

LARKSPUR PLANNING COMMISSION
SPECIAL MEETING MINUTES OF MARCH 29, 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, Monte Deignan, Mark Sandoval,
Todd Ziesing

Commissioners Absent: Daniel Kunstler

Staff Present: Planning Director Neal Toft

OPEN TIME FOR PUBLIC EXPRESSION

There were no comments.

PLANNING DIRECTOR'S REPORT

- The Building Department is planning to move the customer service counter out of the City Council Chambers and into their newly renovated office space on Friday.

PUBLIC HEARING ITEMS

- 1. DR/V/FHE 15-49: 150 Magnolia Avenue (AP #021-116-05); Jason & Katie Zwarg, applicants and property owners; R-1 (Single Family Residential) Zoning District. Request for approval of permits to allow a main floor addition and remodel and construction of a 667 square foot upper level addition resulting in a 3,066 square-foot single family residence on a 7,874 square-foot property: 1) Design Review; 2) Variance to requirement for a covered parking space; 3) Variance to allow an outdoor kitchen and wood trellis structure to be located within the required 5-foot side yard setback; and 4) Fence Height Exception to permit a wall up to eight (8) feet in height to be located within the side yard setback where six (6) feet is the maximum permitted height.**

Planning Director Toft presented a staff report and noted Assistant Planner Armour prepared the report, but was unable to attend the meeting tonight.

Commissioner Ziesing asked if the outdoor kitchen was existing. Planning Director Toft stated "yes, but without permits". They are asking for "post facto" approval of the outdoor kitchen and the trellis. They are proposing to extend the trellis and the wall to align with the addition. Commissioner Ziesing referred to the 2008 application for an outdoor kitchen at 3 Piedmont and asked if that kitchen was also pre-existing. Planning Director Toft stated the house was substantially remodeled and the outdoor kitchen was largely installed prior to having been finished and finalized. It was inconsistent with the approval and had to be removed.

Commissioner Sandoval referred to the trellis and asked if it would need to be moved five feet from the property line to meet the requirements. Planning Director Toft stated "yes"- that is the limit for accessory structures in side yard setbacks.

Chair Tauber opened the Public Hearing.

Mr. Jason Green, owner, made the following comments:

- They have lived in the house since 2010.
- They want to expand the house to accommodate their family.

- He displayed a photograph to the Commission.
- The neighbors support the proposal.

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

- If an expansion has to take place then this is the way it should be done.
- There are no reasonable objections to what is being proposed with the exception of the outdoor kitchen.
- Unfortunately, there was no historical evaluation connected with this house. The home was built by one of the “genuine scoundrels” of Larkspur. It is an historic home in Larkspur.
- In 2008 an application for an outdoor kitchen was denied by the Planning Commission and the City Council due to the potential for noise and odors. This is a legitimate concern.
- He acknowledged the support of the neighbors and stated sometimes this is an indication of the support of the proponents as opposed to the proposal itself.
- Allowing the outdoor kitchen would be an unfair grant of special privilege.
- He was not sure when the oven was built and stated it would be reasonable to allow it to be maintained but remain as an architectural feature.

Mr. Adam Cole, Magnolia Avenue, made the following comments:

- The applicants are the best neighbors he has ever had.
- He is an advocate for the project.
- The project has no bearing on his property- it does not obstruct views or walkways.
- He is not worried about noise or odor issues.
- The outdoor kitchen is a key piece to the existing structure. It should not be moved and makes the most sense in the existing location.

Mr. Chuck Maltzahn, Riviera Circle, made the following comments:

- The applicants bought the house “as is” and he wondered how it passed inspection and went on the market with existing violations. Commissioner Deignan stated inspectors are not usually aware of planning issues. Commissioner Ziesing stated he bought his house with a “non-conforming” garage and it can remain as long as they do not touch it.
- He smells his neighbor’s BBQ all the time.
- The applicants are improving an existing condition and the property. He did not see why the outdoor kitchen should not be approved.
- The applicants should not be penalized for something they bought and now want to improve.
- He was not opposed to the Fence Height Exemption
- They are taking care of the parking and improving the neighborhood.

