

DRAFT FAIRFAX PLANNING COMMISSION MEETING MINUTES
FAIRFAX WOMENS CLUB
THURSDAY, NOVEMBER 17, 2016

Call to Order/Roll Call:

Chair Kehrlein called the meeting to order at 7:00 p.m.

Commissioners Present: Bruce Ackerman
 Norma Fragoso
 Esther Gonzalez-Parber
 Laura Kehrlein (Chair)
 Mimi Newton
 Cindy Swift

Commissioner Absent: Phillip Green

Staff Present: Jim Moore, Planning Director
 Linda Neal, Principal Planner
 Michelle Levenson, Zoning Technician

APPROVAL OF AGENDA

M/s, Ackerman/Gonzalez-Parber, Motion to approve the agenda as submitted.
AYES: Ackerman, Fragoso, Gonzalez-Parber, Newton, Swift, Chair Kehrlein
ABSENT: Green

PRESENTATION OF PROCLMATION TO SHELLEY HAMILTON

Chair Kehrlein presented Ms. Shelley Hamilton a proclamation thanking her for her years of service on the Planning Commission. Ms. Hamilton stated it was a pleasure to have served on the Commission. She urged other residents to become active in the community.

PUBLIC COMMENTS ON NON-AGENDA ITEMS

A resident thanked Planning Director Moore for his years of service to the Town and wished him well in his retirement.

CONSENT CALENDAR

There were no Consent Calendar items.

PLANNING DIRECTOR'S REPORT

Planning Director Moore reported on many of the accomplishments achieved over the last seven years and how the Town and Commission should look forward. He thanked Principal Planner Neal for being an invaluable asset during his tenure. He stated it has been an honor working with the Commission and for the Town of Fairfax.

PUBLIC HEARING ITEMS

1. 96 San Gabriel Drive: Application #16-37

Request for a Use Permit and Side Yard Setback Variance to construct a 356-square-foot, second-story bedroom/closet addition over the garage of a 1,505-square-foot, 3-bedroom, 2-bathroom single-family residence resulting in an 1,872-square-foot, 4-bedroom, 2-bathroom residence; Assessor's Parcel No. 001-261-35; Residential Single-family RS 7.5 Zone; Rod and Millie Millstead, applicants/owners; CEQA categorically exempt per Section 15301(e)(1). This item was continued from the October 20, 2016 Planning Commission Meeting

Zoning Technician Levenson presented a staff report. She corrected an error in the staff report, page 5: the correct Resolution Number is 16-30

Commissioners Newton and Ackerman pointed out a couple of typographical errors in Resolution #16-30.

Commissioner Fragoso asked who would sign the resolution in the absence of the retired Planning Director. Principal Planner Neal stated the Town Manager is the Acting Planning Director until a new Planning Director is hired.

Chair Kehrlein opened the Public Hearing.

Mr. Rod Millstead, applicant/owner, made the following comments:

- He asked the Commission to approve the application- they need the extra space.

Chair Kehrlein stated it appeared they were trying to match the existing ridge because they want to keep the addition under the roofline. The windows might not meet the Building Code (not tall enough). She noted they were well under the height limit and they could build above the existing ridgeline. This could result in a nicer "feeling" in the room.

Commissioner Fragoso stated she could approve the expansion of the house- it is modest. She had similar concerns about the rooflines. It might be to the applicants benefit to expand the new roof portion and peak it rather than flatten it. The existing front elevation "screams" for a trellis or awning (along the garage and the porch/front door). The angle of the roof seems to cut off the kitchen windows.

Commissioner Gonzalez-Parber agreed with the comments about raising the roofline. It would be a good investment. She could support the project.

Commissioner Swift noted the height in the front of the room was a little over 6 feet. She asked if there was a height requirement. Principal Planner Neal stated for attic spaces a certain percentage must meet the height requirement (7 feet). Commissioner Swift asked if the applicant would need to come back to the Commission with revised plans if they choose to make the suggested changes. Principal Planner Neal stated that would be up to the Planning Commission.

Commissioner Fragoso asked if they were working with an architect. Mr. Millstead stated "yes". Commissioner Fragoso had questions about the Permit Streamlining Act. Principal Planner Neal stated the applicant would need to request, in writing, a 90-day continuance.

