

March 15, 2007 Fairfax Planning Commission Meeting Minutes

205 Scenic Road; Application # 06-45

Continued consideration of a request for an Excavation Permit to stabilize a landslide on the property; and request for an Encroachment Permit to address an un-permitted on-grade path within the right-of-way; Assessor's Parcel No. 001-121-79; Residential Single-family RS 6 Zone; Zeina and Tiziano Grifoni, applicants/owners; CEQA categorically exempt, § 13304, 15305(b) and Public Resources Code 21080(b)(3).

Planning Director Welsh gave the staff report.

Commissioner Madsen clarified with staff that some of the improvements are along the property frontage within the Scenic Road right-of-way.

Commissioner Hamilton asked for clarification on staff's recommendation. She asked if staff's recommendation is the solution including significant off-site improvements on Fir Trail or the alternative solution as suggested by the Town Engineer which is entirely in the right-of-way.

Director Welsh indicated that the solution requiring the extensive off-site improvements was proposed by the property owner's engineer. She indicated that the suggested alternative solution by the Town Engineer also requires off-site improvements.

Commissioner Hamilton informed the other commissioners that she is having difficulty with the project engineer's drainage solution because the owner would have to get so many neighbors to agree to it and that is just not realistic.

Planning Director Welsh advised the commission that the Town Engineer's solution only involves the public right-of-way and therefore, the owner would only have to deal with the Public Works Director. She went on to state that it is easier to establish a nexus between the impacts of the parking deck on the drainage problem and the Town Engineer's concept that it is to establish a nexus between the parking deck and the Fir Trail drainage solution.

Chair Meigs questioned the total amount of excavation and fill for the project indicating that she sees different amounts throughout the submittal. Nowhere is there listed the total amount of excavation and fill. She indicated that the commission usually approves a specific amount of material being moved for excavation permits.

Director Welsh indicated that the February 12th Town Engineer's memorandum estimated that 50 cubic yards was being moved, the march 21, 2005 memorandum specified another 25 cubic yards and the site plan itself in 2002 estimated 25 cubic yards. These excavation amounts were based on the assumption that only one tree was being removed, no new stairs were being constructed and no retaining walls were being constructed. Therefore, one can assume, based on these facts, that the excavation and fill exceeds 100 cubic yards.

Chair Meigs asked if there is any way to determine the actual total amount of excavation and fill that have occurred on the site.

Director Welsh state that there has been a cumulative disturbance of the site that has never been quantified. However, staff can add a paragraph to the letter of action, if the project is approved, that clarifies the commission's authority to act on the excavation permit.

Chair Meigs asked staff how they determined that the Fir Trail drainage solution was feasible when the owner would have to work with and gain the approval of so many different neighbors.

Director Welsh indicated that staff is aware of the many difficulties in getting an entire neighborhood to buy into a project like this which is why the Town Engineer proposed the alternate drainage remedy which would only involve the public right-of-way. She finished by stating it may be less expensive to do the project engineer's proposal which would work if negotiations with the neighbors can be accomplished.

Chair Meigs asked staff for clarification on whether this is primarily and drainage problem or an erosion problem and Director Welsh answered that it is complicated drainage and erosion problem.

