

Town of Fairfax Planning Commission Minutes  
Fairfax Women's Club  
Thursday, April 21 17, 2011

**Call to Order/Roll Call:**

**COMMISSIONERS PRESENT:** Morgan Hall  
Shelly Hamilton (Vice-Chair)  
Brannon Ketcham (Chair)  
Peter Lacques  
Shelby LaMotte  
Ryan O'Neil  
Peter Ramsay

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

Chair Ketcham called the meeting to order at 7.30p.m.

**APPROVAL OF AGENDA**

Commissioner Lacques requested that the second item on Consent concerning the paved driveway on the undeveloped portion of the right-of-way on Summit Road be removed to the regular agenda for discussion.

M/S, Ramsay/Hamilton, Motion to approve the Agenda as amended

Ayes: All

**PUBLIC COMMENT ON NON-AGENDA ITEMS**

David Kroll, Claus Circle, discussed his concerns regarding the prospective new purchaser of the Good Earth building and potential problems concerning traffic and parking issues, noise and vagrancy.

Alice Ducayet, Claus Circle, discussed her concerns about the prospective new purchasers of the Good Earth building which related traffic issues.

Dan Peixotto, Claus Circle, expressed his concern about the prospective new owners of the Good Earth building.

Adrienne Peixotto, Claus Circle, said that the potential use of the Good Earth building might result in people hanging outside their home, which she would not want to happen.

Lisa Hunt, Claus Circle, said that the Good Earth had been a great neighbor and that it would not be a good venue for a night club.

## **CONSENT ITEMS**

A Member of the public requested that the item concerning extending the open hours of a 7/11 store be removed to the regular agenda.

M/S, Hamilton/O'Neil, Motion to remove 150 Bolinas Road, Application # 79 UP-33, to the Regular Agenda

Ayes: All

1. 150 Bolinas Road; Application # 79-UP-33; Request for a modification of a previously approved Use Permit to allow the existing 7-11 convenience store to remain open 24 hours; Assessor's Parcel No. 002-101-13; Highway Commercial CH Zone District; Richard M. Matthews Trust, owner; Rajiv Uppal, applicant; CEQA categorically exempt, §15301.

Senior Planner Neal presented the staff report, when she noted that the request for extended hours had been circulated amongst the agencies who would be concerned. Ms. Neal said that the Police Department had not expressed concern, and she discussed ways of mitigating potential impacts. Ms. Neal said that staff supported the request for reasons in the staff report.

In response to Vice-Chair Hamilton, Ms. Neal said that a violation of the Noise Ordinance could trigger revocation of a Use Permit.

In response to Commissioner Lacques, Ms. Neal said that she had not researched noise problems or criminal activity related to another 7/11 store that was based in the County.

Applicant's representative, Sammy, who said that he worked at the store for 10 hours a day, said that they would ensure there would be no shouting. He said there were cameras that monitored people and that they would call the Police if there were any problems. Sammy said that people wanted supplies during the night, which they could provide and that there appeared to be few people against extending their hours compared to the number who were noticed.

In response to Commissioner Lacques, Sammy said he could not quantify the amount of potential night business. Sammy said that he would be willing to curtail the sale of alcohol at midnight.

Commissioner O'Neill noted that the sale of alcohol was prohibited after 2 a.m. by State law.

In response to Chair Ketcham, a 7/11 representative estimated that the store could expect 15 – 20 customers during nighttime hours based on the number of people who visited their stores at night in Mill Valley.

Chair Ketcham opened the public comment period.

Tina Marino, Park Road, discussed noise disturbance in the vicinity of the store, and said that she did not support extended hours in a residential area.

Peter Marino, Park Road, noted that the store was on a busy corner where there was a lot of noise already without the store being allowed to operate all day and all night.

Chair Ketcham closed the public comment period.

In response to Commissioner O'Neil, Ms. Neal said that a Police Department report could be obtained that would identify the areas which particularly caused noise and litter. She noted that there was a public park nearby which could be responsible for some of the noise.

Commissioner Ramsay said that he was not inclined to support all night open hours because he had been woken at 2 a.m. due to noise when bars closed.

Vice-Chair Hamilton said that it was possible the noise issues were an existing problem, and she suggested that there might be a way of resolving the issues such as enhanced monitoring, car parking ticketing, etc., while being able to grant the permit.