Mr. John Grebac, Baltimore Avenue, made the following comments:

- The house and trellis have been there for a very long time.
- The applicants are trying to keep things the way they are- they are not changing or adding anything.
- The outdoor kitchen is safe and will not hurt anybody.
- He is tired of everyone telling everybody else what to do.
- People in the neighborhood do not complain- they talk to one another.
- The applicants are making big improvements to the property.
- They should be allowed to make the proposed improvements.
- He supports the project “100%”.

Planning Director Toft stated it is great that the neighbors supported the proposal and have no complaints. Most regulations exist because of conflicting situations that have come up in the past. In order to grant a variance the Commission must make State-mandated findings aside from the

assertions that the project will not create negative impacts. In addition, it is a challenge to avoid setting a precedent.

Mr. Chuck Maltzahn, Riviera Circle, made the following comments:

- He reiterated that the property was bought “as is” and the conditions already exist. No precedence would be set. Planning Director Toft stated inspections and resale reports do not catch everything and that is not necessarily a justification for a variance. Violations carry over to new property owners.

A resident made the following comment:

- He asked if there was a time limit on violations. Planning Director Toft stated “no”.

Mr. Luke Tyler, designer, made the following comments:

- This issue is one of a side yard setback.
- The recommendation was to relocate the outdoor kitchen in the back yard which presents its own challenges financially as well as on the site plan.
- He had questions about measurements with respect to the property line.

Mr. James Holmes made the following comment:

- Some investigation could be done (real estate photographs, opinion of the Building Official, etc.) to determine whether or not the condition was pre-existing.

Chair Tauber closed the Public Hearing.

Commissioner Deignan provided the following comments:

- He could support the Design Review application, Fence Height Exception, and Parking Variance.
- A variance is a higher standard to be met.
- The Commission has to look at the merits of the project, conditions of the site, etc. and make the findings.
- It is wonderful that the neighbors support the project.
- The designer has done a wonderful job with the massing of the addition. It makes sense to move it towards the back.
- He is having a problem determining the “hardship” with respect to the outdoor kitchen and making the findings for the Side Yard Setback Variance.

Commissioner Ziesing provided the following comments:

- The Commission is tasked with following a given set of rules and regulations on a consistent basis.
- He loves the spirit of the design and everything about the house.
- He wished the outdoor kitchen was not there or a part of the decision.
- The kitchen area is being made larger as a result of the work and the trellis is being extended into an already encroaching setback. This is a flag.
- He has trouble confirming that part of the application.
- He could support everything about the application except the trellis and the outdoor oven.

Commissioner Sandoval provided the following comments:

- He agreed with the comments made by the other Commissioners.
- This is a fabulous application and is what the Commission likes to see particularly on an historic structure.
- The addition is set back from the primary elevations.
- He supports everything except the stumbling block- the trellis and the pizza oven.

- When looking at a variance they look at the configuration and constraints of the lot- there is nothing that says that the oven could not be moved somewhere else on the lot.
- He wondered if there was photographic evidence that the oven was over 50 years old and thus has historic significance.
- He could not support that element.

Chair Tauber provided the following comments:

- She agreed with the other Commissioners.
- She could make the findings for Design Review, the Fence Height Exception, and the Parking Variance.
- She is struggling with the notion of the kitchen – they would not approve it if this is a new application.
- Should they approve it because it's been there?
- She was concerned about setting a precedent.
- She could not support the kitchen.

Commissioner Deignan stated the Commission could continue the application which would allow the applicants to provide evidence that the kitchen has existed for some time or decide to scale back that side yard encroachment aspect.

Ms. Katie Zwarg, applicant, discussed other variances that have been granted in the neighborhood and felt approval of the kitchen would not set a precedence.

Commissioner Deignan stated if there were other similar variances granted for kitchens in side yard setbacks, they could come back and make that argument.

Mr. Tyler asked if the Commission could approve certain parts of the application, with a condition that calls for the removal of the kitchen, and come back with a secondary application. Planning Director Toft stated the Commission must treat the application as a whole- it is problematic to approve a portion and continue another portion. The Commission could continue the application for a month or to a date uncertain. He noted staff needs to come back with findings and conditions of approval in either case. The Commission could approve it subject to very specific conditions.

In response to a question from Commissioner Deignan, Planning Director Toft noted that Commission could approve the project with denial of the variance to the setback. The outdoor kitchen and trellis could be relocated in a manner that meets code, without necessarily coming back for design review.

Ms. Katie Zwarg, applicant, requested that the Planning Commission proceed in that direction.

