom.

Chair Fragoso provided the following comments:

- She asked if a Variance would be required if the setbacks were flipped (alternate deck expansion). Principal Planner Neal stated "no". The Commission could impose a Condition of Approval that the Building Permit submittal show the deck as depicted in Drawing #3 on page 2.1 with the minimum and the combined setbacks (east and west) flipped.

Commissioner Swift provided the following comments:

- The window is going from three foot wide by four to three by six in the same location.
- The window is already there and she is not concerned about it being enlarged and lowered.
- She asked if the parcel to the west is buildable. Principal Planner Neal stated any vacant site is potentially a buildable site.

Chair Fragoso provided the following comment:

- It would not be a huge expense to have the architect flip the setbacks on the same set of plans.

Commissioner Kelly provided the following comments:

- That would be difficult to say- there are no framing plans. It appears the scope of the work would be quite similar.
- The social space and the neighbor's shower adjacent to each other are in conflict.
- There is an opportunity to make both places better.
- He would like the applicant to be flexible.
- He would support sliding the deck over.
- The alternate deck scheme is a possibility. The leading edge of this deck is no farther north than the existing deck and would be less of an imposition on the neighbor.

Chair Fragoso provided the following comments:

- She agreed with Commissioner Kelly's comments.

Commissioner Newton provided the following comments:

- She wondered about the cost of moving the deck.
- She suggested centering the deck at the center of the house or anywhere to the west of that point.
- She is not wild about the window expansion and suggested using opaque non-transparent windows.

Commissioner Kelly provided the following comment:

- Lowering the windowsill will provide sight lines deeper into the room.
- They should be thinking about the view angle.

Commissioner Green provided the following comments:

- Obscure windows would not benefit the owner but would take the neighbor's issue into consideration.
- A continuance would allow people to take another look.

Chair Fragoso provided the following comments:

- She would not like a deck that has a view into her private space.
- She would like to see the deck shifted to the other side.
- She is leaning towards the alternate deck expansion with some level of coverage of the window.
- The setbacks would not be a major issue.
- She is concerned about the depth of that window.

Mr. Pavis made the following comments:

- The window going down to the floor height was an interior design choice. It is not an issue to make it split into two panes and opaque.
- He would be willing to move the deck to the west and resubmit plans.

Commissioner Newton provided the following comments:

- She referred to the resolution and suggested the following changes: 1) On page 1, under Conditional Use Permit Findings, #1 should read: "...the proposed remodeling project will not encroach any further into the required individual side setbacks of the existing building"; 2) The addition of Condition #13: "The revised plan should be approved prior to the Building Permit being issued".
- The setback should be switched so the five foot is on the west and the fifteen foot setback is on the east side of the parcel.
- The Planning Department should have the discretion to approve the proposal with the middle of the deck being aligned with the middle of the house or further over so the western side of the expansion is on the western side of the existing deck.

M/s, Newton/Swift, motion to adopt Resolution No. 2022-12 with the following changes: 1) 1) On page 1, under Conditional Use Permit Findings, #1 should read: "...the proposed remodeling project will not encroach any further into the required individual side setbacks of the existing building"; 2) The addition of Condition #13: "The revised plan should be approved prior to the Building Permit being issued". The setback should be switched so the five foot is on the west and the fifteen foot setback is on the east side of the parcel. The Planning Department should have the discretion to approve the proposal with the middle of the deck being aligned with the middle of the house or further over so the western side of the expansion is on the western side of the existing deck.

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

ABSENT: Jansen

Chair Fragoso stated there was a 10 day appeal period.

**2. 136 Tamalpais Rd.; Application #22-09;  
Request for Hill Area Residential Development, Tree Removal, Encroachment, and Excavation Permits, and Front-Yard Setback and Minimum and Combined Side-Yard Setback Variances to construct a 413 s.f. garage with a 164 s.f., second floor, storage room addition to a 1,210 s.f. single-family residence; APN #001-121-22; Residential Single-family RS 6 Zone; Laura Kehrlin, architect; Robin Hubinsky, owner; CEQA Categorically exempt per Section 15301(e)(1).**

