

LARKSPUR PLANNING COMMISSION
MEETING MINUTES OF JUNE 23, 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, Mark Sandoval, Laura Tauber

Commissioners Absent: Monte Deignan, Daniel Kunstler

Staff Present: Planning Director Neal Toft
Associate Planner Anna Camarota

OPEN TIME FOR PUBLIC EXPRESSION

There were no comments.

PLANNING DIRECTOR'S REPORT

- Staff received a working package for interior work and minor exterior changes to Perry's Restaurant (formerly The Lark Creek Inn). The exterior work was reviewed by the Heritage and Preservation Board earlier this week and will be reviewed by the Zoning Administrator this week. Staff anticipates that the actual work will begin soon. Staff has a working package for design review on the remainder of the shops on that property. The application includes some landscape and hardscape improvements as well as some exterior modifications to the buildings.
- The City Council reviewed the Precise Plan Amendment for the Rose Garden property that was erroneously located within the building and impervious surface setback. There were some issues raised by neighbors. The Council approved the first reading of the ordinance allowing a minor modification to the 50' building and impervious surface setback. Staff has been directed to work with the neighbors with respect to the purpose of the setback and could be coming back to the Commission with a discussion regarding an amendment to, or interpretation of, the purpose.

Commissioner Sandoval stated he was concerned that a precedent might have been set about the backyard space- that was not the intention of the Commission. He asked if the neighbors want to use that space in a more active manner. Planning Director Toft stated "yes".

CONSENT CALENDAR ITEMS

- 1. DR/FAR/EXC 15-10: Michael Hahn, Applicant and Property Owner; 15 Onyx Avenue, Assessor's Parcel: 021-085-12; R-1 (First Residential) Zoning District. Request for the following permits for both interior and exterior modifications to an existing 1,558 square-foot two-story home to raise the dwelling 3 feet in height in order to convert the basement to livable floor space, thereby increasing the floor area of the dwelling by 198 square feet; 1) Design Review; 2) Floor Area Ratio Exception to increase the dwelling to 0.45 FAR (or 1,756 square feet) where a 0.26 FAR (or 1,017 square feet) is the maximum permitted due to lot slope; and 3) Exception permit to increase the height of the structure and install new doors and windows within the non-conforming north side yard setback of 3'-9" where 5 feet is the minimum required and the non-conforming front setback of 12 feet where 20 feet is the minimum required.
Recommendation: Conditional Approval**

Planning Director Toft stated there was one item of late mail in support of the project on the dais.

Chair Ziesing asked if anyone would like to address this application. There were no comments.

On the Consent Calendar, M/s, Sandoval/Tauber motioned and the Commission voted 3-0-2 (Deignan and Kunstler absent) to approve DR/FAR/EXC 15-10, 15 Onyx Avenue, subject to the findings and conditions set forth in the staff report.

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

PUBLIC HEARING

- 1. Appeal of Administrative Decision related to Application DR 14-58: 600 Magnolia Avenue (022-110-33); Ronny G. Clausner, Miller Staff Regalia/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, contesting the City's determination that the project is subject to review under the California Environmental Quality Act (CEQA). The Planning Department has requested this information in the processing of application DR/SIGN/VAR/HT #14-58; a request for design review, sign variance, and heritage tree removal approval to allow demolition of a gas station and removal of underground storage tanks (USTs) and construction of a new bank.**

Associate Planner Camaraota presented a staff report.

Chair Ziesing opened the Public Hearing.

