

FAIRFAX PLANNING COMMISSION MEETING MINUTES  
WOMEN'S CLUB, 46 PARK ROAD  
AND VIA TELECONFERENCE  
THURSDAY, OCTOBER 27, 2022

Call to Order/Roll Call:

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

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

Staff Present: David Woltering, Interim Planning Director  
Linda Neal, Principal Planner  
Kara Spencer, Associate Planner

### **APPROVAL OF AGENDA**

M/s, Newton/Green, motion to approve the agenda with the following change: the Planning Director's Report will be placed in front of Commissioner Comments and Requests.

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

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

Rick Hamer advised the Commission that Town Code Section 17.020, the Design Review Regulations, requires a design review permit and the submittal of interior floor plans for projects that constitute substantive remodels or expansions. He asked that the Planning Commission work with staff so the code can provide greater clarity on the topic of what constitutes a substantial remodel and advised that he believes the Town should have processes in place that encourage building permits to be issued, not discourage them by requiring substantial project processing expenses.

### **CONSENT CALENDAR**

1. Setting the regular meeting dates for the November and December 2022 Planning Commission meetings as November 17, 2022 and December 15, 2022

M/s, Swift/Feffer, motion to adopt Resolution 2022-31.

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

### **PUBLIC HEARING ITEMS**

2. **35 Wreden Avenue.; Application #2022-21  
Request for a Conditional Use Permit, Combined Side-Yard Setback Variance and Parking Variance for a remodel/expansion of an existing 1,182 s.f., single-family residence. Project includes reconstruction/reorientation of the front entry stairs; APN # 002-014-10; RS-6 Single-Family Residential Zone; Christopher Arnold, applicant;**

**Christopher and Kristin Arnold, owners; CEQA categorically exempt per Section**

**15301(e)(1).**

Principal Planner Neal presented the staff report. She answered questions from the Commission regarding the reference to the Planning Commission on page 10 of the resolution, paragraph nine with respect to approval for modifications; the parking requirements; how the parking requirement would change if the plan included an Accessory Dwelling Unit (ADU).

Chair Fragoso opened the Public Hearing.

Ms. Kristin Arnold, owner, made the following comments:

- The front door is in the middle of the house.
- They want to move the front door and make a small entryway and create an office.
- This would help accommodate their growing family.

Chair Fragoso closed the Public Hearing.

Commissioner Jansen provided the following comments:

- The plans look good and the request is minor.
- The house remains the same.
- He is worried about the compact parking spot.
- The slope from the apron to the garage door is steep (about 15%)
- He does not think this qualifies as an official compact spot.
- Legalizing this would set a precedent.
- The owner could certainly still park in that spot.
- The street is wide and there is a public parking spot in the front.

Commissioner Kelly provided the following comments:

- He agreed with Commissioner Jansen.
- The apron should not count as a spot.
- The addition is just large enough to be a legal bedroom.
- The capacity of the house has grown with the parking demand increasing.

Commissioner Green provided the following comments:

- He is amazed at what fifty one additional square feet can do to a house.
- He would like to see this project move forward.
- He agrees with the other Commissioner's concerns.
- The street is wide and the parking might not be critical.
- This is such a minor project.

Principal Planner Neal explained the parking code and requirements. If the Commission looks at the site and believes there is a 9 X 22 foot space along the property frontage that meets the guest parking space requirement then they could make the determination that the property conforms to the minimum parking requirements.

Commissioner Swift provided the following comments:

- She asked if the Town has a definition in the code for a "bedroom". Principal Planner Neal stated "no".
- The addition is called a "bedroom/office" in the plans.
- She is concerned with not having the third guest parking space because of the issue of narrow roads and parking.

Commissioner Jansen provided the following comments:

- Whether it is a bedroom or not is irrelevant since it does not change the parking requirement.

- The concern is not about whether there is enough room to park.
- The concern is setting a precedent about making a compact space that partially overhangs the property line that is at an incline and blocking the front of the garage a legal third required space.
- The project can be approved without the variance for parking or defining in the drawings that this is a parking spot.

Commissioner Feffer provided the following comment:

- He agreed with Commissioner Jansen.

Commissioner Newton provided the following comments:

- She loves the ingenuity in the design.
- They would be allowing the existing non-conformance to continue without a variance.
- She agreed that they do not want to set a precedent about codifying a small size space in front of the garage.

Chair Fragoso provided the following comments:

- She agreed with Commission Newton about the non-conforming nature of the structure.
- She could approve the project without the required Parking Variance.

