

DRAFT FAIRFAX PLANNING COMMISSION MEETING MINUTES
WOMEN'S CLUB, 46 PARK ROAD
AND VIA TELECONFERENCE
THURSDAY, AUGUST 17, 2023

Call to Order/Roll Call:

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

Commissioners Present: John Bella
 Philip Feffer
 Robert Jansen
 Brett Kelly
 Mimi Newton (attending remotely)
 Cindy Swift (Chair)

Staff Present: Jeffrey Beiswenger, Planning Director
 Linda Neal, Principal Planner
 Kara Spencer, Assistant Planner

APPROVAL OF AGENDA

Principal Planner Neal recommended the continuation of item #1 to the September 14th Commission meeting.

M/s, Jansen/Kelly, motion to approve the agenda with the continuation of item #1
AYES: Bella, Feffer, Jansen, Kelly, Newton, Chair Swift

PUBLIC COMMENTS ON NON-AGENDA ITEMS

There were no comments.

CONSENT CALENDAR

There were no Consent Calendar items.

INTRODUCTION OF NEW DIRECTOR OF PLANNING AND BUILDING SERVICES JEFFREY BEISWENGER

The Commission welcomed Planning Director Beiswenger.

Planning Director Beiswenger discussed his education and background and stated he looks forward to working in Fairfax.

OPEN TIME FOR PUBLIC EXPRESSION

Ms. Christy Delman, Oak Manor Drive, discussed the 1991 Fairfax Hills Settlement Agreement. She is concerned about drainage issues and slope stability.

PUBLIC HEARING ITEMS

1. **Discussion/consideration for recommendation to the Town Council of the following:
A resolution of the Fairfax Planning Commission recommending the Town Council adopt**

an ordinance concerning inclusionary housing requirements, approve a resolution adopting affordable housing in-lieu fees and commercial/non-residential linkage fees in the master schedule; and approve a resolution adopting affordable housing requirements and program regulations.

Chair Swift noted this item was continued to the September 14, 2023 Commission meeting.

2. 34 Hill Avenue; Application #23-18

Continued consideration of a request for a project that has been redesigned since the July 20, 2023 meeting for a Conditional Use Permit, Design Review Permit, Variance, Excavation Permit, and a Tree Removal Permit to construct s 1,318 sq. ft. 2-bedroom, 2 ½ bath, single family residence with a 317 sq. ft., one car garage on a 3,309 sq. ft. site. APN 002-214-01; RD 5.5-7 Residential Zone; John Simenic, owner/applicant; CEQA categorically exempt per Section 15303(a) and 15305(a)

Principal Planner Neal presented the staff report. She answered questions from the Commission regarding the whether the only Variance required is for parking in the side setback; if construction would start prior to the survey issue being resolved; if the project would make the drainage better.

Chair Swift opened the Public Hearing.

Mr. John Simenic, owner/applicant/architect, made the following comments:

- He will work with his neighbor to resolve the property line issue.
- He redesigned the project to comply with the setback on the east side.
- He would be happy to discuss a new color.

Mr. Aaron O'Brien made the following comments:

- He owns the adjacent house.
- He has concerns about the drainage, the survey the Town is using, the seasonal creek on the property, the location of the off-street parking and driveway, the wall that will block their sunlight, the color, the proximity of the front of the house to the street, and the second floor balcony.
- The second story should be set back.
- The design does not fit the character of the neighborhood.

Ms. Diane Nichols, Oak Knoll Avenue, made the following comment:

- She is concerned about the color palette- it is too dark.

Colton and Ivy Christiansen made the following comment:

- They support the project.

Ms. Kelly O'Brien made the following comments:

- She lives next door.
- The drainage situation has not been adequately addressed.

Ms. Patricia Silva made the following comment:

- She is concerned about the drainage on Belle Avenue.

Chair Swift closed the Public Hearing.