Tiziano Grifoni, the owner, stated that he bought the property and started building the house in 2003. He received his certificate of occupancy in 2005. There was no requirement on the original building permit for a deflection wall. During the 2005 flood the property sustained damage from the undersized culverts owned by both the Town and Fir Trail property owners uphill from his site. After the flood he brought in 50 cubic yards of rock at a cost of \$25,000 to stabilize the property and protect his home. Now he just wants to complete the erosion control work which will be a benefit for both 205 Scenic and the neighbors at 199 Scenic. Now he is being asked to solve drainage problems that pre-existed uphill. The culverts owned by the town and the Fir Trail neighbors have not been maintained or improved for a number of years and he is being asked to pay to improve them because of the neighbors at 199 Scenic Road. These neighbors have presented no evidence of damage to their property while he and his wife filed a claim with FEMA. The owners of 199 Scenic have not even presented receipts for damage. Additionally, 199 Scenic has fences that illegally encroach onto his property and the public right-of-way. The owners of 199 Scenic say there are safety and visual impact problems created by our slide repair but the neighbor's safety is of the Grifoni's utmost concern. They have installed and proposed extensive plantings to solve the visual impacts of the slide repair. They agree to install a curb to direct future water down Scenic Road to the natural drainage swale. Mr. Grifoni wondered if Scenic Road would have washed out if his car-deck had not been constructed in this location. He asked the commission why the town just replaced the culvert on Fir Trail at the same 24 inch size if that size is inadequate (note: the Fir Trail culvert was not replaced by the town. A new trash grate was installed by an uphill owner which may have involved replacement of the culvert????check in field). He questioned who will maintain off site improvements if he installs them and who will be liable if they fail.

Commissioner Hoffman asked if the landscape plantings are native.

Mr. Grifoni stated that he worked with a landscape contractor to development the landscape plan.

Commissioner Hoffman stated that he wants the landscaping plantings to be native and he does not believe that they are.

Mr. Grifoni stated that he thought that at least some of the plants were natives but he indicated his willingness to plant whatever the Commissioners want him to plant.

Chair Meigs asked the owner to describe the damage that occurred to his property.

Mr. Tiziano informed the Commission that the water dug a 4 to 5 foot deep gully across his property from Scenic Road down to Tamalpais Road. The water removed all of the topsoil so in 2006 he began replacing the topsoil with riprap.

Chair Meigs asked him what happened with his FEMA claim and Mr. Grifoni answered that it was accepted.

Chair Meigs asked if there is an estimate of what the project engineer's off-site drainage solution would cost and what the Town's liability for the improvements would be.

Director Welsh answered that she will have to direct the liability question to Public Works Director Johnson and she can also address whether or not the Town would have to accept the improvements.

Commissioner Madsen indicated that he disagrees with the owner's statement that the existing drainage problems created this situation and that the parking deck saved the road. Construction of the parking deck decreased the area where the water could flow from 30ft to 5ft and appears to have channeled the water towards 199 Scenic instead of it flowing across the 205 Scenic site. He indicated that in his opinion the parking deck may have exacerbated the situation. The installation of the rock riprap across an area that previously was trees and bushes has definitely had a visual impact for the neighbor. At the last meeting several of the Commissioners expressed concern over the visual impact of the riprap. The proposed curb would decrease the amount of water flowing onto the site so some of the rocks could be removed and then it would appear as if the owner were making some effort to be consideration to the neighbors.

Mr. Grifoni stated that he has been considerate by proposing to overlay the riprap with Sonoma fieldstone and by planting an additional 50 to 60 plants.

Commissioner Madsen pointed out the other unapproved improvements creating a visual impact for the neighbor such as the lights on the stairway and pathways that were installed. He then questioned the owner's attempt to address the neighbors concerns when he wants to keep all the riprap while he is not the one that has to look at it.

Mr. Grifoni informed the Commission that the pile of rock in the right-of-way will be removed but the rock on-site has to stay because it is stabilizing the hillside.

Chair Meigs asked staff to address the remaining visual impacts and Director Welsh stated that there is still a problem with the lighting on the side of the residence.

Chair Meigs verified with staff that the replacement of the lighting fixtures can be made a condition of approval of the landscaping plan.

Irving Schwartz, the owner's engineer, informed the Commission that he has made an extensive on-site and off-site reconnaissance prior to proposing the Scenic Road curb solution. As part of the report he included information of the off-site areas that were adding to the drainage problem at 205 Scenic Road. This information included suggestion for how to deal with these off-site problems. However, he never dreamed, nor was he suggesting in this report, that Mr. Grifoni should have to install and pay for them. In his opinion, Mr. Grifoni is the victim of the Town's and the private road owner's improper maintenance and care of their drainage improvements. The proper grading and replacement of the culverts on Fir Trail are the responsibility of those owners. He went on to state that he feels Mr. Grifoni should go after the Town and the Fir Trail owners to make them replace their culverts so he does not experience any more damage to his property. He indicated that he feels that a grate installed across Scenic Road, as suggested by the Town Engineer, would create a hazard for bicyclists. He stated that he finds it interesting that he served on the Measure K Committee for 6 years and none of these culverts were slated for replacement.

