

Town of Fairfax Planning Commission Minutes  
Fairfax Women's Club  
Thursday, January 15, 2015

**Call to Order/Roll Call**

Chair Ketcham called the meeting to order at 7:05 p.m.

**COMMISSIONERS PRESENT:** Roxanne Ezzet  
Esther Gonzalez-Parber  
Philip Green (Chair)  
Shelley Hamilton (7.08 p.m.)  
Laura Kehrlein (Vice-Chair)  
Shelby LaMotte (7.08 p.m.)

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

Chair Green made a short statement on the role of the Planning Commission.

**APPROVAL OF AGENDA**

M/s, Kehrlein/Ezzet, Motion to approve the agenda:

AYES: Ezzet, Gonzalez-Parber, Green, Kehrlein  
ABSENT: Hamilton, LaMotte

Commissioner Hamilton and Commissioner LaMotte joined the meeting.

**PUBLIC COMMENTS ON NON-AGENDA ITEMS**

No one came forward to speak.

**PRESENTATION OF RESOLUTIONS OF COMENDATION**

**Resolution No. 15-01** commending Commissioner **Brannon Ketcham** for his service

Chair Green read the Proclamation of Appreciation for Mr. Ketcham's service to the Town of Fairfax, who resigned from the Planning Commission on December 31, 2014.

**Resolution No. 15-02** commending **Commissioner Shelby LaMotte** for her service

Chair Green read the Proclamation of Appreciation for Commissioner LaMotte's service to the Town of Fairfax. Commissioner LaMotte will resign from the Planning Commission on January 31, 2015.

Mr. Ketcham acknowledged the role of planning staff during the years he has served on the Commission.

Commissioner Hamilton thanked Commissioner LaMotte and Mr. Brannon. She discussed the expertise that they brought to the commission and said that they would be much missed.

## CONSENT ITEMS

1. **1820 Sir Francis Drake Blvd.; Application # 15-01:** Request for a Use Permit to operate a tea shop providing on site consumption of tea and food and retail sales, including a rear yard outdoor eating area and live acoustic music; Assessor's Parcel No. 001-226-34; Central Commercial CC Zone District; Tracy Brien, applicant; Russell Marne, owner; CEQA categorically exempt, §15301(a).

Commissioner Hamilton and Ms. Neal had a short discussion about whether conditions of approval should be added regarding the live music and the hours of operation. Chair Green suggested that part of the Resolution be removed to form a Condition of Approval.

2. **127 Dominga Avenue; Application # 14-46:** Continued consideration of a modification of a previously approved Use Permit and Setback Variances to convert 299 square feet of the 598 square foot basement area into a finished conditioned space; Assessor's Parcel No. 002-025-06; Residential RD 5.5-7 Zone; David Grabham, G-Family Construction, applicant; Krishna Tyne, owner; CEQA categorically exempt, §§ 15301 and 15305(a). *Recommended for continuance to the February 19, 2015 meeting.*

M/s, LaMotte/Hamilton, Motion to approve the Consent Calendar with the following additional conditions of approval to 1820 Sir Francis Drake Blvd:

9. All music shall remain indoors;

That No. 2 of Resolution No. 15-04 be removed and become Condition No. 10 to read as follows:

10. The business hours of operation are Sunday through Thursday 12:00 noon to 8:00 PM and from 12:00 noon to 10:00 PM on Fridays and Saturdays. Therefore, the approval of the Use Permit and use of property as approved under the use permit shall not cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects thereto, or create undue or excessive burdens in the use and enjoyment thereof, or any or all of which effects are subsequently beyond that which might occur without approval or issuance of the use permit.

Ayes: ALL

Chair Green read the appeal rights.

3. **164 Willow Avenue; 14-47:** Continued request for a Hill Area Residential Development Permit, Excavation Permit, Design Review, Encroachment Permit and Variance to construct a 1,192 square foot, three bedroom, 2 ½ bath, single-family residence, including a 2 car garage; Assessor's Parcel No. 001-193-13; Residential RD 5.5-7 Zone District; David Grabham, G-Family Construction, applicant; Kalman Zeiger, owner; CEQA categorically exempt, 15303(a) and 15305(a) and (b).

Principal Planner Neal presented the staff report. She discussed the discretionary permits for the construction of a new 3 bedroom, 2½ bathroom, single-family residence with living space of a little over 1,000 sq. ft. She noted that the applicant has a recorded survey by a licensed surveyor, which shows that properties on either side encroach 164 Willow Avenue, which she discussed.

