

*DRAFT* Town of Fairfax Planning Commission Minutes  
Fairfax Women's Club  
Thursday, December 17, 2009

**Call to Order/Roll Call:**

**COMMISSIONERS PRESENT:** Brannon Ketcham  
Shelley Hamilton  
Peter Lacques, Chair  
Shelby LaMotte  
Pam Meigs  
Peter Ramsay

**COMMISSIONERS ABSENT:** Terry Goyan

**STAFF PRESENT:** Jim Moore, Planning Director  
Linda Neal, Senior Planner  
Joanne O'Hehir, Minutes-Secretary

Chair Lacques called the evening to order at 7.35 p.m.

Approval of Agenda

Public Comments on Non-Agenda Items

No members of the public came forward to speak.

Consent Items

1. **207 Tamalpais Road; Application # 09-29: Request for an encroachment permit and fence height variance to legalize a 6 foot high fence that replaced a previously existing fence damaged in the 2005 flood; Assessor's Parcel No. 001-054-13; Residential Single-family RS 6 Zone; Joyce Lipps, applicant/owner; CEQA categorically exempt, § 15303(e) and 15305(b).**

The Chair opened the hearing to the public, but no speakers came forward.

M/S, LaMotte/Meigs, Motion to approve the agenda and Consent Item:

Ayes: Ketcham, Lacques, LaMotte, Meigs, Ramsey  
Absent: Hamilton

## Public Hearing Items

2. **161 Ridgeway Avenue; Application # 09-30: Request for a Hill Area Residential Development Permit, Setback Variances, a Parking Variance and an Excavation Permit to construct a 1,055 square foot single-family residence on a 5,374 square foot site that is crossed by Vanni Lane; Assessor's Parcel No. 001-203-08; Laura Kehrlein, Fred Divine and Associates, architect; Charles Pierce, owner; CEQA categorically exempt, § 15303(a), 15305(a) and 15305(b).**

Senior Planner Neal introduced the staff report. She noted that trees would need to be removed in order to allow construction and because the Fire Department deemed it necessary to remove eucalyptus. Ms. Neal said that a permit would be needed from the Tree Committee.

Ms. Neal discussed setbacks and the parking and she noted that uncovered parking was permitted in the front yard setback. However, she also noted that the Town Code necessitated the provision of three parking spaces and for which a variance was being requested because there appeared to be no space for the third space. Furthermore, public transportation was close by and the house would consist of just two bedrooms, so staff could recommend approval of the parking variance.

Ms. Neal discussed the Hill Area Residential Development Permit, which was necessary for the reasons she explained, including the need to minimize grading, water run-off and soil erosion.

Ms. Neal discussed the subdivision and she noted that other sites existed which were of a similar small size. The Town Engineer requested that the applicant adhered to the recommendations in the staff report. Ms. Neal noted that staff could make the findings to approve the project for the reasons and conditions laid out in the staff report.

Commissioner Meigs and Ms. Neal discussed parking.

Commissioner Meigs expressed concern that the site was at the edge of Vanni Lane. Ms. Neal said that Vanni Lane formed a public roadway easement for which a Certificate of Compliance had been issued that allowed the owner to retain use of the property. Ms. Neal explained that the owner had granted a public easement to allow the next door neighbors to gain access to their second unit at 167 Ridge Road. They discussed the Certificate of Compliance.

In response to Vice-Chair Ketcham, Ms. Neal said that on-street parking would not be allowed on Vanni Lane because the Fire Department needed the width of the road for access.

Commissioner Hamilton joined the meeting at 7.45 pm.

Commissioner LaMotte and Ms. Neal discussed the bank, tree removal and storm water drainage. Ms. Neal noted that the storm water pipe would need an encroachment permit and that there was a Condition of Approval that the owner would bear responsibility for maintaining the lower slope.