Commissioner Hoffman asked if the curb that is suggested will affect access to the parking deck.

Mr. Schwartz indicated that the curb would start on the downhill side of the deck and extend far enough down Scenic Road to deflect the water across the road.

Commissioner Hoffman stated that one of the letters that has been submitted states that during the flood, the water was shooting off the end of the owner's parking deck.

Mr. Schwartz stated that he was not aware of this fact and he feels that if this had occurred, he would have seen evidence of erosion directly below the end of the structure. He offered that the drainage collection curb could be extended around the perimeter of the parking deck if the water in fact flowed that way.

Chair Meigs asked if Mr. Schwartz has cost estimates for the 8 off-site drainage improvements he discusses in his report.

Mr. Schwartz stated that he did not cost these out because he could not fathom that the town would require this one property owner to fix all the uphill drainage problems.

Chair Meigs asked how tall the curb would have to be and how far it would extend down Scenic Road.

Mr. Schwartz stated that these types of curbs are typically 6 inches high and this curb would extend 2 to 3 feet from the deck????

Chair Meigs asked Mr. Schwartz if he calculated how much water comes down the hill and has he determined this amount of water will not jump the curb.

Mr. Schwartz reiterated that his investigation of the off-site situations was limited because he did not believe the Town would require the owner to fix these off-site, pre-existing problems.

Commissioner Madsen stated that if only suggestion number 8, the curb, is implemented, it could throw additional water down Scenic Road and create other drainage problems.

Mr. Schwartz answered that due to the street cross slope the curb, if it extends as far as he recommends, will push the water back into the channel.

Commissioner Hoffman asked if the main source of the water which washed out 205 Scenic came from Fir Trail and if re-grading will fix this problem.

Mr. Schwartz stated that re-grading will help but the culvert on Fir Trail would still need to be increased in size to stop water coming from Fir Trail from being a problem on Scenic Road.

Commissioner Hoffman asked Mr. Grifoni if he has any knowledge of the water shooting off his parking deck during the flood.

Mr. Grifoni answered that he was out of town and did not get back until the twelfth. He reiterated what his engineer had said, that there was no evidence of erosion around the rear of the deck.

Building Official Lockaby stated that he did not observe the water flow in the area during the flood, but to his knowledge, the water came down Scenic Road because the culvert on Redwood Road plugged. [Of the water coming down Scenic 20% went off the embankment of the road just above the 205 Scenic carport. The remaining 80% of the water came down and merged with the water coming down Fir Trail due to the culvert on Fir Trail being plugged. The water flowing down from Fir Trail forced the total flow off the embankment at 205 Scenic Next to 199 Scenic creating the gulley on the 205 Scenic Road property.](#) There was no evidence he could see, that water flowed up onto, and off the rear of, the car deck.

Chair Meigs asked the Town Engineer if he has any comments.

Town Engineer Wrynski stated that he would like to respond to Mr. Schwartz's report eventually and even though he has not been very involved in the landscaping plan he would like to make a recommendation. If pipes with holes could be installed amongst the riprap and then be filled with dirt and planted, the plants might have fighting chance of surviving. He advised the Commission that he previously discussed the drilled pier plan with Engineer Settgast and the rocks have not been placed on the site in a manner that is consistent with the Settgast report. His report recommended that the rocks be keyed into bedrock and they were not. Mr. Wrynski stated that he and Mr. Settgast then met in the field and agreed the rocks could be braced with piers and grade beams. One of the piers would need to be located above the house with another lower pier wall lower on the site, adjacent to house. The lower wall would need to have additional riprap bracing placed up against it to provide additional stabilization of the hillside. He agreed with Mr. Schwartz's report that the drainage improvements, 1 through 7, listed in his report, should do a good job of taking care of normal flows. The fact that Fir Trail carries as