Ms. Neal noted that a Hill Area Residential Development Permit is necessary because the lot is on a steep slope and is substandard based on today's requirements, which she discussed. She also noted that excavation will result in the removal of over 100 cubic yards of material in order to meet the Town's parking requirements, for which an Excavation Permit is required.

Ms. Neal confirmed that the site is zoned for single-family and duplex use. She said that the proposed house will be built as close to the street as possible, while complying with the Town's parking requirements. She said that a large outdoor yard has not been proposed, and excavation will be minimal. Ms. Neal said that the Town Engineer has reviewed the survey and documents relating to the proposal, including the engineers' reports, and has determined that a house can be developed without causing danger to the residents and other properties.

Ms. Neal discussed design review. She said that the design criteria must be met to ensure the architectural design is of a quality to enhance the neighbor and not negatively impact the value of surrounding homes. She noted that the proposed dwelling will be set back from the road to provide parking and stepped up the hill to minimize impacts on the property on the street façade. Ms. Neal said that the design features include a covered porch, upper dormers and trellises over the garage, to add articulation to the building, in addition to the use of stucco, and board and batten siding. She also confirmed that the story polls were correctly placed.

Ms. Neal went on to discuss the excavation permit, which is necessary to provide parking.

Ms. Neal also discussed the request for a wall height variance, which relates to the necessity of providing retaining walls of up to 11 ft at the front of the property, due to the steep slope and the need to provide parking. She discussed the request for a combined side yard setback variance of 18 ft, which will provide a 2 ft exception to enable the house to be 20 ft in width. Ms. Neal noted that there are other structures in the neighborhood that encroach the side yard setbacks further. She said that staff believes the variance requests are reasonable.

Ms. Neal said that the property line is at the edge of the paved road and the Town Engineer has requested a condition is added to provide a maintenance easement. She noted that the standard conditions have been added by other agencies, which she discussed.

Ms. Neal discussed a letter from the Fairfax Open Space Committee, who have requested clarification on the number of trees slated for removal. She said that five trees are slated for removal to allow construction, and that the owner must obtain tree permits from the Tree Committee first.

Ms. Neal also discussed the amount of excavation required in response to the Fairfax Open Space Committee, and she noted that they have requested a higher level of environmental review due to the wildlife on the property. However, Ms. Neal said that CEQA exempts single-family homes from being subject to environmental reviews except under unusual circumstances. She said that no evidence existed that endangered or protected species of flora or fauna exist only on this site. Ms. Neal also explained that there were no special circumstances in the design that would warrant a negative declaration or environmental impact report. Thus, staff would recommend approval of the project by adopting the Resolution.

Planning Director Moore noted that the letter received from the Open Space Committee was signed by five of its members and did not result from a full hearing with a recommendation from the Open Space Committee. Mr. Moore confirmed that staff did not believe special circumstances existed on this site compared to other sites in the neighborhood that would warrant environmental review. Mr. Moore reminded the Commissioners that they needed to take action tonight due to the Streamlining Act.

In response to Commissioner Hamilton, Ms. Neal said that a design alternative to lower the walls at the front of the property had not been considered because it would result in more excavation and soil removal.

Ryan Connolly, speaking on behalf of the Architect, David Grabham, confirmed that the story polls were placed correctly in response to a letter from the downhill neighbor. He said that they have tried to work within the design standards of the Town and have remained within the height restrictions and the setbacks with the exception of the combined setbacks.

Commissioner Green and Mr. Connolly discussed the use of the garage for parking, rather than for storage space. Mr. Connolly noted that the width of the garage is limited but that storage space existed in the top portion of the garage.

Commissioner LaMotte discussed her concern that the appearance of the height of the retaining walls has not been mitigated. She noted that planters have been used for storm water retention structures and are shown on the grading and drainage plans but not on the regular plans. She discussed the importance of including the structures as part of the conditions.

Mr. Connolly said they are discussing details with the client to break up the wall façade. He confirmed that they will incorporate the civil plans with the architectural plans at the building permit stage so that the details are the same on both sets of plans.

Chair Green noted that the proposed structure is well designed, compact and a good example of smaller and better housing.

In response to Commissioner Gonzalez-Parber, Mr. Connolly said that their arborist had been unable to obtain permission from the neighbors to inspect their two oak trees before they had visited 164 Willow. Commissioner LaMotte suggested adding language relating to the protection of the trees, which she discussed. She noted that their roots grow under the property at 164 Willow and could be impacted by the construction.

