

Town of Fairfax Planning Commission minutes
Fairfax Women's Club
Thursday, April 15, 2010

Call to Order/Roll Call:

COMMISSIONERS PRESENT: Terry Goyon
Shelley Hamilton
Brannon Ketcham (Chair)
Peter Lacques
Pam Meigs
Shelby LaMotte
Peter Ramsey

STAFF PRESENT: Jim Moore, Planning Director
Police Chief Hughes
Linda Neal, Senior Planner
Inda Khalsa, Assistant Town Attorney
Joanne O'Hehir, Minutes-Secretary

Approval of the Agenda

M/S, Goyan/Meigs, Motion to approve the Agenda.

AYES: All

Public Comments on Non-Agenda Items

No-one from the public stepped forward to speak.

Consent Items

1. **20 Bolinas Road; Application # 10-07: Request for a Use Permit to have live music in an existing bar; Assessor's Parcel No. 002-115-09; Central Commercial CC Zone; Eddy Bacci, applicant/owner; CEQA categorically exempt, §15301.**

Chair Ketcham opened the hearing to the public and a neighboring property owner indicated a wish to speak against the project.

M/S, Goyan/Meigs, Motion to move the consent item on 20 Bolinas Road to the regular agenda.

AYES: All

Public Hearing Items

1. **20 Bolinas Road; Application # 10-07: Request for a Use Permit to have live music in an existing bar; Assessor's Parcel No. 002-115-09; Central Commercial CC Zone; Eddy Bacci, applicant/owner; CEQA categorically exempt, §15301.**

Planning Director Moore presented the staff report, when he noted a minor correction in the staff report.

Sue Park, owner of a neighboring property, expressed her concern that music would be a bad influence for the kids who visited the store at her property and that it would attract drunk people. She said that "Revolution 9" sometimes held classes for kids at the back of the store at night. Ms. Park also expressed concern that the noise would disturb the inhabitants above the shop.

In response, Senior Planner Neal said that the music hours would be between 9.30 p.m. and 1 a.m., which should not impinge on business hours.

Commissioner Lacques and Ms. Park discussed the shop's opening hours. Ms. Park said that the top floor of the property could be used as a residential area but was being utilized as an office.

Edward Bacci, applicant, said that he hoped to have music in the bar once or twice a month and that they have not had any complaints. In response to Commissioner Lacques, he said that they would post someone at the door to make sure it remained closed and would close the single-pane windows.

In response to Commissioner Meigs, Ms. Neal discussed the revocable conditions of a Use Permit.

Ms. Neal discussed the noise ordinance with Chair Ketcham.

Commissioner Meigs expressed concern that music had not been used in the location previously.

Commissioner Goyan noted that there would not be an expectation of quiet in the vicinity of a bar. Furthermore, the upstairs portion of 14 Bolinas Road was not being used as a residence.

Vice-Chair Hamilton noted that the music would not start until 9.30 p.m., after the shop activities were finished.

Commissioner Lacques noted that the hours of operation were relatively consistent with other bars and restaurants, and Chair Ketcham noted that this was a mixed use zone where noise would be expected. Commissioner Ramsay was in agreement and he noted that the applicant should receive the same treatment as other bars in the area.

Ms. Neal discussed the noise ordinance, when she noted that it would need to be violated in order for the Use Permit to be revoked.

M/S, Hamilton/LaMotte, Motion to approve application # 10-07, a request for a Use Permit to have live music in an existing bar at 20 Bolinas Road.

AYES: All

Chair Ketcham read the appeal rights.

2. **6 School Street Plaza Suite 210; application 97-UP-2: Continued consideration of a request for a modification of a previously approved Use Permit for a medicinal marijuana dispensary to allow for the (1) operation of a delivery service, (2) the propagation and sale of clones, (3) an amendment to the conditions allowing for location of a grow site run by the dispensary within the Town limits, and (4) the elimination of a series of specific conditions in the existing conditional use permit; Assessor's Parcel No. 002-112-13; Limited Commercial CL Zone; Lynette Shaw, Marin Alliance for Medicinal Marijuana, applicant; Fred Ezazi, property owner; CEQA categorically exempt, § 15301(a).**

Planning Director Moore presented the staff report, when he provided an overview of the discussions that had taken place at the previous meeting. He discussed the information that had been requested by the Commissioners, which included the provision of insurance information for the applicant and regulations of similarly sized towns with regard to the delivery of medical marijuana.

Mr. Moore said that "Little League" had confirmed the existing process worked well and that they would have to discuss extended hours of operation with their board members. He said that staff recommended approval of the extended open hours and the sale of clones on site and denial of the grow site because a site had not been located, and denial of a delivery service for the reasons in the staff report, which included a cause of danger to the public.

Inda Khalsa, Assistant Town Attorney, discussed the Compassionate Use Act in relation to minors entering dispensaries, which she said was not addressed by the law. In response to Commissioner Goyan, Ms. Khalsa discussed primary care givers and said that the law was not clear on whether it limited the number of primary care givers.

In response to Commissioner Meigs, Mr. Moore said that staff recommended a legal guardian should accompany a minor into the store.

