DRAFT MINUTES FROM THE OCTOBER 17, 2013 PLANNING COMMISSION MEETING

CALL TO ORDER

Chair Hamilton called the meeting to order at 7:03 PM.

ROLL CALL

Commissioners Present:	Roxanne Ezzet Esther Gonzalez-Parber Philip Green Laura Kehrlein Brannon Ketcham Chair Shelley Hamilton
Commissioners Absent:	Shelby LaMotte
Staff Members Present:	Jim Moore, Director of Planning and Building Services Linda Neal, Principal Planner Corwin Bell, Planning Intern

PUBLIC COMMENT ON NON-AGENDA ITEMS

There were no public comments on non-agenda items.

APPROVAL OF AGENDA

M/S, Ketcham-Ezzet, motion to approve the agenda.

CONSENT ITEMS

161 Lansdale Avenue; Application # 13-34
Request for Design Review and a Parking Variance to construct a 697 square foot, 50% remodel/addition to an existing 1,955 square foot single-family residence; Assessor's Parcel No. 002-201-07; Residential RD 5.5-7 Zone District; Michael and Liz Scherotter, applicants/owners; CEQA categorically exempt, § 15301(e).

Judy Bersaglieri, 159 Lansdale Road, indicated that she has concerns about the duration of the construction, parking of construction vehicles and delivery vehicles and is concerned about protecting her property during the construction.

M/S, Ketcham-Green, to remove 161 Lansdale from the consent calendar and make it item number 1 under public hearing items.

AYES: all

AGENDA ITEM #2a

PUBLIC HEARING ITEMS

161 Lansdale Avenue; Application # 13-34
Request for Design Review and a Parking Variance to construct a 697 square foot, 50% remodel/addition to an existing 1,955 square foot single-family residence; Assessor's Parcel No. 002-201-07; Residential RD 5.5-7 Zone District; Michael and Liz Scherotter, applicants/owners; CEQA categorically exempt, § 15301(e).

Principal Planner Neal gave the staff report.

Michael Scherotter, the applicant informed the Board that they moved into the house 9 years ago and their family has outgrown the space. He admitted that they were supposed to construct a covered space as part of the legalization of the basement improvements done by the previous owner but they ran out of money after spending what they needed to making the house safe for their kids including replacing a dangerous spiral staircase. By the time they could afford to build the garage, the redwood had grown to a size where a covered space constructed among the roots will be harmful. So they are request approval to just have uncovered parking.

Jessica Fairchild, the project architect, indicated that she designed the addition in the craftsman style of the original dwelling to keep the project in scale with the site. The project complies with the floor area ratio and lot coverage limitations and required no setback variances and provides the owner the space they need for their expanding family.

Commissioner Gomez-Parber asked if there were going to be any new lights on the rear addition that might impact a neighbor?

Ms. Fairchild asked if there were going to be any new lighting on the rear addition that might impact neighbors.

Ms. Fairchild explained that the new lighting would be minimal, just that needed for safety, such as lighting at the doorway and on the side facing 159 Lansdale the stairway will be lighted with step lights that just light the steps themselves.

Mr. Scherotter informed the Commission that he has not put the project out to bid yet and has no definitive time estimate of how long the project will take to complete.

Elizabeth Scherotter, one of the applicants explained to the Commission that she and her husband will have to move out of the house while the construction is occurring and they have 2 small children. They do not want the project to drag on any longer than it has to because the longer it drags on the more disruptive it is for her family as well as for the neighbors.

Judy Bersaglieri, 159 Lansdale, explained that when she met with the neighbors they thought the construction would take no longer than 9 months and she would like the record to reflect they made that statement. She expressed frustration over the parking shortages in her neighborhood with the new Good Earth attracting customers and having employees and the bicycling groups on the weekend. She informed the Commission that she just wants the neighbors and their

contractors to be aware of this parking shortage and respect the neighbors parking needs with the contractors vehicles and material delivery trucks. She requested that the Commission consider putting a condition in place to protect her, her grandkids that are often visiting and her property from any construction debris or other impacts. She finished by asking that the privets along the side fence not be removed until the construction is over because the screen the property from noise and dust.

