

TOWN OF FAIRFAX  
PLANNING COMMISSION

MEETING MINUTES

7:30 PM, THURSDAY OCTOBER 16, 2008

FAIRFAX WOMEN'S CLUB, 46 PARK ROAD

**CALL TO ORDER**

**ROLL CALL**

All the commissioners were present.

**APPROVAL OF AGENDA**

Moved by Lacques, and unanimously passed to approve the Agenda.

**PUBLIC COMMENTS ON NON-AGENDA ITEMS**     None.

**MEETING PROTOCOL**

Chair Meigs read the protocol rules.

**PUBLIC HEARING ITEMS**

**1. 51 Meernaa Avenue; 08-43**

**Request for a Use Permit and a Parking Variance to convert a portion of an existing attached garage into a playroom increasing the residence living space square footage and to convert a 480sf accessory storage structure into living space with a full bathroom; Assessor's Parcel No. 002-092-19; Residential Single-family RS 6 Zone; Keith Hennessey, applicant/owner; CEQA categorically exempt, § 15301(a).**

SeniorPlanner Neal gave the staff report explaining the reasons a Use Permit could be granted and the purpose of Conditional Use Permits. Ms. Neal noted that the use must not invite clients to the property or change the character of the area; that it will not be rented out and a Deed Restriction must be recorded to this affect.

Ms. Neal discussed the parking variance, noting that the current spaces are substandard and in tandem. She said that the Police Department is concerned that the accessory

structure might become a living unit in time, and oppose the project because there would then be inadequate parking.

Ms. Neal noted that the parking proposal does not comply with Town Codes, which she explained further, and thus staff does not support the parking variance based on the findings and conditions in the staff report.

In response to Commissioner Lacques, Ms Neal said that the addition could be used as a bedroom, which concerns the Police Department. Furthermore, two on-site parking spaces are necessary.

In response to Commissioner Ketcham, Ms. Neal said that staff considered that sufficient space lay between the property lines and the structures to render a survey unnecessary.

Ms. Neal and Commissioner Hamilton discussed parking on the property.

In response to Commissioner Ketcham, Ms. Neal said that a survey could be required if the Commission so wished. She discussed the price of surveys with the Chair.

Keith Hennessy, applicant, discussed parking, and confirmed that the addition would not be used as a rental unit, but as a playroom and an office, for which he will complete the Deed Restriction.

In response to the Chair, Ms. Neal said that the structure can only be used for storage unless a Use Permit is granted.

In response to Commissioner La Motte, Ms. Neal said that if the variance is denied, the garage would remain, even though it does not conform to legal garage space.

Commissioner Lacques and Mr. Hennessy discussed the length of the driveway.

Commissioner Hamilton suggested a change to the design that might render the parking variance unnecessary. However, Ms. Neal noted that the design change would result in the stairs encroaching in the parking area, and that parking space could not be reclaimed if the area is converted to living space.

Commissioner Ramsay discussed parking, further. He believes that the required number of spaces will exist if the garage conversion is allowed, and a further space should not be retained on the basis that it might be necessary at a future date. He favors the parking variance and allowing the use of space as the applicant wishes.

In response to Commissioner Ketcham, Ms. Neal confirmed that the proposed project includes a bathroom and with a full bathroom the installation of a hot plate would render the structure a second unit, for which an additional parking space would be required.

Commissioner Ketcham and Ms. Neal discussed the outcome of a sidewalk being installed in future in relation to the present parking conditions.

In response to Commissioner Goyon, Planning Director Ann Welsh explained the meaning of a Conditional Use Permit and the reasons staff believes this project should be allowed a Conditional Use Permit. The Commissioner expressed concern that the unit would become fully habitable, which Ms. Neal said the Commissioners should take into consideration.

Commissioner Hamilton and Ms. Neal discussed changes to the plans to widen the driveway.

In response to the Chair, the applicant said that large trees would be affected if the driveway were widened.

Elaine Machete, 55 Meernaa Avenue, said that she will suffer loss of privacy because there will be a direct view into her backyard from the accessory structure. She is also concerned that the space will become a living area once the bathroom is installed, and that a Deed Restriction is hard to enforce. Furthermore, parking is already a problem in the area, which this project will exacerbate.

In response to the Chair, Ms. Neal explained how a Deed Restriction could be enforced.

Louise Fuge, 56 Meernaa Avenue, shares the same concerns as the previous speaker: That parking is tight and the structure will become a residence.

In response to Commissioner Hamilton, Ms. Neal said that plumbing drawings were not included in the plans for the accessory structure when it was built in 1975.

In response to Commissioner La Motte, Ms. Neal said that a Use Permit would be needed if the structure were to become living space, and that the present application could be approved without plumbing or for a half bathroom only. However, this would necessitate a change to the Deed Restriction language.

General discussion followed on traffic and the possibility of the structure becoming living space. Commissioner Lacques believes that the applicant is asking for too much by way of the use of the accessory structure for living space and for conversion of the garage. He noted that the downstairs study could be converted to a bedroom. He opposes the project, but noted that plumbing is not necessary if the use is as an office or play space.

