

**DRAFT** Town of Fairfax Planning Commission Minutes  
Fairfax Women's Club  
Thursday, July 21, 2011

**Call to Order/Roll Call:**

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

**COMMISSIONERS ABSENT:** Brannon Ketcham

**STAFF PRESENT:** Linda Neal, Senior Planner  
Joanne O'Hehir, Minutes-Secretary

**STAFF ABSENT:** Jim Moore, Planning Director

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

**APPROVAL OF AGENDA**

M/s, LaMotte/Ramsay, Motion to approve the Agenda.

**AYES:** All

The commissioners joined Vice-Chair Hamilton in congratulating Senior Planner Neal on her 25<sup>th</sup> anniversary with the Town of Fairfax.

**PUBLIC COMMENTS ON NON-AGENDA ITEMS**

David Kroll, Claus Avenue, commented on the possibility of a prospective project in the space that will be vacated by the Good Earth store. He said that the neighbors would form a committee to ensure the new operators/owners would adhere to the conditions of a permit issued.

Alice Ducayet, Claus Avenue, discussed her concern that a prospective project for the premises which will be vacated by the Good Earth store would be too large for the small town of Fairfax.

**CONSENT ITEMS**

There were no items on Consent.

## **PUBLIC HEARING ITEMS**

1. 15 Deer Park Drive; Application # 11-14; Request for a use permit to construct a 216 square foot bathroom addition onto a 3,021 square foot, single-family residence; Assessor's Parcel No. 002-152-24; Residential single-family RS 6 Zone; Art Chartock, Architect; Karen and Pirooz Barar, owners; CEQA categorically exempt, § 15301(e).

Senior Planner Neal presented the staff report. She discussed the bathroom and sitting room addition, which she said would not result in the removal of trees and that excavation would cause minimal site disturbance. Ms. Neal discussed a use permit, which she said would be necessary because retaining walls and a patio had been constructed over an easement which the applicants wanted to legalize. She noted that if it were granted, a revocable encroachment permit would need to be recorded at the County of Marin prior to obtaining the building permit.

Ms. Neal noted that the design would not change the character of the dwelling and that the project would not encroach setbacks or violate lot coverage or height restrictions. Thus staff could recommend approval of the project based on the findings and conditions in the staff report. Ms. Neal then discussed two letters of objection from neighbors.

Commissioner Lacques and Ms. Neal discussed the easement in relation to a neighbor's letter.

Commissioner Hall and Ms. Neal discussed ownership of the easement, which Ms. Neal explained had not been determined. She said that staff thought the easement might have been constructed to provide access to a water tank site.

In response to Commissioner Lacques, Ms. Neal noted that the retaining walls did not exceed the height requirement that would require a permit.

The applicants, Pirooz and Karen Barar discussed the retaining wall on the front easement, which they said had been constructed many years ago in conjunction with road improvements. The applicants said that the neighbors most affected by their project supported their proposal.

Vice-Chair Hamilton opened the public comment period.

Jason Morrison, Deer Park Lane, said that he supported the project and Vice-Chair Hamilton closed the public comment period when no one else stepped forward to speak.

Commissioner LaMotte said that the project was modest, well-designed and appropriate. In response to Commissioner LaMotte, Ms. Neal said that the town and Water District would retain the right to use the easement.

Commissioner Lacques and Hall said they supported the project, which they said was modest.

Commissioner O'Neil said that he agreed with the comments of the other commissioners.

Commissioner Ramsay said that the project had been designed with care.

M/s, LaMotte/Lacques, Motion to approve Application # 11-14, a request for a use permit to construct a 216 square foot bathroom addition onto a 3,021 square foot, single-family residence at 15 Deer Park Drive.

AYES: All

Vice-Chair Hamilton read the appeal rights.

2. 31 Bolinas Road; Application # 11-15: Use permit for a 750 square foot, outdoor eating area adjacent to Lydia's lovin Foods Restaurant; Assessor's Parcel No. 002-122-01 and 02 and 002-122-34 and 37; Central Commercial CC Zone District; Lydia Kindheart, applicant/ business owner; Brad Schwan, property owner; CEQA category exempt, §15301(e)

Commissioner Hall recused himself because he owned property within 500 square feet of the applicant's proposal and Senior Planner Neal presented the staff report. She discussed the outdoor eating area and noted that the seating would be ADA compliant. She said that a Use Permit would be necessary for reasons she explained, which included that the principal use would not be conducted entirely within a building. Ms. Neal noted that the use permit would be subject to noise conditions and could be revoked if any of the conditions of approval were broken. She said that a parking variance had not been considered necessary because there were sufficient parking bays, and she recommended that the portion of the staff report that referred to a parking variance be struck. She discussed two letters from concerned neighbors.

In response to Commissioner O'Neil, Ms. Neal discussed other venues with outdoor seating that abutted residential neighborhoods.

In response to Vice-Chair Hamilton, Ms. Neal noted that setbacks for outdoor seating areas had not been addressed by the Code. They discussed noise complaints in relation to the revocable use permit.

Commissioner LaMotte and Ms. Neal discussed additional conditions of approval that had been submitted by a neighbor. She confirmed that the Noise Ordinance addressed noise issues separately from the use permit.

Ms. Neal and Commissioner LaMotte also discussed a statement from the Water District, when Ms. Neal noted that either a permit would be required or confirmation from the Water District that they approved the project.

Vice-Chair Hamilton discussed the garbage containers in relation to a neighbor's complaint with Ms. Neal, who noted that the use permit could be denied if it was thought that the problem would be exacerbated.