Commissioner Ketcham stated that condition 4 addressed the construction vehicle issue and requires all construction related vehicles including delivery and material trucks be parked in compliance with regulations.

Principal Planner Neal reminded the Commission that since the owners are moving out during the construction there will be two parking spaces available for the contractor in the driveway.

Commissioner Green stated that the requirement to keep the roadway and site free of dust by sweeping and watering down the site if necessary will help keep debris out of the neighbor's yard.

M/S, Ketcham-Green, moved to approve application # 13-34 subject to the condition contained in the staff report including the following additional conditions:

1. The project contractor shall use best efforts to minimize possible construction related impacts on neighboring properties.

2. The contractor shall strive to minimize the number of construction related vehicles parking throughout the neighborhood and minimize delivery and contractor vehicle impacts on the neighbors.

AYES: Ezzet, Gonzalez-Parber, Green, Kehrlein, Ketcham, Chair Hamilton

720 Center Boulevard: Application # 13-33
Request for a modification of a previously approved Fence Height Variance and Design Review to extend the 8 foot tall fence along the northern, Sir Francis Drake Boulevard, side of the property; Assessor's Parcel No. 002-131-12; Central Commercial Zone District; Good Earth Organic and Natural Foods, applicant; Rich Hall, Fairfax Center Properties LLC, property owner; CEQA categorically exempt, § 15303(e).

Planning Intern Bell gave the staff report.

Director Moore advised the Commission that in the commercial zones, fences always require design review approval even if they do not require a height variance and this fence requires both. He advised that the fence proposal is an effort to further mitigate the sound impacts from the delivery vehicles particularly for the Willow Avenue neighborhood.

Commissioner Ketcham verified with staff that the soundproofing would just be installed in the new section of fence and that the extension of the fence at the 9 foot 6 inch height the fence maintains now will have a minimal visual impact.

Planning Director Moore informed the Commission that the applicants have volunteered to provide fence soundproofing and that it has not been included as a condition of approval.

Commissioner Ketcham asked if there had been any neighbor complaints about the noise generated by the equipment boxes that are located east of the proposed fence extension. He wondered if the fence should be extended even further.

Director Moore indicated there had been no complaints about any noise from the equipment boxes.

Al Baylacq, of the Good Earth, informed the Commission that they fence a fence extension might help reduce the sound that now travels up Willow Avenue. They are open to making the fence even taller than 9 feet 6 inches if the Commission feels the aesthetics of such a tall fence will be acceptable. They are also willing to install the extra sound proofing material and while the fence can be built in a week, the selection of the type of soundproofing material and its installation will take longer. Their preference is to build the fence, see if it solves the truck noise problems and then to install the soundproofing only if necessary. He finished by stating that the Good Earth is agreeable to extending the fence the full 32 feet recommended by staff but that after that point, any additional fence will not accomplish any noise attenuation because that is well past the loading dock.

Commissioner Ketcham pointed out that there are a lot of recycling bins that extend beyond the 32 feet proposed for the fence. An additional fence extension would screen the bins.

Mr. Baylacq stated that the bins stop at the equipment boxes and he asked Mr. Bell, the Planning Intern, how much further the fence would have to be extended to screen the bins.

Mr. Bell estimated that the fence would have to be extended an additional 30 feet to screen the recycling bins.

Commissioner Green asked Mr. Baylacq if the Good Earth had determined what type of material they will use for the sound attenuation and Mr. Baylacq indicated that there are a lot of different types of materials out there and they had not chosen a specific one yet. They are leaning towards the soft absorption type which is a kind of blanket that can be hung on the fence although there are types of fences with the material built in. The fences with the material built in are the most expensive.

Commissioner Hamilton asked if there will be problems with the fence bouncing the sound towards the market and Mr. Baylacq answered that it is one of their concerns that the sound might bounce off the fence and the back and forth between the fence and the building.

Commissioner Ketcham suggested that the first 31 feet of fencing be 9 feet 6 inches and include sound attenuation material while the next 17 feet can step down in height and just be to provide a visual screen.

Commissioner Green stated that he is inclined to leave the truck delivery conditions as they are, have the fence and sound limiting material installed, and then see how things go.