much water as it does, tells him that it was poorly designed in the first place. With regards to responsibility for Mr. Grifoni's Slide, the Town Engineer stated that he believes the car deck did block the water that used to sheet flow over the 205 Scenic site. He stated he knows the car deck did not create the water flows but he believes it is obstructing and redirecting the flows now. He went on to state that he believes the flagstone steps next to the deck helped deflect the water away from the 205 Scenic residence and towards 199 Scenic. He finished by stating that he believes if the flagstone steps had not been there, the water would have flowed straight downhill and caused much more damage to 205 Scenic Road.

Commissioner Hamilton asked Town Engineer Wrynski to comment on the proposed curb.

Town Engineer Wrynski stated that he would not recommend approval of the curb. The curb would have to go through the area where the flagstone stairs are and the ability of the curb to stop the types of flows experienced in this area is questionable to say the least. For one thing, there is no clear calculation of how much water currently flows down Fir Trail and even if the curb was able to contain it, he would be surprised if the water would go across the road and into the culvert. He believes most of the water would continue down Scenic Road. He finished by stating that if the 24 inch pipe on Fir Trail cannot contain the water flow, the curb will not contain it.

Commissioner Lacques asked if the March 12, 2007 plan is adequate.

The Town Engineer explained that if the rock and pier and grade beam installation is supervised by Engineer Settgast, the plan is adequate to stabilize the site.

Commissioner Lacques asked if Engineer Settgast had specified how deep the piers need to be drilled and the Town Engineer indicated that he would have to check the soils report but they were probably required to be drilled 6 to 7 feet deep into rock

Commissioner Lacques asked the Town Engineer how important the plantings are to stabilize the site.

The Town Engineer answered that plantings are only useful to help retain the top 6 to 8 inches of soil, for anything deeper than that you need to place rock.

Commissioner Hamilton stated that if the existing rocks on the site are inaccurately placed, how will the Town ensure the rocks are in the correct location in the future?

Senior Planner Neal stated that the Town Engineer has required that project engineer Settgast be on site to determine the hand placement of any additional rock.

Commissioner Hoffman pointed out that there is a discrepancy between the landscaping plan and the wall plan and he confirmed with the Town Engineer that additional rock is required above the lower wall to complete the plan.

Commissioner Madsen pointed out that the Commission has not even discussed the on grade encroachments which the Town Engineer has stated may be contributing to the erosion problems. Diana Purdue, owner of 199 Scenic Road, informed the Commission that she and her husband paid \$3,000 to have the mud removed from their property after it washed onto their property from 205 Scenic Road. After the storm, she begged workers placing the rock next door not to do it. She begged them not to plead financial hardship in the future when she brings her claim to the Town. She stated that when this residence was originally being reviewed a local architect made the presentation for the out-of-town owners. At the time the architect indicated that the owners planned to live in the residence but the lot went up for sale and the new owners bought the lot and built the house. She stated that she wishes she could understand what finally convinced Town Engineer Wysinski to approved the current submittal. She expressed concern that the information for tonight's meeting was not ready until Tuesday morning. She finished by stating that she wants the rock removed from the site and wants the owner of 205 Scenic Road to building a wooden wall, parallel to the side property line, to deflect the water away from her property and she wants the wall to include wooden planters. The wooden planters could then be landscaped.

Commissioner Madsen asked Ms. Purdue to address the proposed landscaping plan.

Ms. Purdue stated that she does not like Cypress and the bottlebrush will not grow. She stated her belief that with the rock in place, nothing will grow on the site to help restore her wooded view.

Commissioner Hoffman commented that if topsoil can be placed within the riprap so that the rocks are mostly covered and then the soil is planted with vegetation, the hillside can be made to look more natural. He suggested that the plastic planting pipes be replaced with biodegradable cardboard pipe and that the pipes be planted with native plant material.