Commissioner Hamilton and Ms. Neal discussed the Town's right to uphold the project to resolve the parking issues at the neighboring property at 167 Ridge Road, which pertained to a second unit on the property. Ms. Neal said that Town Attorney Mr. Karpiak agreed with Mr. Sorensen that the Town did not have the right to uphold the project over this issue.

Chair Lacques and Ms. Neal discussed the possible need for a retaining wall on Chester Road. Ms. Neal noted that the present plan was to leave tree stumps in place to maintain soil stability. They also discussed water run-off and Ms. Neal noted that the Town Engineer had approved the plans with his recommended conditions.

Chair Lacques and Ms. Neal discussed the house being built so close to the road. Ms. Neal noted that setbacks were not an issue because the road was constructed on private land.

Commissioner Hamilton and Ms. Neal discussed the Hill Area Residential Development Permit with regard to safety issues. Ms. Neal noted that the Town Engineer had added the condition that the homeowners should be required to maintain the bank.

Commissioner Hamilton and Ms. Neal also discussed the encroachment permit for the project that the Town Engineer had recommended as part of the Conditions of Approval.

Charles Pierce, owner, provided background information on the lot. He said that they wished to build a small house that fitted on the site, which the roadway restricted. Mr. Pierce noted that they will be upgrading the fire hydrant and removing trees that were deemed a fire hazard by the Fire Department.

Fred Divine, project architect, said that they knew the site required a small building. He said that the project met many of the conditions that were required; that they had worked with the Fire Department and that the variances requested were reasonable. Mr. Divine discussed drainage issues with regard to the slope and the reasons he believed the house would not destabilize the hillside. He noted that they would replace trees that needed to be removed.

Mr. Divine and Vice-Chair Ketcham discussed the east elevation retaining wall. Mr. Divine said that the neighbors had expressed an interest in installing steps although they had intended to install plants for screening.

Mr. Divine and Commissioner Meigs discussed landscaping on the side of the house that would be on Vanni Lane.

Commissioner LaMotte and Laura Kehrlein, architect, discussed a planting plan and a fence.

Commissioner Hamilton, Ms. Neal and Mr. Divine discussed parking and the reasons it would not be possible to fit in a third parking place, which Mr. Divine said related to the curb and easement.

Chair Lacques expressed concern that a retaining wall would be necessary in the future with which Vice-Chair Ketcham expressed agreement, although he noted that the Town Engineer did not seem to require a wall.

Ms. Neal reminded the audience of the Town Engineer's Condition of Approval that the owners should bear responsibility for the portion of the site where a retaining wall might become necessary.

Commissioner Hamilton and Ms. Neal discussed the potential wall with regard to liability issues for the Town. Ms. Neal said that the Commissioners could continue the project to a meeting at which the Town Engineer and Town Attorney could be present.

Commissioner Meigs said she would favor a continuance.

Vice-Chair Ketcham said that he would like the applicants to address green building issues.

Neil Sorensen, attorney for the applicant, expressed concern with the ninth Condition of Approval, which required the property owners to assume responsibility for maintaining part of the slope for reasons he explained. Mr. Sorensen said that his client did not wish to maintain any portion of the slope outside the boundaries of his property and he noted that public agencies usually maintain roadways and the public right of way.

Mr. Sorensen explained why he believed an easement for Vanni Lane did not yet exist.

Vice-Chair Ketcham and Mr. Sorensen discussed the Certificate of Compliance, which Mr. Sorensen referred to as a Conditional Certificate of Compliance for reasons he explained.

Ms. Neal Linda noted that the applicant has requested to build within 3 feet of the rear setback.

Lucy Burlingham, Ridgeway Avenue, discussed her concerns that the project might block access to their driveway for a second unit on their property and which might require them to apply for a parking variance. Ms. Burlingham also expressed concern that an on-street parking space would be removed.

Dennis Turrentine, Ridgeway Avenue, said that soil erosion was of concern to him.

