

Fairfax Town Council Minutes
Special Meeting
Women's Club, 46 Park Road, Fairfax
and via teleconference
Wednesday, **September 13, 2023**

Mayor Cutrano called the Special Meeting to order at 5:00 p.m.

Call to Order/Roll Call:

COUNCILMEMBERS PRESENT: Bruce Ackerman
Lisel Blash
Barbara Coler
Chance Cutrano
Stephanie Hellman

STAFF MEMBERS PRESENT: Jeff Beiswenger, Planning & Building Services Director
Mark Lockaby, Building Official
Janet Coleson, Town Attorney
Kylee Otto, Assistant Town Attorney
Christine Foster, Deputy Town Clerk

Approval of Agenda and Affidavit of Posting

M/S, Coler/Blash, Motion to approve the affidavit of posting and the agenda as submitted.
AYES: Ackerman, Blash, Hellman, Vice Mayor Coler, Mayor Cutrano

Regular Agenda

1. Appeal of Suspension of Building Permit- 79 Wood Lane

Building Official Lockaby presented a staff report. Staff answered questions from the Council regarding the excavation of the garage; if the appellant denied a request to stabilize that situation; what could happen in terms of stabilizing the walls of the excavation; if there was a specific hearing process for suspension of a permit; over-excavation of the basement and the original agreement with the Planning Commission for a two-step approach; the difference between a Stop Work Order and the suspension of a permit; if there had been multiple Stop Work Orders and correspondences with the appellant.

Mayor Cutrano opened the meeting to public comments.

Mr. Richard Harris, the attorney representing Appellant Coby Friedman, stated Mr. Friedman was requesting a delay of this hearing. It appeared the Town Code does not have an appeal process for actions under the Building Code. He discussed the noticing requirements for appeals under the Town Code. He had received two days' notice and did not have sufficient time to provide documents to the Town and provide an argument that the permit suspension should not be upheld.

Janet Coleson, Town Attorney, representing the Building Official, discussed the Town Code chapter governing this appeal and stated there was no requirement for a 10-day notice. She noted that Mr. Friedman had rushed in and filed the appeal prior to completion of the discussions amongst the attorneys about how they were going to handle the appeal, leaving the impression he was anxious to have it heard as soon as possible and so we scheduled this hearing. She noted there were no new

issues raised beyond what was included in the court documents. She recommended that the Council hear the appeal now.

Kylee Otto, Assistant Town Attorney, representing the Town Council, stated that as there was no provision in the Town Code for the appeal, it defaulted to the Brown Act, which required 24-hour notice for a special meeting.

It was the consensus of the Council to proceed with the appeal.

Mr. Harris lodged his objection and stated he was unclear about the Town Code section they were proceeding under or what procedures were being followed and believed this would prejudice Mr. Friedman.

Mr. Harris discussed due process for the revocation of a permit lawfully granted. He discussed the history of the project and the authority of the Building Official to accept changes to the project.

Assistant Town Attorney Otto stated the Building Official had not revoked the permit; he had issued a stop work order, or suspension. Attorney Coleson concurred, adding she had heard no citations of authority from Mr. Harris that a pre-deprivation hearing was required for the suspension of a building permit.

Mayor Cutrano asked Mr. Harris if there was a willful misrepresentation in the application by the appellant. Mr. Harris stated "no". He discussed the three specific items described at the reasons for the suspension.

Mayor Cutrano opened the meeting to public comments.

Renu Melhatra, Wood Lane, stated she lived next door to the project. The excavation affected her and there was no way to build the adjoining fence/retaining wall without it impacting her. She noted time was of the essence.

Erika Milliken, Wood Lane, supported the Building Official and stated the neighbors were watching this project. They were concerned about the safety of the adjacent properties. There were initial misrepresentations to the neighbors.

Suzanne Quentin, Wood Lane, stated the project was disruptive and the owner displayed a lack of attention to the impacts.

Maya Friedman supported increased housing availability including ADUs and JADUs. The building envelope had not changed significantly or at all.

Mayor Cutrano closed the meeting to public comments.

The Council discussed the matter, noting there were no ministerial approvals and the application needed to go back to the Planning Commission.

M/S, Coler/Hellman, Motion to deny the appeal and uphold the suspension pending review and action by the Planning Commission.

AYES: Ackerman, Blash, Hellman, Vice Mayor Coler, Mayor Cutrano

The meeting was adjourned at 5:59 p.m.