

LARKSPUR PLANNING COMMISSION  
MEETING MINUTES OF JULY 26, 2016

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

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

Staff Present: Planning Director Neal Toft  
Associate Planner Anna Camaraota  
Assistant Planner Nicholas Armour

### OPEN TIME FOR PUBLIC EXPRESSION

There were no comments.

### PLANNING DIRECTOR'S REPORT

- The renovations to City Hall are almost complete and cabinets for the kitchen and copy room were recently installed. The Council Chambers should be cleared of materials by next week.
- The Grand Opening of The New Wheel, a business that recently opened up at the foot of the ferry connector overpass and specializes in electric pedal assist bikes, will be held on August 3<sup>rd</sup> from 5:00 p.m. to 7:00 p.m. He has been invited to help "cut the ribbon" on behalf of the City.
- He will be the Acting City Manager for the next three weeks while City Manager Schwarz is on vacation.
- Sonoma State University will be holding its annual Planning Commissioners Conference on Saturday, December 3<sup>rd</sup>. He will be attending and encouraged Commissioners to attend as well.
- Filming occurred for the Netflix production of "13 Reasons Why" over the weekend in the Heather Gardens neighborhood. They did a good job working with the neighbors and the response was mostly positive.

Commissioner Ziesing asked if there has been progress on painting the structure (trim work) across the street. Planning Director Toft stated "yes" and added they submitted some canvas options including a light green to compliment the windows. Commissioner Ziesing asked if the former Yankee Pier site has been leased. Planning Director Toft stated he believed it has been leased to a restaurant.

### PUBLIC HEARING ITEMS

1. **DR/SUP #16-19: 3 Piedmont Road (AP #021-121-10); Robert Wilkinson, applicant; Kurt Houtkooper, Property Owner; R-1 (First Residential) Zoning District. Request for approval of the following permits to allow for grading and site improvements to accommodate a new sport court (basketball court) in the rear yard of a 9,690 square foot property with a 16% average slope: 1) Design Review; 2) Slope Use Permit for 92 cubic yards of excavation. Note: A Slope Use Permit for 150 cubic yards of grading was issued for the expansion of the single-family dwelling and a new pool in 2006. A Slope Use Permit is required for this proposal per LMC Sec. 18.34.090.D (Cumulative Grading). CEQA Status: Categorically Exempt pursuant to Sections 15303 and 15304 of the California Environmental Quality Act (CEQA) Guideline.**

Commissioner Sandoval stated he would recuse himself from this item.

Assistant Planner Armour presented the staff report.

Chair Tauber opened the Public Hearing

Mr. Rob Wilkinson, architect, made the following comments:

- He was the architect for the 2006 application.
- The Slope Use Permit spans a 10-year period due to the cumulative grading

Ms. Julie Houtkooper, property owner, made the following comments:

- She has three daughters who play in the back yard. The front yard is located on a very busy corner.
- They were thinking about putting in some artificial turf.
- This would not be a full-sized basketball court- the term "sport court" is a bit misleading

Mr. Wilkinson made the following comments:

- The court is a concrete substrate with a sport court tile finish- it is not just a big concrete slab.
- The proposal is to expand the existing lawn area, not actually grading 1,300 square feet.
- He discussed the retaining wall.
- He pointed to an area of the back yard that was not visible to the neighbors or from the street.
- They are not proposing a regulation half-court (50' X 47') but rather a 30' X 29' court.
- He referred to the view of the wall and stated they plan to use continuous horizontal strips of wood mounted over the face of the concrete- it will have the appearance of a fence. There will be landscaping above it.
- They are proposing a 3' metal gate in the vicinity of the court.
- They are proposing low-voltage recessed aisle lights set in the concrete wall about 18" above grade to give some light at the bottom of the court. There will be no overhead lighting.
- The canopy of the trees would be higher than 6 feet- they would apply for a fence height exception if necessary.
- He was surprised about the requirement for a Slope Use Permit since very little has changed over 10 years. It is important for the Commission to weigh the benefits of the initial excavation and why it was done (to minimize mass and bulk) vs. the impact of any future proposals.
- It feels like "double indemnity" to now be told they are over the limit.
- They are complying with the intent of the code by proposing a reasonable development that makes reasonable and safe use of the site and creates a space that is invisible to anyone else.