Commission Kehrlein agreed and stated that she is inclined to give the applicants latitude as to the type of fence material and sound proofing they choose so they can choose the best material to minimize the sound impacts. She also strongly recommended that they obtain the advice of an acoustic engineer on how and what the fence should be built of to accomplish its goal.

Commissioner Gomez-Parber asked if the market has security cameras that face east and if so what are the quality of the photos.

Mr. Baylacq answered that as you get further from the building the pictures get grainier and become indecipherable when you get out to the equipment boxes it gets hard to see anything.

Commissioner Ezzet indicated that she would not like to put some kind of piecemealed fence condition on the applicants and thinks the whole fence should be built at once. She prefers the longer fence option citing that even the last 17 feet constructed to screen the recycling bins might also screen some noise. She reminded the Commission that the state will be requiring even more recycling in 2020 so the additional fence, if required, will be in place to screen what will most certainly be a growing number of recycling containers.

Commissioner Ketcham noted that people go between Sir Francis Drake and the existing fence now to hang out because it is a quiet place away from the store to smoke. If the fence decreased in height as it approached the equipment boxes it will be harder to hide behind.

M/S, Ezzet-Green, motion to approve the requested fence height variance allowing the first 31 feet of the extension to a height of 9 feet 6 inches and the second 17 feet to height up to 6 feet, for a total extension of 48 feet with the materials to be chosen in concert with staff and subject to staff approval prior to installation.

AYES: All

720 Center Boulevard; Application # 13-10
Review of Use Permit for compliance with Use Permit Conditions relating to truck delivery times; Assessor's Parcel No. 002-131-12; Central Commercial CC Zone District; Good Earth Organic and Natural Foods, Business Owners; Rich Hall, Fairfax Center Properties LLC, property owner.

Planning Director Jim Moore gave the staff report touching on the history of the project, the series of public meetings, community meetings and meetings between staff and the Good Earth and staff and the neighbors. He reiterated that the current conditions limit deliveries to one 60 foot truck between 5 AM and 6 AM, two 45 foot produce truck between 6 AM and 7 AM and

that garbage pick-up is supposed to occur after 8 AM. He went over the three recommendation options available to the Commission and indicated that staff recommends that the Commission take no action and leave the delivery truck restrictions in place as set forth in the existing condition of approval-. He finished by advising the Commission that at the June 12th meeting between the Good Earth and the neighbors a three step approach had been agreed upon which included Compliance, Improvement and Reward – the store should comply with the existing conditions, the store should work to improvement the noise impact mitigation and then, if improvement was achieved, perhaps the reward could be unlimited deliveries after 6 AM.

Commissioner Ketcham reiterated/clarified for the audience and his fellow Commissioners that the conditions regarding truck deliveries was the result of a Mitigated Negative Declaration He verified with staff that the Mitigated Negative Declaration did include a noise study and the actual delivery truck condition was instituted by the Town Council after a community meeting was held between the neighbors and the Good Earth.

Commissioner Ezzet asked if staff could recall the radius that the noise study included and Director Moore indicated that he could not bring the radius to mind, the Neg Dec was done quite some time ago, but the approve included a condition that the Town would study sensitive receptors. At the time the staff though the sensitive receptor area would be Belle Avenue but it has turned out to be Willow Avenue.

Al Baylacq, of the Good Earth Organic and Natural Foods Store, spoke admitting that prior to November of last year there were problems with the delivery vehicles not adhering to the delivery regulations. Since then the store has put protocol in place that has all but stopped the problems since January of 2013. They have kept a dialing log of the delivery times and turned truck away that have arrived prior to the allowed AM times and this approach has been effective. He reminded the Commission that constant significant traffic travels on Sir Francis Drake Boulevard very early with it becoming constant after 6 AM so not all vehicle noise can be attributed to the Good Earth. He indicated that in order to operate successfully they need to have the shelves stocked as much as possible before 8 AM and then they do continue to finish stocking throughout the day but like to keep the aisles as clear as they can. He explained that the store really thought that although they were limited to three large trucks before 7 AM they thought the smaller vans and trucks could come before 7 AM. He indicated that he was upset by an e-mail sent by a neighbor, Bob Mullin, and does not think the store deserves the negative comments made in it.