Commissioner Lacques said that noise was an important consideration. He supported limiting the sale of liquor to before midnight, restricting parking in the parking lot and that if the Use Permit were granted, then it should be revisited in six months.

Commissioner LaMotte said that she was in favor of continuing the item for further discussion. She thought that there could be other aspects in the neighborhood that could be causing noise.

Commissioner Hall said that noise was part of the territory when people lived downtown, but that extended hours would exacerbate the problems. Furthermore, the store was in a residential area.

M/S, Hamilton/LaMotte, motion to continue Application # 79-UP-33, a request for a modification of a previously approved Use Permit to allow the existing 7-11 convenience store to remain open 24 hours at 150 Bolinas Road in order to obtain additional information from the Police Department with regard to noise disturbance and to discuss with the applicant conditions they would be amenable to adhering to in order to mitigate some of the noise and vagrancy problems.

Ayes: All

2. Three vacant parcels on Ridge Road between 131 and 153 Ridge Road; Application # 11-08: Encroachment permit requested to construct a portion of a 12 foot wide access driveway within the undeveloped Summit Road right-of-way. The driveway is necessary to access an existing water tank site.

Senior Planner Neal presented the staff report, when she noted that the tank was old and had outlived its lifetime. She said that an access driveway had been requested to enable trucks to gain access to remove the tank and replace it with a steel tank. She also noted that a portion of the access road consisted of an easement on which temporary tanks would be placed. Ms. Neal said that tree removal would be necessary and that there was no other suitable location for the tank. Furthermore, the tank was considered necessary for fire depression and to serve nearby homes.

Ms. Neal said that staff recommended approval of the project subject to the plan check process by the Town Engineer and consultants, and the recording of a revocable license agreement.

In response to Commissioner Hall, Ms. Neal clarified the rights-of-way.

Chair Ketcham and Ms. Neal discussed the driveway.

Commissioner Lacques discussed his concerns that a drainage plan had not been presented. In response, Ms. Neal noted that the Planning Commissioners had the authority to continue the project and request more information.

Planning Director Moore noted that the Town Engineer would review the plans.

Kevin McDonald, Marin Municipal Water District, discussed the project. He said that the Water District did not have suitable access to the water tank on their own property and that they would be agreeable to signing a revocable license agreement. He said and that they would be happy to present a drainage plan.

Mr. McDonald discussed truck loads and staging, which he said would not be difficult but that they wanted to build the access driveway during the dry season. In response to Commissioner Lacques, Mr. McDonald said that approximately 30 truckloads were anticipated.

Commissioner LaMotte and Mr. McDonald discussed an alternative access route. Mr. McDonald discussed the reasons an alternative route would not be feasible, mainly due to land instability.

Vice-Chair Hamilton suggested additional conditions with regard to drainage and staff review of plans, to which there was general consensus.

Commissioner O'Nil and Mr. McDonald discussed the necessity of a permanent paved access road and Mr. McDonald noted that an unsurfaced road would cause erosion and that hardscape would be useable.

Senior Planner Neal reported that the Fire Dept supported the project and had requested the incorporation of a turnaround to provide them with more access. Mr. McDonald noted that there would be a fire hydrant on the property.

Chair Ketcham noted that the commissioners' purview was limited although they could make comments as part of the CEQA process. He opened the public comment period.

David Maxwell, Ridge Road, expressed his concern about storm water runoff from a steep hillside and other drainage issues. He discussed road impacts and hillside stabilization issues caused by tree removal

Kagwa Kironde, Ridge Road, discussed his concerns about drainage and the road which was not city-maintained and provided the only access to the properties on the street.

Chair Ketcham closed the public comment period

In response to comments, Ms. Neal suggested that a road damage bond be implemented and the Town Engineer should examine the road before construction began to ascertain existing conditions.

In response to Vice-Chair Hamilton, Ms. Neal said that the Town did not have the right to apply zoning laws and building codes to the project which did not affect anything other than the right-of-way.

Director Moore said that language could be added to capture their concerns and conditions could be crafted. He noted that the Town would ensure the plans included a site drainage plan that would maximize onsite retention and limit dispersion on to Town property He noted that there was still time for members of the public to address their concerns in a letter for the CEQA document.

Mr. McDonald discussed the reasons they did not wish to make a bond payment.

In response to Commissioner Lacques, Ms. Neal said that the Town Engineer would approve drainage and construction plans for the public-right-of way.

