

DRAFT Town of Fairfax Planning Commission Meeting Minutes
Fairfax Women's Club
Thursday, May 20, 2010

Call to Order/Roll Call:

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

COMMISSIONERS ABSENT: Pam Meigs

STAFF PRESENT: Jim Moore, Planning Director
Inda Khalsa, Assistant Town Attorney
Joanne O'Hehir, Minutes-Secretary

Chair Ketcham called the meeting to order at 7.35 p.m.

Approval of Agenda

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

AYES: All

Public Comments on Non-Agenda Items

Michael Dunne, 18 Wood Lane, discussed the reasons why he believed that a crosswalk was needed in front of Fairfax Lumber & Hardware.

Consent Items

There were no consent items on the agenda.

Public Hearing Items

1. **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 introduced the staff report.

Commissioner LaMotte joined the meeting at 7.38 p.m.

Mr. Moore noted that modifications had been made to the application, which he hoped would facilitate a decision by the Commissioners. Mr. Moore discussed the modifications and the manner in which they had been presented in the staff report. He discussed staff's suggestions for the manner in which discussions should proceed.

Mr. Moore went on to discuss the delivery service and grow sites and the perceived potential problems, which included robbery and violent crimes. He noted that the grow site was undesignated and was therefore not in the purview of the Commissioners for discussion.

In response to Chair Ketcham and Vice-Chair Hamilton, Assistant Town Attorney Khalsa clarified the recommendations of staff and what the Commissioners would be voting upon.

Chair Ketcham opened the meeting to the public.

Gregory George, Marin County resident, spoke about the proposal. He said that the dispensary was a valuable resource and he requested that they be allowed to deliver medical marijuana to patients in need.

George Bianchini, former owner of Broadway Video, said that he supported the delivery service. He said that he has found it necessary to use an internet service because the dispensary could not deliver medical marijuana. Mr. Bianchini discussed several incidences of crime that related to the video store.

The meeting was closed to public comment and the Commissioners agreed to review and discuss the modifications to the conditions supported staff.

There was general agreement that staff's recommendation of the hours of operation be added.

General discussion took place on an age and/or height limit of clones that could be sold from the premises. Commissioner Lacques explained why he would support an age limit, and Planning Director Moore discussed the difficulty of enforcement.

Ms. Khalsa noted that the law did not address the age of clones that could be sold.

There was general agreement that the language of condition 5 would be revised to allow the storage and sale of immature, non flowering-clones no taller than 12” in height from the dispensary.

Commissioner Lacques led a discussion on record keeping in the 30-day trial period and the verification process during this period. There was general agreement that the discussion would be better suited under the record-keeping section.

General discussion ensued on the conditions pertaining to the care givers with regard to the 30-day trial period. There was general agreement that the language should be changed to “New clients will be allowed.....confirmed by phone”, as part of condition 8 and “Caregivers of new clients may sign up for 30-day trial membership....”. which would form part of condition 11.

There was general consensus that the receipt relating to condition 15 should bear the membership number, in addition to the name of the person obtaining the marijuana.

There was general agreement to staff’s recommended change to condition 26 with the addition of “....at all times”

In response to the Chair, Ms. Khalsa confirmed that the applicant could respond to questions by the Commissioners without the need to open the hearing to the general public.

There was general approval to adopt conditions 42 and 43, with a direction that staff be empowered to add language pertaining to a Certified Public Accountant in condition 42.

There was general consensus among the Commissioners to remove condition 65 pertaining to the hours of operation, which they felt had been addressed by condition 3.

Condition 72 was acceptable as written by the Commissioners.

Discussion then turned to the grow-related conditions.

Mr. Moore noted that discussion of the conditions was moot because there had been general agreement amongst the commissioners at a previous meeting that a grow site would need to be located before the conditions could be discussed and perhaps applied.

Discussions turned to the delivery of medical marijuana. However, Mr. Moore noted that the discussions would likely be protracted and suggested that the commissioners moved forward with records and inspections.

There was general agreement that staff’s recommendations should be incorporated into the conditions that related to the records and inspections. However, since a grow site

had not been identified, there was general consensus that staff's recommended amendment to the language concerning condition 23 would be incorporated should there ever be a named grow site.

Discussion took place on the conditions concerning inspections. Ms. Khalsa noted that it would be a reasonable condition that inspections by the Police Department took place during business hours. She noted that medical records would not be subject to inspection. Ms. Khalsa made some recommendations to the language pertaining to inspections pursuant to State and Federal Laws that were accepted by the Commissioners. Overall, general consensus was reached to accept staff's recommendations pertaining to inspections.