Commissioner Ezzet asked if the it is always the same company and drivers making the three morning deliveries and Mr. Baylacq indicated that it is always the same companies but not always the same drivers. He reiterated that the companies they are using now know the rules but every once in awhile you get what he calls a rogue driver and there is no way to predict when that will happen, the store can only deal with the renegades during or after they break the rules. He reiterated that he has gone to great lengths to lessen air break noise and to have drivers shut off the reverse beepers.

Commissioner Hamilton asked if there are other noises that occur in the loading dock area and Mr. Baylacq indicated that noise is also created by roll up doors, the dock leveler and lift-up gates. He indicated that probably as many as 10 small trucks and vans come to the site between 6:30 AM and 7 AM.-

Commissioner Gonzalez-Parber asked why stocking at night is not an option.

Mr. Baylacq explained that afternoon and evening stocking is not an option for them because the way they operate now they are able to utilize the employees that unload trucks in the morning to work in the store when they are open and don't have to hire a completely separate crew just to unload. This does save the store money. He also stated that it is hard to find employees willing to come out to Fairfax to start work at 9PM and work the graveyard shift. It is also difficult to find trustworthy people to work these hours. In order to have the items ready to stock by a night shift crew, the large truck would have to deliver goods between 4 PM and 9 PM when the parking lot is very busy at the store with patrons and the Good Earth does not have anywhere to store items until a night crew would be able to stock.

Steve Franks, 19 Willow Avenue, informed the Commission that the noise at the Good Earth now starts at 5 AM instead of 3 AM like it is supposed to but he still feels it took too long to gain compliance from the Good Earth. He still has air brakes waking him up at 5 AM, six days a week. He feels that the log being kept is not 100 % clear and the parking lot is hard to control without it being chained closed. He finished by stating that he still feels that having the trucks come after 6 AM is more reasonable.

Bob Mullin, 20 Willow Avenue, started by stating that he was about to advise the Commission that progress had been made and there was no bad blood between the neighbor's and the Good Earth but after listening to Al Baylacq speak he sees that is not true. He advised the Commission that this noise issue is not important enough for him to lie about which Mr. Baylacq has accused him of. The tone of his e-mail was meant to express his frustration with the situation. He reminded the Commission that 6 months ago at the previous hearing he invited the Commissioners to spend the night at his house and experience the noise impacts the Willow Avenue neighborhood is experiencing but no-one took him up on his offer. He is frustrated that there are no consequences for the Good Earth when they do not comply they merely continue with business as usual. Originally the neighbors were told that the noise issue would be revisited and a sound wall would be built if problems continued within 12 months and that has not happened and we are here discussing adjusting a permit that is not being enforced now. He advised the Commission that the group of neighbors he represents are discussing hiring an attorney and that they don't personally come to these meetings because they shop at the Good Earth and are afraid to speak up. He finished by stating that once you are awake you are awake so if the 1 truck makes too much noise at 5 AM, the neighbors are up from that time on.

Director Moore clarified what the Commission is hearing tonight and that is a review of the Use Permit for compliance with the delivery conditions. He advised that there have been consequences for the store, and that is the bad PR they have received even though the original conditions did not guarantee that the noise from the three perm-/*-itted trucks would be reduced

to nothing. He advised that the applicant have indicated that they are willing to increase the number of days they keep the video tapes of the loading dock area from 3 to 7 and will provide the tapes to the Town if complaints are received. This will give staff the ability to issue administrative citations if there are violations. We have to witness the violations and cannot cite based on here-say. The Commission can see by reviewing the two police reports received that it often is not easy to discern if a violations has actually occurred even though the police responded to the 2 complaints received as quickly as they could.

Commissioner Ezzet verified with staff that there had been only two police reports of complaints since April and that the reports were inconclusive as to whether a violation of the conditions had occurred.

Commissioner Green pointed out that the delivery observations submitted by Mr. Mellin for the 7th, 8th and 9th seems to show that the store is complying with the truck noise entries occurring between 5:00 and 6:00 and only one entry occurring 4 minutes early. He noted that the observations include the fact that at 4:30 on the 9th the sawhorse barricades were blocking the entrance to keep trucks out so they were complying then. He finished by stating that the fence may really help to decrease the noise that is still occurring during the permitted truck delivery times and he thinks the applicants should be given a chance to try it.