Principal Planner Neal presented the staff report. She noted there was an error in the staff report—there are two (not one) lights proposed on the front of the garage. She noted the following corrections to the Resolution: 1) On page 1, the second "Whereas" should read: "...*the Commission held* a duly noticed public hearing on the proposed project."; 2) On page 3, under Encroachment Permit, it should read: "The...(one wing *of the* retaining wall)..."; 3) On page 5, Conditions #8 and #9 were switched and the redundant wording was eliminated; 4) On page 5, the addition of the following to Condition #10: "The approved Tree Permit must be kept on the job site and the applicant must verify that the tree company performing the tree work has a current Fairfax Business License"; 5) On page 6, Condition #15 was added: "Construction shall be prohibited during the Northern Spotted Owl nesting season from February 1<sup>st</sup> through July 31<sup>st</sup> unless a plan for allowing construction activities during this period is submitted by a qualified Spotted Owl biologist and approved by the State with documentation of approval provided to the Town prior to initiating any construction activities. All requirements listed in the plan including potential on-site monitoring must always be met by the applicants."; 6) On page 8, Condition #25 should read: "The project...sprinkler system *in the garage structure*..."; 7) On page 10, the language regarding a second driveway should be deleted; 8) On page 13, the second paragraph should read: "The approval... Design Review, *Excavation, Encroachment, and Tree Removal... and a minimum Side Yard and Combined Side Yard Setbacks Variance to allow construction of a garage storage structure in the*..."; 8) The wording in the title should match the wording in the "Now, therefore..." paragraph.

Chair Fragoso opened the Public Hearing.

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

- The staff report was straight-forward.
- They worked through all the drainage and engineering issues.
- This is a sensitive site.
- The homeowner is trying to clear up some irregularities.
- The retaining walls will help protect the property.
- She referred to the resolution, page 10, Condition #50 and stated there is no sidewalk required; on page 11, Condition #55 should reference Civil Engineer Overkamper and not ILS Associates; Conditions #57, 58, and 59 do not apply to this project.

Principal Planner Neal agreed that Condition #57, #58, and #59 should be removed. She noted the correct reports and consultants are listed on page 4 under the “Whereas”. Commissioner Newton stated the sentence about that should read: “The project is approved based on the work being performed in accordance with the conditions and recommendations set forth in the following plans and reports”.

Ms. Robin Hubinsky, owner, made the following comments:

- This is a straight forward plan-
- They want to create a parking space, clean up some legacy easements and encroachments, provide a better space for garbage, walkways and improve the property.
- They are trying to complement the existing house.
- There are complexities to the site.

Ms. Kristin Amlie, Tamalpais Road, made the following comments:

- She lives next door.
- The drainage from the subject property goes underneath her driveway.
- She has not heard any details about the project. There has been no communication.
- She would like to get copies of plans, reports, etc. and have time to review this information before a decision is made.

Ms. Linda County made the following comments:

- She lives across the street.
- She found out about the project his week.
- She wants to learn more about the project.

Principal Planner Neal stated staff sent a notice to all property owners within a 300 foot radius ten days before the meeting. This is required by State law.

Ms. Hubinsky made the following comments:

- The story poles were installed two weeks ago.
- They would be respectful of people coming in and out of driveways and during the construction process.
- They have tried to keep everyone in the loop.

Chair Fragoso closed the Public Hearing.

Commissioner Green provided the following comments:

- This is an extremely complex project for a garage but very carefully thought-out.
- The project would be a major improvement to the property and the neighborhood.

Commissioner Kelly provided the following comments:

- The house is an asset to the street in terms of scale, proportions, and siting.
- The house is lovely.
- The new massing is a graceful addition.
- The garage addition is well done.
- He did not think there was another way to get parking on the site.
- The engineering reports were done well and anything that can be done in terms of water management is an asset to the hill.
- He is in favor of the project.

Chair Fragoso provided the following comments:

- The engineering and drainage analysis made sure that there is no runoff to the street or adjacent properties.
- The garage is well designed.
- The project will be a huge improvement for the property and the neighborhood.
- She is supportive of the project.

Commissioner Swift provided the following comments:

- She supports the project.
- She referred to the resolution and suggested the following changes: 1) On page 4, Condition #6, should refer to the Ross Valley Fire Department; 2) On page 12, Condition #60, the last sentence should be deleted.