In response to Vice-Chair Kehrlein, Mr. Connolly said that the large tree behind the proposed house would probably need to be removed because it will be affected by excavation. He noted that the arborist's report confirms that the tree is suffering from disease and there is a potential for it to fail.

Commissioner LaMotte said that the tree is magnificent and the effects of construction might not be felt for many years. She noted that the problems with the tree are not imminent.

In response to Commissioner LaMotte, Ms. Neal said that the applicant could file an appeal to the Town Council if the Tree Committee does not approve the application for tree removal and if the Planning Commission does not approve the project.

Chair Green opened the public comment period.

Liz Harris, 160 Willow Ave, discussed her concern that their fence encroached the property line at 164 Willow. She said that they would like additional conditions to protect her trees. However, Ms. Harris said that their main concern is that the lot is narrow and the house too large. She said that the applicants should not be granted a variance for the retaining walls, which are too high and that they should build a smaller, narrower house without the need for exceptions. Furthermore, she said that the oak tree in the back is one of the nicest trees in the area and they would not want it to fall on their property.

Victor Harris said that the proposed project should be changed or not built. He expressed concern that the boundaries have been changed and that they had not been consulted. Mr. Harris said that the fence has been in place for the 34 years they have lived there; that they are entitled to that land and it cannot be changed. He also expressed his concern that so much grading is necessary to build an 11ft wall, in addition to the destruction of oak trees and the possibility of a landslide. Mr. Harris said that the house is too big for a small lot.

Mimi Newton, Chair, Fairfax open Space Committee, said that the neighborhood is built up and this is one of the undeveloped properties, with large trees that are important to the neighborhood. She noted a discrepancy in the size of a tree in the arborist report, which she said is a heritage oak tree that is valuable to the Town.

In response to Commissioner LaMotte, Ms. Newton said that they did not have the time to document the flora and fauna on the site.

James Whittlesey, 168 Willow, said that deer and raccoons regularly visit the lot and he presented photographic materials to the commissioners. He said that the proposed house is located too far back on the property and that it will impede views and would darken the vicinity. He is also concerned that a 6ft tall fence would also darken their property further, and he asked if an air conditioning unit is installed that it not be installed close to their house.

Sandra Cornell, 169 Willow, discussed her safety concerns about transporting earth along the street, and the dust and dirt caused by construction. Ms. Cornell said that she will have a direct view of the stairs and that she would like them to be softened since the material seems to be cement.

Ruth Horn, 11 Upper Ridgeway, said that the oak trees are an incredible canopy and wonderful to look at. She commented on treating oak trees that had health issues and said that the applicants should build within the Town's rules. Ms. Horn said that Willow is narrow with little parking and that the road should be protected.

Richard Holland, 176 Willow, said that the proposed dwelling will have a significant impact on the neighbors and environment and that he disagrees with the Resolution. Mr. Holland said that the issues can be mitigated.

Helen Strodl, 95 Chester, said that an 11ft retaining wall is a huge problem, albeit that it is necessary. She suggested a smaller house might be more suitable for the small piece of property. Ms. Strodl discussed her concerns that construction vehicles might be parked on the street at night. She said the exceptions should not be granted that negatively impact the neighborhood.

Chair Green closed the public comment period.

Commissioner Ezzet noted that, although the lot has been open for everyone to enjoy, it is zoned for development. She said that the retaining walls should be softened. Ms. Ezzet said that she understood the concern about construction vehicles using the street but there are ways of dealing with the problem.

Chair Green noted that the house is relatively modest in size and he said that he would support a condition relating to the softening of the retaining walls with plantings or articulation.

Vice-Chair Kehrlein and Ms. Neal discussed parking. Commissioner Kehrlein suggested moving the house closer to the street to save the tree at the back and mitigate some of the retaining wall issues. Ms. Neal said that the applicant should be asked if they are willing to continue the project for 90 days in order for them to apply for a parking variance to allow both spaces to be in tandem with the house.

Commissioner Gonzalez-Parber said that the proposed dwelling is well designed and compact. However, she suggested relocating the house further up the hill on the property, which would necessitate a longer driveway, but she would favor it if the oak tree could be saved and some of the retaining wall issues mitigated. Commissioner Gonzalez-Parber said that parking is important. She expressed concern about the neighbors' oak trees, whose future she said is uncertain, and she

said that they do not yet know how the retaining walls will be softened. Commissioner Gonzalez-Parber said she would support a continuance.