Commissioner Ketcham stated that he is disappointed that the store and the neighbors have not been able to find resolution and he respects the significant efforts the store has undertaken to try and comply with their conditions. He is disappointed that the neighbors did not speak during the discussion about the proposed fence to address how it might be helpful or an opportunity to meet somewhere in the middle. He went on to state that he feels that the next time the Commission does a review of the truck delivery issue, because of noise complaints or if a request is received to relax the conditions, he wants either request to be accompanied by an actual noise study performed by a professional licensed to study these types of truck/loading dock noises.

Commissioner Ezzet concurred that as a professional that analyzes data she always asks herself how reliable the data she is looking at is. In this case she is looking at the two police reports filed in 6 months and thinking that this is the real world and with all the different players involved, different delivery companies, constantly changing drivers, different store employees, you are never going to be able to achieve 100% compliance because people are human. She indicated that she understands that the neighbors do not always want to involve the police so she agreed that the video documentation will be very helpful to staff and the Commission going forward. She finished by stating that if it were being considered she might be in favor of lifting the ban on the number of van deliveries allowed after six based on the information she has been provided to date.

Commissioner Green agreed and stated that from an evidentiary standpoint he feels the Commission does not have enough evidence to determine that here is continuing non-compliance with the conditions. He reiterated that he thinks the fence will help the situation.

M/S, Kehrlein-Ketcham, to direct the applicant to continue complying with the truck delivery conditions before 7:00 AM and to comply with the following conditions:

1. The Good Earth shall retain the video tapes of the truck delivery area for a minimum of seven (7) days and shall provide copies/allow staff to review the tapes if the Town receives complaints of the business violating the condition of approval.

2. The Good Earth shall continue the efforts put in place to date to comply with the delivery truck conditions and to decrease the noise created by the deliveries prior to 7:00 AM as described in the staff report dated October 17, 2013 and the "Protocol For 5 AM Receiver Role" developed by the Good Earth and provided to the Town on July 31, 2013.

The Commission also requested that a formal sound study be included with any future application to amend or alter the delivery conditions (e.g., whether to tighten or relax them).

AYES: Green, Gomez-Parber, Kehrlein, Ketcham, Chair Hamilton

NOES: Ezzet

MINUTES

The minutes from the September 19, 2013 meeting were continued to the November 21, 2013 meeting because Commissioner(s) requested additional time to review them.

PLANNING DIRECTOR'S REPORT

DISCUSSION ITEMS

Director Moore gave his report addressing the following:

The Climate Action Plan will be presented to the Commission at the November meeting as a courtesy. The Commission will not be acting on the plan but if they have comments they can submit the comments prior to or at the meeting.

The Housing Element amendments and a Resolution indicating that the amendments require no additional environmental review are scheduled for what is hopefully final action on October 22, 2013 by the Town Council. The Town expects a final letter of approval from the Housing and Community Development Department on the 22nd.

He welcomed new Commissioners Gomez-Parber and Green.

He advised the new Commissioners to review the General Plan Matrix that sets forth an action plan for bringing the Town Code and the Town into compliance with the 2010 to 2030 Fairfax General Plan.

COMMISSIONER COMMENTS AND REQUESTS

Commissioners requested that staff look into:

The early garbage pick up that occurs in Fairfax citing the fact that it does not occur that early in other Marin Town's.

Why the street light in San Anselmo at Suffield Avenue cannot be timed to coincide with the Fairfax light at Willow and Pastori.

Commissioner Ketcham asked for an update on the restaurant upgrade where Lydia's Lovin Foods used to be and staff advised that they ran into trouble with the Health Department because some type of mold was found underneath the flooring and now they are short on money.

Chair Hamilton verified that the election of a new chair will occur in December and she reminded everyone that her term and Commissioner Ketcham's terms are up in January.

Chair Hamilton adjourned the meeting at 10:10 PM.

Respectfully submitted,

Linda Neal
Principal Planner