M/s, Deignan/Ziesing motioned and the Commission voted 4-0-1 (Kunstler absent) to continue DR/V/FHE #15-49, 150 Magnolia Avenue, and direct staff to bring back findings and conditions of approval for Design Review, Variance to require on-site parking, the Fence Height Exception and to bring back findings of denial for the Variance to required side yard setback to allow an outdoor kitchen and extended wood trellis in the side yard setback.

- 2. DR/V/HTR 15-63: 102 Riviera Circle (AP#022-203-03); Wagstaff Rogers Architects, applicants; Kevin Hakkman, property owner; R-1 (Single Family Residential) Zoning District. Request for approval of permits to allow demolition of a non-conforming garage, construction of new garage and two-story addition, totaling 844 square feet of new floor area on an existing 3,696 square foot single family residence, and to legalize a non-conforming tree house located with a heritage-size tree: 1) Design Review; 2) Variance to allow garage within 15-foot rear yard setback; 3) Variance to allow accessory treehouse**

structure within 3-foot rear yard setback for accessory structures; 4) Variance to allow accessory tree house structure to exceed 15-foot height limit for accessory structures; 5) Heritage Tree Permit to alter a 80-inch circumference Eucalyptus tree to accommodate the treehouse structure.

Planning Director Toft presented a staff report and noted Assistant Planner Armour prepared the report.

Commissioner Ziesing asked if the Commission has ever considered a tree house in any prior applications. Planning Director Toft stated not during his 15-year tenure.

Commissioner Deignan asked if the Larkspur Marina Property Owners Association was aware of the treehouse. Mr. Hakman stated “yes” and noted their January 23rd letter of support.

Chair Tauber opened the Public Hearing.

Mr. Erik Rogers, architect, made the following comments:

- He stated he would discuss the building itself and asked that the treehouse be considered separately.
- The plan is to create a new garage attached to the house with a recreation room above.
- They want to maintain five bedrooms in the house.
- They are adding 1-½ bathrooms.
- The lot size is 11,385 square feet.
- They are moving the HVAC system to a new location.
- They carefully designed the addition to reflect the constraints of the site while improving some existing conditions.
- They are not increasing the height of the home and are maintaining the architectural style.
- The treehouse is included in the application as requested by the Planning Department.
- The adjacent property owner has no problem with the treehouse.

Mr. Kevin Hakman, owner, made the following comments:

- The treehouse is a play structure that he built with his sons.
- He heard that he could do small accessory structures without a permit - was not aware that this structure would require a permit.

Mr. Chuck Maltzahn, Riviera Circle, made the following comments:

- He is all for treehouses. He asked the applicants to put a tree or a bush in front of the treehouse to provide camouflage.
- The former owner experienced flooding through the garage and on that side of the house- relocating the garage is a good idea.
- The addition is beautiful.
- The square footage of the garage should not count as floor area (FAR) if it is within the footprint.
- Approximately 40% of this 11,000 square foot lot is “deep water”. People who do not have waterways and have the easement have this deducted from the FAR. There is a contradiction.

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

- He is apprehensive about extending the City’s planning and permitting requirements to treehouses. Such structures are small and ephemeral. He is not aware of any previous planning applications for a treehouse.
- However, this is sort of a “treehouse on steroids” so review is probably appropriate.
- Allowing the treehouse would not be a grant of special privilege.

- The variance should be granted with the understanding that this is not representative of a general City policy for extending the permitting process to treehouses.

Chair Tauber closed the Public Hearing.

Commissioner Sandoval provided the following comments:

- They did a great job on the application and the design.
- He supported the Variance for the rear yard setback and the Variance for the maximum height of an accessory structure.
- He referred to the Variance to permit an accessory structure and the Heritage Tree Permit and stated those were the sticking points.
- This is a really cool treehouse but when the application is reviewed it is no longer a “treehouse” because it is rooted with posts to support it since it cannot be supported by the tree. It is no longer “temporary” since it has foundation.
- He acknowledged that the location does not disturb the neighbors.
- He could support the application with the exception of the parts that deal with the treehouse.

