

LARKSPUR PLANNING COMMISSION
MEETING MINUTES OF FEBRUARY 9, 2016

The Larkspur Planning Commission was convened at 7:00 p.m. in the Central Marin Police Authority Community Room by Chair Tauber

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

Commissioners Absent: Monte Deignan

Staff Present: Planning Director Neal Toft
Senior Planner Kristin Teiche

OPEN TIME FOR PUBLIC EXPRESSION

There were no comments.

PLANNING DIRECTOR'S REPORT

- At its last meeting, the City Council heard the Order to Show Cause Hearing for the property at 31 Piedmont Avenue. There were a lot of neighbors present and the Council ultimately determined that the project constituted a "nuisance" and directed staff to impose fines. There is a schedule for completion (punch list items) of the project.
- The Council adopted an ordinance to restrict construction on Sundays and holidays. It will go into effect in March.
- The Council will review the issue regarding time limits for building permits at its next meeting.
- The application for a Chase Bank project at 600 Magnolia was withdrawn by the property owner.
- At the January 20th Council meeting, the Library/Community Center Facility subcommittee, consisting of Councilmembers Chu and Hillmer, made a presentation to the Council. The subcommittee will work with the architects and staff to prepare some simple drawings and alternatives to the prior plans. The Council will review these drawings in March. All future meetings regarding the facility would take place at a Council meeting. The advisory committee would be invited to participate. Commissioner Kunstler asked if the advisory committee needed to be reconstituted. Planning Director Toft stated "no".
- The Governor signed legislation expanding processes for issuing licensing for the cultivation and delivery of medical marijuana. The City Council adopted a resolution declaring that City zoning does not permit cultivation. The Governor subsequently eliminated the March 1st deadline giving cities the chance to revise ordinances. The Council indicated there was room for discussion regarding this issue, including deliveries. These issues will be brought to the Commission for future consideration.

PUBLIC HEARING ITEMS

CONSENT CALENDAR ITEMS

1. **DR/UP 15-09: 2207 Larkspur Landing Circle (AP #018-191-01); BCV Architects & YogaWorks, applicant; Marin Country Mart LLC- James Rosenfield, property owner; PD (Planned Development) Zoning District. Applicants are requesting approval of the following permits to allow operation of a yoga studio on the second floor of Building 5 in the Marin Country Mart retail center. The yoga studio would include two indoor instructional workout rooms, and one roofed, partially enclosed outdoor instructional workout room, and minor retail sales: 1) Design Review of proposed exterior building alterations to expand the second floor roofline to cover an outdoor patio and create an**

outdoor instructional workout room; 2) Conditional Use Permit for a tenant space in excess of 4,000 sq. ft. The proposed use would occupy 5,217 sq. ft., and 3) Conditional Use Permit to allow a fitness use with class sizes of ten or more persons. Proposed class sizes are anticipated to be 25-30 persons.
Recommendation: Conditional Approval

Chair Tauber asked if anyone would like to remove this item from the Consent Calendar. There were no comments.

M/s, Kunstler/Sandoval motioned and the Commission voted 4-0-1 (Deignan absent) to approve DR/UP 15-09, 2207 Larkspur Landing Circle, based on the findings and conditions set forth in the staff report.

Chair Tauber stated there was 10-day appeal period.

2. DR/SUP/V/FAR/EXC 15-22: 577 Magnolia Avenue (AP #020-252-00); Marty Zwick, applicant; Stan Pomichter and Stanley Grey, Property Owners; R-1 (First Residential) Zoning District. The applicants are requesting approval of the following permits to allow substantial remodeling, including single story rear addition, replacement of existing nonconforming attic dormers and turret, excavation of a full basement, and expansion of a parking pad located partially in the Magnolia Avenue public right-of-way: 1) Design Review; 2) Floor Area Ratio Exception for remodeling and new additions that result in a floor area ratio (FAR) of 0.41 where 0.36 FAR is the maximum permitted; 3) Slope Use Permit to allow excavation and grading totaling 558 cu. yds. of earth (reduced from 675 cu. yds.) on a parcel with an average grade of 14%; 4) Exception Permit to allow reconstruction of existing nonconforming attic dormers and turret that exceed the 30-foot height limit; and 4) Variance to required parking to allow the provision of two uncovered parking spaces, located partially on-site and partially in the Magnolia Avenue public right-of-way, and one guest space in the public right-of-way, where four off-street parking spaces are typically required for the substantial renovation and remodeling of a single family structure.