Commissioner Hamilton suggested that additional conditions be added regarding drainage and road issues, to which there was general consensus.

M/S, Hamilton/ LaMotte, Motion to approve Application # 11-08, a request for an encroachment permit to construct a portion of a 12 foot wide driveway within the undeveloped Summit Road right-of-way on three vacant parcels on Ridge Road between 131 and 153 Ridge Road with the conditions in the staff report and three further added conditions:

1. The plans will ensure that the site drainage plan will maximize onsite retention and limit dispersion of water onto the right-of-way to ensure the dispersion rate into the Ridge Road right-of-way is equal to or less than that which exists now.

2. The Town Engineer shall document with the applicant the existing condition of potentially impacted roads. He shall review the condition of those roads with the MMWD representative after construction to determine if any damage has occurred.
3. The applicants shall provide financial restitution or remediation for roadway damages caused by the construction to be agreed upon by the Town Engineer and the project engineer.

A roll call was taken:

AYES: Ramsay, Hamilton, Ketcham, Lacques, LaMotte  
NO: O'Neil

Chair Ketcham read the appeal rights before announcing a 10-minute break.

3. 9 Scenic Road; Application # 10-30: Continued consideration of a request for a use permit to legalize the conversion of a detached workshop into living space with a full bathroom adjacent to a single-family residence; Assessor's Parcel No. 001-146-04; Residential RD 5.5-7 Zone District; Dolores Cordell, applicant/owner; CEQA categorically exempt, § 15303(e).

Senior Planner Neal presented the staff report. She discussed the reasons why the project had been continued, which related to the Fire Departments' requirements. She noted that a floor plan had been provided at the commissioners' request.

Ms. Neal discussed the use in relation to the Town Code and she noted that accessory buildings could not be used for residential purposes. However, she said that Use Permits has been issued previously on the condition that the permitted use would not include the renting of the space as a separate living unit. Ms. Neal discussed the reasons that staff supported the project, which were in the staff report.

In response to Commissioner Hall, Ms. Neal noted that the residence had been constructed before FAR (floor area ratio) regulations had been implemented.

Dolores Cordell, Applicant, discussed the structure, which she said had been used as living space when she purchased the house and that she then installed a bathroom. She discussed the sprinkler requirements and the denial of her appeal by the Fire Board.

In response to Chair Ketcham, Ms. Neal said that the Planning Commissioners did not have discretion over the Fire Department's requirements.

Staff and Chair Ketcham discussed what would be entailed if the application were denied by the commissioners. Planning Director Moore noted that the applicant could appeal whatever decision the commissioners made to the Town Council.

In response to Commissioner Ramsay, Ms. Cordell said that the new owners did not wish to join the accessory structure to the main residence, although it would negate the need to install sprinklers.

In response to Commissioner Lacques, Ms. Cordell said that she did not believe the use of the property had changed by the addition of a bathroom. Commissioner Lacques noted that they could not waive the Fire Department's requirements.

Chair Ketcham noted that the addition of a bathroom changed the use of the structure.

Chair Ketcham opened the public comment period.

The resident at 9 Scenic Road said that he supported the applicant.

Daryl Grossman, a neighbor, said that sprinklers were costly and not necessary for a very small space.

Ms. Dolores' partner said that they had lived in the accessory structure and that the addition of a bathroom had not changed its use.

Chair Ketcham closed the public comment period.

In response to Commissioner LaMotte, Ms. Neal said that former owners of the residence had been granted a permit to build a new house with the specific condition that a portion of the old house that remained could not be used as a residence. It could be used only as an accessory structure. She noted that the Planning Commissioner had the authority to reverse the decision.

Planning Director Moore discussed the change in use. He noted that the written record could not be changed and that he recommended the commissioners approve the project.

Planning Director Moore and Vice-Chair Hamilton discussed how changes could be made to the Code with regard to fire sprinklers. Chair Ketcham noted that there were benefits to having a fire sprinkler system.

Chair Hamilton and Ms. Neal discussed a deed restriction in relation to the accessory structure.

M/S, Lacques/Ramsay, Motion to approve Application # 10-30, a request for a use permit to legalize the conversion of a detached workshop into living space with a full bathroom adjacent to a single-family residence at 9 Scenic Avenue based on the findings and conditions in the staff report.

