

DRAFT Town of Fairfax Planning Commission Minutes
Fairfax Women's Club
Thursday, January 21, 2009

Call to Order/Roll Call:

COMMISSIONERS PRESENT: Terry Goyan
Shelley Hamilton
Brannon Ketcham, Chair
Peter Lacques
Shelby LaMotte
Peter Ramsay

COMMISSIONERS ABSENT: Pam Meigs
Peter Lacques

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

Call to Order

Chair Ketcham called the meeting to order at 7.35 pm.

Approval of Agenda

M/S, Hamilton/Goyan Motion to approve the agenda.

AYES: All

Public Comments on Non-Agenda Items

No one from the public came forward to speak.

Consent Items

1. **15 Bell Avenue; Application # 10-01:** Request for a Use Permit and a Combined Side Yard Setback Variance to enclose an existing open carport attached to an existing single-family residence; Assessor's Parcel No. 002-211-11; Residential RD 5.5-7 Zone; Darrel and Mary Hickman, applicants/owners; CEQA categorically exempt, § 15301(e)(1) and 15305(a).

Chair Ketcham opened the hearing to members of the public but no one came forward to speak.

M/S, Hamilton/Goyan, Motion to approve Consent Item 15 Bell Avenue, Application # 10-01.

Ayes: ALL

Chair Ketcham read the appeal rights.

Public Hearing Items

1. **80 Chester Avenue; Application # 09-25**: Continued consideration of a request for a Use Permit, Parking Variance, Floor Area Ratio (FAR) Variance and Setback Variances to construct a 191sf addition remodel to an existing single family residence, to construct a two car garage and expand the parking deck; Assessor's Parcel No. 001-192-11; Residential RD 5.5-7 Zone; Rich Rushton, Rushton Chartock Architects, applicant; Cameron and Kamber Mason, owners; CEQA categorically exempt, § 15301(e)(1) and 15305(a).

Senior Planner Neal introduced the staff report. Ms. Neal said that it was the Town Attorney's opinion that the project did not constitute a three-story structure and, therefore, the Planning Commission was not precluded from making a decision.

Ms. Neal explained that the garage entry height had been raised to allow the owner to store his construction vehicle so that it would not block the shared access easement; that the proposed retaining wall would be replaced by a fence that would follow the access easement line for the driveway access easement to 84 Chester Avenue.

Ms. Neal said letters of support had been received from the neighbors, which included two letters with requests for additional conditions that were in the Commissioners' purview to add to the Conditions of Approval should they choose. She said that the Commissioners should also consider whether there was a need for the project to be reviewed by the Design Review Board, which was included as a Condition of Approval. Ms. Neal said that staff recommended approval of the property based on the findings and conditions laid out in the staff report.

In response to Vice-Chair Hamilton, Ms. Neal said that the Town Attorney had reviewed the Deed Restriction but that he had commented only on the three-story structure. He did not comment on lot coverage. However, Ms. Neal noted that the project would expand lot coverage to 33% and the Deed Restriction set a maximum of 35%.

Chair Ketcham and Ms. Neal discussed the Condition of Approval which required the project to be reviewed and approved by the Design Review Board.

Commissioner Lacques and Ms. Neal discussed height limitations in relation to the Code and the Deed Restriction.

In response to Chair Ketcham, Ms. Neal said that the Town Attorney had determined that the dwelling consisted of a two-story building.

Commissioner Goyan said that it would be helpful to know the contents of the ordinance that governed height restrictions at the time when the Deed Restriction was drawn up.

M/S, Goyan/Lacques, Motion to take a 15-minute break at 7.55 p.m. to allow Senior Planner Neal to locate and provide copies of the relevant ordinances that covered height restrictions and lot coverage at the time the Deed Restriction was enforced.