Commissioner Newton stated perhaps the Commission could approve the application conditioned on the Building Official ensuring that the windows are the proper size.

Principal Planner Neal asked if there was concern that changing the size of the windows would affect the look of the architecture. Chair Kehrlein stated “no”- her main concern was that the front wall was too low- it should be at least 8 feet. She did not want to hold up the application and felt the Commission should allow them some flexibility in the height.

Commissioner Ackerman stated he would support the general direction of not continuing the application.

Commissioner Fragoso asked the applicants if a month delay would be an issue. Mr. Millstead stated “no”. He noted his architect told him that the side window was designed to support egress. He would be interested in meeting with his architect to try to make the project move livable and aesthetically pleasing. Commissioner Fragoso stated they might need to change the slope or the angles if they decide to increase the height.

Chair Kehrlein closed the Public Hearing.

M/s, Newton/Gonzalez-Parber, Motion to adopt Resolution No. 16-30, approving application #16-37 for 96 San Gabriel Drive, subject to the following modifications: 1) On page 1 of the Resolution, number 2 of the 4th Whereas shall read: “The addition to the residence will reach a maximum of 18 feet, 11 inches in height. The Planning Commission will allow up to 20 feet, 11 inches in height for the build which is significantly less.....”; 2) On page 2, the addition of paragraph #6 shall read; “ The Commission desires to give the applicants the option of increasing the height of the addition up to two feet”.; 3) On page 2, paragraph 5 of the 5th Whereas shall read: “The Building Official shall.....including the windows in the addition”; 4) On page 4, under “Miscellaneous Conditions”, the addition of #6 shall read: “The applicant has the option to raise the height of the proposed addition up to two additional feet maximum”. The date of the resolution shall be changed to November 17, 2016.

AYES: Ackerman, Fragoso, Gonzalez-Parber, Newton, Swift, Chair Kehrlein

ABSENT: Green

Chair Kehrlein stated there was a 10-day appeal period.

2. 68 Cypress Drive; Application #16-38

Request for a Design Review Permit for a 50-percent remodel/expansion of a single-family residence. The project would involve demolishing 608 square feet of the existing 1,858-square-foot structure and adding 1,127 square feet resulting in a 2,377 square-foot, 3-bedroom, 2-bathroom residence; Assessor’s Parcel No. 003-201-25; Residential Single-family RS-6 Zone; Herbert Van Den Bergh and Andrea Speraw, owners, Morgan Hall, architect; CEQA Categorically exempt per section 15301(e)(2). This item was continued from the October 20, 2016 Planning Commission meeting.

Principal Planner Neal presented a staff report.

Commissioner Newton referred to page 4 and had a question about the citations in the second paragraph. She referred to the resolution and noted it should contain the November 17th date.

Chair Kehrlein opened the Public Hearing.

Mr. Morgan Hall, architect, made the following comments:

- He was happy to answer any questions.

Commissioner Gonzalez-Parber stated she liked the project and how he hinged the addition. She had questions about the “cat room”. Mr. Hall stated it was a closet for the litter box, etc.

Commissioner Gonzalez-Parber asked about the stairway going down the middle where the building hinges. Mr. Hall stated there is an existing stair down to the utility room in the basement.

Commissioner Fragoso stated she loved the plan and the design was beautiful. She was upset that they could not work in a graywater system. She asked if they plan to recycle construction as well as landscaping materials. Mr. Hall stated "yes". Chair Kehrlein noted State law requires recycling of 50% of construction waste.

Commissioner Swift referred to the Ross Valley Fire Department requirement for providing an on-site hydrant or alternative method and asked Mr. Hall if this has been worked out. Mr. Hall stated the Fire Department figures out where they would stage the pumper which could lie out only 150 feet of hose. There is a small part of the house that is over the 150 feet distance and they have offered to use one-hour fire resistant construction.

Commissioner Newton stated she appreciated the beautiful drawings.

Chair Kehrlein closed the Public Hearing.

M/s, Fragoso/Gonzalez-Parber, Motion to adopt Resolution No. 16-29, approving application #16-38, 68 Cypress Drive.

