

Minutes from the September 15, 2011 Planning Commission meeting.

## CALL TO ORDER

Chair Ketcham called the meeting to order at 7:35PM.

## ROLL CALL

Commissioners present: Morgan Hall  
Shelley Hamilton  
Peter Lacques  
Ryan O' Neil  
Chair Brannon Ketcham

Commissioners Absent: Shelby LaMotte (expected to arrive later)

Staff Members Present: Jim Moore, Director of Planning and Building Services

Staff Members Absent: Linda Neal, Senior Planner (expected to arrive later)  
Johanna O' Hehir, Minutes Clerk

## APPROVAL OF AGENDA

M/S, Hamilton-Lacques, motion to approve the agenda as submitted.

AYES: All

## PUBLIC COMMENT ON NON-AGENDA ITEMS

David Krull, 30 Claus Circle, indicated that he is aware that the Terrapin Crossroads project will be going through the full CEQA process but he wants to go on the record as follows: the proposed structure is 16,700sq in size; they proposed 100events per year with 500 people at each event with tickets that will cost \$150.00. He feels the project is too big.

## MEETING PROTOCOL

Chair Ketcham read the meeting protocol.

Commissioner LaMotte arrived at approximately 7:45 PM.

## CONSENT ITEMS

### **125 Mono Avenue; Application # 11-20**

**Request for an exception to the 4ft front fence height limitation to erect a 5 foot fence along the property frontage for a single-family residence; Assessor's Parcel No. 002-123-71; Central Commercial CC Zone District; Doniel Ellis and Yana Harootunian-Cox, applicants/owners; CEQA categorical exemption, § 15303(e).**

M/S, Hamilton-LaMotte, motion to approve application # 11-20 based on staff findings and subject to the conditions listed in the staff report .

AYES: All

Chair Ketcham advised the applicant that there is a 10 day appeal period during which he cannot start construction on his fence project.

## PUBLIC HEARING ITEMS

### **32 Tamalpais Road: Application # 11-21**

**Request for a Use Permit and Variances to convert 390 square feet of basement area into living space, expanding an existing 757 square foot single-family resident to 1,147 square feet; Assessor's Parcel No. 001-122-14; Residential RD 5.5-7 Zone; CEQA categorically exempt, § 15301(e)(1).**

Chair Ketcham stepped down and turned the Chair over to Vice Chair Hamilton because he lives within 500 feet of the project site.

Planning Director Moore gave the staff report making the following corrections:

The staff report incorrectly indicates that there will be a new bay window within the side setback off the kitchen. The bay window off the kitchen is existing and the new window is off the new master bedroom on the north side of the lower level. The proposed new fire place off the west side will be in same location as the existing fire place and it will be smaller in scale. He indicated that based on these corrections he recommends that the Commission modify finding # 2 to reflect these changes.

Director Moore went on to inform the Commission that the applicant is requesting a relaxation of the following conditions of approval recommended by staff:

Condition 2 – the requirement that the Public Works Director be provided with a video of roads that may be impacted by construction vehicles prior to issuance of the building permit. Director Moore informed the Commission that this requirement can be, and often is, waived by the Public Works Department if the equipment that will be used for the project does not have the potential to significantly damage roadways.

Condition 2C – the requirement for a bond/letter of credit. The applicant has requested that this condition be eliminated. Director Moore explained that eliminating this

condition is within the purview of the Commission but it is a standard condition placed on all projects and is for the benefit of the Town to ensure that any roadway damage is repaired.

Condition 12 – requirement for an arborist report and that the arborist be on-site when the tree on the property at 130 Manor Road is trimmed to meet Fire Code requirements. Director Moore stated that for a tree of this size that has to be significantly cut back, requiring an arborist report and on-site review is a standard condition although the Commission does have the authority to exempt a project.

Director Moore than made a final correction to the staff report indicating that on page 3, second paragraph, incorrectly reads that the 1,426 square foot structure size includes the 260 square foot garage when it does not.

Commissioner LaMotte questioned whether the Town can require an arborist report for the trimming of a tree that is not on the property owner's property.

Director Moore explained that the tree overhangs the project site and the Fire Department is requiring the trimming to bring the property into compliance with the Wildland Urban Interface Zone.

Commissioner Lacques questioned whether the owner would have to hire a professional to create the video of the access roadways and Director Moore explained that the property owner can make the video themselves.