Commissioner Ketcham agrees that the office could be converted to a bedroom, and that it is unfair to put the onus on neighbors to insure the Deed Restriction is enforced. Furthermore, he believes that a survey is necessary to ensure there is sufficient parking for a second unit.

Commissioner Ramsay said that the structure could be useful habitable space without a bathroom, since plumbing would indicate a more intensive use. He does not believe the owner should be denied the use of the building as habitable space, and he is in favor of the parking variances

Chair Meigs is in agreement with the increase of space and the conversion of the structure, and indicated that a Deed Restriction should solve the concerns of the neighbors. However, she agrees with staff that the parking variance should be denied.

Commissioner La Motte noted that the structure would convert from one non-conforming space to another, and she is concerned that the homeowner is being held accountable for a possible future illegal use of the building. She favors the project, including the Deed Restriction.

**MOTION:** Moved by Lacques to deny Use Permit and Parking Variance No 08-43, at 51 Meernaa Avenue, based on the following reasons: The recommendations of the Police Department; the nature of the neighborhood and limitations on parking and traffic; the project as proposed could create a four-bedroom house with only two parking spaces or a second unit with only two parking spaces, where three are necessary; the proposed study addition is within the setback area, which would overburden the property and neighborhood.

The motion died because of the lack of a second.

**MOTION:** Moved by Ketcham, second Goyon, and passed, to approve Use Permit and Parking Variance No 08-43, at 51 Meernaa Avenue with the following conditions: That the Use Permit be granted to allow an art studio to be made habitable without plumbing; a Deed Restriction be recorded to prevent further development; that a Parking Variance be granted for reasons that the existing conditions will not change; that additional safety hazards would not be created by the granting of the Variance.

Commissioner Lacques added the amendment that the existing bathroom plumbing and fixtures in the artists studio will be abated, and La Motte added the condition that screening or landscaping be added between this property and the neighboring property, if feasible, to soften the view.

**AYES:** Goyon, Ketcham, La Motte, Ramsey, Hamilton

**NOES:** Lacques, Meigs.

Chair Meigs advised the audience of any citizens right to appeal the Commission action if they are dissatisfied within 10 days.

## **2. 177 Frustuck Avenue; 08-44**

**Request for a Use Permit to convert an uncovered parking deck to an enclosed garage structure which was previously denied by the Town Council on appeal;**

**Assessor's Parcel No. 003-193-02; Residential Single-family RS 6 Zone; John Owens, applicant/owner; CEQA categorically exempt, § 15301(e).**

Planner Neal gave the staff report. She noted that a previous application had been denied by the Planning Commission, but approved on appeal with amendments, which she discussed in more detail.

Ms. Neal explained how the Slope Ordinance affected this project, and she said that the proposed garage needs a Use Permit for reasons she explained. She noted that properties that slope down from the road are exempt from the covered parking requirement. She went on to state that staff recommends the Commission uphold the decision of the Town Council and deny the garage based on the findings contained within the staff report, which include the approval of the garage at this stage would be inconsistent with the previous decision made by the Town Council.

In response to the Chair, Ms. Neal noted that the conditions requested by the Town Council have been met with the exception of a recorded Deed Restriction that was not undertaken. However, the applicant has indicated that he would submit the Deed Restriction.

In response to a Commissioner, Ms. Neal said that staff had not deemed story poles necessary, but that they can be erected should the Commissioners wish.

In response to Commissioner Goyan, Ms. Neal explained the changes to the design, noting that the garage has been redesigned and the parking pushed away from the neighboring lot.

In response to Chair Meigs, Planning Director Ann Welsh explained that a Use Permit is being sought on the advice of the Town Attorney. He thought this a more suitable action because the previous project had been finalized.

Commissioner Hamilton and Ms. Neal discussed lot size, with Ms. Neal noting that Use Permits are often sought due to the small size of lots in town.

In response to Commissioner La Motte, Ms. Welsh said that a new project has been presented, but the Commission should bear in mind the conditions of the previous permits should they wish to change them.

General discussion followed on project applications.

Following discussion between Commissioner Lacques, the Chair and Attorney Mayer, who was representing the applicant, the Chair said that she can remain impartial to the project and would continue to act as Chair.

Attorney Mayer, representing the applicant, confirmed that this is a new hearing and the conditions have changed. The neighbors now support the project, and he discussed other

reasons why the Use Permit should be granted, noting that other homes in the neighborhood enjoy the use of a garage. Furthermore, the garage will not affect the use of the project and a garage is desirable for reasons of safety.

In response to the Chair, Mr. Mayer discussed the reasons he believes the new structure should not be considered detached from the house.

Planner Neal and Commissioner Ketcham discussed the Deed Restriction pertaining to the storage unit under the parking deck.

Commissioner Goyon and Mr. Mayer discussed the construction of the foundation, and Chair Meigs discussed the height of the garage with the applicant.

In response to Commissioner Hamilton, the applicant discussed the redesign of the project, noting that this is a lower structure and there is sufficient space for storage at the rear of the garage and no loft is proposed. He discussed storage with Commissioner Ketcham.