Mr. Bryan Wenter, representing Miller Starr Regalia, made the following comments:

- They have submitted the two applications required- one for a Demolition Permit and one for Design Review. They believe those are the only two applications required.
- They are asking that staff deem the project complete so it can go through the process like any other land use application.
- They do not want to get caught in the perpetual "hamster wheel" of being deemed incomplete.
- They are responding to staff's request for information and have conducted the requested studies.
- The staff report mischaracterizes the setting in a number of different ways.
- They are replacing an existing gas station with all of the trips, noise, and potential contamination with a bank. This is allowed under the General Plan and is consistent with the zoning. This is one of the reasons the application only requires Design Review.
- Staff asserts that the project is not eligible for an exemption under CEQA because the exception to the exemption applies.
- They provided a traffic study that indicates that the project would not create new trips.
- They have conducted a health risk assessment that indicates that the theoretical risks from the project are "de minimus".
- In a recent case the court rejected the idea that the mere existence of toxic soil contamination at a project site is in itself a significant impact requiring CEQA review. There is contamination that is not from the gas station but rather from the cleaners adjacent to the site.
- Case law is unanimously in favor of the notion that CEQA does not operate in reverse- CEQA compels agencies to analyze the impacts of a project on the environment not the impacts of the existing environment on the project or its users.
- The project is exempt from CEQA and the City should treat it accordingly.

Commissioner Sandoval disagreed with Mr. Wenter's premise that there is no difference between a gas station and a bank building. This is a new project and a completely different occupancy- different codes apply. Mr. Wenter stated the General Plan, the CLASP, and the zoning code have banks as an allowed use. Commissioner Sandoval agreed but stated the building itself will be altered for a different occupancy. Mr. Wenter stated the State Resources Agency created approximately 30 classes of CEQA projects for which environmental review would not be required.

One is “construction of small structures”. This project falls within this exemption and the infill exemption.

Mr. Andrew Black, representing Frontier Real Estate Investments, made the following comments:

- They have never applied for a tree removal permit.
- The owner and tenant of the gas station are eager to leave the station and would like to close it as soon as possible.
- He referred to the staff report and stated it mischaracterizes the summation of the conclusions of the health risk assessment which clearly concludes that the risk to the construction workers and users of the property following construction is “de minimus”. There is insignificant risk as a consequence of the development.
- The Phase II investigation uses generic standards and its intent is to characterize the nature and extent of contamination- not to define risk. The health risk assessment evaluates the specific risk. The assessment has been submitted to staff for their review.
- The letter from the regional board relates to the adjacent property.
- This site has a “no further action” letter from the Regional Water Quality Control Board. They have determined there is no further risk.
- The regional board and the county have determined there is no need for remedial action.

Ms. Teresa Rose, Larkspur, made the following comments:

- The tenant is not in a hurry to get out- he has 13 years to go on a 15-year lease. He has sought court action to stop the project.
- There is no other gas station within a mile of this one.
- The applicants have not considered the impacts from construction on the site to the other businesses.
- The owner of the property has not been informed about this meeting.
- Ideas for development should not come from outsiders but rather the people of Larkspur.
- She is opposed to the idea of a bank on this site. It would be detrimental to the City.
- Show the developers the door.

Ms. Cindy Winter, Greenbrae, made the following comments:

- She supports the idea of an Environmental Impact Report.
- The project falls within CEQA with regard to cyclists and pedestrians.
- She provided four legal citations regarding CEQA and EIR’s.
- She is the Chair of the Larkspur Bicycle and Pedestrian Advisory Committee and is concerned about the impact to walkers and cyclist.
- The project lies across a critical bicycle route running from Ward Street to Doherty Drive. It has long been the City’s goal to build out that route around the edges of the property.
- She asked if the footprint would leave sufficient space on the west side to accommodate a new path.
- She is concerned about traffic ingress and egress.
- She wants to see specific plans presented to walkers and cyclists.
- She is distressed that the letter from the Department of Public Works dated May 13th mentions nothing about cyclists or walkers.
- CEQA has a public process including analysis and questions from the public and should be used here.

Mr. Scott McClain made the following comments:

- He distributed some literature about J.P. Morgan Chase.
- This site is beneficial to the community.

Mr. Dwain Price, Elm Avenue, made the following comments:

- He agreed with the comments made by Ms. Winter about pedestrian and cyclists.

- This is a major route for pedestrians and cyclists and any changes should take this into account.
- There could be impacts to human health.