Commissioner Jansen provided the following comments:

- The color would not reflect light but the applicant was willing to discuss a change.
- He understood the drainage concerns but it would probably get better with the development.
- He liked the changes made by the applicant that were based on prior comments.

Commissioner Kelly provided the following comments:

- He is not confident that the drainage would get better. He would like to add a condition that the Building Permit application shall be subject to review and approval of the Town Engineer to ensure that the increased hardscape will not increase the speed or amount of the water leaving the site prior to issuance of the Building Permit.
- This will be a handsome building and provide some diversity in the neighborhood.
- He is generally in favor of the aesthetics.

Commissioner Feffer provided the following comments:

- He was in favor of the project at the last meeting.
- These funky lots should be developable.

Commissioner Newton provided the following comments:

- She agreed with the comments made by Commissioner Jansen.
- She supported the condition suggested by Commissioner Kelly.

Chair Swift provided the following comments:

- She submitted some corrections to the Resolution to staff.
- She appreciated the story poles.
- The design and height of the house is not a fit from a Design Review perspective for that lot.
- She cannot make the Design Review Findings.

M/s, Kelly/Newton, motion to adopt Resolution 2023-16 with the corrections submitted by Chair Swift and the following additional conditions: 1) The condition recommended by Commissioner Kelly; 2) The Planning Director shall have discretion to approve a lighter color palette proposed by the applicant.

AYES: Bella, Feffer, Jansen, Kelly, Newton

NOES: Chair Swift

Chair Swift stated there is a 10-day appeal period.

3. 299 Bolinas Rd. Application #23-21

Request for a Conditional Use Permit to construct an approximately 129 sq. ft. wooden deck with a metal railing and wooden access stairway on a detached Accessory Dwelling Unit (ADU); APN 002-033-01; RS 5.5-7 Residential Zone; Cottage Technologies, Inc., applicant; John Boldrick, owner; CEQA categorically exempt per section 15301(a)

Assistant Planner Spencer presented the staff report. There were no questions from the Commission.

Chair Swift opened the Public Hearing.

Mr. Cole Stevens, representing Cottage Technologies, Inc. made the following comments:

- The owners have agreed to partially remove the existing non-conforming deck near the creek to meet the combined setback requirements.
- They are willing to work with the neighbors.

Chair Swift closed the Public Hearing.

There were no comments from the Commission.

M/s, Jansen/Kelly, motion to adopt Resolution No. 2023-18.

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

Chair Swift stated there is a 10-day appeal period.

4. 128 Dominga Ave.; Application #23-22

Request for a Variance to construct a second driveway and parking area; APN 002-023-30; RD 5.5-7 Zone; Stephen LaDyne, applicant; Katherine Johnson, owner; CEQA categorically exempt per Section 15301(C)

Assistant Planner Spencer presented the staff report. She answered questions from the Commission regarding traffic near the cul-de-sac; if this additional parking would impact the sidewalk; the height of the fence and if it would be lowered.

Chair Swift opened the Public Hearing.

Ms. Katherine Johnson made the following comments:

- They are adding a parking space voluntarily.
- There is an existing red zone so there would be no loss of street parking.
- They have letters of support from the neighbors.

Chair Swift closed the Public Hearing.

Commissioner Bella provided the following comments:

- He was concerned about additional curb cuts on Dominga Avenue- one of the few walkable streets in downtown.
- He asked if there was a real demand for that additional space.

Commissioner Jansen provided the following comments:

- This is not a continuous curb and the parking is not adjacent to each other.
- This is the best solution and it makes sense.

M/s, Newton/Feffer, motion to adopt Resolution 2023-19.

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

Chair Swift stated there is a 10-day appeal period.

5. 7 Valley Rd.; Application #23-23

Request for a Conditional Use Permit and Variance to reconstruct/expand an existing carport, build a front entry arbor and legalize conversion of an existing storage shed to office space on an existing single-family residence site; APN 003-191-30; RS 6, Single Family Residential Zone; Brooks McDonald, architect; Kyle Miller and Jessie Curtner, owners; CEQA categorically exempt per Section 15301(a), 15303(e)

Principal Planner Neal presented the staff report. She answered questions from the Commission regarding the side setbacks; when the accessory structure was constructed.