In response to the Chair, Planning Director Welsh discussed the reasons why the applicant's Attorney advised that the structures should be considered attached. These reasons are recorded in the staff report and Ms. Welsh noted that the roof and foundation of the parking are attached to the house.

Senior Planner Neal noted that the Code defines detached structures, only, not attached.

Commissioner Hamilton noted that the Council have already stipulated that a garage was not to be constructed, and Ms. Welsh said that the Town Attorney advised that this project should be considered as a new application.

Commissioner Lacques noted that a project had been approved with a cardeck only.

The hearing was opened for public comment.

Niccolo Caldararo, 165 Frustruck, opposes the project because the lot is not conforming and the building is going to be taller than originally approved; that it will be larger and block views of Mount Tamalpais. He believes that if exceptions are continually being made, then the laws are ineffective, and that a decision has already been reached. Other homes have carports and those with garages tend to be screened. He believes that the house is too large for a small lot.

William Madsen, 109 Porteous Avenue, said that the project has changed, and he noted that a larger structure has been built next door to the applicant since the original application was submitted. He supports the project.

Shane Deal, 44 Belle Avenue, supports the project, as do many people in the community. It is a new project and design, and he noted that the project does not require a variance. It will improve the owner's life.

Frank Egger, 13 Meadow Way, discussed the problems associated with the project in the original application when a garage was proposed, and he noted that the conditions allowing only a parking deck should remain in place.

In response to the Chair, Planning Director Welsh discussed the planning process advised by the Town Attorney for this project.

General discussion on the application between staff and Commissioners followed. Staff advised the Commission that they need to make findings in order to approve the project.

Commissioner Ramsay said that the size of the house is reasonable and that the original decision was unfair to the applicant for reasons he explained. He believes it is unreasonable to deny the garage because others have garages and the proposal is of a reasonable size and should not affect the views of the neighboring properties to a great degree.

Commissioner La Motte believes that decisions made previously should usually be adhered to, but that the Town Attorney has advised this should be considered a new project. She believes that the garage addition is modest and supports the project with the finding that a special privilege would not be granted if the garage were allowed, and noted that the project meets setback requirements.

Commissioner Goyon feels there is an obligation to uphold the previous Town Council's decision, and that the neighbors most impacted do not appear to oppose the project. He has concerns about the construction, but believes that the garage is a reasonable size. However, the decision affects the whole Town, not just the neighboring properties.

Commissioner Lacques addressed view impacts, noting that the site is on the hillside where a garage would be highly visible. This was considered in the earlier application when it was denied and the property has not changed. A plan was submitted without a garage, and he believes that it is important for the Commission to preserve the integrity of the planning process by not reversing a key condition relating to the success of the previous application. He supports the staff's recommendation to uphold the decision of the Town Council to approve the residence with an uncovered parking deck.

Commissioner Ketcham said that the Town Council has made a decision that the Planning Commission is now being asked to reverse, and the response previously was perhaps based on the area not being as developed as it has subsequently become. He is concerned about view impacts and believes that the decision of the Town Council should be upheld, since the decision to deny a garage was specific.

Commissioner Hamilton believes that the feelings of the neighbors have been considered, which is important in the approval process. She expressed concern that the house and garage were not considered to be detached, which would have called for a height variance to be sought for the garage addition. She is also concerned that a garage has already been denied.

Chair Meigs believes that the Town Council made a decision that a garage should not be built on the property, which should be upheld by the Planning Commission.

The Commissioners discussed the height issue.

Commissioner Goyon expressed concern that plans showing the lowered garage height were not submitted prior to the meeting to allow the Commissioners to give it proper consideration. The applicant has tried to appease his neighbors with this design, but story poles would have been helpful.

General discussion followed on the way to move forward. Commissioner Ketcham said that it is more appropriate for the Town Council to make a decision for reasons he explained previously.

**MOTION:** Moved by Lacques, second Ketcham, and passed, to deny Use Permit Application 08-44 based on staff's recommendations and adopting their findings in the Staff Report, and adopting further findings that the project will impact the view corridor because the property is a hillside development; that it contradicts the prior decision of the Town Council to allow a cardeck in lieu of a garage; that it represents a piecemeal project by presenting it separately for consideration and attempting to change the design of the project at a later hearing.

Amended by the Chair to strike the piecemeal finding, which was accepted by Commissioner Lacques.

Hamilton would like to strike the view shed; that denial is based on the understanding that the Town Council has already made a decision. Lacques believes that view findings are specific and he denied Hamilton's amendment.

**AYES:** Goyon, Lacques, Ketcham, Meigs

**NOES:** La Motte, Ramsay, Hamilton,

## DISCUSSION ITEMS

### 3. Discussion of Revisions to Draft Mixed Use Design Guidelines

The Commissioners discussed the presentation of the materials.

## APPROVAL OF MINUTES

Minutes from the meeting of September 18, 2008 will be reviewed at the November 20, 2008 meeting.

#### COMMISSIONER COMMENTS AND REQUESTS

There were no commissioner comments or requests.

#### ADJOURNMENT

Moved by Goyan, second by Meigs, and unanimously passed to adjourn the meeting at 11.10pm.

Respectfully submitted

Joanne O' Hehir  
Minutes Clerk