Commissioner Green provided the following comments:

- There might be another way around this that would avoid creating a precedent.
- He pointed out the very unusual configuration and non-conforming nature of the property.

Interim Planning Director Woltering stated the Commission could eliminate the Parking Variance from the resolution due to the very small modification and the negligible or non-existent impact.

Commissioner Newton provided the following comment:

- She made several edits to the resolution.

Commissioner Green provided the following comment:

- He referred to the resolution and recommended, under the Conditional Use Permit Findings, some additional language taken from the staff report. Interim Planning Director Woltering stated the language in the resolution was adequate. Staff could certainly try to be more specific about the rationale in the future.

Commissioner Swift provided the following comments:

- She asked if the Parking Variance was related to the Combined Side Yard Setback Variance. Principal Planner Neal stated “no”. On page 2 of the resolution, under Combined Side Yard Setback Variance, the first sentence in #1 should be deleted and the following should be added: “The addition will maintain a greater combined setback than the existing house”

M/s, Jansen/Newton, motion to adopt Resolution No. 2022-29 with the following changes: 1) On page 2, paragraph 4, “and the” is repeated twice; 2) On page 5, #11, the reference to the Design Review Board should be deleted; 3) On page 2 of the resolution, under Combined Side Yard Setback Variance, the first sentence in #1 should be deleted and the following should be added: “The addition will maintain a greater combined setback than the existing house”; 4) Reference to a Parking Variance shall be deleted throughout the Resolution.

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

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

**3. 109 Broadway (Fairfax Lumber); Application #2022-22  
Request for a Fence Height Variance, Design Review, and an Encroachment Permit**

**to erect an 8-foot tall fence along approximately 350 linear feet of the rear property line along Spruce Road and install a planting buffer within the Spruce Road right-of-way: APN #001-148-13; Service Commercial CS Zone; Fairfax Lumber, applicant; San Rafael Lumber Company, owner; CEQA Categorically exempt per Section 15303(e)**

Chair Fragoso disclosed that she had a discussion with a staff member at Fairfax Lumber about the neighbor concerns prior to the Council meeting. She did not think she needed to recuse herself from this item.

Principal Planner Neal presented the staff report. Staff is recommending adding the following to the resolution: 1) "The fence shall be maintained in good repair by the Lumber Yard and failure to properly maintain the fence will result in Code Enforcement proceedings being taken against the Lumber Yard to restore the fence to its original condition". 2) "A Landscaping Plan shall be prepared by a licensed architect and shall include the plant species, size, and planting locations and the location of the irrigation system drip lines and automatic timing system for approval by the Planning Director prior to the start of construction. Specific screening material used to create the visual vegetative barrier will be determined as part of the Landscape Plan". She answered questions from the Commission regarding whether the fence at the increased height would need a Building Permit; where the privacy panels are being proposed; the use of the art deco panels; the neighborhood concerns.

Chair Fragoso opened the Public Hearing.

Charlie Cain, representing Fairfax Lumber, made the following comments:

- They are addressing three issues: visual, longevity, and fire safety.
- He understood the drawings were inadequate. They will submit better plans.
- Shrubbery placed in front of the panel would help to break up the visual aspect of the panels.
- Steel panels will last a long time and are noncombustible.

The Commission took a 5-minute break.

Ms. Susie Bergen, Spruce Road, made the following comments:

- A subcommittee has met which includes two Councilmembers and several residents.
- All fences in the neighborhood are wood- this is not a commercial neighborhood.
- A long stretch of corrugated metal fencing would be unsightly.
- She supported the eight foot variance but would like the subcommittee to discuss the other issues.

Ms. Kendra Scott, Spruce Road, made the following comments:

- PG&E transformers along that road have exploded with live wires on the ground.
- These wires could hit that metal fence.

Ms. Hillary Wittman, Spruce Road, made the following comments:

- She was not in favor of a corrugated metal fence.
- She supports a wood fence – it would be in keeping with the neighborhood.

Mr. Ryan Morgan, Spruce Road, made the following comments:

- They want the business to thrive.
- He agreed with the other neighbors- metal is out of character.
- The neighbors want some say in the final Design Review application.

Mr. Tim Horn, Spruce Road, made the following comments:

- He supports a wood fence.

- The neighborhood is concerned about the appearance of the fence.
- The business should be required to maintain the fence and the plantings.

