

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

Call to Order/Roll Call:

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

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

Commissioner Absent: John Bela

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

### **APPROVAL OF AGENDA**

Principal Planner Neal recommended that agenda item #3 be continued to the January meeting.

M/s, Feffer/Kelly, motion to approve the agenda with the continuation of item #3 to the next meeting.

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

ABSENT: Bela

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

There were no comments.

### **CONSENT CALENDAR**

There were no Consent Calendar items.

### **OPEN TIME FOR PUBLIC EXPRESSION**

There were no comments.

### **PUBLIC HEARING ITEMS**

- 1. 114 Mono Avenue; Application #23-33  
Request for a Conditional Use Permit, Design Review Permit, and Variances  
for a 50 percent remodel and approximately 460 sq. ft. addition to a single family  
residence, reconstruction of the garage, and site improvements; AP # 002-125-03; RD  
5.5-7 Residential Zone; CDG Architecture, applicant; Justin Semion and Jayme Mogen,  
owners; CEQA categorically exempt per Section 15301(a), 15301(e)(1), 15303(e),  
15304(b), and 15305(a)**

Commissioner Newton recused herself from this item.

Assistant Planner Spencer presented the staff report. She answered a question from the Commission regarding whether the reduction in the lot coverage is due to the pavement around the building.

Chair Swift opened the Public Hearing.

Mr. Justin Semion, owner, made the following comments:

- They need more space for the family.
- The existing driveway determines the location of the garage.
- The lot coverage was discussed quite a bit.

Mr. Justin Housman made the following comments:

- He lives next door.
- He supports the project.

Chair Swift closed the Public Hearing.

Commissioner Jansen provided the following comments:

- The Variances are existing with parking in the back yard.
- The non-compliant garage becomes a part of the house. This is an improvement.
- This is a straight forward proposal that makes sense.

Commissioner Kelly provided the following comment:

- This is a good project that has been thought through.

Commissioner Feffer provided the following comment:

- This project is good for the applicant and the neighborhood.

M/s, Jansen/Kelly, motion to adopt Resolution No 2023-34.

AYES: Feffer, Jansen, Kelly, Chair Swift

ABSENT: Bela

RECUSED: Newton

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

## **2. 38 Tamalpais Rd. Application #23-34**

**Request for a Conditional Use Permit (CUP) for a 264 sq. ft. remodel/addition to a single family residence; AP #001-022-16; RD 5.5-7 Zone; Joseph Hewlings, applicant/owner; CEQA categorically exempt per section 15301(e)(1)**

Principal Planner Neal presented the staff report and noted the date on the reduced set of plans should match the date on the larger plans (November 22<sup>nd</sup>). She answered questions from the Commission regarding why it does not qualify as a 50% remodel; if the addition would need a variance if they ignored the existing studio and garage with parking.

Chair Swift opened the Public Hearing.

Mr. Joe Hewling, applicant, made the following comments:

- They are outgrowing the house. They need more living space.
- They are building a new foundation and thought they should make it a two-story structure to get more value.
- They are complying with all the Planning regulations.

Ms. Susan Adams, Tamalpais Road, made the following comments:

- She supports the project.

- The addition fits nicely into the shape of the house.

Ms. Lynn Logier, Tamalpais Road, made the following comments:

- She is happy with the project. It is modest and appropriate for the neighborhood.
- This is an eclectic neighborhood.

Chair Swift closed the Public Hearing.

Commissioner Jansen provided the following comments:

- This is similar to the previous project.
- The addition fits within the neighborhood.

Commissioner Kelly provided the following comments:

- This is a charming neighborhood house.
- This is a modest addition and good for the neighborhood.

Commissioner Feffer provided the following comments:

- He agreed with what was said.
- The plans indicate a lack of impact on the street scape.

M/s, Jansen/Kelly, motion to adopt Resolution 2023-34.