Commissioner Lacques asked staff what the cost of bond for this project would amount to. Director Moore indicated that the bond amount varies with the project cost and he is not sure what the amount would be for this project. Director Moore stated that the applicant informed him that she had asked what all the ancillary costs would be for her project and staff did not inform her about the bond amount.

Commissioner Lacques stated that he feels the staff should know what these bonds could run. He went on to state that he would like to see the conditions about an arborist's report stay in place and that the owner can hire an arborist who can also do the work to save money.

Commissioner Hall asked how much excavation the project will entail and Art Chartock stated that 7 to 10 cubic yards of material will be removed. Commissioner Hall felt that the roadway damage bond should be required because concrete trucks and other delivery vehicles could damage the roadway.

Mr. Chartock explained to the Commission that the residence is small with only 757 square feet of conditioned living space. In order to access the lower unfinished basement area the owners need to go outside so the project includes an internal stairway. The proposal will not increase the number of bedrooms and will have almost no impact on neighbors. The only issue is removal of bamboo on westerly side yard

that provides privacy. The owner has obtained signatures from 29 neighbors indicating their support of the project.

Commissioner Lacques asked if the neighbor' concerns about the bamboo removal had been addressed and Mr. Chartock indicated that the neighbors will be planting star magnolia trees on their side and the owner is planting strawberry trees on the project side of the fence to provide privacy for both properties.

Lynn Lozier, the applicant, indicated that she has lived in Fairfax for 18 yrs in a residence that was built in 1924. She and her partner have invested a lot of money to rehabilitate this cottage they have paid for a new roof, foundation, etc. None of it improves their quality of life or gives them more living space. Based on the new fire regulations just putting in an internal stairway is a substantial remodel. Going through the Use Permit process is onerous and a big part is the fire code compliance. The project has ended up being a lot more expensive than they thought it would be so she is asking the Commission to remove the bond condition and the requirement that an arborist prepare a report including mitigation measures for trimming the large cypress on the neighbors property and the condition that the arborist be on site during the trimming.

Will Simpkins, a neighbor at 124 Manor Road behind the site, indicated his support for the project.

Donald Kavanaugh, 130 Manor Road, indicated his support for the project and informed the Commission that he has trimmed the large Cypress tree on his property many times without an arborist report. He has lived next door to the project site for 18 years and maintains the Cypress and does not see the need for such a report.

Brannon Ketcham, 63 Tamalpais Road, told the Commission that when he remodeled his house the bond was something the contractor supplied.

Commissioner O-Neil stated the project is well thought out and is a modest plan. He likes to see neighbors coming out to support each other. He has served on the Tree Committee for 4 years and has seen that the best intentions when trimming trees sometimes turn out with the worst results best intentions end up with the worst results so although most people don't need to involve the Tree Committee for seasonal trim, for a significant trim like this, he feels an arborist should at least mark the branches to be removed in the field.

Commissioner Lacques echoed Commissioner O' Neil's comments that the project is nice and tasteful project and his sympathies go out to the applicant for having to comply with Fire department conditions because the project is a substantial remodel. He is reluctant to waive the roadway damage bond and does not feel the arborist condition will add significant cost to this scale of project.

Commissioner LaMotte, supports the design of project, thinks it is worthwhile to hire an arborist to write a report and to mark the tree branches in the field prior to trimming and to require the roadway damage bond.

Commissioner Hall stated that he also sees need for arborist report because serving on the Tree Committee has shown him how some tree surgeons will just recommend cutting/trimming a tree to make work for themselves. He also does not see the justification for the Commission waving the bond or the roadway video although he would not have a problem if the Building Official wants to waive the need for a video.

Chair Hamilton indicated that she concurs with everything her fellow Commissioners have said and thinks that at the very least, if the Commission agrees to waive the arborist report requirements, the arborist should mark the limbs to be trimmed in the field. She advised the applicants that the requirement for a roadway video is in their best interest and affords them some protection if some other project or contractor damages the road.

M/S, LaMotte-Lacques, motion to approve application # 11-21 based on the finding contained in the staff report and subject to the conditions of approval contained in the staff report amending conditions 2(B) and 2(C) be the requirement for a roadway video and roadway damage bond to be at the Building Official's discretion.

AYES: all

Acting Chair Hamilton advised the applicants about the 10 day appeal period during when any concerned citizen can appeal a decision of the Planning Commission.