Ms. Jennifer Hibbits, Spruce Road, made the following comments:

- She shares a property line with the lumber yard.
- She supports a wood fence.

Ms. Tara Hernandez, Spruce Road, made the following comments:

- She supported an eight foot fence.
- She is concerned about an encroachment that would result in a loss of parking and an impact the vegetation.

Ms. James Riley, Spruce Road, made the following comments:

- He is not in favor of a metal fence.
- He is concerned about the maintenance of the fence.
- Fairfax Lumber was built after the subdivision in the residential neighborhood.

Mr. Rick Hamer made the following comment:

- Most of downtown Fairfax was residential small lots at the turn of the century.

Mr. Michael Macintosh made the following comment:

- He asked if a pre-existing use that is changed over time is legal non-conforming.

Chair Fragoso closed the Public Hearing.

Interim Planning Director Woltering asked the Commission to provide direction on what they want to see in terms of Design Review. Staff will work with the applicant, the subcommittee, and the neighborhood and come back with a plan.

Commissioner Swift provided the following comments:

- She had questions about parking, encroachment on existing plantings, and feedback from the Ross Valley Fire Department about electrification of a metal fence.
- A landscape plan needs to come back addressing the posts and number and species of plants.
- Thought should be given to the amount of corrugated metal fence, the privacy panels, and colors.

Commissioner Jansen provided the following comments:

- There is a lot of design work to be done.
- They need plans and elevations showing the materials, location of plants and parking, and dimensions.
- They need to submit a rendering of what will be seen from the street.
- This is a very large element because of its length.
- Nobody seems to be concerned about the height.

Commissioner Newton provided the following comments:

- She agreed with Commissioner Swift and Jansen.
- She would like to see how the fence framing will be treated.
- The building is old and full of character.

Commissioner Kelly provided the following comments:

- Consideration should be given to how this element in the public right-of-way can age gracefully.
- The scale is odd in this neighborhood.

- He suggested considering the following design elements: the repetition and rhythm, breaking down the length, the materiality.
- Parking needs to be considered.
- The “greenness” and plantings should be a priority.
- He did not want to see a big, long, tall, eight-foot barrier.
- He cannot make a decision based on the information that has been submitted.
- This is a classic case of “good fences make good neighbors”.

Commissioner Feffer provided the following comments:

- There were two, distinct issues with respect to the metal fence.
- Fire safety experts should be relied upon with respect to materials.

Chair Fragoso provided the following comments:

- They do not have enough information.
- She does not have a problem with the height.
- The “elephant in the room” is the parking.

Commissioner Green provided the following comment:

- He has a problem with the drawings.
- He is not sure about the placement of any of the elements.
- The fence is necessary.

M/s, Swift/Kelly, motion to continue Resolution No. 2022-30 to a date uncertain.

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

**4. Gas Station Ordinance: Discussion/Consideration of a proposed ordinance prohibiting new gas stations and prohibiting expansion of fossil fuel infrastructure at existing gas stations: CEQA categorically exempt per Section 15307, 15308, and 15061(b)(3)**

Interim Planning Director Woltering presented the staff report. He noted a minor typographical error in the staff report and the ordinance. Staff answered questions from the Commission regarding anticipated requests for future gas stations; how this policy would reduce traffic congestion; proposed change in the definition of a gas station and unintended consequences; the impact of identifying businesses as legal non-conforming; if existing gas stations would be able to expand the business; allowable uses; how underground storage tanks are used; does the replacement of tanks require a Building Permit.

Chair Fragoso opened the Public Hearing.

Mr. Woody Hasting, representing the Coalition Against New Gas Stations, made the following comment:

- He supported the ordinance.
- The ordinance would help the Town deal with undesirable land use applications that would have negative consequences.

Dr. Jody Timms, Chair of the Climate Action Committee, made the following comment:

- She supported the ordinance.
- Fairfax adopted a Climate Emergency Resolution setting a goal of zero emissions by 2030.
- The ordinance moves the Town in this direction.

Chair Fragoso closed the Public Hearing.

Commissioner Green provided the following comments:

- He cannot recommend the ordinance as written.
- The definition of “filling/service station” is too broad and includes some things that are necessary for electric cars.
- He has a problem with the 180 day timeline. It could be challenged as a “taking”.
- The 180-days could be a period of time in which the applicant could apply for more time.
- He was concerned about Fairfax being gas station free.
- EV infrastructure could be based on what is contained in the Climate Action Plan
- Filling up a gas can should be prohibited.
- He is concerned about enforceability.