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

ABSENT: Bela

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

### **3. 339 Cypress Drive; Application #23-35**

**Request for a Conditional Use Permit for two detached decks providing approximately 257 sq. ft. of deck area under construction adjacent to an existing single-family residence; AP #003-131-49; RS 6 Single-family Zone; Bruce McCurdy, applicant; Tess and Jesse owners; CEQA categorically exempt per Section 15303(e)**

Chair Swift stated this item has been continued to the next meeting.

### **4 Consideration for recommendations to the Town Council zoning amendments to implement Program 2-D (Standards for Low Impact Clustered Residential Development on Large Sites) of the Housing Element**

**A Resolution of the Fairfax Planning Commission recommending the Town Council adopt an ordinance to amend the following chapters of Title 17 (Zoning) of the Fairfax Municipal Code: 17.060 (Ridgeline Development); 17.072 (Hill Area Residential Development Overlay Zone); 17.124 (UR Upland Residential Zone). Adoption of this ordinance has been analyzed as part of the Environmental Impact Report (EIR) prepared for the 2023-31 Housing Element project.**

Planning Director Beiswenger presented a staff report. Mr. Andrew Hill, representing Dyett and Bhatia, presented a PowerPoint presentation. They answered questions from the Commission regarding the Ridgeline Map and the sites of the low impact clustered lots; if there would be any deed restrictions on clustered developments; if Dark Sky requirements apply to all new developments; how the restriction on open space functions (Section 17.072.090(h)(9)); enforcement of the Dark Sky provisions; the language regarding maintenance of fire roads; the language contained in Section 17.062; if a topographic map of Fairfax could be created depicted the Ridgelines Scenic Corridor; if all the ridgelines on OS1 (red lines) are considered major ridges; if there is a difference between “undisturbed” and “previously disturbed” land with respect to natural state; the addition of the word “ridge” to Section 17.060.050, Criteria for Review of Application, (A)(6)

and if it applies to adjacent ridges; the definition of a “major ridge”; the origin of the Dark Sky language; the definition of “seasonal lighting”; Section 17.072.060, Referral to Planning Commission, (A); if the formula for locating clustered development could result in more than the base density; how the underlying density is determined; if Section 17.072.090, Development and Design Standards, (H)(5), Emergency Access, should also address two methods of ingress and egress; why Section 17.072.090(14), Parking, limits guest parking and if this parking could be put on the roadway; clarification of Section 17.072.100(C); why is the clustered development section in the Hill Area Residential Section; if this would apply to the UR Zones; the Tree Ordinance; Fire Department determination of whether an existing fire road should remain open.

Chair Swift opened the Public Hearing.

Mr. Michael Macintosh made the following comments:

- The requirement that 75% of the site must remain in its natural state and preserved as open space is a “taking”. The Town will get sued.
- He suggested an in-lieu of development expediting process- this would make it a choice and not a “taking”.
- There will be a concentration of cars due to the clustered development.
- He discussed the two lots on Forrest Avenue totaling ½ acre that is zoned for 10 units. The slope is 63 degrees. These two lots should be excluded.

Mr. Frank Egger, Cascades, made the following comments:

- The Housing Element mistakenly lists many of the previously saved public and private open space parcels as available for clustered hillside development.
- The two lots of Forrest Avenue were purchased for public open space in the late 1960’s.
- Historic landslides have been ignored in this process.
- He urged the Commission to take time to carefully review these amendments.

Mr. Todd Greenberg, downtown Fairfax, made the following comments:

- He agreed with the comments made by Mr. Egger and Mr. Macintosh.
- There are a lot of problems with the amendments and they should not be “rubber stamped”.
- The amendments would result in huge changes and development.

Ms. Christy Delman, Oak Manor Drive, made the following comments:

- She spoke on behalf of the Heritage Oak tree on the top of Oak Manor and the Red Shouldered Hawks.
- She was concerned about ingress and egress off of Oak Manor Drive.

Ms. Mallory Geithheim made the following comments:

- These amendments should not be approved.
- She was concerned about evacuations during an emergency.

Mr. Mark Mersky, Oak Manor, made the following comments:

- He discussed the 615 Oak Manor Drive property and the 1991 Fairfax Hills Settlement Agreement.
- The agreement is still valid.