Chair Ketcham resumed the Chair.

**69 Taylor Drive; Application # 11-19  
Request for a Use Permit and Variances to construct a 100 square foot storage shed replacing a dilapidated shed in the rear yard of a 2,448 square foot parcel developed with a 560 square foot single-family residence; Assessor's Parcel No. 001-211-10; Residential RD 5.5-7 Zone; Rene Verduin and Heinz Engel, applicants/owners; CEQA categorically exempt, § 15303(e).**

Commissioner Lacques confirmed with Director Moore that the FAR is increasing from .24 proposed .28 and was incorrectly listed in the staff report table.

Commissioner Hamilton questioned whether tough built portable sheds require a permit and Director Moore indicated that if they are under 120 square feet they do not need a building permit.

Commissioner Hall further clarified that the sheds do not need permits as long as they comply with setbacks but the applicant's shed does not meet setbacks.

Rene Verduin, the applicant, indicated that she does not have anything to add to the staff report but can answer questions.

Commissioner Hall questioned how 3 feet of additional framing would be added to already framed 8 foot shed to reach the 11.5 feet shown in the plans and informed the rest of the Commission that his inclination would be to have the applicant start the sloping roof at 8 feet and to limit the shed to 9.5 feet in height. ,

Chair Kecham clarified that the proposed framing heights are 11 feet 6 inches on the low side and 13 feet where the shed is the tallest and the slab is 2 feet in height so slab and structure at the tallest point total 15 feet.

Ms. Verduin stated that her son framed the shed starting at 8 feet and reaching to 13 feet because he had some nice windows he had saved from a job and one of them fits in the upper three feet of the highest eastern wall of the structure.

Commissioner Lacques asked if any neighbors had commented on the shed.

Ms. Verduin stated that her uphill neighbor at 75 Taylor Drive originally complained because she was upset that she had to go through a process and get a permit for her addition and wanted the new shed to be reviewed and approved. She has since indicated in writing that she supports the project.

Kathy Rolston, neighbor downhill at 67 Taylor Drive, indicated that she put a shed up further from the property line. Old shed dilapidated and needed to be removed. The new shed is much better. My concern was that if electricity or plumbing to the shed that it be installed to code.

Chair Ketcham stated that the lot is very small and with a 24 foot wide lot it is impossible to meet the setback requirements. Also, the staff report includes a condition that the shed would have to come back before the Commission to modify the Use Permit if the owner ever wanted to run electricity or plumbing to the building.

Senior Planner Neal arrived at 8:45 PM.

Commissioner Hall indicated that he feels 15 feet is too tall for an accessory structure and he would like the Commission to consider lower the maximum allowable height in the future. He feels the shed will impact the uphill neighbor. He has experienced a neighbor of a property he owns on Bolinas come in and put up a 16 foot tough shed and it had a great impact on his property. He would like the Commission to consider conditioning approval upon decreasing the height in light of the fact that it is in the required setback. The structure is shown at 13 feet and he is inclined to limit the height to 9.5 feet.

Commissioner Lacques stated that he shares Commissioner Hall's concern and he likes that the applicant is recycling windows from another building. He feels the structure could be lowered in height.

Commissioner LaMotte stated that what is nice about a 15 foot accessory structure is that you can hang a bicycle vertically from the ceiling.

Commissioner Hamilton said she would be concerned the structure was brand new and not replacing a previous dilapidated structure.

Ms. Verduin indicated that she really would like the 13 foot height because she want light in the structure to see to store her books, fabric, etc. because there is not room in the house. She likes the design and there is one window that she would be unable to use if the height is decreased.

Commissioner O' Neil reminded the rest of the Commission that the applicant's house is only 600 square feet in size.

Commissioner Hall stated that because the uphill owner is not present objecting to the shed, he is willing to live with the 15 foot height but he would like the Commission to consider decreasing the height for accessory structures. He would like to include language in the code that would allow a shed under 120 square feet as long as it was only 6 to 8 feet in height and if taller, it would require an exception.

Commissioner Lacques stated that he agrees with Commissioner Hall that he can live with this shed but would like to visit this issue for possible code changes in the future.

M/S, Hamilton-O' Neil, motion to approve application 11-19 subject to the findings and conditions in the staff report.

Chair Ketcham called for a roll call vote.

