

*DRAFT* Town of Fairfax Planning Commission Minutes  
Fairfax Women's Club  
Thursday, March 18, 2010

**Call to Order/Roll Call:**

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

**COMMISSIONERS ABSENT:**

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

Call to Order

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

Approval of Agenda

Chair Hamilton opened the meeting to the public, but no one stepped forward to speak.

M/S, Goyan/LaMotte, Motion to approve the agenda with the Consent Item on 40 Merwin Avenue continued to the meeting of April 15, 2010.

AYES: All

Public Comment on Non-Agenda Items

No one from the public came forward to speak.

Consent Items

1. 40 Merwin Avenue; Application # 10-03 : Request for a Use Permit and Combined Side Yard Setback Variance to construct a 208 square foot dining room addition to an existing 1,674 square foot single-family residence; Assessor's Parcel No. 002-111-05Residential Multiple Family RM Zone; Rich Dowd, Architect/applicant; John and Soy Molloy, owners; CEQA categorically exempt, § 15301(e)(1).

Continued until the April15, 2010 meeting.

Public Hearing Items

2. 161 Ridgeway Avenue; Application # 09-30: Request for a Hill Area Residential Development Permit, Setback Variances, and 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

Senior Planner Neal presented the staff report. She noted that at the previous hearing, the Commissioners had requested a continuance so that the Town Attorney, Town Engineer and a representative of the Ross Valley Fire Department could be present to address their concerns.

Ms. Neal discussed the changes to the design. She noted that the minimum parking requirements had been met, the structure had been moved back from Vanni Lane to 1ft from the rear yard setback, and that the upper deck had been decreased in width.

Ms. Neal discussed the easement which would dedicate Vanni Lane to the Town pursuant to the Certificate of Compliance. She said that liability issues relating to the maintenance of the slope had been resolved by conditions of approval that released the Town from liability.

Ms. Neal noted that staff recommended approval of the project based on the revised plans and Conditions of Approval.

Commissioner Meigs and Ms. Neal discussed the Certificate of Compliance. She said that the prescription of the easement would be forwarded for approval by the Town Council if the house was approved by the Planning Commission, tonight.

Chair Hamilton and Ms. Neal discussed the Conditions of Approval.

Commissioner Meigs and Ms. Neal discussed an old easement that pertained to the Water District.

Commissioner LaMotte and Fire Chief Roger Meagor discussed the vegetation management plan and fire break that was a requirement of the UWIC (Urban Wildland Interface Code).

Neil Sorrensen, applicant's attorney, introduced the project design team.

Fred Divine, project architect, discussed the changes they had made to the project design, which included moving the structure away from Vanni Lane towards the rear setback. Mr. Divine confirmed they would be meeting the UWIC requirements.

In response to Commissioner LaMotte, Ms Neal confirmed that the neighbors had access to the second unit driveway.

Assistant Town Attorney Inda Khalsa discussed the Certificate of Compliance. She noted that it certified that the lot was legal and that the owner volunteered to dedicate Vanni Lane as an easement to the Town in exchange for which the Town would allow a building to be erected on the remaining part of the lot. Ms. Khalsa explained that the easement would become dedicated to the town on issuance of the building permit.

Ms. Neal noted that the Town Council would draft the easement and its conditions and address the matter of whether or not the wall at the bottom of the slope would be included.

Chair Hamilton opened the meeting to public comment.

Jessica Green, Ridgeway, expressed her concern that Vanni Lane was too narrow to accommodate a house on a lot which she believed was built too close to the front property line. She also expressed concern that the road was not town-maintained and had not been cleaned up by the property owners.

Dennis Turner, Ridgeway, expressed concern that if the retaining wall were not included in the easement, no one would be responsible for its maintenance.

In response to Commissioner Meigs' concern that the narrow setback at the front of the property would cause a safety issue, Ms. Neal said that the Police and Fire Departments have approved the project and that there were other structures in Fairfax that were built close to the edge of a road.

Commissioner Meigs suggested that a lower speed be posted, to which Ms. Neal responded that her suggestions should be addressed to the Safety Committee.

Commissioner Goyan noted that the lot was difficult to accommodate a building, but that he appreciated the efforts made by the applicant to amend the design in accordance with the Commissioners' wishes at the previous hearing.

Commissioner Meigs said that she supported the project.