Senior Planner Teiche presented the staff report.

Chair Tauber opened the Public Hearing.

Mr. Marty Zwick, architect, made the following comments:

- They changed the dormers at the suggestion of staff and the Commission.
- They removed some windows and a doorway on the façade that faces the street.
- They reduced the FAR, the square footage in the basement, and the amount of excavation.
- They agree with the mathematics cited in the staff report.

Commissioner Sandoval asked if they intended to use the State Historic Building Code. Mr. Zwick stated "no". Commissioner Sandoval stated the guardrails in the front seemed to be less than 42" in height (diagramed at 36"). Mr. Zwick stated they would be 42". Commissioner Sandoval stated that would change the appearance on the primary façade. Senior Planner Teiche stated they pulled a permit to do work on that front porch but it did not address the front railing nor was the permit finalized.

Commissioner Sandoval referred to the size of the windows in the basement and asked if they met code in terms of light and ventilation. Mr. Zwick stated he believes they meet the requirements.

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

- It was ironic that one of the major concerns to the Commission was the issue regarding the basement- it was a lesser concern from an historic preservation standpoint. Larkspur Past and Present, page 241, contains a photograph of the southeast corner of the house showing a basement in the front.
- The rails were either the original or exactly the same as appeared in the 1913 photograph. They should be retained.
- It could be worse.

Chair Tauber closed the Public Hearing.

Planning Director Toft stated it was possible that the railings would be need to be raised to 42". The Building Official would be reluctant to apply the Historic Building Code to a structure that has not been deemed historic. The original basement design lacked adequate egress for living areas. The Building Official reviewed the initial plan and determined that the original egress was adequate. Egress has been improved with egress in the rear and side door, but has not been reviewed by the Building Official at this time.

Commissioner Kunstler provided the following comments:

- He is generally sympathetic to the nature of the project even though the structure is not deemed historic.
- The project does attempt to retain the spirit of an "historic structure".
- He was troubled by the sheer amount of excavation proposed in the original plan.
- The other original hesitation was the size of the project.
- He discussed other projects that have requested an FAR Exception and stated this project was a "reverse situation"- there is no massing problem and there are no design issues that could not be prevented. This is a size issue on a small lot.
- He is concerned about the overall size of the project and the excavation required.
- This is a large number of square footage on a small lot.

Commissioner Sandoval provided the following comments:

- Given the age of the house and the fact that it is a part of the community, his biggest concern is trying to maintain the overall historical character and features.
- The biggest problem is that this is not a preservation project.
- He stated they were giving it a false sense of history.
- The building has been altered immensely over the years.
- There are a lot of things that do not seem to be thought-out such as the light wells, the materials on the porch, means of egress, and guardrail detailing.
- He commended the architect for listening to the original comments.
- Once they work with the Building Department then a lot of what is represented will have to be changed. This is a concern.
- There may have been minor alterations to the porch and this is a significant characteristic of the house.
- He would like to see something submitted that is sensitive to the architecture.
- The "devil is in the details".
- They have made progress in terms of the square footage and the grading.
- He would like to see more in terms of the site development- the drainage plan (protection of some of the areas such as the light wells, etc.)

Commissioner Ziesing provided the following comments:

- He was not at the first meeting but did read the minutes.
- His sense of the building is that it is "funky".

- Over the years the building has become more noticeable and prominent. It is now an interesting “landmark”.
- Design wise it is fine. Once it is redone it will be an improvement.
- They might want to address Commissioner Sandoval’s concerns about historic accuracy (the railing, etc.)
- He is troubled by the excavation and the light wells.
- He would be 100% supportive of the project if it had less of a basement and no light wells.
- He could support the project at this point.

Chair Tauber provided the following comments:

- They have done a lot to address the Commission’s concerns especially in terms of Design Review.
- She referred to the FAR Exception, which is essentially the basement, and noted it was a big house on a small lot and having a basement does not make that much of a difference.
- She would rather see less excavation but could approve it.
- She referred to the Parking Variance and noted the difficulty in parking on the lot.
- She could approve the application.