Mr. Moore discussed the conditions of approval, including those which staff did not support.

Mr. Moore and Vice-Chair Hamilton discussed a delivery service in relation to a business license. Mr. Moore noted that a delivery service could be sanctioned with conditions, and Ms. Khalsa said that the Commission would not be bound to provide delivery services to other dispensaries if they approved a delivery service for the dispensary at School Street Plaza.

Police Chief Hughes discussed his concerns about a delivery service. He said that marijuana was highly sought after and that thefts and home invasions were known to have taken place in connection with the drug and that he would be concerned that the vehicles transporting marijuana would be attacked. Chief Hughes said that the Police Department had had no contact with any delivery services.

In response to Commissioner Lacques, Ms. Khalsa said that the Town would study the legal aspects of indemnification should the delivery service be sanctioned by the Commission.

In response to Commissioner LaMotte, Chief Hughes said that a sanctioned delivery service might lead to a criminal act. He said that when large quantities of marijuana were transported, there was a greater risk of the vehicles being targeted. He said this would not happen if the service was not sanctioned.

Chair Ketcham and Mr. Moore discussed opening hours during Little League games and Ms. Khalsa and Chair Ketcham discussed the differences between a delivery service and a dispensary.

Commissioner Meigs and Chief Hughes discussed violent attacks in connection with marijuana.

Lynette Shaw, applicant, said that each delivery vehicle, which would be unmarked, would carry only 1lb of medical marijuana, which was not especially valuable. She said that she had lost 40% of her clients because her business could not offer a delivery service.

A representative of State Farm Insurance said that there had not been theft problems. He said that they required their clients to use unmarked vehicles and for businesses to maintain a low profile. He said that they insure approximately 350 delivery services throughout the United States and that they have been offering insurance for two years. He discussed their policy and indemnity insurance, which was usually for \$1,000,000 and noted that Ms. Shaw exceeded State Farm's guidelines and that he supported Ms. Shaw's application to offer a delivery service.

In response to Vice-Chair Hamilton, the State Farm Insurance Agent discussed risk pertaining to the dispensary business and delivery business.

Ms. Shaw discussed the dispensary in relation to Little League. She said that her clients leave her premises and do not smoke outside.

Ms. Shaw and Commissioner Meigs discussed licensing for deliveries.

Ms. Shaw and Commissioner Lacques discussed the number of anticipated deliveries and the number of clones that might sell.

The State Farm agent discussed clone insurance, which he said were not considered valuable and were therefore a lower risk.

In response to Commissioner Meigs, Chief Hughes said that he was not aware of any problems caused by the dispensary to the Little League.

Chair Ketcham opened the hearing to the public, but no one stepped forward to speak.

General discussion took place on the way forward. General consensus was reached that conditions for a delivery service would be drawn up by staff for consideration at the next meeting.

M/S, LaMotte/Ramsay, Motion to continue application 97-UP-2: Continued consideration of a request for a modification of a previously approved Use Permit for a medicinal marijuana dispensary to allow for the (1) operation of a delivery service, (2) the propagation and sale of clones, (3) an amendment to the conditions allowing for location of a grow site run by the dispensary within the Town limits, and (4) the elimination of a series of specific conditions in the existing conditional use permit at 6 School Street Plaza Suite 210 to the meeting of 20 May, 2010.

3. **40 Merwin Avenue; Application # 10-03: Request for a Use Permit, Floor Area Ratio Variance and Combined Side Yard Setback Variance to construct a 208 square foot dining room addition to an existing 988 square foot single-family residence; Assessor's Parcel No. 002-111-05 Residential Multiple Family RM Zone; Rich Dowd, Architect/applicant; John and Soy Molloy, owners; CEQA categorically exempt, § 15301(e)(1).**

Senior Planner Neal presented the staff report. She explained that the project did not constitute a 50% remodel but that a Use Permit was required because the parcel did not meet minimum size requirements. She noted that the project would not encroach any further into the existing legal non-conforming setbacks and that the minimum side yard setback would be maintained. Ms. Neal noted that for these reasons, and others laid out in the staff report, staff could support the project.

Chair Ketcham and Ms. Neal discussed the basement area in relation to the floor area ratio (FAR).

General discussion on setbacks took place.

Rich Dowd, project architect, discussed the project. He noted that if the area that constituted uninhabitable space were included in the FAR, then the allowance would be exceeded. If it were not included, then the project remained below the maximum FAR allowed.

Commissioner Lacques said that the project was a modest improvement with little impact visually; that it was a thoughtful and inconspicuous change, to which Commissioner Meigs was in agreement.

Chair Ketcham opened the hearing to the public, but no one stepped forward to speak.

Chair Ketcham said that he appreciated the proposed green building upgrades.

M/S, LaMotte/Lacques, Motion to approve Application # 10-03: Request for a Use Permit, Floor Area Ratio Variance and Combined Side Yard Setback Variance to construct a 208 square foot dining room addition to an existing 988 square foot single-family residence at 40 Merwin Avenue.

AYES: All

Chair Ketcham read the appeal rights.