Commissioner Hamilton discussed her concern that the applicant and neighbors do not seem to have discussed the proposal before tonight's hearing. She also expressed concern that there have been lot line changes, which she discussed. Commissioner Hamilton discussed the possibility of moving or angling the parking in order to save the oak tree at the back. She said she would support a continuance to ascertain the accuracy of the type and number of trees slated for removal on the plans.

Planning Director Moore noted that the survey formed part of the record. He said that lot line disputes are not uncommon and that, if the neighbors disagree, they can obtain their own survey. Mr. Moore suggested that the Commissioner might wish to continue the application to allow the applicants to submit plans to mitigate the effects of the retaining walls. Mr. Moore noted that the neighbors have expressed concern about the impact of construction on the road and he said that a road bond would be charged. He suggested the commissioners request a construction plan, which he discussed.

In response to Commissioner Ezzet, Chair Green said that the survey applies to the land and is not an agreement specifically between two property owners.

Commissioner Hamilton and Ms. Neal discussed the measurements of the setbacks of the retaining wall from the house. Ms. Neal noted that the stairway is not considered a structure and can encroach the setback. Mr. Moore discussed a design change that would lower the height of the garage, lessen the length of the stairway and bring the house forward, which he thought might make a difference to saving the heritage tree at the back.

Commissioner LaMotte suggested that a second opinion is sought as to whether moving the house a few feet further away from the oak tree will make a difference. She noted that the structure could be moved forward but that a variance would be needed for a guest parking space. Commissioner LaMotte said that she would value the tree so much more than the guest parking space, but that it should be ascertained first if the tree can be saved.

Vice-Chair Kehrlein and Commissioner Hamilton said they would favor a continuance to determine if the design can be modified and the tree saved.

Commissioner Ezzet said that there is insufficient parking and that she would condition the present application to soften the retaining wall at staff's discretion, and use mitigation measures to protect the tree. She said she would trust the Tree Committee to make recommendations.

Chair Green said he would like more information on the impact of construction on the neighbors' trees but, overall, he likes the project.

In response to Chair Green, Mr. Connolly said they agreed to a 90-day continuance.

M/s, Green/LaMotte, Motion to continue Application No. 14-47 for up to 90 days, for a request for a Hill Area Residential Development Permit, Excavation Permit, Design Review, Encroachment Permit and Variance to construct a 1,192 square foot, three bedroom, 2 ½ bath, single-family residence, including a 2 car garage at 164 Willow Avenue with the friendly amendment proposed by Commissioner Hamilton as follows:

- a) That another independent arborist review the trees on the property that are slated for removal and provide an accurate plan, and also review the two oak trees at 160 Willow Avenue.
- b) That parking options be provided that might allow the building to be moved forward. Tandem/angled parking may be considered;
- c) That a construction management plan is provided;
- d) That plans are provided for softening, articulating or lowering the front retaining walls.

AYES: All

4. **15 Wood Lane; Application # 15-02:** Request for a Hill Area Residential Development Permit and Design Review of a proposed 50% remodel and expansion of an existing duplex converting it into a 3,354 square foot, 5 bedroom, 3 bath, single-family residence; Assessor's Parcel No. 002-081-07; Residential Single-family RS 6 Zone District; John Fraine and Mark Bruce, applicants; John and Angela Ginsburg, owners; CEQA categorically exempt, § 15301(e)(1).

Senior Planner Neal presented the staff report. Ms. Neal explained that the increase in square footage would result in the development of a single-family home, although the footprint would not be expanded.

Ms. Neal discussed the discretionary permits that would be necessary for the conversion. She said that staff were not concerned about the proposed work to the structure. However, she said that the Town Engineer considered the proposed method of excavation at the back of the property to be unstable, and the applicants had hired another engineer who made recommendations to address the problems. She noted that, although the Town Engineer has approved the plans, the Town Attorney has provided a more detailed liability document than is usually provided that holds the Town harmless. Ms. Neal also discussed the extensive drainage improvements that would be necessary.

Ms. Neal noted that the proposal complies with the design criteria, other than the requirement for a third parking space, which requires the encroachment of the side yard setback. She said that, in order to comply with the setback, fruit trees would need to be removed. Ms. Neal noted that the space is next to the neighbor's garage and not next to their home. Staff believes the proposed parking plan minimizes impact while providing a third space. Overall, Ms. Neal noted that staff could make the findings to support the project, which are discussed in the staff report.

In response to Vice-Chair Kehrlein, Ms. Neal said that the third parking space would be accessible through the carport.