Ayes: Goyan, Ketcham, Lacques, LaMotte, Ramsay
Noes: Hamilton

Ms. Neal said that Ordinance 3351, passed in 1973, stipulated that principal buildings should not exceed 45 feet in height on a sloping lot, which would have applied to 80 Chester Avenue. Ordinance 486, passed in 1981, prior to the Deed Restriction, restricted primary structures to a height of no more than 35 feet above natural grade.

Rich Rushton, project architect, discussed height limit. He noted that the owner had ten letters of approval by the neighbors and he presented photographic materials to show that the size of the dwelling would be similar to others on downhill- slopes in the neighborhood.

Mr. Rushton discussed the placement of the fence and changes to the design. He said that the loft height would be too low to constitute a story.

Riley Hurd, attorney for the applicants, discussed height and story restrictions. He noted that the height of the dwelling would meet the requirements of the Deed Restriction and Town Code.

Mr. Hurd also discussed design review in relation to the Deed Restriction. He said that he believed the intent of the Deed Restriction, which was drawn up in conjunction with the subdivision of the lot, was to restrict the design of an anticipated new house on the empty lot, rather than to changes to the design of a dwelling once it had been built. .

In response to Commissioner Goyan, Cameron Mason, applicant, said they would repair any damage to the road caused by their construction vehicles.

Ms Neal noted that the applicants would need to pay a Road Bond.

Commissioner Goyan and Kamber Mason, applicant, discussed patronage of local businesses in relation to the construction of their project.

Commissioner Goyan and Mr. Rushton discussed green building materials.

Chair Ketcham noted that they tended to look more favorably on projects requesting a floor area ratio (FAR) that exceeded the maximum if additional green building materials were used beyond those required by the Building Code.

In response, Mr. Rushton noted that their intention was to build a garage and entryway and not retrofit the entire dwelling.

Commissioner Ramsay noted that they are exceeding the requirements of the Energy Code.

Commissioner Goyan expressed concern that a slightly larger FAR might be granted in return for the applicants restricting green building materials to the requirements of the Building Code.

Chair Ketcham and Mr. Rushton discussed the garage doors. Mr. Rushton confirmed that there will be no useable space underground.

Chair Ketcham opened the hearing to public comment.

Stephen Vanni, owner of 90 Chester, provided background information on the project. He discussed his concerns about a lack of parking in the area for construction vehicles and possible damage to the road which was resurfaced about six years ago. Mr. Vanni also discussed his concerns about a sewer pipe.

James Hird, 84 Chester Avenue, expressed his concern that he would not have access to his driveway for a significant amount of time. He said he would work with the applicants but that a timeframe for the project should be established.

William Deason, 78 Chester Avenue, also expressed his concern about parking. Mr. Deason and Ms. Neal discussed the Road Bond and Ms. Neal confirmed that the amount would be determined by the Public Works Director.

Mr. Hurd noted that Conditions of Approval required a construction management plan to be drawn up and that they would adhere to the Town's construction hours.

Commissioner Ramsay noted that the project had overwhelming support from the neighbors and that it appeared that the Town's ordinances addressed Mr. Hird's concerns. He said that he was satisfied with the findings for the project and that the design would improve the dwelling.

Commissioner Goyan said he was disturbed that current building practices rendered an FAR variance useless. He believed that a FAR variance should only be granted for projects which exceeded minimum green construction standards required by the Code. Commissioner Goyan discussed construction hours with staff.

Vice-Chair Hamilton said that she appreciated the efforts made by the applicants to ameliorate the neighbors concerns with regard to the redesign of the entryway, fence line and driveway access. She noted that stricter green building guidelines would probably be introduced in future.

Commissioner LaMotte said that the design would be a vast improvement on the property. She noted that the streets were narrow, that construction vehicles impacted neighborhood parking, but that it appeared the applicants were accommodating towards their neighbors.

Chair Lacques said that he believed the height might be too imposing, for which reason he believed the project should be reviewed by the Design Review Board. He said that the Town's current Green Ordinance was a little too generous in ascribing mandatory building practices, noting that the project had sufficient "green points" to exceed the FAR requirements.