Bill Appleton, Ridgeway Avenue, said that the removal of one of the three parking spaces on the street would make a bad parking situation worse. Mr. Appleton also expressed concern that the house would be built beside the roadway and suggested it could be a little smaller to accommodate the available space on the lot.

Jim Petrack, Ridgeway, expressed his concern regarding the removal of a parking space on Ridgeway and that he believed the house should not be built so close to the road.

Judy Hitchcock, Chester, said that it is would be too hard for dog walkers to move off the road out of the way of traffic when the house was constructed.

David Weinssoff, Ridgeway, said that he supported the comments from the public. Mr. Weinssoff said that at the Council Meeting he attended as a Council Member, he recalled there being a very short discussion to move an item forward to dedicate the name of Vanni Lane for the Vanni Family, who lived on Chester Avenue. He said that it had not been his intention to encumber the Town.

Commissioner Meigs expressed her concern with the public process.

Rue Burlingham, Rideway, expressed her concern that the road might be removed from public use.

Chair Lacques closed the public speaking period.

In response to Chair Lacques, Mr. Sorensen said he was not aware of the timing of the dedication of Vanni Road and the Conditional Certificate of Compliance which was given to his client by the Town.

Vice-Chair Ketcham and Mr. Sorensen discussed the Conditional Certificate of Compliance. Mr. Sorensen said that it granted a legal lot which was subject to conditions.

In response to Chair Lacques, Ms. Neal said that it was probable that the Court might have to decide upon whether or not the client could close the road to public use. They discussed the Conditional Certificate of Compliance and Ms. Neal noted that it was recorded prior to the Council Meeting where Vanni Lane was dedicated to the family.

In response to Commissioner Hamilton, Ms. Neal said that the Fire Department had the authority to require pullouts on Vanni Lane.

Vice-Chair Ketcham and Ms. Neal discussed easements and setbacks. Vice-Chair Ketcham requested further information from the Town Attorney about the Conditional Certificate of Compliance, whether or not Vanni Lane was a public roadway and who would be responsible for a retaining wall should it become necessary.

Commissioner Meigs supported a continuance so that Vice-Chair Ketcham's concerns could be addressed. She also expressed concern about the variances that were requested and parking.

Commissioner LaMotte noted that the architect had done an admirable job of designing a house which reconciled many of the property's difficulties. However, she was concerned about parking and the responsibility for the road and possible retaining wall. Commissioner LaMotte said that the possible withdrawal of the neighbor's legal second unit parking should be investigated and that she would like a soils engineer to discuss the lower slope at a public meeting. She supported a continuance.

Commissioner Ramsay said that he echoed the comments of Commissioner LaMotte with regard to the design. He noted that the Town would benefit from a new turnout, a fire hydrant and the

removal of fir trees if the project went ahead. He also noted that the owner should be able to develop the property and that the house was modest. However, the Condition of Approval pertaining to the owner's maintenance of the slope seemed to be an issue for the Commissioners.

Commissioner Hamilton said she would entertain a zero rear setback to move the house further away from the road. She also believed that further discussion was needed to clarify the maintenance responsibility of the slope and that a proposal for a retaining wall for the upper slope should be entertained. Commissioner Hamilton said she would also like clarification from the Fire Department about the need to remove a parking space from Ridgway.

Chair Lacques said that the house would be modest and in character with the neighborhood and that the parking variance seemed reasonable compared to variances that had been granted in the past. However, he remained concerned about the engineering of the lower part of the property, which he would like addressed. He further requested that the Town Engineer be available at a future meeting to discuss the Commissioners' concerns.

Chair Lacques suggested that the impact of the fence along Vanni Lane could be mitigated and that perhaps a sidewalk might be accommodated and a speed bump. Chair Lacques requested that the Town Attorney provide an opinion as to whether the Town would be responsible for a wall that would run along Vanni Lane and whether or not the Town Attorney agreed with Mr. Sorensen regarding the easement that pertained to the property at 167 Ridgway.