Commissioners LaMotte and Ramsay noted that the issues surrounding the lot had been addressed and that they supported the project.

M/S, Meigs/ Motion to approve Application #09-3, a request for a Hill Area Residential Development Permit, Setback Variances, and 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 with the conditions of approval set forth in the staff report.

Planning Director Moore suggested a friendly amendment to add a minimum of 91 green points that the applicants submitted on a checklist, and to include Resolution No. 10-02, its findings and all recommended conditions of approval.

Chair Hamilton suggested the friendly amendment that in the staff report, Exhibit A, not B, would be approved and that the correct date should be 2/22/10.

The motion, as amended, was seconded by Commissioner Goyan.

AYES: ALL

Chair Hamilton read the appeal rights.

3. 6 School Street Plaza Suite, 210; Application 97-UP: 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;

Planning Director Moore presented the staff report, when he discussed the conditions by which a medical marijuana dispensary could operate under a Use Permit. He discussed the determinations that staff made to support the use of ancillary space for the sale of products that were related to the primary use.

Mr. Moore noted that the applicant was requesting a modification to the Use Permit to include the sale of live clones on site, a delivery service, and a grow site in town. He discussed the conditions of the existing permit which the applicant has requested be removed and/or modified.

Mr. Moore explained why the Planning Commission could only provide authority, should they wish, for the delivery of medical marijuana to town residents, only, and he noted that the applicant had not yet procured a grow location, which they would prefer not be made known. However, staff believed that when a location was secured, the neighboring property owners should be made aware of the location before a decision could be made by the Planning Commission.

Commissioner Meigs and Mr. Moore discussed the modification process for a Use Permit.

Chair Hamilton and Mr. Moore discussed the issues for which approval was requested. Assistant Town Attorney Khalsa said that language had not been drafted pertaining to the deliver service because staff had not recommend approval and would be directed by the commissioners.

Ms. Khalsa and Commissioner Ramsay discussed zoning and land use pertaining to the growth of marijuana for medicinal use.

In response to Chair Hamilton, Mr. Moore said that the request for extended hours pertained to other areas of the business, and not just for the delivery of marijuana should that be approved.

In response to Commissioner Meigs' concern that traffic might increase, Mr. Moore said that as other similar businesses have increased, the applicant's business has dropped and the intent of the ancillary space was to allow her to increase her business.

Lynette Shaw, applicant, provided additional materials to staff and the commissioners regarding legal information on medical marijuana and insurance. Ms. Shaw said that there were about twenty delivery services in Marin that were affecting her business. She believed that many of these services were unregulated.

Ms. Shaw and Commissioner Meigs discussed enrollment that enabled a patient to purchase medical marijuana from her business, delivery trips and the requested modification to the condition that would allow underage critical patients to enter the shop.

General discussion took place on the transportation of medical marijuana relating to the law. Ms. Khalsa said that under the Compassionate Use Act, the Court had not made it clear who a primary care giver should be or whether there could be multiple primary care givers.

General discussion amongst the Planning Commissioners took place with regard to growth sites. Mr. Moore noted that the purpose of bringing this aspect before the Commission without a specific site in mind was to gauge their response towards a growth site.

Ms. Khalsa discussed site options in relation to town code, and Mr. Moore noted that the legitimate growth of marijuana could not take place in residential areas.

Commissioner Meigs and Ms. Shaw discussed access to the store by minors and ID. Ms. Shaw explained that the ID card was expensive and that she requested a change to the conditions to allow patients to purchase medical marijuana for 30 days with a doctor's prescription. Ms. Shaw noted that the patient who had a 30-day intern period could not purchase clones during that time.

In response to Commissioner Meigs, Ms. Shaw noted that that there were no licensed delivery services in Sonoma.

Ms. Khalsa and Commissioner Meigs discussed the legal issues regarding a 30-day intern period.

Mr. Moore led a discussion on the issue of allowing minors into the store, which the Police Chief did not favor. Ms. Shaw discussed the reasons why she believed minors should be able to enter the store in response to Commissioner Goyan.

Chair Hamilton led a discussion on the conditions that related to record-keeping. Mr. Moore said that staff could support a change to the conditions to allow the Town to make a request to audit the books, rather than the twice-daily inventory that currently took place under the Use Permit conditions.

Commissioner Goyan and Mr. Moore discussed the conditions that related to the reporting of crime. There was general agreement amongst the commissioners that the applicant should be limited to the need to report crimes that occurred in the building or parking lot.