Chair Ketcham noted that the applicant had amended the design, following Commissioners' comments at the last meeting. He said he would not like a decision made by the Commission to violate the Deed Restriction and he suggested that construction hours be limited to 5 p.m.

Vice-Chair Hamilton noted that the applicants had support from the community, which should not necessitate design review. However, she remained concerned that the Planning Commission might not have the authority to override the terms of the Deed Restriction.

Senior Planner Neal explained why staff interpreted the original Deed Restriction to apply only to the original structure, which was partly because design review was listed as a sub heading under the Deed Restriction.

Planning Director Moore suggested that the Town Attorney's opinion be sought as to whether the terms of the Deed Restriction would require this project to be reviewed by the Design Review Board.

In response to Vice-Chair Hamilton, Ms. Neal noted that the shared driveway was not a public roadway easement and that any matter of contention between the neighboring properties or damage to the driveway would be a civil matter. She noted that the road bond would only cover damage to the public roadway.

Ms. Mason stated that they would fix any damage to the public road or the driveway easement.

Mr. Hird reiterated his concerns that the project might take too long to complete. He did not wish to impede progress but he would like there to be an agreement over the length of time he might not be able to use the driveway.

Ms. Neal suggested that a work schedule be drawn up and peer-reviewed as a Condition of Approval.

Ms. Neal suggested that the Commissioners include a Condition of Approval that the Town Engineer should study the drainage plan as part of the building permit process.

Commissioner Lacques said he believed the addition could constitute a dramatic visual impact and should, thus, be forwarded for review to the Design Review Committee.

M/S, Hamilton/ Motion to approve Application # 09-25, Continued consideration of a request for a Use Permit, Parking Variance, Floor Area Ratio (FAR) Variance and Setback Variances to

construct a 191sf addition remodel to an existing single family residence, to construct a two car garage and expand the parking deck at 80 Chester Avenue with following amendments and additions to the Conditions of Approval:

That construction hours should end at 5 p.m.;

That a Town-approved plan-checker should review the work schedule;

That driveway drainage be plan-checked;

That Condition # 4 be changed to“....prior to issuance of project final” from “....Occupancy Permit”.

Further discussion ensued and Commissioner Hamilton withdrew her motion.

Commissioner Goyan agreed with Commissioner LaMotte that the Town Attorney’s interpretation should be sought in view of neighborhood support for the project, rather than directing the project straight to Design Review. Commissioner Ramsay was also in agreement.

Commissioner Lacques said that he believed the project should be brought before the Design Review Board because it might have a significant impact on the neighborhood.

Commissioner LaMotte noted that the addition would not create a very large dwelling or change the footprint.

Chair Ketcham believed that the addition was substantial and the Deed Restriction could be interpreted as requiring design review, for which reasons he believed that Design Review was triggered.

M/ Hamilton/ , Motion to approve Application # 09-25: Continued consideration of a request for a Use Permit, Parking Variance, Floor Area Ratio (FAR) Variance and Setback Variances to construct a 191sf addition remodel to an existing single family residence, to construct a two car garage and expand the parking deck at 80 Chester Avenue with the following amendments and added conditions:

That construction hours should end at 5 p.m.;

That a Town-approved plan-checker should review the work schedule;

That driveway drainage should be reviewed by the Town Engineer;

That Condition # 4 be changed to“....prior to issuance of project final” from “....Occupancy Permit”.

Commissioner LaMotte suggested a friendly amendment to Recommended Finding # 12, which was accepted by Vice-Chair Hamilton, which would read “Based on the supplemental information provided with the Application for an FAR Variance, the project is incorporating a sufficient amount of green building materials in the project design and therefore qualifies to increase the FAR from .42 to .44”.

