

LARKSPUR PLANNING COMMISSION
MEETING MINUTES OF MARCH 10, 2015

The Larkspur Planning Commission was convened at 7:00 p.m. in the City Council Chambers by Chair Ziesing.

Commissioners Present: Chair Todd Ziesing, Monte Deignan, Daniel Kunstler, Mark Sandoval, Laura Tauber

Staff Present: Planning Director Neal Toft
Planning Consultant Lorraine Weiss
Associate Planner Anna Camaraota

OPEN TIME FOR PUBLIC EXPRESSION

Mr. Ron Bolt, Piedmont Avenue, stated the project at 31 Piedmont was progressing but was not meeting the conditions that were agreed upon. The construction was meeting the deadlines but was questionable. He was concerned about the appearance of the site and the fencing. Several weeks ago the road was blocked for quite some time by a delivery vehicle. The neighbors expect the Commission to take some action if the deadlines are not met. Planning Director Toft stated staff has been in contact with the property owners and have been monitoring the progress of the project. Staff would be making an assessment of the project before the end of the month. The property owners have been advised in writing that they are not meeting the terms of the agreement with respect to the site conditions. The City could ultimately rescind the permit and begin Nuisance Abatement proceedings. The final deadline for the project is the end of September.

PLANNING DIRECTOR'S REPORT

- The Commission would be discussing the community facility parcel design process in a workshop setting at the end of March. This would be followed by a Study Session hosted by the Commission. There is a page devoted to this process posted on the City Website.

PUBLIC HEARING ITEMS

1. **DR/V 14-67: 8 Stanford Court (AP #020-101-13); Rodgers Architecture, applicants, Don and Maryann Thompson, property owners. Requests for the following permits to allow construction of a single-story, 469 square-foot addition at the rear of an existing 2,335 square-foot single-family dwelling: 1) Design Review; 2) Variance to allow a 9-foot encroachment into the rear yard setback.**

Planning Consultant Weiss presented a staff report.

Commissioner Kunstler asked if the existing home encroaches into the rear yard setback. Planning Consultant Weiss stated "yes" by about 4 feet at the very corner (bedroom #2).

Commissioner Kunstler asked about the distance between the creek bank and the property line. Planning Director Toft stated the edge of the Corte Madera Creek was quite a distance. There is a drainage swale feeding into the creek that is right behind the house.

Chair Ziesing opened the Public Hearing.

Mr. Andy Rodger, architect, made the following comments:

- He wanted to create some additional space for the clients and decided early on that it did not make sense to do a second story. The neighborhood is mostly one-story structures.
- The logical place to create additional space was in the corner.
- It would have been very difficult to keep the addition fifteen feet away from the rear property line.
- The maintained a six foot distance.
- They have kept the design of the addition consistent with the house. They have matched materials and the roof form (low slope).
- They wanted to ensure that the house, with the addition, fit in with the context of the neighborhood.
- The addition is minimally visible from the street and is more visible from the water.

Mr. Don Thompson, property owner, made the following comments:

- They have lived in Hillview for over ten years.
- The added space would allow family members who live out of town to visit and have a place to stay.
- They included the neighbors every step of the way. They have tried to be sensitive.
- Only one neighbor would be impacted.
- They have support of the neighbors and the head of the Homeowner's Association.

Commissioner Sandoval asked Mr. Roger if the roof overhang (eave) would be stucco. Mr. Roger stated the eave would be wood frame with a wood fascia. Commissioner Sandoval noted it was closer than five feet from the property line and would need one-hour construction. Mr. Roger stated he would address that in the Building Permit stage. They might go with a non-combustible material such as Hardi board.

Commissioner Sandoval asked about the roof drainage that is close to the property line. Mr. Roger stated the plan is to create a small garden in the corner that would be watered by the rain. The intention is to keep it all on site. They have not gotten to those details yet. Commissioner Sandoval stated the drainage should not flow into the neighbor's yard. Mr. Roger agreed.

Chair Ziesing closed the Public Hearing.

Commissioner Sandoval provided the following comments:

- This is a modest addition.
- He did not have any concerns other than the ones he brought up.

Commissioner Deignan provided the following comments:

- This is a good application from the perspective of visual impact from the street.
- There is very little profile from the street and a significant distance in the back to the bike path, etc.
- Very few people will notice the addition.
- He was glad they talked to the neighbors and involved them in the process.
- A variance is a higher threshold and this is a perfect example of why it makes sense- this is a triangular shaped lot that could not be extended on the other corner.
- The site conditions are the hardship for making the variance findings.
- He could support the project.