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

- The bottom line is a sport court approach is an "estate" feature but this is not an "estate" lot.
- There are two neighbors that could potentially be aggravated in the future.
- Staff is correct that this proposal was highly unusual and unprecedented.
- He is concerned that more intensive features tend to invite uses that become intensive and can become a nuisance for the neighbors.
- He is a believer in a flexible approach to the Slope Use Permit when the intent is to allow more space below ground. That is not the case here and there is no offsetting benefit.

Mr. Wilkinson made the following comments:

- The rear yard area that is already graded flat has always been and will continue to be the play area.
- It is not an issue of annoyance- the kids are already playing and making noise in that area.
- This application is about improving an area that is being used per the code.

Chair Tauber closed the Public Hearing.

Commissioner Deignan provided the following comments:

- He initially agreed with the staff report- it is too big and they excavated before and are now asking for more.
- He visited the site and realized it looks a lot less onerous.
- Putting in retaining walls requires over-excavation for the walls and the backfill.
- He wondered how the dirt would be removed.
- The Slope Use Ordinance, Section D, talks about cumulative excavations but 10 years between applications seems like a fairly long time.
- He is a bit on the fence.
- He could make the findings for Design Review.

Commissioner Kunstler provided the following comments:

- He thanked staff for a very thorough staff report.
- He is in general agreement with the staff.
- The design elements are not very onerous and he could approve the Design Review application with the conditions of approval.
- The size of this half-court play area results in a fairly large element.
- He understood that people did not want uses allowed in the neighborhood that might cause disruptive behavior. However, it is not in the Commission mandate to pre-judge or speculate about future behavior.
- He has a problem with the grading and excavation.
- He is not sure what constitutes a “cumulative” removal of earth.
- He was not sure if a denial would deprive the applicant of privileges that other neighbors enjoy.
- The staff report notes that the project should be designed to fit the site and not vice versa. This is a vice versa situation.
- He wondered if there was an alternative design that would minimize the excavation but still provide the desired play area.

Commissioner Ziesing provided the following comments:

- He loves the house and he walks by it all the time.
- He is very sympathetic to the applicant’s position.
- He was concerned about setting a precedent.
- He referred to the Slope Use Permit request and stated it makes sense to remove the dirt cumulatively. A hill remains a hill.
- The Commission must look at this with glasses on that shield them from the emotional connection to the property and look at how this would uniformly apply throughout the rest of the neighborhood.
- He has a problem with setting a precedence for developing something that does not necessarily need to be developed in order to change the use of the property as opposed to renovation or new construction.
- He could not support the application as presented.

Chair Tauber provided the following comments:

- She does not have an issue with the Design Review portion of the application. It is clear this could not be seen from the street and it will not impact the neighbors.
- She referred to the Slope Use Permit and stated it made sense to excavate for the house (minimize bulk and mass).
- Some grading must have occurred to put in the pool and flatten parts of the back yard.
- Doing more excavation goes against the intent of the code- to preserve the natural topography.
- She could not approve the Slope Use Permit.

Commissioner Kunstler asked Mr. Wilkinson if it was possible to cut back the amount of excavation significantly. Mr. Wilkinson stated even one cubic yard of excavation would require a Slope Use

Permit. He did give some thought to alternatives including building a platform three feet above ground that would require no grading or excavation. He would be willing to look at alternatives including shrinking the size of the court or flipping the court. He asked if there was some amount of excavation that would make the Slope Use Permit more tenable.

Commissioner Ziesing stated they should be able to find a happy medium and a continuation would be appropriate.

M/s, Deignan/Kunstler motioned and the Commission voted 4-0-1 (Sandoval abstained) to continue DR/SUP #16-19, 3 Piedmont Road, to the August 23<sup>rd</sup> meeting.