Commissioner Ziesing provided the following comments:

- The Planning Department got this right.
- He could support the work being done to the house.
- The design is great and he liked the continuity that it provides to the house and how it will frame out the backyard.
- He wished this were a play structure and not a treehouse- it might fall under a different set of rules. Mr. Hakman stated it is a play structure.
- He has the same concerns expressed by Commissioner Sandoval. The treehouse has a “foundation” and is similar to a building.
- He acknowledged that it is located on a remote part of the property.
- It is a pleasing looking structure and compliments the existing house.
- He could support the treehouse if it did not set a precedent.
- He could support the other applications.

Commissioner Deignan provided the following comments:

- He liked the treehouse.
- He agreed with Mr. Holmes- treehouses are temporary (kids get older, etc.).
- It is 40 square feet and is a kid’s structure.
- Applications for a treehouse are rare.
- The neighbor would like to see some screening.
- Allowing the treehouse would not be a grant of special privilege as there are other treehouses in the community.
- The design of the project is appropriate. He could approve the Design Review application.
- He could make the findings for this application.

Chair Tauber provided the following comments:

- She referred to the Heritage Tree Permit and asked the applicant’s to make the changes recommended in the arborist report to protect the tree.
- The treehouse is not highly visible.
- She would like to see the screening that is requested by the neighbor.
- She does not have a problem with the treehouse as long as they provide screening and make changes as recommended by the arborist.

Commissioner Ziesing asked if they have to “permit” the treehouse or could they just ignore it. Planning Director Toft stated since it is a pretty built and obvious structure. They were aware of its

existence they need to make sure it is safe and the heritage tree is protected. A precedent is not necessarily bad, it is just something you need to be aware of.

Commissioner Sandoval provided the following comments:

- The report talks about the structural elements of the treehouse and once it is permitted he wondered if the Building Department would get involved in terms of the structural integrity, etc. This is a different situation than just a platform.
- He would hate to see damage done to the tree.
- He would love to support it but has a problem with the structural aspects.

Mr. Erik Rogers, architect, made the following comments:

- He was asked to follow up with a different report including structural data for a treehouse but nobody knows how to deal with this.
- A treehouse is by its nature a temporary structure.
- He would hate to see the City require the review of every single treehouse.

Commissioner Ziesing provided the following comments:

- He asked if they could give a pass on a temporary play structure that is in a tree.

Planning Director Toft stated they could approve this as an accessory structure but it requires a permit. They are providing a path to make it legitimate and safe.

M/s, Deignan/Ziesing motioned and the Commission voted 4-0-1 (Kunstler absent) to approve DR/V/HTR 15-63, 102 Riviera Circle, subject to the findings and conditions set forth in the staff report and the additional conditions: 1) A basic landscaping plan showing vegetative screening shall be provided; 2) The recommendations listed in the arborist report shall be implemented.

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

BUSINESS ITEM

1. Adopt Findings of Denial for application DR/FAR/V #15-59; Eric Layton, Patriarch Architects, Applicant; Kristin Bennett, Owner; 8 Alexander Avenue, Larkspur; Assessor's Parcel: 021-181-86; R-1 (First Residential) Zoning District.

Planning Director Toft presented a staff report.

M/s, Ziesing/Deignan motioned and the Commission voted 4-0-1 (Kunstler absent) to adopt the Findings of Denial for application DR/FAR/V #15-59, 8 Alexander Avenue.

2. Commissioners Reports

Commissioner Ziesing asked for an update on the Library/Community Center Facility planning process. Planning Director Toft stated the Council has tentatively scheduled this for the next meeting. He will send an email to the Commission with more information.

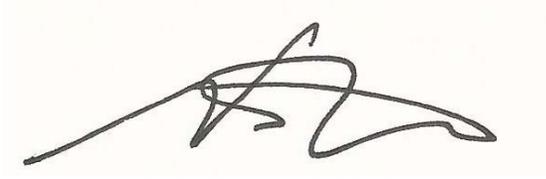
3. Approval of minutes of Planning Commission meeting on March 8, 2016

M/s, Deignan/Ziesing motioned and the Commission voted 3-0-2 (Kunstler absent, Sandoval abstained) to approve the March 8, 2016 minutes.

The meeting was adjourned at 9:25 p.m.

Respectfully submitted,
Toni DeFrancis, Recording Secretary

I HEREBY CERTIFY that the foregoing minutes were duly and regularly adopted the regular meeting of the Larkspur Planning Commission on April 12, 2016.

A handwritten signature in black ink, appearing to be 'NT', is centered on a light beige rectangular background.

Neal Toft, Planning Director