AYES: Ackerman, Fragoso, Gonzalez-Parber, Newton, Swift, Chair Kehrlein
ABSENT: Green

Chair Kehrlein stated there was a 10-day appeal period.

3. 16 Piper Lane, Application #16-40

Request for a Use Permit to remove an existing 580-square-foot deteriorated deck and replace it with an 842-square-foot deck. Construction of the deck would result in the removal of a diseased Coast Live Oak tree; Assessor's Parcel Number 001-241-27; Residential RS 7.5 Zone; Rich Dowd, applicant; Judy Mayne, owner; CEQA categorically exempt per Section 15301(e).

Zoning Technician Levenson presented a staff report. She noted a typographical error in the staff report.

Chair Kehrlein opened the Public Hearing.

Ms. Judy Mayne, owner, made the following comments:

- The Tree Removal Permit was issued in 2005 and she explained the reason for the 11-year delay.
- She would like to replace the deck to provide a nicer place to live.

Mr. Rich Dowd, architect, made the following comments:

- The staff report is very concise. He does not need to add anything.
- He would be happy to answer any questions.

Commissioner Swift stated the existing deck has plantings in front of it close to the road and she asked if they plan to do more plantings in the new space. Ms. Mayne stated she is not expecting a lot of intrusion in terms of what is already there. The hillside is planted in Hypericum which comes back nicely. She planted two trees that would provide shade for the west side of the house in anticipation of removing the Oak.

Chair Kehrlein asked about the maximum height of the deck above grade. Mr. Dowd stated it varies- the existing deck represents the highest point. Chair Kehrlein noted the support beams were set back from the edge of the deck and this would help soften it.

Chair Kehrlein closed the Public Hearing.

M/s, Ackerman/Fragoso, Motion to adopt Resolution No. 16-32, approving application #16-40, 16 Piper Lane.

AYES: Gonzalez-Parber, Green, Hamilton, Newton, Chair Kehrlein

ASENT: Green

Chair Kehrlein stated there was a 10-day appeal period.

DISCUSSION ITEMS

4. Discussion of Town Position on the definition of a “school” in Town Code Chapter 5.52, Medical Marijuana Dispensaries, and the process going forward if the Commission determines they may want to amend the ordinance.

Principal Planner Neal presented the staff report.

Commissioner Fragoso referred to Ordinance No. 759 and asked how distances were measured. Principal Planner Neal stated in the past staff would set a compass on the assessor parcel maps and measure from the exterior property lines. Staff now uses the Marin County GIS program. She referred to the “School Site Buffer Zone” Map and stated the red squares depict schools.

Commissioner Fragoso stated she had questions about whether or not First Friends Montessori Preschool was a “school” and she would like to see this come back with some clarification. She referred to Ordinance No. 759, Section 17.110.080(e), “Limitations on Location of Dispensaries” and asked for clarification. Principal Planner Neal stated there is a group who would like to open a dispensary at the location that is currently S&N Automotive and they could apply for a waive under this provision. She noted changing the definition of a “school” could affect other businesses as well.

Commissioner Fragoso stated she would like to discuss the idea that a child-care center was not an educational facility. Principal Planner Neal stated the Town Attorney has taken a different position.

Commissioner Swift stated Ordinance No. 759 references making a change to the Zoning Code however the ordinance seems to have been incorporated into Municipal Code Section 5.52, Business Licenses. She asked if the issue pertained to the definition of a “school” that is contained in the Zoning Code or the more limited definition that is in the actual dispensary code section. Principal Planner Neal stated she thought the Town Attorney was looking at both definitions.

Commissioner Swift pointed out that there was a dance “school” next to S&N Automotive and asked if the ordinance would apply to them as well.

Commissioner Ackerman stated the question before the Commission was whether or not to recommend to the Council a modification to the dispensary ordinance. He agreed there were two, slightly different definitions.

Chair Kehrlein opened the Public Hearing.

Mr. Lew Tremaine, Sir Francis Drake Boulevard, made the following comments:

- He was on the Council when Ordinance No. 759 was adopted.