A roll call was taken:

AYES: O'Neil, Ramsay, Ketcham, Lacques, LaMotte, Hall  
NO: Hamilton

Chair Ketcham read the appeal rights.

4. 720 Center Boulevard; Application # 11-09: Review of an Initial Study, Draft: Mitigated Negative Declaration, Use Permit for outdoor eating and a Traffic Impact permit for a project encompassing remodeling and a 196 square foot expansion of the existing commercial building to; 1) bring the structure into compliance with current Building Codes; 2) add exterior improvements and landscaping; and, 3) resurface the parking lot in order to open as a natural foods grocery store; Assessor's Parcel No. 002-131-12; Highway Commercial CH Zone District; Good Earth Natural Foods, applicant; John Fry, applicant's representative; LRG Capital Real Estate Partners, owners.

Commissioner LaMotte recused herself and left the meeting because she had a professional association with the application.

Consultant Kennings presented the staff report. He noted the project included an Initial Study, Draft Mitigated Negative Declaration, Traffic Impact Permit and a Use Permit for outdoor eating purposes for which there were findings in the staff report. Mr. Kennings said that an on-site deli would be included, which would increase the size of the operation. Furthermore, the access from parking to the structure would be improved.

Mr. Kennings discussed the roof design and other design features, including an outdoor seating area. He also discussed the colors, which consisted of greens and tans.

Mr. Kennings noted that the service utilities would be upgraded or replaced, the parking areas would be resurfaced and reconfigured with landscaping that would include the addition of trees and storm water run-off. He discussed parking spaces and parking lot lighting and he noted that there would be an electric car charging station.

Mr. Kennings went on to discuss the traffic report, which he said had been peer-reviewed by the Town's Traffic Consultant who had determined there would be no significant traffic problems and that those that might exist could be mitigated.

Vice-Chair Hamilton sought clarification from staff regarding materials that had been provided.

Chair Ketcham and Ms. Neal discussed the Traffic Impact Permit, which Ms. Neal said should be voted upon separately for reasons she explained, and the number of parking spaces. Ms. Neal confirmed that they had not received any comments from the public.

John Fry, applicant, discussed the project in more detail. He discussed the roof materials and colors, and he noted that the roof equipment would be hidden by a clerestory. He discussed building upgrades, and noted that there would be no grading. He addressed parking and the number of spaces, which he noted would be remarked. He said that they hoped to open in October 2011.

Mr. Fry discussed the design, and noted that seating, tables, and trees would be added and that the overall site would be improved to make all the building's sides inviting.

He discussed the conditions and requested that the hours of work be extended for internal work, particularly on a Saturday.

Mr. Fry discussed the traffic study in relation to the condition regarding signs and exits. He said that the actual traffic situation could not be determined until the store had been opened and requested that they be allowed an option for staff to review the condition 90 days after the opening date.

He discussed water entitlement and suggested an amendment to a condition.

Mr. Fry discussed the construction in relation to a permit requirement by Marin County Environmental Health Department and he asked for a waiver of the requirement. He also discussed the Tenant Improvement Permit and road bond.

Ms. Neal noted that the road bond amount would be set by the Town Engineer or Building Official. She also noted that any kind of digging was considered to be grading for which arrangements needed to be made during the rainy season.

Mr. Fry asked if a civil engineer could oversee site work, rather than a geotechnical engineer which was part of the conditions. He also requested that the word “substantiated” be added to the condition 19 regarding damages to the roadways accessing the site resulting from construction activities shall be the responsibility of the property owner.

Commissioner Lacques and Mr. Fry discussed traffic impacts at the intersection of Sir Francis Drake Blvd and Pastori during peak hours. Mr. Fry said that he did not see significant changes in the report and he discussed the Town’s condition of a right turn-only exit from the parking lot in relation to traffic congestion.

Commissioner Hamilton and Planning Director Moore discussed how a mitigation measure could be revised or changed. He said that he would not recommend making a revision because it could result in the findings being made more challengeable. He noted that the traffic impact report had been peer-reviewed by the applicant’s engineer and the Town Engineer. Mr. Moore said he would recommend a continuance if they wished to modify the Negative Declaration.

In response to Chair Ketcham, Ms. Neal said that testimony from the public should be taken before determining hours of construction, and she noted that the Noise Ordinance would nonetheless apply.

In response to Vice-Chair Hamilton, Planning Director Moore said staff recommended that no changes should be made to the conditions that had been added by other agencies unless those agencies had provided a relaxation of their requirements in writing.