Furthermore, Commissioner LaMotte suggested a further friendly amendment to Condition # 11 to read “The project must be reviewed and approved by the Design Review Board pending the Town Attorney’s determination on whether or not the terms of the Deed Restriction deem approval by the Board necessary”

Second: LaMotte

A roll call was taken:

Ramsay:	Aye
Goyan:	Aye
Hamilton:	Aye
Lacques:	Aye
Ketcham:	Aye
LaMotte	Aye

The project passed with unanimous approval.

Chair Ketcham read the appeal rights.

Chair Ketcham announced a ten minute break at 10 pm.

Discussion Items

1. **Continued discussion/consideration of the Draft Safety Element**

Planning Director Moore said that the Commissioners should review the Draft Safety Element prior to the fire forum that would be held on Saturday, 30 January, which he believed was pertinent to the Element.

Commissioner LaMotte, a member of the sub-committee which had met to discuss the Fire Section of the Draft Safety Element, provided an overview of the discussions. She said they had made the section more concise and moved some content to the Preparedness Section. Commissioner LaMotte noted that neither the Tree Ordinance nor UWI (Urban Wildland Interface Code) were referenced in the policies and programs of the Fire Section, which the sub-committee believed should be included. She noted that this was a rough draft that needed further input.

Chair Ketcham noted that programs 3.8.1 through 3.8.10 were issues that should be addressed at the Fire Forum.

Chair Ketcham suggested that a workshop should take place for further discussion and also discussion on the chapter on preparedness. He said that it would be useful to be provided with a “UWI” map that pertained to Fairfax.

Vice-Chair Hamilton and the Commissioners discussed the difficulty of incorporating the Town Codes and Fire Codes into the Fire Section of the Draft Safety Element.

Planning Director Moore noted that Fairfax' Code could supersede the Fire Code or State Code but it must at least adopt the standards contained in those codes.

It was agreed the fire sub-committee would meet, again.

1. Report from Planning Director on forthcoming topics or items of interest.

Planning Director Moore provided materials to the Commissioners that included the Berst Task Force Staff Report and the draft resolution of the green-building ordinance provided by Bob Brown, Community Development Director at San Rafael.

Mr. Moore explained the procedure for changing a zoning ordinance.

Mr. Moore noted that sub-committees made up of planning commissioners were needed for each remaining element.

He further noted that the Town and County Site had been removed from the list of suitable places on which to open a school. He said that the State Fire Marshall could be the final arbiter on a suitable site.

Mr. Moore passed out a brochure on the Brown Act.

Mr. Moore said that the Town Attorney and Town Engineer would be available at the meeting of February 18, when the project at 161 Ridgeway would be heard. He made a note to check with the Commissioners beforehand that there would be a quorum.

Approval of Minutes

3. Minutes from the Meeting of December 17, 2009

M/S, Hamilton/Ramsay, Motion to approve the minutes from the meeting of December 17, 2009, with the following amendments:

Paragraph 1 on Page 3 of the minutes would read:

“Commissioner Hamilton and Ms. Neal discussed the fact that the second unit parking issue at 167 Ridge Road, which concerned a second unit, was not relevant to the Planning Commission’s decision on this project”.

Page 5, paragraph 8 of the minutes would read:

“In response to Commissioner Hamilton, Ms. Neal said that the pullout requirements by the Fire Department necessitated the removal of a parking space on Ridgeway”.

AYES: All

Commission Comments and Requests

Commissioner Goyan said that he would provide a copy of the City of Davis’ light pollution ordinance to Planning Director Moore, which might be useful to discuss and include in the Draft Safety Ordinance.

Vice-Chair Hamilton requested the definition of an “ad-hoc committee” at the next meeting.

Commissioner LaMotte asked if other commissioners wished to join the sub-committee for further discussion of the Fire Section of the Draft Safety Element, which would convene on January 25th, at 4pm.

Adjournment

A motion was made, seconded and unanimously passed to adjourn the meeting at 11.05 pm.

Respectfully submitted,

Joanne O’Hehir