Commissioner Tauber provided the following comments:

- When reading the staff report and looking at the plans she was concerned about how close the addition would be to the setback.
- There is a fair amount of space between the property line and the edge of the creek.
- The design makes sense and she was glad that the proposal was not for a second story.

- She could support the project.

Commissioner Kunstler provided the following comments:

- This is a modest expansion of the home. Denial would prevent the property owners of privileges that are enjoyed by others.
- He appreciated the respect for the scale of the other structures in the neighborhood.
- The subtle design changes to the front of the house are very attractive.
- He could support the application.

Chair Ziesing provided the following comments:

- He could make the findings for Design Review.
- A variance requires a higher standard but he could understand the need for a modest addition to this house. There are constraints to this irregularly shaped lot.
- He could support the application.

M/s, Deignan/Sandoval motioned and the Commission voted 5-0 to approve DR/V 14-67, 8 Stanford Court, subject to the findings and conditions in the staff report.

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

- 2. Appeal of Administrative Decision Related to Application DR 14-58: 600 Magnolia Avenue (AP #022-110-33); Paul Smith, Keegin Harrison Schoppert Smith & Karner LLP/Frontier Real Estate Investments, Inc. Appellants; James Shively, Stantec Architecture Inc., applicants; MASH Petroleum Inc., property owners. An appeal of Planning Director's decision pursuant to Larkspur Municipal Code (LMC) Section 2.50.100.B, requiring information related to gas station demolition and removal of underground storage tanks (USTs). The Planning Director has requested this information in the processing of application DR#14-58; a request for design review approval to allow construction of a bank on a property currently developed with an automotive service and fueling station.**

Associate Planner Camaraota presented a staff report and noted staff received two pieces of late mail. She noted the hearing was not about the development merits but rather the administrative decision related to the completeness of the application. Planning Director Toft reiterated this meeting is not a review of the actual application for a bank or the demolition of the gas station or a discussion of the merits of the project. The question is about whether the application must include information related to the existing structure and service operation.

Commissioner Kunstler stated the appellant is arguing for a bifurcated process whereby the permit for construction is separate from the permit for demolition. He asked if there was any precedent for a bifurcated process. Associate Planner Camaraota stated it was the obligation of the City to review the application in its entirety. In order to analyze the project for construction of a bank staff must also review the demolition. Planning Director Toft noted that the City requires design review approval for demolition of commercial structures as well. He stated that the quick answer to Commissioner Kunstler's question is "no" - there is no precedence, particularly for a project of this scope.

Commissioner Kunstler asked if the Commission should not draw any inference as to whether or not a Conditional Use Permit (CUP) would be required. Planning Director Toft stated this would be determined by staff based on the completeness of the application.

Commissioner Tauber asked if one of the key pieces of information that was missing was how they would deal with the underground storage tanks. Associate Planner Camaraota stated that the applicant has agreed to provide all of the requested information, with the exception of documentation

related to removal of the tanks, remediation of the site, and demolition of the existing improvements.

The appellant is contesting staff's requirement that this specific information be provided in review of the application.

Commissioner Sandoval stated this was a discretionary application and asked staff if they would be in violation of the California Environmental Quality Act (CEQA) if this information were not received. Associate Planner Camaraota stated staff would be unable to deem the application complete and move forward with review. Planning Director Toft stated they would be creating a high CEQA risk if they deemed the application complete without receiving the requested information.

Commissioner Deignan asked how long this location has been a fueling station with underground storage tanks. A member of the audience stated about 45 years. Commissioner Deignan asked if there were records of remediation in the past and Regional Water Quality Control Board documentation for the site. Planning Director Toft stated there has been some remediation in terms of replacing tanks and testing to bring the site up to standards by the Water Quality Control Board. Commissioner Deignan stated a gas station on that location for that long could be something of a "wild card".

Chair Ziesing opened the Public Hearing.

Mr. Paul Smith, attorney representing the applicants and appellants, made the following comments:

- He understood the significance of the site. He grew up in Larkspur.
- Tonight's topic was a technical question.
- He referred to Attachment #2 and noted under the "Purpose of the Application" section the "demolition of the service station" was lined out. The underground storage tank removal, demolition of the gas station structure, and removal of hardscape on the site was the responsibility of the current gas station operator (MASH Petroleum).
- MASH Petroleum is under contract to sell the site to Frontier Real Estate Investments.
- Frontier Investments does not own operating gas stations for liability reasons.
- MASH Petroleum was responsible for obtaining the demolition permit, grading permit, and a UST removal permit. They have the UST permit that was issued by the County.
- In February MASH attempted to submit a Demolition and Grading permit application but the application was not accepted.
- The Design Review application should be submitted by Chase Bank, a potential end user of the property.
- Chase Bank will not acquire the property unless it is a viable site for a bank. They have no interest in doing the demolition work. They just want to see if they can get Design Review for a bank.
- Chase Bank might not be the ultimate purchaser of the property. Frontier Investments will acquire the property from MASH Petroleum once the grading and demolition permits were obtained. Chase Bank will not purchase the property unless there is an understanding that it could be used for bank purposes.
- This is a "chicken and egg" situation.
- He does not disagree with what staff has said – you need permits to remove the station and UST's.
- They tried to submit a permit for removal of the station and UST's but they did not have all that information provided yet.
- It is up to Mash Petroleum to deal with all the removal and remediation.
- He suggested conditioning the Design Review application subject to the completion of proper grading, demolition, UST removal and all necessary permits.
- There is no intention of changing the grading of the site. They would simply scrape the site and build a new building.

- There would not be any dramatic significant change to the site.
- CEQA is not an issue. Tanks are not on the Department of Toxic Substance Control lists. This application would qualify under CEQA categorical exemptions and is an infill project.

Commissioner Tauber asked why Chase Bank needs an answer right away. Mr. Smith stated Chase Bank is one potential end user and wants to know if this is a potentially viable site. Commissioner Tauber stated that is all the more reason to get everything taken care of and approvals in place. Mr. Smith stated they tried to submit the permit applications in February. Associate Planner Camaraota stated that someone tried to submit a building permit application requesting approval to demolish the gas station and remove the underground storage tanks. They were advised that demolition of a commercial site was subject to Design Review. They were further advised that supporting documentation, including demolition of existing structures, grading plan, and underground storage tank removal plan would also be required.

Planning Director Toft reiterated that the person attempting to file the building permit application had only provided the application form with a brief statement indicating that the request was for demolition of the gas station and removal of UST's. It is a prominent site and the Staff needs to consider the grading, tree removal, easements, and project as a whole. He noted that Larkspur, not the County, is the lead agency for the project, for CEQA purposes. While it has been helpful to understand the different "who's and whys", it does not change the need for Larkspur to follow both State and local regulations.

Mr. Smith stated there were two, separate application processes- the MASH Petroleum process and the end user process of proceeding with Design Review to determine whether or not a bank could be built.

Commissioner Sandoval stated it sounded like a "Catch 22" and Mr. Smith was juggling a lot of entities that do not seem to see eye to eye. Mr. Smith stated the entities have different interests. Commissioner Sandoval stated he understood but it was all speculation. A demolition permit was a process in itself and they need to have everything in place. Mr. Smith stated that was the reason they removed it from the Design Review application. Commissioner Sandoval stated they need to follow the administrative process. He asked Mr. Smith if he could provide the requested information. Mr. Smith stated "yes", it would be submitted by MASH Petroleum.

Commissioner Kunstler asked if Chase Bank was an applicant in any piece of this process. Mr. Smith stated "yes"- the Design Review application was submitted by Stantec, the architect for Chase Bank. Commissioner Kunstler asked for a brief recess to confer with Planning Director Toft.

Commissioner Kunstler disclosed for the record that he was an employee for J. P. Morgan Chase from 1979 to 2002. He receives deferred income and post retirement health care benefits from J. P. Morgan Chase. He is comfortable adjudicating this matter with the Commission and did not feel conflicted.

Commissioner Deignan asked what would happen if Chase Bank or another investment firm found out they were not able to get a workable Design Review proposal- would MASH Petroleum not demolish the gas station or would Frontier Investment not buy the property. He asked if the business was going to be "torn down" no matter what? Mr. Smith stated the gas station will be torn down and eliminated and the tanks removed and then Frontier Investment would take title of the property. The second piece involving Chase Bank as the end user is a separate question. Commissioner Deignan asked staff if the Design Review aspects include the Design Review of the new bank are part of the demolition permit or if there is a Design Review aspect of the demolition. Associate Planner Camaraota stated there is a Design Review aspect to the demolition which would be true of any project, including a single-family home. Staff would review everything from start to

finish- the existing conditions through to the proposed end condition. Staff analyzes the grading required, hardscaping, driveways that would be removed, how the site would be prepared for the new development, etc. Commissioner Deignan asked if this is the part that has not been received by staff. Associate Planner Camaraota stated “yes”. Planning Director Toft stated that the property owner ultimately authorizes all application including the application for the bank. It is not unheard of to have co-applicants authorized by the property owner to put forward a project application. The City’s analysis can be done with the submittal of all the plans being discussed. It is not a good practice to have two applications in process for the same property with different “players”. That can lead to numerous process complication and legal issues.