Chair Swift opened the Public Hearing.

Mr. Brooks McDonald, applicant, made the following comments:

- He discussed the dimension of the columns and the required setbacks.
- Valley Road is very tight.
- They are adding a second parking space which would remove a car from the street.
- The project results in a reduction in lot coverage.

- The owners were told that the outbuilding in the back had permits. It will be legalized and remain as an office.
- The exterior lighting on the office structure would be downward directed, shielded, and on a photo-sensor.

Chair Swift closed the Public Hearing.

Chair Swift provided the following comment:

- She referred to the resolution, page 2, #1 under the “Whereas” and stated the reference to the project should be deleted.

M/s, Newton/Jansen, motion to adopt Resolution No. 2023-20 as amended by Chair Swift and the addition of Condition #8, the standard Dark Sky compliant lighting condition.

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

6. 771 Center Blvd.; Application #23-24

Request for a Conditional Use Permit to operate an alternative healing center featuring cold plunge pool baths with infrared saunas, red light therapy, cryotherapy and various muscle recovery tools, from an existing commercial space in the Fair-Anselm Plaza; APN 002-131-14; CH Highway Commercial Zone; Colin Russel, applicant; Rich Hall, Magna Real Estate, owner; CEQA categorically exempt per Section 15301(a)

Commissioner Newton recused herself from this item due to the proximity of her residence. She left the meeting at 8:30 p.m.

Principal Planner Neal presented the staff report. There were no questions from the Commission.

Chair Swift opened the Public Hearing.

Mr. Joseph Drummer made the following comments:

- He discussed the services and benefits that will be offered.
- They are adding two showers.
- The expected number of customers on any given day would be 30% to 40% occupancy during the weekdays and 60% to 70% of available appointments on weekends. There would be 80 to 90 appointments max per week and maybe 10 per day.
- The number of employees on site would be three.

Mr. Rich Hall, managing partner for Fairfax Plaza, made the following comments:

- The previous use had approval for 107 patrons simultaneously.
- The amount of traffic would be significantly reduced.

Tanya, Zoom Master, made the following comment:

- She would be happy to sacrifice herself and try out the treatments.

Chair Swift closed the Public Hearing.

Commissioner Jensen provided the following comments:

- This is straightforward.
- This type of use was not envisioned when the codes were written.

M/s, Jensen/Bella, motion to adopt Resolution 2023-21.

AYES: Bella, Feffer, Jansen, Kelly, Chair Swift

RECUSED: Newton

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

Discussion Items

7. Continued discussion of proposed changes in the minutes taking protocol to comply with previous Town Council Resolution No. 2460

Principal Planner Neal presented the staff report. There were no questions from the Commission.

It was the consensus of the Commission to adopt the recommendation of staff.

Minutes

8. Review and approval of the minutes from the May 18, 2023 and the July 20, 2023 meetings

M/s, Jensen/Bella, motion to approve the May 18, 2023 minutes as submitted and the July 20, 2023 minutes as corrected.

AYES: Bella, Feffer, Jansen, Kelly

ABSENT: Newton

ABSTAIN: Chair Swift

Commissioner Comments and Requests

Commissioner Feffer asked for an update on the Housing Element at the next meeting.

Planning Director's Report

Principal Planner Neal stated staff is scheduling a second Public Hearing in the months of September, October, and November- it will be held on the second Thursday of the month.

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 8:58 p.m.

Respectfully submitted,

Toni DeFrancis,
Recording Secretary

DRAFT FAIRFAX PLANNING COMMISSION MEETING MINUTES
WOMEN'S CLUB, 46 PARK ROAD
AND VIA TELECONFERENCE
THURSDAY, SEPTEMBER 14, 2023

Call to Order/Roll Call:

Chair Swift called the Special Meeting to order at 7:00 p.m.