Commissioner Kunstler referred to protection of the area around the window wells and asked where the Commission’s jurisdiction stops and the Building Department starts. Planning Director Toft stated staff could approve minor modifications, particularly if required by the Building Code. The concerns expressed by Commissioner Sandoval were valid and some of these issues could change the look of the building. Staff certainly tries to tackle these issues up front but it is not always caught through the process. Staff exercises some discretion, but changes that are very contrary to the intent and/or direction of the Commission must return for Commission review.

Commissioner Kunstler provided the following comment:

- He referred to the depth of the wells and asked if the Commission could condition the approval on requiring a reduction in the depth of the well. Planning Director Toft stated he has seen many wells that do not go the full length of a basement with an inlet that drains down to the sub-drain. The engineer could certainly come up with a solution.

Commissioner Sandoval provided the following comments:

- He has designed houses with basements and thought they would need an 8’ opening for the natural air plus some additional glazing. Having two light wells would not be adequate.
- Light wells would require more excavation.
- There has not been much of a change from the front or the major vistas.
- He is fine with the actual basement and keeping it underground.
- His biggest concern is the additional grading that might come about and other changes that might occur.
- He would like more details so he does not have to second-guess.
- The actual appearance, when all is said and done, will be wonderful.
- The staging operation will be a nightmare given the size of the lot, the fence in the front, and the slope of the property.
- He approved of the increase in the parking area.
- He would like to see a more tidy application.

Commissioner Ziesing provided the following comment:

- The Slope Use Permit is granted based on a certain number of cubic yards and if there were modifications to the configuration of the light wells causing the grading to exceed that number then the applicant would need to return to the Commission. Planning Director Toft stated there

was a grading program and the approval would not include anything beyond that. The numbers can change a bit but the overall program must be followed.

Commissioner Sandoval provided the following comments:

- He asked Mr. Zwick what material would be used for the basement (shotcrete, etc.). Mr. Zwick stated it has not been engineered yet. His approach is usually an over-excavation and a traditional approach. Commissioner Sandoval stated the use of shotcrete would minimize the overcut. Mr. Zwick reiterated he was a traditionalist and he does not like to use shotcrete. His calculations were performed using the traditional method.

M/s, Ziesing/Kunstler, motioned and the Commission voted 3-1-1 (Sandoval voted no, Deignan absent) to approve DR/SUP/V/FAR/EXC 15-22, 577 Magnolia Avenue, based on the findings and conditions set forth in the staff report.

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

BUSINESS ITEM

1. COC 15-62: Intent to Record a Notice of Violation; Anthony Martinelli, Applicant; Task Mortgage and Investment Group, Inc., Property Owner; 0 Summit Drive; APN 021-250-13; Zoning District- RMP (Residential Master Plan); General Plan Designation- Open Space. The Planning Director of the City of Larkspur has determined that an illegal division of Property has occurred, in violation of the Subdivision Map Act and Municipal Code Title 15, (Subdivision of Land). Per California Government Section 66499.36, the Planning Commission shall hold a public hearing to allow the property owner to present evidence as to why a Notice of Violation should not be recorded.

Senior Planner Teiche presented a staff report.

Commissioner Sandoval had questions about the deed. Senior Planner Teiche stated it was a grant deed that was not filed with the City.

Commissioner Kunstler asked if staff's investigation of this matter included comparing what they had, in terms of the characteristics of the property, with Section 10 of Ordinance 226 which delineates the required physical characteristics. Senior Planner Teiche stated at this point it is simply not a lawfully created parcel because they did not apply for a parcel map. Staff has not evaluated it for compliance to the standards yet. The property was purchased or inherited in recent times and they have to comply with the current subdivision standards and regulations.

Commissioner Kunstler asked if the Certificate of Compliance would certify that the applicant is in compliance with all of the applicable sections of Ordinance 226 and any additional conditions. Senior Planner Teiche stated "no"- in order to issue a Certificate of Compliance staff would need to determine that the lot was created lawfully by deed. This lot does not pre-date City regulations and they did not apply for a parcel map to create it. Therefore, it was created in violation and is not a legal lot of record.