AYES: Hall, Hamilton, Lacques, Lamotte, O' Neil, Chair Ketcham

Note: There is currently 1 vacant seat on the planning Commission.

**31 Bolinas Road; Application # 11-15**

**Continued consideration of a 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 categorically exempt, §15301(a).**

Commissioner Hall recused himself because he is the architect for the project.

Senior Planner Neal gave the staff report.

Lydia Kindheart, the applicant, informed the Commission that she has located her garbage, recycling and mulch containers to the most neutral and aesthetic location on the site as far from her residential neighbors as she can get, half way down and immediately adjacent to the building. They can't be seen from the street. She chose not to create a structure to house the containers because it would take up too much space so instead she bookended the mulch containers between the recycling and the cardboard recycling.

Commissioner Lacques asked for clarification on what the cardboard bin will look like and Ms. Kindheart stated that it is just like the rolling dumpsters only smaller. She explained that she will use 20 gallon Rubbermaid containers for the mulch and they can be stacked.

Commissioner Lacques commented that they are also water and critter proof. He went on to ask if Ms. Kindheart was able to get anywhere with her vendors in trying to change their delivery times to later in the day.

Ms. Kindheart stated that she has been trying to get them to change their hours for years and have been unsuccessful. She has done everything she can on her end to try to minimize the noise for her neighbors including having the larger trucks park on the street and bringing her supplies in by handcart and having the garbage company roll the garbage can out of the lot.

Commissioner Lacques asked if Ms. Kindheart would consider shortening the hours for the outdoor eating area.

Ms. Kindheart indicated that there are two drinking establishments that play live music that stay open until 2 AM and does not feel that staying open until 10PM on weekends and 9PM during the week is unreasonable. She also feels that to close the outdoor area earlier than the indoor seating area would create a weird dynamic. She explained that her establishment is operated deli style with patrons coming up to the counter to order their food. She does not have waitresses, so employees would have to explain why patrons could not take their food outside.

Commissioner O' Neil complimented the applicant on the measures she has already instituted, the new garbage/recycling/mulching area. He appreciates the fact that the applicant listened and stated that the best way to make sure there are no problems with odors is to place the garbage area immediately adjacent to the building. He asked how she plans to keep people from using the outdoor area once the restaurant is closed.

Chair Ketcham agreed that the outdoor area with its tables and chairs will invite kids and others to congregate in this area.

Ms. Kindheart stated that she has employees in the building after the restaurant closes that can monitor the situation and there is also a light already on the building that shines on the outdoor area.

Commissioner Lacques stated that the trellis, fence and plants will help deter people.

M/S, Lacques-Hamilton, motion to approve application # 11-15 based on the findings and subject to the conditions contained in the staff report.

AYES: ALL

Chair Ketcham advised the applicant that there is a 10 day appeal period during which anyone concerned with the Planning Commission's action can appeal their decision to the Town Council.

## **DISCUSSION ITEMS**

Director Moore informed the Commission that he is hoping to have the Ordinance combining the Design Review Board with the Planning Commission on the October agenda. Then it would go on for introduction before the Town Council in November, be adopted in December and then go into effect January. He explained that there had been some concern on some Councilmember's parts that design review would be going away but those concerns were elevated when it was explained that the functions of the Design Review Board were not being eliminated they were being assigned to the Commission.

## **MINUTES**

M/S, Hamilton-O' Neil, motion to approve the July 21, 2011 minutes with the following change:

Page 5, paragraph 8, "Commissioner O' Neil discussed his concern that there was no way to verify whether or not 7-11 was selling alcohol after midnight in violation of their conditions".

AYES: Hall, Hamilton, Lacques, O' Neil

Chair Ketcham abstained because he was absent from that meeting.

M/S, Lacques-O' Neil, motion to approve the August 18, 2011 minutes with a notation that the August meeting had been scheduled for August 25<sup>th</sup> at the July 21<sup>st</sup> meeting due to concerns that staff might not be available to attend, but then was rescheduled back to the regular August 18<sup>th</sup> date when staff became available.

AYES: Lacques, O' Neal, Chair Ketcham (Hamilton, LaMotte absent, Hall recused – so 3 members was a quorum of those present and the minutes were approved).

Chair Ketcham adjourned the meeting at 10:10 PM.

Respectfully Submitted,

Linda Neal, Senior Planner