John made the following comments:

- He agreed with Commissioner Newton about the definitions. There is some ambiguity.
- Section 17.060.050(A)(1) would allow extensive tree pruning. It should be reworded. The words “extensive” and “fire hazard” should be defined.

Pamela made the following comments:

- She supports all of the public comments.
- A deed restriction requiring the 75% retention of open space is weak and vague.
- She would like to see some visual mapping.

Chair Swift closed the Public Hearing.

Commissioner Jansen provided the following comments:

- He did not want to remove the exclusion for “seasonal lighting”.
- Clustering would make development physically possible on some lots and thus counted towards the RHNA numbers.
- Clustering does not change the number of units- it is the same zoning.
- The red line on OS1 Map is the major ridgelines.

Commissioner Kelly provided the following comments:

- Placing the clustered development section in the Hill Area Residential Section seems odd.
- Some of the terminology including “property”, “lots”, “building lots”, and “land” could be improved.
- The word “property” should be changed to “project area”.
- He opposed putting an undue burden on property owners.

Commissioner Feffer provided the following comments:

- The intent is to address issues of development on hillsides and slopes.
- Amendments to Zoning Codes should not focus on specific parcels or projects.
- According to the Ross Valley Fire Authority, clustering homes is an advantage to fire agencies.
- It should be up to a neighbor, etc. to say that “seasonal lighting” is too bright or obnoxious.
- It would be appropriate to take action tonight.

Commissioner Newton provided the following comments:

- The purposes of these amendments are to preserve open space and protect the ridgelines.
- This should apply to the RS Zones.
- There is not a lot of land in town zoned as open space.
- The “seasonal lighting” language should be deleted.

Chair Swift provided the following comments:

- She referred to Section 17.060.050(A)(1) and would like the words “may be allowed” as opposed to “shall be allowed” with respect to reducing vegetation that may be a fire hazard.
- She appreciates the incorporation of Dark Sky standards and wants to see these standards apply everywhere.
- She wants to make sure clustering does not add to the already existing constraints in the community.
- She does not want to restrict parking to one guest spot per five units. She wants to reference the Parking Code Section.
- She would like to take out the word “major” when referring to ridgelines.
- She would like to delete the “seasonal lighting” language.

Chair Swift asked for a straw poll regarding the “seasonal lighting” wording. It was the consensus of the Commission to delete this language.

Town Attorney Coleson recommended the following revision to Resolution 2023-77: “Adoption of this Resolution is consistent with the EIR prepared in conformance with the California Environmental Quality Act (CEQA)”. She pointed out that a recommendation to the Council on Zoning Code Amendments needs a two-thirds vote of the body and anything less is a negative recommendation.

M/s, Newton/Kelly, motion to adopt a Resolution of the Fairfax Planning Commission recommending the Town Council adopt an ordinance to amend Title 17 (Zoning) of the Fairfax Municipal Code to update Chapter 17.060 (Ridgeline Development); 17.072 (Hill Area Residential Development Overlay Zone); 17.124 (UR Upland Residential Zone) as amended by the Town Attorney.  
AYES: Feffer, Jansen, Kelly, Newton, Chair Swift  
ABSENT: Bela

The Commission took a 5-minute break.

## **Discussion Items**

### **5. Study Session: Zoning Amendments for Workforce Housing Overlay (WHO)**

Planning Director Beiswenger stated the intent of this Study Session is for the Commission to provide input. Staff will present a revised document to the Commission in January.

Mr. Andrew Hill, representing Dyett and Bhatia, presented a PowerPoint presentation. He and staff answered questions from the Commission regarding the requirements for living in workforce housing; if there are income restrictions; if the units have to be mixed-use; if a parcel owner could demolish a business and build housing; if the map of property under consideration was based on owner interest; if there is a procedure that would allow the overlay to apply to a site; chart of the heights and conditions that must be met that would allow for a maximum building height; if there is a structure in Fairfax that is 58-feet high; if a State Density Bonus project would get one additional story (up to 38 feet high); if any property in a Commercial Zones would be eligible to apply; if these numbers could be modified for Fairfax; performance standards for new commercial uses; why would they want to provide more than what State Density Bonuses allow; what is the purpose of this ordinance; if HCD would be certifying the Housing Element prior to the adoption of these ordinances; commitments to income levels and deed restrictions; if the Town can require prevailing wages.