Chair Lacques said that a continuance was warranted to explore how the Certificate of Compliance evolved and suggested that the applicant waive their rights under the Permit Streamlining Act, although it was not necessary at this time.

Vice-Chair Ketcham suggested that the variances should be granted if the property owner continued to provide access to the community over his private property, which he believed would be a conservative and reasonable approach to solving the road access problem. He also agreed that the building could be shifted back from Vanni Lane, which would appease the members of the public who voiced their concerns.

General discussion commenced on whether the Commissioners would consider moving the house away from Vanni Lane, to which Commissioners LaMotte and Meigs expressed interest and Chair Lacques said that the geotechnical issues were of more concern to him.

M/S, Ketcham/Hamilton, Motion to continue Application # 09-30 for a request for a Hill Area Residential Development Permit, Setback Variances, a Parking Variance and an Excavation Permit to construct a 1,055 square foot single-family residence on a 5,374 square foot site that is crossed by Vanni Lane at 161 Ridgeway Avenue to the Planning Commission Meeting of February 18, 2010 and for the Town Attorney and Town Engineer to be present and for the Town Engineer to provide additional soils information.

AYES: All

Chair Lacques announced a 10 minute break at 10.10 p.m.

## Discussion Items

### 3. Continued discussion/consideration of the Draft Safety Element

It was agreed that due to the late hour, discussions would be continued to the meeting of January 7, 2010. However, Planning Director Moore suggested that the Commissioners could accomplish good work at that meeting if they reviewed the Draft Safety Element beforehand.

Mr. Moore said that he hoped a draft evacuation plan would be available for discussion at the meeting on January 7.

### Planning Director's Report

Planning Director Moore noted that the Green Building Model Ordinance would be presented to the Council on January 13, 2010 by Bob Brown, Community Director at the City of San Rafael. Mr. Moore noted that the ordinance had not yet been adopted by San Rafael.

General discussion took place on the Model Ordinance.

Mr. Moore provided materials on bylaws to the Commissioners. He noted that the Planning Commission could draft laws but that they had to be passed by the Town Council.

Mr. Moore noted that he had not had a response from the Town Manger to the Planning Commissioners' request that they return to the former layout of staff reports.

### Approval of Minutes

#### 4. Review of the minutes from the meeting of November 19, 2009

M/S, Hamilton/Meigs, Motion to approve the minutes from the meeting of November 19, 2009 with the following amendment:

“Ms. Neal confirmed the materials submitted to the Commissioners by Mr. Hurd included a recorded Deed Restriction that showed height and lot coverage restrictions (in addition to a second story restriction), which applied to the applicants' property...” was amended to read:

“Mr. Hurd presented a Deed Restriction pertaining to the applicant's property, which limited the height to two stories.....”

AYES: All

### Commission Comments and Requests

In response to Chair Lacques, Planning Director Moore said that the Fire Department would be holding a presentation for members of the public on January 30, 2010 between 9.30 a.m. and 12.30 p.m.

In response to Vice-Chair Ketcham, Planning Director Moore said that it would be good practice for staff to discuss controversial projects with the applicants or for a workshop to be held prior to a Planning Commission Meeting.

### Election

#### 5. Election of a new Chair and Vice Chair

Chair Lacques said that he would not be seeking re-election and he presented a brief job description.

Commissioner LaMotte thanked Chair Lacques for the time and work he had put in as Chair of the Commission and on sub-committees.

Commissioner Meigs also expressed her appreciation of Chair Lacque's Chairmanship.

M/S, Meigs/ Hamilton, Motion to elect Vice-Chair Ketcham as Chair.

AYES: All

M/S, Ketcham/Meigs, Motion to elect Commissioner Hamilton as Vice-Chair.

AYES: All

A presentation was made to the outgoing Chair.

### Adjournment

On motion duly made and carried, the meeting was adjourned at 11 p.m.

Respectfully submitted,

Joanne O'Hehir