Commissioner O'Neil and Ms. Neal discussed other conditions a resident had brought up in e-mail correspondence.

The Applicant, Lydia Kindheart, explained that she wished to have a patio area in order to increase her business. She discussed the three large events that had occurred during an 8-year period where music had been played and she said that she had addressed complaints. She discussed the problems regarding the garbage containers which she said had lids that her staff sometimes forgot to close. Ms. Kindheart noted that she had little control over early deliveries because her business was just one which the trucks delivered to on their route. However, she said that the trucks did not back up into her property and thus there was no noise from "back-up beeps".

Ms. Kindheart discussed hours of operation and said that she would like the patio area to maintain the same operating hours as the restaurant. She said that they would not be serving alcohol or playing music.

Ms. Kindheart discussed landscaping with Commissioner LaMotte, which Ms. Neal noted would be reviewed by the Design Review board.

Commissioner O'Neil and Ms. Kindheart discussed the garbage problem and the amount of materials kept on that section of the property. Commissioner O'Neil said that the smell had been offensive when he had visited the site and they discussed enclosure options. Ms. Kindheart said that she composts.

Vice-Chair Hamilton noted that the trash containers took up parking spaces and Ms. Neal said that it rendered the number of usable spaces shown on the plans to be inaccurate and that a parking variance might therefore be needed.

Vice-Chair Hamilton suggested that a parking variance might be an option in exchange for an enclosed compost and waste area, to which there was general agreement.

Commissioner LaMotte and Ms. Neal discussed the directional sign, which was acknowledged to look hand-made. They discussed the conditions of a previous permit which appeared not to have been effectively adhered to.

Vice-Chair Hamilton opened the public comment period.

John Berkus, 47 Bolinas Road, discussed his concerns with early morning deliveries and a dumpster being located close to his property line, in addition to other noise issues.

In response to Commissioner O'Neil, Ms. Neal discussed the residential and commercial zone which the restaurant occupied.

Vice-Chair Hamilton closed the public comment period.

The applicant, Vice-Chair Hamilton and Commissioner LaMotte discussed the early morning deliveries. Commissioner LaMotte said that she would find it difficult to approve a project that would exacerbate an existing noise problem. Ms. Kindheart explained why it might not be possible to change the delivery times but she discussed the steps that had been taken to ameliorate the problem of noise caused by truck deliveries. Furthermore, she noted that other people use the parking lot and caused noise.

General discussion took place with the applicant on the feasibility of shortening the opening hours of the patio and Ms. Kindheart said that it would not be reasonable to have different hours of operation for the patio and restaurant. Furthermore, she noted that another establishment close to her own operated longer hours and created more noise.

Commissioner Ramsay noted that downtown residents needed to accept that the environment was not peaceful and he said that he was frequently awoken by trash vehicles.

Commissioner Lacques said that it was tough to balance the concerns of the neighbors with the necessary business hours. He said that a closing time of 9pm throughout the week would not be unreasonable, particularly for the patio business.

M/s, O'Neil/Lacques, Motion to continue Application # 11-15, use permit for a 750 square foot, outdoor eating area adjacent to Lydia's lovin Foods Restaurant at 31 Bolinas Road to the August 2011 meeting, in order that staff could investigate the hours of operation of other restaurant establishments with outdoor dining areas and for the applicant to investigate a suitable trash enclosure.

AYES: All

## **DISCUSSION ITEMS**

Commissioner O'Neil led a discussion on landscaping improvements at the convenience store at 150 Bolinas Road. There was general agreement that the landscaping had not been sufficiently upgraded to meet the conditions of approval.

Senior Planner Neal noted that police reports had not been generated due to complaints or disturbance.

Commissioner O'Neil discussed his concerns that alcohol was being be sold after midnight.

Commissioner Ramsay announced that he would be retiring from the Planning Commission and moving out of town.

Following discussion, it was agreed that the next Planning Commission meeting would take place on August 25, 2011 to ensure the commissioners would have a quorum.

M/s, Hamilton/LaMotte, Motion to move the next Planning Commission meeting from August 18 to August 25, 2011.

AYES: All

### **PLANNING DIRECTOR'S REPORT**

Senior Planner Neal said that Planning Director Moore requested that a commissioner volunteer for GPIC (General Plan Implementation Committee).

Ms. Neal noted that the Council had approved an application for a project that had been denied by the Planning Commission and had refunded the appeal fee to the applicants.

### **APPROVAL OF MINUTES**

5. Minutes from the May 19, 2011 meeting.

M/s, Ramsay/LaMotte to approve the minutes from the May 19, 2011 meeting with the following amendments to the motions concerning the application for the convenience store at 150 Bolinas Road:

First Roll Call:

Ayes: LaMotte, Ketcham, Hamilton, Ramsay, O'Neil

Noes: Hall, Lacques

Would be amended to read:

Ayes: Hall, Lacques, Ketcham

Noes: LaMotte, Hamilton, Ramsay, O'Neil

The second roll call:

Ayes: LaMotte, Ketcham, Hamilton, Ramsay, O'Neil

Noes: Hall, Lacques

Would be amended to read:

Ayes: LaMotte, Hamilton Ramsay, O'Neil

Noes: Hall, Lacques Ketcham

AYES: All

**ADJOURNMENT**

A motion was made, seconded and unanimously approved to adjourn the meeting at 9.30 p.m.

Respectfully submitted,

Joanne O’Hehir