Discussions moved to condition 46 that related to the amount of medical marijuana that could be sold by the dispensary. Ms. Khalsa explained that the commissioners had discretion over the amount of medical marijuana that could be sold to clients, which related to land use and zoning. She recommended the language "reasonable amount prescribed by a doctor for a patient" be used.

Following further discussion, there was general consensus that the language suggested by Counsel be adopted, although Commissioner Lacques noted that doctors did not recommend dosages and it was within the Commissioners' purview to limit the amount sold.

Discussion took place on enforcement of such a ruling and Mr. Moore suggested that staff would craft different language regarding the amount of medical marijuana sold.

The Commissioners discussed the removal of the limitation on the hours of operation, which Commissioner Lacques said he believed would not affect Little League. He said it was a low key business and should not create a hazard for children and that he recommended removing the condition. Commissioners Goyan and Ramsay were in agreement and Mr. Moore suggested that opening hours could be reviewed if there were complaints.

Chair Ketcham did not support the removal of the condition because he was concerned that the dispensary was located too close to an area heavily used by youths. Vice-Chair Hamilton announced that she was on the Little League Board and therefore abstained from discussion.

Commissioner LaMotte said that she had a "Little Leaguer" and had observed the dispensary's operation during games. She said that they were not doing anything to put the Little League group at risk, although she struggled with supporting the extended hours of operation.

In summation, Mr. Moore noted that there appeared to be support for the removal of the condition limiting the hours of operation.

Discussions moved on to the age-related conditions.

Commissioners LaMotte and Goyan expressed support for the proposed changes to the condition that those under the age of 18 should not be allowed to enter the dispensary unless they were enrolled in a medical marijuana club and accompanied by an adult. Vice-Chair Hamilton also agreed with the proposed amended language.

Commissioner Lacques said that he could see no compelling reason why a minor should be allowed into the dispensary, and he expressed concern that a card could be obtained by minors who were not sick.

General consensus was reached amongst the majority of Commissioners to agree to the exception language.

Discussions moved on to the miscellaneous conditions. There was general agreement that the condition relating to an officer being available to offer advice should be removed because it had little bearing on a Use Permit.

There was general agreement that condition 66 should be removed because it duplicated condition 56.

Vice-Chair Hamilton and Ms. Khalsa discussed condition 68, which Ms. Khalsa said referred to the Use Permit and not to the use of medical marijuana.

Ms. Khalsa discussed the conditions Counsel had drawn up in relation to a delivery service, which she advised should be incorporated into the Use Permit if a delivery service was approved. She noted that town ordinances did not cover delivery services.

Ms. Khalsa discussed indemnification of the town, limitation of hours, amounts of marijuana that could be carried and verification of club membership. She said that Counsel suggested delivery only be made to residences.

In response to Chair Ketcham, Ms. Khalsa said that the conditions would not give the applicant the legal right to deliver medical marijuana outside of Fairfax.

Chair Ketcham expressed his concern that transit of medical marijuana would take place when youths were close by.

Commissioner LaMotte expressed her concern about vehicle traffic in the parking lot.

Commissioner Lacques said that protocols for record-keeping, including delivery service, need to be more stringent.

In response, Ms. Khalsa said that the recommended record-keeping conditions should suffice.

Commissioner Goyan discussed a trial period with Ms. Khalsa.

In response to Vice-Chair Hamilton, Ms. Khalsa said that no precedent existed, as far as she was aware, about licensing legal delivery services and conditions. They discussed delivery services of prescriptive drugs.

Commissioner Ramsay noted that the delivery service should reduce traffic congestion.

In response to Vice-Chair Hamilton, Ms. Khalsa confirmed that the modified Use Permit could be sanctioned without the delivery service.

General consensus was reached that staff would amend the conditions of approval and draw up a resolution.

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 6 School Street Plaza Suite 210.

Chair Ketcham announced that there would be a 10-minute break at 10.35 p.m. and Commissioner Ramsay recused himself from the meeting.