- The Council understood that First Friends was clearly not a kindergarten or 1st through 12th grade school.
- However, they were told that the facility qualifies as a kindergarten since they allow children up to age 6. This was a mistake- kindergartens are certified by the State.
- First Friends is not a kindergarten. It is located in a residence- this is an exclusion in the ordinance.
- The Zoning Ordinance is not relative to the Medical Marijuana Ordinance.
- The radius should not have been drawn around First Friends.
- There is no ambiguity in the ordinance.
- There are inaccuracies in the map.

Commissioner Fragoso referred to the November 9, 2016 letter from the Assistant Town Attorney regarding the Conditional Use Permit issued to First Friends in 2004. The permit was based on the facility being an “educational facility” as opposed to a “child care center”. Principal Planner Neal stated the Code states that if a use is not specifically listed as a permitted use then the Planning Commission has the authority to grant a Use Permit.

Ms. Roselle Nardel, Director of First Friends, made the following comments:

- They do offer a kindergarten program.
- They serve children 2 ½ to 6 years old.
- The curriculum goes up to the second grade.
- They are licensed by the State of California under Community Care licensing.
- They have credentialed teachers teaching kindergarten.
- They have advanced math and language programs.

Mr. Tim Nardel, Co-Director of First Friends, made the following comments:

- They serve 24 kids per day representing 32 families in Fairfax.
- This is a serious issue for the entire Town.
- He is concerned about the misinformation about the kindergarten program.
- It seems premature to consider the issue given the passage of Proposition 64.
- Proposition 64 is unambiguous- it includes pre-schools and child care centers in the definition of “schools”.
- He is of the opinion that they are a “school” under the existing ordinance.

Commissioner Swift asked if their license was under the State Department of Social Services as a “day care facility”. Ms. Nardel stated they are licensed as a “child care center”.

Commissioner Gonzalez-Parber stated there were a lot of issues that needed to be addressed given the passage of Proposition 64. She referred to Ordinance No. 759, Section 17.110.010, “Purpose and Intent” and stated she could not figure out why it would not apply to a pre-school.

Commissioner Swift stated it would be a good idea to continue this item and give the Town Attorney an opportunity to address the Commission’s questions.

Commissioner Newton referred to the “School Site Buffer Zone” map and stated there were very few parcels that were in the commercial district but not within the 600-foot buffer- this is a huge windfall for them. She did not see any reason to distinguish a buffer zone for kindergarten vs pre-kindergarten- she did not want to create an artificial distinction. The intent is to keep these businesses at least 600 feet away from any learning facility. She would like to get advice from the Town Attorney about how the Fairfax Ordinance and Proposition 64 will interact.

Principal Planner Neal asked the Commission to submit any questions to her via email.

Chair Kehrlein closed the Public Hearing.

M/s, Newton-Ackerman, Motion to continue this item to a date uncertain.

AYES: Gonzalez-Parber, Green, Hamilton, Newton, Chair Kehrlein

ASENT: Green, Hamilton

MINUTES

5. Minutes from October 20, 2016 regular meeting and the September 14, 2016 regular meeting.

M/s, Newton/Ackerman, Motion to approve the minutes of September 14, 2016 as corrected.

AYES: Ackerman, Fragoso, Gonzalez-Parber, Newton, Chair Kehrlein

ABSENT: Green

ABSTAIN: Swift

M/s, Swift/Newton, Motion to approve the minutes of October 20, 2016 as corrected.

AYES: Ackerman, Fragoso, Newton, Chair Kehrlein

ABSENT: Green

COMMISSIONER COMMENTS AND REQUESTS

Commissioner Swift stated she would like to receive a copy of corrected resolutions. Principal Planner Neal stated she would submit this request to the Acting Planning Director. Chair Kehrlein stated it was the responsibility of the Chair to review the resolution when he or she signs it. Principal Planner Neal stated the appeal period (10 days) begins when the resolution is signed and the Notice of Action is received by the applicant- not the date of the Planning Commission action.

Chair Kehrlein asked if any of the items from last month's meeting were appealed. Principal Planner Neal stated "yes"- the Use Permit application for 23 Broadway.

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 10:15 p.m. Respectfully submitted,

Toni DeFrancis,
Recording Secretary