Commissioners Present: John Bella
 P. J. Feffer (attending remotely)
 Robert Jansen
 Brett Kelly
 Mimi Newton (attending remotely)
 Cindy Swift (Chair)

Staff Present: Jeffrey Beiswenger, Planning Director
 Linda Neal, Principal Planner
 Janet Coleson, Town Attorney
 Kylie Otto, Assistant Town Attorney
 Daniel Hortert, Contract Planner

Commissioner Newton and Feffer announced they are participating remotely.

APPROVAL OF AGENDA

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

CONSENT CALENDAR

There were no Consent Calendar items.

PUBLIC HEARING ITEMS

- 1. Discussion/consideration for recommendation to the Town Council of the following:
A resolution of the Fairfax Planning Commission recommending the Town Council
adopt an ordinance concerning inclusionary housing requirements, approve a
resolution adopting affordable housing in-lieu fees and commercial/non-residential
linkage fees in the master schedule; and approve a resolution adopting affordable
housing requirements and program regulations**

Contract Planner Hortert presented the staff report. Planner Hortert and staff answered questions from the Commission regarding Section 17.140.130, how the funds will work, and if the usage of the funds is open to public review; if fees could be changed and modified in the future by the Town Council; how the inclusionary percentage amounts (20% and 15%) were established and if they are consistent with what other jurisdictions are adopting; incongruences in some of the Ordinance language; the relationship between the two documents; requirements and program regulations; how this differs from what other jurisdictions are adopting; if General Plan Policies could dictate how the funds will be used; regulatory restrictions; options for compliance; definition of a mixed use project; reason for requiring sufficient reserves for on-going repairs in a sale; if short-term rentals are

allowed; the process for in-lieu fees for small parcels; three-unit minimum projects; waivers for structures that are destroyed; if Exhibit A is an overlay of the ordinance; if the inclusionary requirements are being set at the very low income level of 35% AMI; how maximum sales prices are computed.

Chair Swift opened the Public Hearing.

Mr. Rick Hamer, Fairfax, made the following comments:

- The resolution as written will do nothing towards raising funds of any consequence.
- A project comprised of luxury units could slip past the resolution without any in-lieu fees.
- The term “moderate income” should be replaced with the low income category, specifically the 65% target AMI level.

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

- This resolution may be fine for San Rafael but not for Fairfax.
- They need to use numbers that are relevant to Fairfax.
- Some applications could get ministerial approval with no EIR, public hearing, or appeal process.
- He was concerned that they will lose the Town to high density and high-rise development.

Chair Swift closed the Public Hearing.

Planning Director Beiswenger and Assistant Town Attorney Otto addressed some of Mr. Egger’s comments.

Commissioner Newton provided the following comments:

- She wants to see a much bigger emphasis on low and very low housing.
- She would like to build in the ability for the Council to interpret the term “act of nature” at its discretion.

Commissioner Bella provided the following comments:

- The ordinance should tackle all of the AMI categories.
- He did not want to incentivize developers to simply pay the in lieu fees over building housing.

Commissioner Feffer provided the following comments:

- He agreed with the sentiments of Mr. Hamer and Mr. Egger.
- They should focus on the low or very low income categories.
- They will have to be looking critically at development costs.

Chair Swift provided the following comments:

- When talking to a developer they need the flexibility to do moderate income development with the low and very low.
- She would like to see clarification on the Housing Plan with respect to “sufficient reserves”.
- They can review the Ordinance and make changes in the future.

Commissioner Newton provided the following comments:

- A rent of \$2,500 is too much for someone with a low income.
- They want to create something that developers will buy into.
- She would like to see the Affordable Housing Fund focus on low and very low.

Commissioner Bella provided the following comments:

- The RHNA numbers are coming from the State and the Town has little choice in terms of delivery.
- The State Density Bonus offers an option to provide low and very low income units.