4. **36 Merwin Avenue, application # 10-0;** Request for a Use Permit and setback variances to construct a 1,445 square foot, two story addition to an existing 812 square foot single-family residence (107 square feet of existing to be removed); Assessor's Parcel No. 002-111-04; Residential Multiple Family RM Zone; Rowan and Vikki Fennell, applicants/owners; CEQA categorically exempt, § 15301(e)(2).

Commissioner LaMotte excused herself from the meeting at 10.25 p.m. and Senior Planner Neal presented the staff report. She explained that the lot was large but that a creek ran through the property. Since the lot was in the flood zone, the floors would need to be elevated above the flood plain. She discussed the discretionary permits.

Ms. Neal also addressed the required creek setbacks and staff's concern regarding the portion of the addition which would encroach the side yard setback of the neighboring property. Ms. Neal also discussed the parking variance. She noted staff's recommendation that the project be continued for redesign because the number of variances requested suggested that the addition was too large for the lot.

In response to Chair Ketcham, Ms. Neal discussed the Permit Streaming Act in relation to the project.

In response to Commissioner Meigs, Ms. Neal said that storm water runoff had not been studied because the lot was flat. She noted that the property was not in the urban wildland interface zone.

Rowan Fennell, applicant, discussed the project. He explained how they wanted to provide sufficient space from the creek which resulted in the need to encroach the side yard setback.

Mr. Fennell and Vice-Chair Hamilton discussed other options that had been considered.

Sarah Deeds, project architect, discussed the reasons why lifting the house would have caused problems, including the disruption of the floor plan and porch design. She said that they shifted the addition closer to the neighbor in order to meet the 20 foot creek set back. Ms. Deeds said that if the addition could be moved closer to the creek, there would not be a need to request multiple variances.

In response to Commissioner Meigs, Ms. Deeds said that it was assumed the storm water runoff would go into the creek.

Chair Ketcham opened the hearing to the public.

John Molloy, Merwin Avenue, said that he supported the project, although he expressed concern that the height and size of the wall directly next to his property might seem too imposing.

Vice-Chair Hamilton said that she would be amenable to the addition being shifted towards the front of the property in order to provide a 5 foot setback from the neighbor's side.

Commissioner Goyan said that it was hard to design an addition for the lot and that he could see the difficulty in lifting a house so close to the creek. However, he said that the addition would be too close to the neighbor's property line and that screening and drainage plans should have been included for discussion.

Commissioner Meigs said that she supported some of the ideas put in the staff report.

Commissioner Lacques said that he applauded the inclusion of energy efficient ideas in the plans but that the mass was intimidating on the neighbor's side. He believed that the plan was too ambitious for the site and that it needed to be more modest.

Chair Ketcham said that the structure would be massive in comparison to the present building and that he also remained concerned with the mass and height of the back structure. He noted that they were incorporating a huge mass on a limited part of the lot. He noted that more runoff would be produced that would need to be managed, and thus a drainage plan would be helpful, and that he was concerned that the second floor roof deck would cause privacy issues with the neighbor.

Vice-Chair Hamilton discussed an amendment to the design. Planning Director Moore suggested that the plate heights could be reduced in order to reduce the height of the structure without eliminating square footage and he noted that there was ancillary space that could be reduced to make the house smaller.

Ms. Deeds and Ms. Neal discussed the creek setbacks and a possible exemption to covered parking.

The applicants agreed to waive their rights with regard to the Streamlining Act, should it not be possible for them to appear at the next meeting.

M/S, Hamilton/Goyan, Motion to continue application # 10-0; Request for a Use Permit and setback variances to construct a 1,445 square foot, two story addition to an existing 812 square foot single-family residence (107 square feet of existing to be removed) with the provision of a drainage plan at 36 Merwin Avenue to a date uncertain.

AYES: All

Discussion Items

5. Final discussion and/or editing of the draft Safety Element.

Planning Director Moore presented a brief report, when he discussed the introduction.

Chair Ketcham noted that there were format problems, which Mr. Moore said would be fine tuned by a subcommittee.

Mr. Moore provided a resolution for consideration, although he noted that a resolution was not necessary in order to pass the Safety Element to the Town Council.

M/S, Hamilton/Goyan, Motion to adopt Resolution Number 10-0 forwarding the draft Safety Element to the Town Council for their consideration and adoption.

AYES: All

Planning Director's Report

Planning Director Moore provided an update on the elements for the General Plan. He said that he would like to present two more elements to the Town Council at their June meeting.

Approval of Minutes

6. Review of the minutes from the meeting of March 18, 2010

M/S, Goyan/Hamilton, Motion to approve the minutes from the meeting of March 18, 2010 with an amendment to note that Commissioner Lacques and Chair Ketcham had been absent.

AYES: Goyan, Hamilton, Meigs, Ramsay

ABSTENTIONS: Lacques, Ketham

Commission Comments and Requests

General discussion took place on the presentation of materials regarding the marijuana dispensary.

Adjournment

A motion was made, seconded and unanimously passed to adjourn the meeting at 11.35 p.m.

Respectfully submitted,

Joanne O'Hehir