M/s, Newton/Swift, motion to adopt Resolution No. 2022-13 with the following revisions: 1) On page 1, the second “Whereas” should read: “...*the Commission held* a duly noticed public hearing on the proposed project.”; 2) On page 3, under Encroachment Permit, it should read: “The...(one wing of *the* retaining wall)...”; 3) On page 5, Conditions #8 and #9 were switched and the redundant wording was eliminated; 4) On page 5, the addition of the following to Condition #10: “The approved Tree Permit must be kept on the job site and the applicant must verify that the tree company performing the tree work has a current Fairfax Business License”; 5) On page 7, Condition #15 was added: “Construction shall be prohibited during the Northern Spotted Owl nesting season from February 1<sup>st</sup> through July 31<sup>st</sup> unless a plan for allowing construction activities during this period is submitted by a qualified Spotted Owl biologist and approved by the State with documentation of approval provided to the Town prior to initiating any construction activities. All requirements listed in the plan including potential on-site monitoring must always be met by the applicants”; 6) On page 9, Condition #25 should read: “The project...sprinkler system *in the garage structure*...”; 7) On page 11, the language regarding a second driveway should be deleted; the reference to ILS Associates should be changed to the Overkamp report of July 1, 2021; and Conditions #56, #57, and #58 should be deleted; 8) On page 13, the second paragraph should read: “The approval... Design Review, *Excavation, Encroachment, and Tree Removal... and a minimum Side Yard and Combined Side Yard Setbacks Variance to allow construction of a garage storage structure in the*...”; 8) The wording in the title should match the wording in the “Now, therefore...” paragraph; 9) On page 4, under the “Whereas” it should read: “The project ...based on the *work being performed in accordance with the conditions and recommendations set forth in the following plans and reports*”; Condition #6, should refer to the Ross Valley Fire *Department*; 11) On page 12, Condition #60, the last sentence should be deleted.

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

ABSENT: Jansen

Chair Fragoso stated there was a 10 day appeal period.

### **3. 152 Porteous Ave.; Application #22-10**

**Request for a Hill Area Residential Development, Design Review, Tree Removal Permits and a Parking Variance to construct a 1,011 s.f., 2-story addition to an existing 714 s.f. residence; APN # 002-071-09; Residential Single-family RS 6 Zone; Peter Brown, applicant/owner; CEQA categorically exempt per Section 15301(e)(1).**

Principal Planner Neal presented the staff report. The Public Works Department does not support parking spaces that cover the public sidewalk. The revised landscaping plan does not match the approved Vegetative Management Plan. The Ross Valley Fire Department will not allow plants that exceed four inches in height in those planting beds on either side of the sidewalk or any plants within four feet of a structure. If approved, the project should be conditioned on use of the original Vegetative Management Plan and not the landscape plan. The following condition should be added to the resolution: "Construction shall be prohibited during the Northern Spotted Owl nesting season from February 1<sup>st</sup> through July 31<sup>st</sup> unless a plan for allowing construction activities during this period is submitted by a qualified Spotted Owl biologist and approved by the State with documentation of approval provided to the Town prior to initiating any construction activities. All requirements listed in the plan including potential on-site monitoring must always be met by the applicants". She answered a question regarding the location of the addition relative to the story poles;

Chair Fragoso opened the Public Hearing.

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

- The house has some deferred maintenance issues.
- They have the support of the neighbors and signed affidavits.
- This is an owner/builder project.
- They will do this as expeditiously as possible.
- The design appearance will be in line with the neighborhood.

Commissioner Green asked Mr. Brown about the Public Works Department recommendation for a driveway approach accessing an additional parking space that would be parallel to the front wall. Mr. Brown stated he has not had time to think about this recent development. Justin Brown

Justin made the following comments:

- He will be the one banging the nails.
- He laid out the site plan and measured from the curb to the sidewalk and the sidewalk to the new retaining wall. One car will fit bumper to bumper.
- Parking is a concern on that street.
- They are converting the garage back to a garage.

A resident made the following comment:

- The presence of a sidewalk is very important for the community as an amenity.

Chair Fragoso closed the Public Hearing.

Commissioner Swift provided the following comments:

- She supported the project.
- This is not the first application that has a request to widen the existing driveway or put in a second driveway. This Variance has to go to the Town Council. It is something the Commission should be able to address.

Chair Fragoso provided the following comments:

- This is a nice project and will be a significant improvement to the property.

M/s, Swift/Kelly, motion to adopt Resolution No. 2022-14 with the following revisions: 1) On page 6, the addition of the following Condition after Condition #12: "Construction shall be prohibited during the Northern Spotted Owl nesting season from February 1<sup>st</sup> through July 31<sup>st</sup> unless a plan for allowing construction activities during this period is submitted by a qualified Spotted Owl biologist and approved by the State with documentation of approval provided to the Town prior to initiating

any construction activities. All requirements listed in the plan including potential on-site monitoring must always be met by the applicants”

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

ABSENT: Jansen

Chair Fragoso stated there was a 10 day appeal period.