Commissioner Lacques stated that he feels the curb proposal is reasonable and he likes Commissioner Hoffman's ideas for the landscaping.

Chair Meigs stated that she would really like to see this project go forward but she is not crazy about the curb idea because the Town Engineer will not endorse it. She thinks the Town Engineer's suggestion for the grate across the road is a good one but she is concerned about the Town's liability.

Director Welsh advised the Commission that she has heard comments from the owner of 199 Scenic Road and 205 Scenic Road that seem to indicate they may have reached agreement on one portion of a solution to this problem. She stated that perhaps the landscaping plan could be approved as submitted, the drainage could be installed as proposed and then a wall could be built along the side property line between the two properties.

I don't have in my notes who suggested the continuance.

Chair Meigs indicated that it would be helpful, if the project is continued, for the Town Engineer and Mr. Schwartz to get together and see if there is a way to construct the curb so that it will not cause a problem

Commissioner Madsen indicated that the Commission should ask the applicant if he is willing to construct the wall proposed by the neighbor.

Mr. Grifoni informed the Commission that he does not want a continuance and he requested that the Commission make a decision tonight.

M/S, Hamilton-Madsen, motion to continue application # 06-45 and direct the applicant to do the following:

Insert the language from Ann's letter of action.

64 Porteous Avenue; Application # 07-07

Request for a Use Permit and Front Setback Variance to demolish an existing 1,711sf single-family residence, a 257sf cottage and a 181sf garage to construct a 2,492sf residence and 440sf carport; Assessor's Parcel No. 002-041-09; Residential RD 5.5-7 Zone; Jeff Kroot, Architect, applicant; Michael Ambrosini and Diane Marchant, owners; CEQA categorically exempt, §15303(a) and 15305(a).

Senior Planner Neal gave the staff report.

Architect Jeff Kroot addressed the design of the residence, indicated that it is located further from two of the large oaks on the property than the existing house which is in a dilapidated condition and the arborist has indicated the new house will not impact the trees. He stated he did not bring his green building notes with him but the owners plan to install all energy efficient appliances and double paned windows as well as installing green insulation.

Jutta Mead, owner of 66 Porteous Avenue, indicated she thinks the design of the left side of the proposed residence is great. However, she is planning to add onto the right side of her residence in a few years. Therefore, the applicants will not have the view from the left side of their house they think they will. She indicated she thinks the house is too long and commented that it does go back quite a distance on the property.

Commissioner Hoffman indicated that for a house of this size he expects to see more green building techniques used. He is not happy that the Floor Area Ratio has been maxed out, and in his opinion, the house is too large for the property. He also stated that the mass of the house is not appropriate for the neighborhood and the house has been shoehorned in amongst the oak trees, pushing the buildable envelope in every way. Commission Hoffman disagreed with the arborist report, commenting that even though the foundation is a drilled pier and grade beam, any new impervious surface will prevent the existing heritage oaks from getting moisture. Lack of moisture in areas where the trees are used to getting it can cause oaks to shunt their roots. He stated he appreciates that the landscape surfaces are pervious but he would like to see a majority

of the plants used for the landscape plan be natives. He finished by stating the submitted landscape plan appears to only contain a few token native plants.

Commissioner Madsen stated that this is the second house the Commission has seen in a few months in excess of 2,000sf in size. This one has a formal dining room, three bedrooms and a study. The windows are looking down on the neighbor and the height has been maxed out at 28.5ft. The design does not recognize the impact of such a large house on either of the neighboring homes,

Commissioner Ketcham indicated the house at 62 Porteous Avenue, next door to the proposed house, has always been one of his favorites because it is set so far back from the roadway and the front yard is open, without an accessory structure such as a garage. He agreed that the north face elevation is large but it will soften with age. He indicated he does not really like the carport and asked staff what the reason was for the covered parking requirement.

Senior Planner Neal stated she is not sure why the covered parking ordinance was originally adopted since it happened in the 70's. Now, many people like to keep their vehicles covered so they are not exposed to the elements.