Chair Ziesing asked Mr. Smith if he had been retained by Frontier Investments. Mr. Smith stated he was representing Chase Bank, Frontier Investments, Mr. Mo Mashhoon, 600 Magnolia Avenue LLC, Mr. James Shively at Stantec Architecture. Chair Ziesing asked Mr. Smith to name who is retaining him as his client. Mr. Smith stated Frontier Investments.

Commissioner Sandoval stated the application before the Commission was for a 3,390 square foot bank and demolition was part of that work. Mr. Smith stated a solution could be to condition the Design Review application subject to the processing and approval of the UST, grading, and demolition permits.

Commissioner Kunstler stated he was confused about the reluctance to incorporate the substance of the application for the demolition and removal of the tanks into the Design Review application. He asked if both parties could be co-applicants in Design Review. Mr. Smith stated this has not been considered that since there were very specific contractual obligations. There are two completely separate players with completely separate interests. Commissioner Kunstler stated there was a “cart before the horse issue”. Mr. Smith agreed.

Mr. Greg Patterson, Madrone Avenue, made the following comments:

- It sounds like this issue is about convenience and commanding a higher real estate price.
- Larkspur is a special place with character and he did not want it to lose that “magic”. This could be the first domino that knocks it all down.
- A gas station is a community hub.

Mr. Charles Bruce, Corte Ortega, made the following comments:

- There were six banks within a one-mile radius of the City of Larkspur.
- The matter is not that technical- the regulations of the City of Larkspur and CEQA should be followed.
- The Demolition Permit should be submitted with the Building Permit and Design Review.
- He urged the Commission to deny the appeal.

Mr. Chris Holly, Hawthorne Avenue, made the following comments:

- He is a general contractor and is familiar with the frustration that results from permit processing.
- It does not make sense to do things out of sequence.
- They need to go through the required process, get the site ready, and then submit the appropriate applications.

Ms. Teresa Rose made the following comments:

- She has lived in Larkspur for 32 years.
- Many residents feel like they have been left out of the process.
- Senior citizens frequent this gas station. It is a vital business to this town.
- Removal of the gas station would be detrimental to Larkspur.

Chair Ziesing closed the Public Hearing.

Commissioner Kunstler provided the following comments:

- He supports the position of staff to reject the appeal.
- He understood Mr. Smith's conundrum with regard to the various agendas.
- He cannot reach the conclusion that the normal procedures should be overridden.
- There should be some way to amalgamate all of the application material with regard to the demolition, Design Review, etc.
- He supports denial of the appeal.

Commissioner Tauber provided the following comments:

- This should be a sequential process.
- They need to go through the Design Review process for the demolition, tank removal, etc. before they can consider Design Review of the building as a bank. It would make sense to submit this as one application with co-applicants.
- Chase Bank needs to be patient.

Commissioner Deignan provided the following comments:

- Mr. Smith made some very compelling arguments.
- The City Attorney has weighed in and they need to look at the entire picture.
- He understood Chase Bank's reluctance in obtaining a contaminated property with a lot of remediation needed.
- The City has a set process. Staff has deemed the application incomplete.
- He agreed with the opinion of staff and the City Attorney.
- He supported denial of the appeal.

Commissioner Sandoval provided the following comments:

- He agreed with the comments made by the other Commissioners.
- The process needs to be followed. Any exceptions could be a potential nightmare and cause problems.
- He would uphold the staff decision and support denial of the appeal.

Chair Ziesing provided the following comments:

- This is a process that has a sequence. They are asking to do things out of sequence.
- This is an incomplete application.
- Things are highly speculative- someone "may" lease from a property owner who "may" buy from a seller who "may" sell.
- The site is environmentally sensitive.
- The project needs to be considered in its entirety.
- He would support the denial of the appeal.

M/s, Kunstler/Tauber motioned and the Commission voted 5-0 to deny the appeal of the Administrative Decision related to application DR 14-58, 600 Magnolia Avenue.

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

BUSINESS ITEMS

1. Commissioner Reports

There were no reports.

2. Approval of minutes of Planning Commission meeting on February 24, 2015

M/s, Deignan/Kunstler motioned and the Commission voted 5-0 to approve the February 24, 2015 minutes as submitted.

The meeting was adjourned at 8:40 p.m.

Respectfully submitted,

Toni DeFrancis,
Recording Secretary

Minutes adopted 4-0-1 (Deignan Absent) on March 24, 2015

*Neal Toft
Director of Planning & Building*