Discussion took place on the change on the Tenant Improvement Permit.

Chair Ketcham opened the public comment period.

Laine Sprague, Belle Avenue, said she believed people would be present to speak against the project if they had not been asked to stay until nearly midnight. She said that construction noise would exceed the limit and that vehicle deliveries began too early and caused traffic issues.

Sue Peterson, Forest Avenue, said she supported the project but that she thought construction noise would be an issue if the hours of construction were extended.

Chair Ketcham closed the public comment period.

Commissioner Lacques said that the design looked good visually and the market would be a welcome addition to Fairfax. He said that he supported the “turn right only” restrictions but that early deliveries were of concern.

Vice-Chair Hamilton said that this would be a great project for Fairfax; that it fitted within the use of the space and would be the best use of the building for the town and community. She said that the applicant had done a great job of redesigning an ugly building and providing spaces for the community around the building. She noted that the grocery store had business needs that were not compatible with residential areas.

Commissioner O’Neil said that the design would be aesthetically pleasing and the visual impact fantastic. He discussed traffic issues with Mr. Moore.

Commissioner Ramsay said he wished to add his appreciation for the design of the project.

In response to Commissioner Lacques, a representative of Good Earth said that early morning deliveries were critical to their operation and that “back-up” beeps existed for safety purposes.

Commissioner Hall said that the project was a great design and he urged the applicants to do whatever was possible to mitigate noise issues. He noted that none of the contractors, with the exception of the landscape architect, were local.

Chair Ketcham noted that the draft Negative Declaration had been open for 30 days for review and that there had been other opportunities for public comment. He said that traffic issues would not go away and that he recommended moving the driveway to make more space. Chair Ketcham said that the location was the gateway to the town and the proposed project reflected all that could be hoped would go in there. He noted that the applicants had followed the Town’s conditions and he commented on the requested changes to the language.

There was general agreement that if the applicant made different arrangements with outside agencies regarding the conditions contained in the staff report, then written permission should be provided by the agencies to town staff.

M/S, Hall/Hamilton, Motion to approve the Traffic Impact Permit:

A roll call was taken:

AYES: O'Neil, Ramsay, Hamilton, Ketcham, Lacques, Hall

M/S, Hamilton/O'Neil, Motion to approve a Mitigated Negative Declaration, Use Permit for outdoor eating for a project encompassing remodeling and a 196 square foot expansion of the existing commercial building to; 1) bring the structure into compliance with current Building Codes; 2) add exterior improvements and landscaping; and, 3) resurface the parking lot in order to open as a natural foods grocery store, based on the findings laid out in the staff report, with the following amendments to the conditions:

1. That in condition no. 4, "geotechnical engineer" be substituted by "civil engineer".
2. That in condition no. , the word "substantiated" be added.

A further condition was added:

3. Upon written permission by an agency, Town staff would amend the condition or conditions that had been supplied by the agency.

A roll call was taken:

AYES: O'Neil, Ramsay, Hamilton, Ketcham, Lacques, Hall

M/S, Hamilton/Lacques, Motion to recommend to the Town Council that Resolution # 11-04 be approved.

A roll call was taken:

AYES: O'Neil, Ramsay, Hamilton, Ketcham, Lacques, LaMotte, Hall

Chair Ketcham read the appeal rights.

## **DISCUSSION ITEMS**

None.

## **PLANNING DIRECTOR'S REPORT**

Planning Director Moore reported that the Town Council had accepted staff's recommendation to draft an ordinance to combine the Design Review Board with the Town Council.

Mr. Moore reported that the Arrowwood subdivision had been finalized and a Certificate of Occupancy had been issued for the two existing houses.

Mr. Moore reported that staff had sought legal interpretation with the result that if commissioners were involved in a project that would be brought before the Planning Commission, they must recuse themselves and leave the premises.

## **APPROVAL OF MINUTES**

### 4. Review of the minutes from the meeting of March 17, 2011

M/S, Hamilt n/Lacques, Motion to approve the minutes from the meeting of March 17, 2011:

AYES: All

## **COMMISSION COMMENTS AND REQUESTS**

None.

## **ADJOURNMENT**

A motion was made, seconded and unanimously approved to adjourn the meeting at 12.20 a.m.

Respectfully submitted,

Joanne O'Hehir