The Commissioner took a 5-minute break at 10:00 p.m.

**4. Senate Bill 9-Related Ordinance; Continued consideration of an Ordinance amending Fairfax Town Code by 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)**

Town Attorney Coleson presented the staff report. She and Attorney Otto answered questions from the Commission regarding occupancy certifications; concept of requiring occupancy of the premises for a period of time; matching architecture; prohibition against short-term rentals.

Chair Fragoso opened the Public Hearing.

There were no comments.

Chair Fragoso closed the Public Hearing.

Commissioner Green provided the following comment:

- He supported the staff recommendation.

Commissioner Swift provided the following comments:

- She referred to the ordinance, top of page 8 and page 17, under Architecture (iii), and suggested the following change: “All exterior lighting *fixtures must be Dark Sky compliant...fully shielded...illumination and emit no light above the horizontal plane with no sag or drop lenses, side light panels or upright panels and with a color temperature of no more than 3,000 Kelvin. No landscape...*”.
- There is one plant that is on the Fire Safe Marin’s Fire Smart list but also on the Town’s Undesirable Tree Species list. She recommended deleting the reference to the Town’s Tree Code and retain the Fire Safe Marin’s Fire Safe list.

Chair Fragoso provided the following comments:

- She supports SB9.
- The housing market does not create affordable housing.
- They need small affordable units in Town and this is an opportunity to create infill housing.
- She understood the prohibition of short-term rentals on these split units. Short-term rentals remove units from the housing market.
- She is ready to move forward with this item.

Commissioner Newton provided the following comments:

- She asked if the State set a lower size threshold for units. Attorney Otto stated “no”.
- She asked if Fairfax has its own minimum size for a unit in the residential area. Principal Planner Neal stated the Building Code or Property Management Code does set a minimum size of 500 square feet.
- She envisions an Accessory Dwelling Units (ADU) or Junior Accessory Dwelling Units (JADU) as a tiny, extra unit. She does not think a 500 square foot unit is little.
- Small units will give them affordable housing.



Commissioner Green provided the following comments:

- Page 5 of the ordinance talks about unit size.
- The Town Council seems to be committed to affordable housing.
- AirBNB's should be taxed.

Chair Fragoso provided the following comments:

- The Town has a 200 square foot minimum for a garage conversion and a smaller sized limit for a JADU.
- A JADU is not required to be 500 square feet.
- Things should not be "matchy-matchy".

Commissioners Swift provided the following comment:

- She is fine with the size limits as written.
- There is a difference between requiring "matchy-matchy" for structures on one lot as opposed to an entire block.
- She is fine with that aspect of the code.

Commissioner Newton provided the following comments:

- Staff should mark out the roads and areas in the Town that are designated an evacuation route along with the endangered species habitats.
- The General Plan Policies that are consistent with this proposal should be called out in the ordinance.

Commissioner Kelly provided the following comments:

- He referred to the "matchy-matchy" issue and stated he saw it as more as congruent.
- It is talking about projects within itself and not matching anything down the road. He is in support.
- He would support going as low as 200 square feet.

Chair Fragoso provided the following comment:

- She likes the new wording and the chart.

Commissioner Green provided the following comments:

- He would like to see a "Whereas" added the included a statement about General Plan Policy consistency with a list of the sections.
- A map should be added to the ordinance showing the pertinent areas that are covered.

M/s, Green/Kelly, motion to approve Resolution No 2022-03 with the suggested changes.

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

ABSENT: Jansen

## **MINUTES**

### **5. Minutes from the April 28, 2022 Planning Commission meetings**

M/s, Newton/Kelly, motion to approve the April 28, 2022 minutes as corrected.

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

ABSENT: Jansen

## **Commissioner Comments and Requests**

Commissioner Green encouraged everyone to install solar panels and have fun watching the meter run backwards ! He noted there were numerous signs in Town in a derelict condition, some that are protecting children.

Chair Fragoso asked about the upcoming Joint Meeting with the Town Council. Principal Planner Neal stated the tentative dates are June 15<sup>th</sup> or June 29<sup>th</sup>. Town Attorney Coleson stated June 29<sup>th</sup> will not work and it might have to wait until July or August.

## **ADJOURNMENT**

A motion was made, seconded and unanimously approved to adjourn the meeting at 11:32 p.m.

Respectfully submitted,

Toni DeFrancis,  
Recording Secretary