Chair Swift opened the meeting to public comments.

Mr. Michael Macintosh made the following comments:

- He understood the concern that the State could come in and impose its own rules and regulations.
- They need to ask: Why are we doing this?
- They do not want to lose the Town's commercial property.
- Affordable or workforce housing needs to be subsidized through a State program.
- They should be looking at smaller parcels that could accommodate a series of mini or transient homes.

Mr. Todd Greenberg made the following comments:

- Policies being implemented are forcing people to move.
- This is a rapidly changing landscape with respect to housing legislation and there will be many legal challenges.
- He asked the Commission to think about the future and create more balance.

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

- They should not allow any loophole for developers to seek non-prevailing wage labor forces.
- Town ordinances must allow for the implementation of the RHNA numbers without relying on State bonuses.

Mr. Frank Egger made the following comments:

- They should be focusing on providing low-income housing for Fairfax workers that make under \$60,000 per year.

- Fairfax depends on Sales Tax Revenue and he was opposed to reducing commercial areas to provide housing.
- The elimination of the words “small Town character” from the General Plan was a mistake- now everyone wants to create something else.
- He is concerned about the height provisions and subsequent visual impacts.

Chair Swift closed the meeting to public comments.

Commissioner Feffer provided the following comments:

- He would like to know what other jurisdictions are doing.
- They can adopt something that is not as generous as State regulations.
- He did not want to lose commercial spaces and encouraged mixed-use development as opposed to turning commercially zoned properties into 100% residential.
- He would support using an overlay concept to help develop some of the funky lots that would not get developed under the standard zoning.
- He supported the use of prevailing wages.

Commissioner Jansen provided the following comments:

- The thing that is fundamentally wrong is that the bonus creates taller buildings instead of finding more infill for horizontal capacity.
- The additional height is only allowed if the housing is built over commercial so it would not serve the RHNA numbers.
- The limit should be 35 feet while only allowing overruns for elevators or stairs with a setback from the street.
- The Town should allow a height that is slightly less than what the State allows.

Commissioner Newton provided the following comments:

- She supports more affordable housing.
- She wants to protect residents who live near commercial areas from disruptions.
- They should be shooting for much lower income numbers and keeping the height down.

Commissioner Kelly provided the following comments:

- They will never get commercial spaces back or see them filter into residential neighborhoods.
- There are no buildings in Fairfax over three stories or 40 feet.

Planning Director Beiswenger thanked the Commission for the input.

## **Minutes**

8. Review and approval of the minutes from the November 29, 2023 meetings

Chair Swift opened the meeting to public comments.

Mr. Michael Macintosh discussed a Councilmember’s comments about the Council minutes.

Chair Swift closed the meeting to public comments.

M/s, Swift/Kelly, motion to approve the November 29, 2023 minutes as corrected.

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

ABSENT: Bela

## **Election of Chair and Vice Chair**

M/s, Swift/Feffer, motion to elect Commissioner Jansen as Chair for 2024.  
AYES: Feffer, Jansen, Kelly, Newton, Chair Swift  
ABSENT: Bela

M/s, Jansen/Kelly, motion to elect Commissioner Feffer as Vice Chair for 2024.  
AYES: Feffer, Jansen, Kelly, Newton, Chair Swift  
ABSENT: Bela

Chair Swift opened the meeting to public comments.

Mr. Michael Macintosh thanked the Commission for a welcoming and engaging meeting.

Chair Swift closed the meeting to public comments.

### **Commissioner Comments and Requests**

There were no comments.

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

Principal Planner Neal asked the Commissioners if they would be available for a meeting on January 11<sup>th</sup>.

### **ADJOURNMENT**

A motion was made, seconded and unanimously approved to adjourn the meeting at 12:06 a.m.

Respectfully submitted,

Toni DeFrancis,  
Recording Secretary