Planning Director Toft stated there were different scenarios- there are lots that are created by deed prior to the time the City adopted Subdivision and Tentative Map standards but had minimum lot size standards and other zoning regulations. These were granted a Conditional Certificate of Compliance since they did not violate the Subdivision Map Act even though they were not in compliance with the standards for development at the time of creation. In the case where there was not compliance with the Map Act, and in the case of a Certificate of Compliance, the applicable regulation can vary upon the time of the violation, and whether it is the original property owner or a

subsequent property owner applying. A Certificate of Compliance can be based on a “snapshot” of either when the property was created or the later date of when it is acquired.

Chair Tauber opened the Public Hearing.

Mr. Riley Hurd, attorney for the property owner, made the following comments:

- He acknowledged that this was an unusual situation.
- It is important to keep in mind that they are talking about actions from the 1950’s.
- His client came into ownership of the lot and had nothing to do with committing the violation.
- He walked them through how he believes the City of Larkspur has treated the lot since the day it was created.
- From the time the deed was recorded at the County, the City of Larkspur has collected and accepted property taxes for this lot.
- Section 66499.36 of the Subdivision Map Act requires the City, upon knowledge of an illegally created lot, to issue a Notice of Violation immediately. The Assessor’s Office sent notice to the City upon creation of the lot.
- He does not have a “smoking gun”.
- The minimum lot size for this district is 7,500 square feet- this lot is 29,500 square feet.
- This lot is 152 feet wide- the minimum width requirement is 60 feet.
- The context of the neighborhood is very important. This lot has access that is paved. A road passes through it and it is not “completely surrounded by open space”. It has homes on both diagonal sides of it.
- This is the last buildable lot in the area.
- There are two options: 1) Find that the lot is legal based on 60 years of collecting taxes and treating it as an individual lot; 2) Not agree that this results in a legal lot.
- He asked what conditions the Commission would attach to a Certificate of Compliance so they could comply with them.
- There is a large financial implication as to whether or not this is a legal lot.

Planning Director Toft referred to the map that shows the easement and the subject lot and a statement identifying the boundary line. He believed the property line was located slightly off of the adjacent property and the City boundary. Mr. Hurd stated he did not prepare that map; the Zoning Map shows the property at the intersection of Corte Madera, Mill Valley, and Larkspur. Planning Director Toft noted that the Assessor’s Map indicates the narrow disconnect from the property, which is described in the deed as the corner being 10.3 feet within the parent property. This is just an FYI that the lot is located off the adjacent property and City boundary.

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

- Larkspur has always been meticulous about respecting property rights of lots that were created before the existence of requirements (lots that predated the late 1940’s).
- This is a case where the lot did not comply with anything- after the existence of the statutes.
- It is not in the public interest to legalize oddly placed and sloped (70%) lots.
- This would disregard the statutes and ordinances that were put in place to remedy the problems that occurred when there was a “laissez faire” attitude about dividing lots at will.
- It is not in the public interest to have lots developed that ignore the statutes.
- The lot seems isolated if not land-locked and there could be public health issues given the difficulty of providing police and fire services.
- The statute is clear that it makes no difference that the current owner had no responsibility for the original violation.
- He encouraged the City to be hesitant in doing anything that would validate what should never have occurred in the first place.

Mr. Riley Hurd made the following comments:

- If the Commission feels the lot was not legally created then the Conditional Certificate of Compliance is mandatory- it is not optional. It is a matter of what conditions are attached to the certificate.
- The health and safety argument is not valid- there is a home at the beginning of the road and one at the end of the road. There is a pattern of development and this lot is the edge.

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

- The Commission might want to get advice from the City Attorney. The scenario in which the lot was illegally created but the City must provide conditions to make it legal is a “heads I win, tails you lose” situation. This is inconsistent with the other provisions of the code.

Planning Director Toft stated Mr. Hurd was correct- State law requires the City to issue a Conditional Certificate of Compliance which identifies the path that one must take to make the lot developable or legal. There are many factors that go into legalizing the lot and the Conditional Certificate of Compliance provides guidance as to what the standards would be. He agreed that this is an unusual process.