Chair Hamilton announced at 10-minute break at 10.05 p.m.

When the commissioners reconvened, Chair Hamilton opened the meeting to public comment.

Mr. Mullin, Seaver Drive, Mill Valley, said he was a patient. He requested that the Planning Commission grant the extended hours because weekend closure meant that he had to use an unlicensed dispensary.

Mr. Moore said that staff and the Police Department supported the sale of clones and suggested that a decision on the delivery service, grow site, age and perhaps hours could not be made at the meeting.

Commissioner Meigs said that she would like information on the rules about minors, trial membership and home delivery in other Bay Area communities that were similar to Fairfax.

Commissioner Goyan said he had visited the playing field and would like to know where the boundary lay between the field and dispensary, since the impact of extended opening hours was thought to be slight.

Commissioner Ramsay said he would support a lift on the restricted hours and that he would not be opposed to a delivery service, given that there were others who were providing such services and penalizing a local business. He said it would be different if the Police Chief could regulate all delivery services.

Commissioner LaMotte said that she was in agreement with Commissioner Ramsay in general, but that she would like to study the materials provided by the applicant and to gain a better understanding of the law which related to delivery services. She noted that the allowance of an activity should not necessarily be granted because someone was doing the same activity unlicensed. Commissioner LaMotte said she did not have an issue with the sale of clones.

Commissioner Meigs said that she also did not have an issue with the sale of clones. She said that she was drawn to the Police Department's report and noted that Sebastopol, a community that reflected similar values to Fairfax, did not allow delivery services. She said she required more information on the issue of minors before she could make a decision.

Chair Hamilton said she would not consider a grow site because it was not connected with the Use Permit. She said that, conceptually, she did not have an issue with delivery but would like further information from the legal aspect.

In response to Chair Hamilton, Ms. Khalsa addressed delivery services, She said that the Compassionate Use Act indicated that transportation was legal provided it was undertaken by the primary care giver. Delivery services should, at the very least, possess a business license and that proof of insurance should be required. Ms. Khalsa said that the rules for delivery services were not well defined and that the Planning Commission could instigate their own regulations.

Chair Hamilton said that she did not have an issue with extended hours as long as they were for non-dispensary activities and Mr. Moore noted that they had not heard from the Little League about their opinion on the matter. Mr. Moore said they would provide more information about the removal of the condition to close during Little League games and Ms. Khalsa suggested language changes.

In response to Commissioner LaMotte, Ms. Khalsa said she would research the law with regard to allowing minors into dispensaries.

Chair Hamilton requested staff to review the language for the 30-day intern period to ensure it met legal requirements.

M/S, Ramsay/Goyan, Motion to continue the item on 6 School Street Plaza Suite, 210; 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 to the meeting of April 15, 2010 when the following information should be provided:

1. Comparable information on communities of a similar size with respect to age, delivery and trial period.
2. A boundary line map.
3. Proof of insurance and indemnification language.
4. A request that a member of the Police Department attend the next meeting to address safety issues.
5. Ms. Khalsa would research whether the Compassionate Use Act has provisions for minors.
6. Staff will address conditions 8 and 11 regarding internship verification with respect to a delivery service.

AYES: All

#### Discussion Items

4. Continued discussion/consideration of the Planning Commission's Subcommittee's edits to the draft Chapter 4 – "Community Preparedness" section of the Draft Safety Element.
5. Review and comments on the draft Gantt chart articulating a "critical path" towards completing the drafting of all remaining General Plan elements for Council review by July 1, 2010.

Planning Director Moore said that the subcommittee was working on Chapter 4 and that he hoped to present substantial edits for review by the Planning Commission at the next workshop meeting.

There was general consensus amongst the commissioners that discussions would not continue due to the lateness of the hour.

#### Planning Director's Report

There was general consensus amongst the commissioners that the next meeting on April 1 be moved to April 8, 2010.

Planning Director Moore provided materials to the commissioners regarding the strategy to complete the General Plan on time.

Approval of Minutes

6. Review of the minutes from the meeting of January 21, 2010

M/S, Ramsay/LaMotte, Motion to approve the minutes of January 21, 2010.

AYES: All

7. Commission Comments and Requests

There were no comments.

8. Adjournment

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

Respectfully submitted,

Joanne O’Hehir