2. **36 Merwin Avenue; application # 10-06: Continued consideration of a request for a Use Permit and Setback Variances to construct a one story addition, constituting a 50% remodel, 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).**

Senior planner Neal presented the staff report, when she discussed the changes that had been made to the project since the previous hearing. Ms. Neal noted that staff believed the project was still too large and too close to the west side of the property line. However, the project had been reduced to a single story and its size was in keeping with other homes in the neighborhood. Ms. Neal noted that the project complied with parking requirements, although four variances were being requested due to the unique nature of the property, the large setback requirements and the creek. She noted that staff recommended approval of the project with the condition that a 7.5 feet setback be maintained on the west side and the removal of two rear decks which would form extensive structures in the setback. Ms. Neal said that the exterior of the home could be

enjoyed without the building of structures in the setback, which was the reason staff could not make findings for the variance that related to those structures.

Chair Ketcham and Ms. Neal discussed setbacks and the project plans.

Commissioner Goyan and Ms. Neal discussed the difference between a flagstone patio and a deck.

Chair Ketcham and Ms. Neal discussed the plans.

Ms. Neal and Vice-Chair Hamilton discussed a letter of opposition from a neighbor.

Rowan Fennell, applicant, said that they believed they had tried to accommodate their neighbor's concerns and Vikki Fennell discussed the reasons she believed the content of the neighbor's letter was inaccurate.

Commissioner LaMotte and the applicants discussed the reasons they did not design a second story.

Commissioner Goyan noted that the lot was difficult, but that they had moved the new structure closer to the neighbor's property line.

Chair Ketcham discussed the design with the applicants and noted that two separate living units could be in compliance with the Code. They also discussed drainage.

Vice-Chair Hamilton approved of the reduction in height and said that she liked the cottage-type design of the front of the new structure and she suggested design changes that could reduce the setback variance on the west side.

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

General discussion took place between the commissioners and staff with regard to the deck. Commissioner LaMotte noted that a deck could be swept away in a catastrophic flood and become an impediment, and that flagstone set on sand was impervious.

Commissioner Lacques said that he would lean towards supporting a 7.5 feet setback on the western side of the property line. He believed that the impact would be too great for the neighbors with a 5 feet setback.

Commissioner LaMotte noted that the neighboring property encroached the property line setback but that this was historic. She noted that it would be possible to eliminate the garage, shorten the laundry to reduce the west wall and maintain good relations with the neighboring property owners. Commissioner LaMotte expressed concern that directing roof water to a gravel pit above the stream bed would be insufficient for drainage purposes.

Chair Ketcham discussed his concern that the height of the garage would impact the neighbors but that he would support the design with the removal of the decks, which would eliminate additional mass in the creek setback.

General discussion took place on the way forward with regard to the design.

Commissioner Goyan noted that it was historical happenstance that a 20 foot creek setback existed and that the neighboring property was built in the setback. Furthermore, single family residences were allowed to encroach the side yard setback up to 5 feet. Commissioner Goyan said he would prefer to support this project for these reasons, rather than building further towards the creek. There was general consensus amongst the majority of planning commissioners to support this view.

M/S, Hamilton/Ketcham, Motion to approve application # 10-06 for a Use Permit and setback Variances to construct a one story addition, constituting a 50% remodel, to an existing 812 square foot single-family residence (107 square feet of existing to be removed) at 36 Merwin Avenue, based on the conditions set forth in the staff report, including that the decks which would encroach the creek setback be eliminated, with the following revisions:

A 5 feet setback be maintained for the proposed living space with the finding that the project would meet the required side yard setback for the single family residence zone; that the impact on the creekside and riparian corridor would be minimized by building further into the west side yard setback; that the decks which would encroach the creek setback be eliminated.

AYES: Goyan, Hamilton, Ketcham, Lacques,
NOES: LaMotte

Chair Ketcham read the appeal rights.

Discussion Items

3. Adoption of Resolution Number 10-02 forwarding the draft Open Space Element on to the Town Council for consideration and/or editing

Planning Director Moore noted that a subcommittee would sort out editorial and formatting issues.

M/S, Hamilton/LaMotte, Motion to approve Resolution Number 10-02 forwarding the draft Open Space Element on to the Town Council for consideration and/or editing.

AYES: All

4. Discussion and/or editing of the draft Land Use Element.

Due to the lateness of the hour, it was agreed that discussion of the Land Use Element would be continued.

Planning Director's Report

None.

Approval of Minutes

5. Review of the minutes from the meeting of April 15, 2010

M/S, Goyan/LaMotte, Motion to approve the minutes from the meeting of April 15, 2010.

AYES: All

Commission Comments and Requests

None.

Adjournment

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

Respectfully submitted,

Joanne O'Hehir