Commissioner Ziesing asked when the lot was last surveyed. Planning Director Toft stated he was not sure it was ever surveyed- he has never seen a survey of the property. Commissioner Ziesing asked how many owners there have been since 1958. Planning Director Toft stated he was not sure- there have been a few. Staff does not have a chain of title.

Ms. Lorraine Giuliani made the following comment:

- She wanted to put the location of the lot in perspective.
- The lot is beyond the pillars on Summit.
- The paved road serves all of the properties- she pointed out two, large structures, a home with a pool, and another home all the way in the back.
- She did not see how the lot would have a fire issue or other negative impacts.
- The subject property is the last available lot in this area.
- There will be no other houses in the area.

Chair Tauber closed the Public Hearing.

Commissioner Sandoval provided the following comments:

- This is certainly a “horse of a different color”.
- He referred to the access easement and stated an easement could be granted between two property owners. It does not have to go through the County.
- The property seems to be situated off the boundaries of two cities. The strip between the two lots seems odd.
- They seem to be picking up pieces of something that should have been done properly to begin with. Senior Planner Teiche stated all these issues would be examined when the owners pursue legalizing the parcel. Planning Director Toft noted staff has not analyzed the origin or adequacy of the easements- this would occur during the creation of the Tentative Parcel Map.
- He is troubled by the slope of the property and developing the lot would be a challenge, along with the access issue.
- He asked if this would be in the best interests of the public- he did not think so.

Commissioner Ziesing provided the following comments:

- There is the letter of the law and there is common sense.
- The City has collected taxes over the years.

- He felt they should get a “mulligan”. They should make it a lot and see if they can come up with a plan to develop it.
- He understood the concerns but there were property ownership issues.
- He would recommend that this becomes a lot at some point.

Commissioner Kunstler provided the following comments:

- This is the early step in a fairly lengthy process.
- They are being asked if this lot could be declared as compliant and worthy of a Certificate of Compliance.
- There are circumstances that could lead one to believe that it was legal all along (taxes paid).
- They could not tag this lot as undevelopable at this point because they were not at that stage of the process.
- He understood the concerns about public health and safety but stated that would be borne out or not during the process.
- Accessing the property in a vehicle was very challenging- it is very steep.
- The law allows the City to issue a Conditional Certificate of Compliance provided they conform to other ordinances, etc.

Chair Tauber provided the following comments:

- She agreed with the comments made by the other Commissioners.
- It is clear that this was not done properly back in the 1950's.
- It behooves the City to rectify this.
- They should confirm that a violation has occurred and begin preparing a Conditional Certificate of Compliance.
- It sounds like they want to develop the property- they need to go through the proper steps.

M/s, Kunstler/Sandoval, motioned and the Commission voted 4-0-1 (Deignan absent) relative to COC 15-62, 0 Summit Drive (AP #021-250-13) that based on the information presented tonight the creation of the parcel by grant deed did not comply with the standards and staff should record a Notice of Violation. Staff would come back with a draft Conditional Certificate of Compliance for the Commission to review.

2. Commissioners Reports

There were no reports.

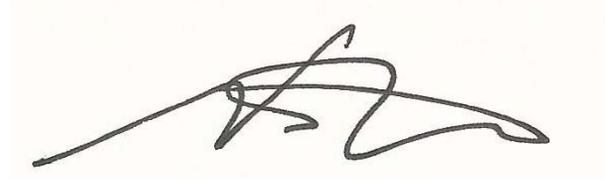
3. Approval of minutes of Planning Commission meeting on January 12, 2016

M/s, Sandoval/Kunstler motioned and the Commission voted 3-0-2 (Ziesing abstained, Deignan absent) to approve the January 12, 2016 minutes as submitted.

The meeting was adjourned at 9:05 p.m.
Respectfully submitted,

Toni DeFrancis,
Recording Secretary

I HEREBY CERTIFY that the foregoing minutes were duly and regularly adopted at a regular meeting of the Larkspur Planning Commission March 8, 2016.

A handwritten signature in black ink on a light beige background. The signature is stylized and appears to read 'Neal Toft'.

Neal Toft, Planning Director