Mr. James Holmes, Larkspur, made the following comments:

- This site is located on fill and at one time there was a deep hollow about 15' to 20' below the sidewalk on Magnolia Avenue. Further back there was a hill about 15' to 20' above the level of Magnolia Avenue.
- The hill, including the Doherty House, was bulldozed to fill up the ravine and create a relatively flat site. He did not know if there were any archeological remains on the site.
- Mr. Wenter's assertion that this project is categorically exempt (construction of small structures) is erroneous. It does not apply to demolitions.
- He disagreed with the assertion that the project was consistent with all applicable land use policies. There is a policy in the General Plan to preserve the gas station to the extent possible.
- They do not know what affect the project would have to traffic and parking.

Ms. Teresa Rose made the following comments:

- In the event of an earthquake she wondered how emergency vehicles would get gasoline.

Mr. John Markeselo made the following comments:

- He advocated for an open forum.
- He was concerned with the business practices of Chase Bank.

Mr. Bryan Wenter, representing Miller Starr Regalia, made the following comments:

- The comments made by the public were not focused on the CEQA guidelines- they were raising speculation about the impacts the project might have.
- The issue of the bike path would be addressed in the plan and the site plan depicts a path through the site that does not presently exist.
- There is no case law that holds that the exception for small structures is not available when the activity of the demolition of an existing structure.
- There is a traffic report that looks at ingress and egress and concludes there would be no additional trips created by the project. Ingress and egress would be safe.

Commissioner Tauber stated staff had concerns with some of the issues raised in the Phase I and Phase II environmental surveys while the applicant states there were no issues. Planning Associate Camaraota stated staff has questions for the author of the report. There seemed to be some discrepancies about the location of PCE's on the subject property. In addition, there are questions about the effects of traffic, noise, and air quality. Planning Director Toft clarified that this is not a review of the project. The appeal pertains to an administrative decision and not the merits of the project. Staff does not have a complete application at this point.

Commissioner Tauber asked if the potential for this to be an archeological site would trigger CEQA review. Planning Director Toft stated "yes".

Chair Ziesing closed the Public Hearing.

Commissioner Sandoval provided the following comments:

- The staff report "hit the nail on the head"- the report was thorough.
- This is an incomplete application.
- All the information needs to be submitted in order to have a categorical exemption under CEQA.
- Providing all the information is a "necessary burden".
- This is a change in use that includes demolition and the potential for significant modifications as far as contamination of soils.

- He could not support the appeal.

Commissioner Tauber provided the following comments:

- There are a lot of unanswered questions.
- It is probable that this site could have archeological significance.
- She is inclined to say that this project needs CEQA review.

Chair Ziesing provided the following comments:

- This is an important site and it deserves thorough consideration.
- The applicant does not seem to be complete.
- He agreed with the comments made in the staff report.
- The applicant should provide the information requested by staff.

M/s, Tauber/Sandoval motioned and the Commission voted 3-0-2 (Deignan and Kunstler absent) to deny the appeal of the administrative decision related to DR/VAR/HTR #14-58, 600 Magnolia Avenue, and uphold staff's determination that the California Environmental Quality Act (CEQA) applies to the project.

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

BUSINESS ITEMS

1. Commissioners Reports

Chair Ziesing asked staff about the dock next to the Marin Rowing Association and if the City has plans to improve it. Ms. Cindy Winter stated it is supposed to be improved as mitigation for the Bon Air Bridge Project. Planning Director Toft agreed and stated he was not sure about the timing of the project, but it is funded as part of the bridge replacement.

Commissioner Tauber had questions about dredging of the creek and Flood Zone 9. Planning Director Toft discussed some of projects planned by Flood Zone 9 and the challenges of building community consensus on the project scope. Commissioner Tauber stated she concern was flood control.

2. Approval of minutes of Planning Commission meeting on June 9, 2015

M/s, Sandoval/Tauber motioned and the Commission voted 3-0-2 (Deignan and Kunstler absent) to approve the June 9, 2015 minutes as corrected.

The meeting was adjourned at 8:10 p.m.

Respectfully submitted,

Toni DeFrancis,
Recording Secretary

Minutes adopted 3-2-0 on July 28, 2015 (Kunstler, Deignan Abstain)

Kristin Teiche, Senior Planner