In response to Chair Green, Ms. Neal confirmed that the Town Code requires a third on-site parking space. They discussed soils stability and Ms. Neal confirmed that both the Town Engineer and the applicant's engineer believe that the level of safety for the residents and the neighbors is acceptable. She noted that the area does have a history of landslides, which she discussed.

In response to Commissioner Gonzalez-Parber, Ms. Neal said that the neighbor whose side the third parking space will encroach has been notified but they have not been in touch.

In response to Commissioner Hamilton, Ms. Neal said that the parking requirement for a duplex is 5 spaces and she confirmed that 3 spaces are sufficient for a single family home.

Mark Bruce, Project Architect, said that their design shares characteristics of the neighboring homes and that they want to capture the space in the existing building footprint.

Chair Green opened and then closed the public comment period when no one came forward to speak.

Vice-Chair Kehrlein said that the Town Attorney's recommendations regarding the back wall should be elaborated in the conditions of approval and also documented in the building permit application. Ms. Neal noted that the building permit plans will be reviewed by the Town Engineer for compliance with the Miller Pacific reports, which form part of the conditions of approval.

Commissioner Gonzalez-Parber commended the designer for consolidating the space.

Commissioner LaMotte said that she always favors modifications that do not expand the footprint, although she thought it a shame that multi-units were being removed.

Commissioner Hamilton said that she also appreciates the maintenance of the footprint of the dwelling, and that the conversion to a single-family home fits within the rules with the exception of parking. She said that it is a good design and that a second unit in the future would be a fine feature.

M/s, LaMotte /Gonzalez-Parber, Motion to approve Resolution No. 15-003, Application No. 15-002, to approve the request for a Hill Area Residential Development Permit and Design Review of a proposed 50% remodel and expansion of an existing duplex converting it into a 3,354 square foot, 5 bedroom, 3 bath, single-family residence at 15 Wood Lane with the following amendments and changes to the conditions of approval:

**"WHEREAS** the Commission has approved the project subject to the applicant's compliance with the following conditions:" shall be amended to read:

"Based on the foregoing, the Commission has approved the project subject....."

"A hold harmless document which shall be recorded after Town approval...." Shall be amended to read:

“A hold harmless and indemnity document which shall be recorded after Town approval....”

Condition e. will have the following language added:

“..... The construction drawings will be reviewed by the Town Engineer for compliance with the Geotechnical Engineer’s reports”.

AYES: All

Chair Green announced the appeal rights.

## **MINUTES**

5. Minutes from the December 18, 2014 meeting.

Approval of the December minutes was continued due to a lack of a quorum of Commissioners present at that meeting to allow the Commission to take action.

AYES: Gonzalez-Parber, Green, Hamilton, Kehrlein, LaMotte  
ABSTENSION: Ezzet

## **DISCUSSION ITEMS**

6. Zoning Ordinance: Issues list creation/update

Keeping areas of the lot undeveloped, natural state requirements.

## **PLANNING DIRECTOR’S REPORT**

Planning Director Moore reported on a GPIC (General Plan Implementation Committee) meeting. He said that they are discussing recommended policy on the Housing Density Ordinance that the Town is required to draft by the existing General Plan.

Mr. Moore noted that a workshop will be held on Thursday, January 22, 2015 to present the Housing Element update and receive feedback from the public. He said that a joint meeting will then be held between the Planning Commission and Affordable Housing Committee before the final Draft Housing Element is presented to the Town Council. Mr. Moore said he hopes that the document can then be sent to HCD and their comments received within 60 days in time for the Council to adopt the Housing Element before May 31, 2015. Mr. Moore noted that the Town should have an additional year to implement the zoning changes required by the current Housing Element.

Mr. Moore noted that a traffic forum will be held during the spring, in addition to the third and final forum on the existing Housing Element policy changes.

Mr. Moore discussed two vacancies on the Town Council.

### **COMMISSIONER COMMENTS AND REQUESTS**

Chair Green reported on his attendance of the GPIC meeting, where they discussed affordable housing and other concessions that the Town is required to implement.

Commissioner Hamilton led a discussion on the laundry list that is being drafted, such as allowing tandem parking, which has not been addressed. Mr. Moore said that a workshop should take place for this purpose and he suggested that the commissioners present a list of three main topics at the next Planning Commission Meeting for discussion at the workshop.

The commissioners acknowledged the work of Commissioner LaMotte.

### **ADJOURNMENT**

A motion was made, seconded and unanimously approved to adjourn the meeting at 10:30 p.m.

Respectfully submitted,

Joanne O'Hehir