- 2. TEXT #16-21; Amendments to Title 18 (Zoning) to define and regulate the establishment of Junior Accessory Dwelling Units within specified zoning districts; City of Larkspur. A public hearing to consider text amendments to Larkspur Municipal Code to renumber and rename Chapter 18.21 Residential Second Units to 18.23 Accessory Dwelling Units, add Chapter 18.24 to establish regulations for Junior Accessory Dwelling Units, amend Chapter 18.08 (Definitions) to clarify distinctions between types of dwelling units, and update Chapters 18.20 (R-1 First Residential District), 18.21 (R-2 Residential Second Dwelling Units), 18.28 (Residential Second Units), 18.32 (Third Residential District), 18.41 (SD Storefront Downtown District), and 18.43 (GD Garden Downtown District) to add and revise definitions and terminology related to accessory dwelling units and to indicate districts in which a Junior Accessory Dwelling Unit may be established subject to standards outlined in the new regulations. Note: The Planning Commission's review is advisory to the City Council; the matter will be forwarded for public hearing at the City Council after the conclusion of Planning Commission review. CEQA Status: Categorically exempt from California Environmental Quality Act (CEQA) pursuant to Section 15061.b.3 of the CEQA Guidelines, because adoption of the zoning ordinance amendment is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment.**

Commissioner Sandoval returned to the dais.

Associate Planner Camaroata presented the staff report.

Commissioner Kunstler had questions about the permitting process and expirations. Planning Director Toft stated the unit should be certified with the City and the permit expires if it is not exercised through a deed, etc. Commissioner Kunstler stated the ordinance as proposed talks about not requiring these units to have fire sprinklers. He asked if a smoke detector could be required. Associate Planner Camaroata stated the unit is created in an existing home which already has such a requirement.

Commissioner Ziesing referred to page 9, Section 18.24.040, General Requirements and Standards, K (4) and asked if a new owner would have to continue the unit as a separate unit. Associate Planner Camaroata stated the new owner would need to abide by the same regulations if they chose to continue to operate it, or they could eliminate it from the floor plan.

Commissioner Sandoval noted the deed restriction would be passed on through a sale and recorded as such. Associate Planner Camaroata stated the deed restriction would apply to the use of the property. The language would probably be very general and would transfer over to any successor.

Commissioner Sandoval asked if there were any tax ramifications. Associate Planner Camaroata stated any upgrades to create the unit within the existing space would go to the County Assessor's Office for an assessment. However, the valuation would be lower than an addition, etc. Commissioner Ziesing asked if they could add a provision to protect the homeowner from a bump in

the assessment. Associate Planner Camaroata stated “no” but the intent of the ordinance is to minimize the barriers to providing affordable housing by creating units within existing space and eliminating some of the more costly requirements associated with new construction.

Chair Tauber opened the Public Hearing.

Ms. Rachel Ginnis, Executive Director of Lilypad Homes, made the following comments:

- Her organization helps to create housing that is more affordable across all income levels with a focus on sustainability.
- The majority of homes in Marin are occupied by one or two people.
- Junior accessory units are generally used by a family member or someone who works in the community.
- She supported the proposed parking provision- reducing congestion in the streets is also a big issue.
- Young people today shy away from owning cars and use alternative forms of transportation.
- She was opposed to the provision that would require the removal of the exterior door should the Junior Unit be eliminated.
- The issue regarding vacation rentals is separate from the issue of Junior Units.
- The Marin Municipal Water District is on board and her organization is talking with sanitation districts.
- All of the parts are in place to move forward.
- She encouraged the Commission to pass the ordinance.

Mr. Michael Hooper, Madrone Avenue, made the following comments:

- This is a terrific idea for a lot of reasons.
- It will help the City with meeting the regional housing needs goals.
- He encouraged the City to not require things that make applying difficult.
- Fees could be reduced or waived.
- There is no need for an internal door and there should not be a requirement to remove the external door.
- He is glad to see that this is moving in the direction of a “by rights” application and not a discretionary one. Once approved, the right to use it as a Junior Unit should continue without additional review.
- The requirement should be for a deed “declaration” and not a deed “restriction”.
- The limitation of 500 square feet might be too small. This is a “re-purposing” of space.