Commissioner Newton provided the following comments:

- She referred to the ordinance, Section 17.008.020, Definitions, “Filling Station”, and suggested the following: “A retail business...include facilities *selling related products* for washing....”. Under Section 17.016.080, (H), she would like to see language that provides for other types of modifications to the fossil fuel infrastructure underground storage tanks.
- She does not want to include the language about hazard substance or waste tanks.

Commissioner Feffer provided the following comments:

- He is glad this is coming up in the context of climate and electrification.
- The ordinance is fine.
- He has no issue with the changes suggested by Commissioner Newton.

Commissioner Jansen provided the following comments:

- Electric vehicles are superior.
- He supports the ordinance.

Commissioner Swift provided the following comment:

- She would like to see this item continued to address the Commission concerns. Town Attorney Coleson stated the Council would like to see this ordinance as soon as possible.

Commissioner Kelly provided the following comments:

- As a Planning Commission they are regulating this in the wrong way.
- The market in Town should dictate what happens with this issue.
- The ordinance does not feel “Fairfax” to him- it is a prohibition of a certain industry.

Chair Fragoso provided the following comments:

- She has no issue with the ordinance as written.
- Testing, reporting, and cleanup of underground tanks should be required.
- The Commission seems supportive in general.

M/s, Feffer/Newton, motion to recommend adoption of the Ordinance to the Town Council with the following changes: 1) The eighth “Whereas” and Section 17.016.080, (H), shall be clarified by the Town Attorney with respect to the establishment of use in the event of any legal require changes to the underground storage tanks; 2) Section 17.008.020, Definitions, “Filling Station”, and suggested the following: “A retail business...include facilities *selling related products* for washing....”. 3) Direct staff to address the location of tanks, legal or otherwise.

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

NOES: Kelly, Swift

**5. Driveway Entrance Ordinance: Discussion/Consideration of ordinance transferring Authority to review and grant exceptions to the residential and commercial driveway width and number regulations from the Town Council to the Planning Commission and expanding the variance language contained in the various residential and commercial**

**zone districts to include the option to consider driveway entrance variances; CEQA categorically exempt per Section 15301(e), and 15303 (a) and (c) and 15305.**

Principal Planner Neal presented the staff report. She referred to the ordinance, Section 21, and stated the UR Upland Residential Zone should be moved to Section 16. All the residential zones will be in the beginning of the ordinance and the commercial zones will be renumbered. This change also applies to the Ordinance Title. She answered questions regarding whether this applies to existing and new development; if this applies to parking structures; if fencing and fencing heights should be addressed; if there is interplay with the Housing Element and the Objective Development and Design Standards (ODDS).

Chair Fragoso opened the Public Hearing.

There were no comments.

Chair Fragoso closed the Public Hearing.

Commissioner Swift provided the following comments:

- This is long overdue.
- She supports the ordinance.

Commissioner Green provided the following comment:

- He supports the ordinance.

M/s, Swift/Jansen, motion to adopt Resolution No. 2022-28 with the changes recommended by Principal Planner Neal

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

## **MINUTES**

### **6. Minutes from the September 22, 2022, and September 28, 2022 meetings**

M/s, Newton/Jansen, motion to approve the September 22, 2022, minutes as corrected and September 28, 2022, as submitted.

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

ABSTAN: Green

### **Planning Director's Report**

Interim Director Woltering reported at the upcoming meeting the Council will consider adoption of the update Building Code, and the Rent Stabilization and Just Cause Evictions Ordinance, consider the transition to a new team to develop the Housing Element, and fees for parklets. He answered questions about parklets including location and music; if previous work done on the Housing Element will be made available to the new consultants; applications coming to the Commission.

### **Commissioner Comments and Requests**

Commissioner Swift asked if staff has decided where the Housing Element documentation would be housed. Interim Planning Director Woltering stated this is a work in progress but the document would be made available on the Town Website and Fairfax Speaks.

Commissioner Swift asked for an update on the Marinda Heights (a.k.a. Wall Property) project. Interim Planning Director Woltering stated the property owner wants to work with the Town on some type of project to get something moving.



Commissioner Newton welcomed newly appointed Commissioner Feffer. She also thanked staff for their hard work- bravo !!

**ADJOURNMENT**

A motion was made, seconded and unanimously approved to adjourn the meeting at 11:43 p.m.

Respectfully submitted,

Toni DeFrancis,  
Recording Secretary