Commissioner Jansen provided the following comments:

- The discussion on whether to focus on low income and include the other categories has been decided. There must be a profitable component.
- The in lieu fees should be used to fund low and very low income units and not moderate.

Chair Swift provided the following comment:

- She was concerned about restricting the use of these funds at this point in time.

Commissioner Bella provided the following comment:

- He agreed- he would like to remain flexible.

M/s, Newton/Jansen, motion to adopt Resolution No. 2023-26 of the Fairfax Planning Commission recommending that the Town Council adopt an Ordinance adding Chapter 17.140, Affordable Housing, to Title 17, Zoning, concerning Inclusionary Housing requirements, approve a resolution adopting Affordable Housing In-Lieu Fees and Commercial /Nonresidential Linkage Fees in the Master Fee Schedule, and approve a Resolution adopting Affordable Housing Requirements and Program Regulations with the changes reference in the errata sheet received before the meeting tonight, the changes discussed tonight in terms of clarifying Attachment “A” language about the maximum rental and maximum sale percentages, including a discussion about the Commission’s thoughts on Section 17.140.130 regarding whether to focus on low and very low affordability, adding a provision with respect to the language about exempt structures that are destroyed by fire, flood or other acts of nature, giving the Town Council the discretion to interpret that phrase and to also address Section 17.140.080(b)(7) Inclusionary provision as discussed with respect to the maintenance fund.

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

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

**2. Discussion/consideration for recommendation to the Town Council the following:
A resolution of the Fairfax Planning Commission recommending the Town Council adopt an ordinance amending the Fairfax Municipal Code to add or amend chapters to Implement the General Plan Housing Element**

Planning Director Beiswenger presented the staff report. Staff answered questions from the Commission regarding whether the Objective Development and Design Standards (ODDS) would be woven into the code; the meaning of Section 17.027.070(B), Compliance Determination; how fence heights are measured; if any of the Zoning Code changes add height to the existing categories; if the maximum height in any of the zones is three-stories; if the Town would have a compliant General Plan if amendments are not adopted; if a State regulator checks for compliance with State Law; if a cap can be put on a ceiling height for Density Bonus purposes; if Section 17.020.030(A), Applicability is the current code; the required findings in Section 17.044.090, Authority to Grant Waivers.

Chair Swift opened the Public Hearing.

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

- Fairfax should challenge these housing laws instead of rolling over.
- This “one size fits all” approach is inappropriate for Fairfax.
- Fairfax has many constraints including properties in the WUI Zone, Flood Zones, or Landslide Zones

Chair Swift closed the Public Hearing.

Chair Swift provided the following comments:

- The Commission did not have enough time to review the information in the packet.
- Red-line versions would have been helpful.
- She has a lot of questions.
- She would like to continue this item.

Commissioner Jansen provided the following comments:

- He agreed with Chair Swift. This needs more study.
- He is happy to see this coming to the Commission.

Commissioner Feffer provided the following comments:

- He is concerned about being in compliance with State law and the consequences.
- He would like everybody to be able to get behind the changes.
- He was not opposed to a continuance but would like to get something done tonight.

Commissioner Bella provided the following comments:

- It would be nice to have more time with this.
- He agreed with the concern about the December deadline.

Town Attorney Coleson and the Commission discussed the timeline and scheduling another Special Meeting of the Commission. She noted this is a living document and can be revised.

Commissioner Jansen provided the following comments:

- He would rather approve this as it stands than to review it on September 28th.
- He is concerned about “running out the clock”.

Commissioner Bella provided the following comment:

- He did not want to miss the State deadline.

Commissioner Newton provided the following comment:

- She suggested the Commission provide questions to staff and continue the item to next Thursday.

M/s, Newton/Feffer, motion to continue this item to September 21st.

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

The Commission made additional comments regarding the ordinance including integration of the ODDS, color being removed from the consideration of approval in the downtown, 90 days to act on an application involving 150 units or less, and height regulations.

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 10:54 p.m.

Respectfully submitted,

Toni DeFrancis,
Recording Secretary