Commissioner Ketcham commented he is concerned with the impact of the carport on the oaks. He is not pleased the house has been pushed to the edge of all the maximum permitted parameters for this zone, but it is permitted. He finished by stating that the large setback the house maintains results in the structure's massiveness not being so apparent, but he would prefer the design if the carport was not out front.

Commissioner Hamilton agreed that although the house seems large for the site it does meet all the requirements of the zone district. Therefore, she does not feel comfortable, at this point, requiring modifications of a project that complies with the requirements.

Commissioner Madison cautioned his fellow commissioners that in the past, when structures that are built out to the maximum allowed by the code have been constructed, their large size has always shocked the Commission. He advised them that if this proposed home gets built as currently designed, in his opinion it will look out of scale with the project site.

Senior Planner Neal informed the Commission that it seems some of them are feeling uncomfortable with their legal right to require project changes. She pointed out that the reason the project requires a Use Permit is because the parcel does not meet the minimum 60ft width requirement and she reminded the Commission that a Use Permit is a discretionary permit. She read from the Town Code Use Permit Chapter, "The purpose of the conditional use permit is to allow the proper integration into Fairfax of uses which may be suitable only in certain locations in the town or is a zone or only if the uses are designed or laid out on the site in a particular manner. In consideration of an application for conditions use, the Planning Commission shall give due regard to the nature and condition of all adjacent uses and structures, to the physical environs of the proposed use and to all pertinent aspects of the public, health and general welfare."

Commissioner Petty said her sentiments echo those of her fellow commissioners who feel the structure is too large for the project site. The design does not feel like Fairfax to her, although she does like the porch. She finished by stating that she likes the idea of the porch but would prefer the design if the carport were removed, maybe with the cars hidden at the back of the house like other older homes in town.

Architect Kroot informed the Commission that at first, the applicants wanted to retain the existing garage which is located on the rear and side property lines. However, they were advised by staff that since it was a new house, the proposal should comply with the code as much as is possible. Therefore, they designed the carport at the front of the residence.

Commissioner Lacques said he agrees the residence size and height has been maximized and it is an imposing structure. He stated he does not have a problem with the carport at the front of the residence and it is not as obtrusive as the residence because it is only 15ft in height. He asked staff if the Town can retain an arborist to perform an objective review of the project arborist's report.

Senior Planner Neal indicated that that would be possible, but the Commission should ask the applicant's if they are willing to pay for a second opinion. She indicated it is not appropriate for the taxpayers to pay for anything having to do with a private property owner's project.

Commission Madsen stated the project complies with the letter of the law but not the spirit of the law.

Architect Kroot pointed out the footprint of the proposed house is no larger than the footprint now. He stated his clients are willing to give up the carport and to take another look at the trees and the landscaping. He finished by advising the Commission that there are homes as least this large in the neighborhood.

Commissioner Hamilton asked staff if the commission is ever provided with information or analysis of home sizes in different neighborhoods.

Planning Director Welsh answered that studies or analysis of this type are easily obtainable by staff and obtaining it is very time consuming. However, the applicant could obtain information on house sizes from the Marin County Tax Assessor.

Senior Planner Neal reminded the commission that if they request that type of information from the applicant, they should make it clear that they want home sizes in the neighborhood on similar sized parcels.

M/S, Hoffman-Madsen, motion to deny application # 07-07 based on the following findings:

1. The house, as proposed, is out of character with the existing neighborhood in mass, size and bulk, relative to the lot size.

2. There is not adequate information on the oak trees to ensure they will not be impacted by the construction of the house. Therefore, the house may pose a health risk to the trees which are important to the neighborhood.
3. The 6ft setback maintained by the carport does not comply with the Town Code setback requirements.
4. The Commission offered to continue the application for more information and the offer was rejected by the applicants.

AYES: Madsen, Petty, Hoffman, Lacques, Ketcham, Hamilton, Chair Meigs

NOES: None

Acting Chair Lacques adjourned the meeting at 12:15PM.