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

- He referred to page 8, Section 18.24.040, General Requirements and Standards, (C) of the draft ordinance and stated strict enforcement of owner occupancy is critical. There should be a cross-reference to Section 18.21.030 Application (page 5, F.1) with respect to the issue of multiple owners.
- He referred to the third sentence in (C) and suggested the following revision: “...except when the home is *owned* by an agency....”
- He referred to page 8, Section 18.24.040, (E), and asked if the conversion could be a downstairs recreation room or a study as opposed to an existing bedroom. The entitlement should not necessarily depend on the nature of the room involved.
- He referred to page 8, (I), and agreed with the concept that no additional parking would be required but wondered how this would be applied and suggested clarifying the language.
- A deed restriction is essential.
- He referred to page 8, K (3), and suggested the following revision: “...is occupied by the owner or record of the property *as their primary residence...*”.
- It should be clear that this unit could not be used as a vacation residence.

- He referred to page 9, (L), “Expiration of Use Permit” and agreed with Mr. Hooper that they should not make this too difficult but the renewal is ministerial as a matter of right. He suggested a requirement of evidence of continue compliance.
- He referred to page 9, (M), and suggested the following revision: “...exterior access to and from the dwelling unit *if the exterior access did not exist prior to the installation of the Junior Unit.*”

Ms. Ellen Nicosia, Lillypad Homes, made the following comments:

- The Assessor’s Office would look to see what value this project added to the home and add 1% of that to the tax bill. They would not assign a new use type or tax rate.
- The reason for the internal door is that it provides flexibility and allows the units to be less expensive (minimizes the requirements).
- The conversion should apply to bedrooms, and not other rooms in the house, because this would not result in an increase in the occupancy of the house and thus no extra charge by MMWD or the sanitary district.

Commissioner Ziesing asked if there would be a requirement for separate meters. Associate Planner Camaroata stated “no”. Commissioner Ziesing asked about the rationale regarding a maximum of 500 square feet for a unit. Associate Planner Camaroata stated part of the rationale pertains to the parking issue, the number of individuals that would live in the unit, and trying to make the units affordable. Commissioner Ziesing stated he would be in favor of raising the ceiling a bit. Associate Planner Camaroata noted the City has a Second Unit Ordinance that provides the option to create a bigger unit. Planning Director Toft stated this number allows for the repurposing of part of a house in a manner that would not increase the parking demand beyond what already exists for the house. Commissioner Ziesing stated requiring the removal of the door is ludicrous- it would be expensive. Planning Director Toft agreed that anything that existed prior to the conversion should remain.

Commissioner Deignan referred to the level of documentation needed to get the permits approved and noted the cost for a topographic survey, as indicated on page 4 of the ordinance, was quite expensive. He hoped they would reach a happy medium. These are existing buildings and not an addition. Associate Planner Camaroata agreed but stated there were some instances where they need to be careful especially when dealing with hillsides, and natural state, etc. Planning Director Toft stated the reference to a topographic survey applies to a second unit not a Junior Second Unit. Site development related to development of a second units, such as additional parking, triggers a lot more regulations and plans, than just improving within an existing structure. Associated Planner Camaraota added that some exterior improvements may be necessary to create the unit, and zoning regulations would apply to these alterations. Commissioner Deignan stated the process for a Junior Unit should be as streamlined as possible.

Planning Director Toft stated staff could bring back a revised ordinance to the Commission at the next meeting. The ordinance would not be heard by the City Council until September.

Planning Director Toft asked for comments regarding increasing the square footage, as suggested by Commissioner Ziesing.

Ms. Rachel Ginnis, Executive Director of Lillypad Homes, made the following comments:

- There should be a clear differentiation between Junior Units and standard second units.
- 500 square feet is a very comfortable “apartment”.
- The City would not need to adopt the State law if it had a Junior Unit Ordinance.

Commissioner Kunstler stated 500 square feet would meet the objective of keeping the unit affordable.

Commissioner Kunstler and Ziesing stated they were comfortable with the 500 square foot limit.

Planning Director Toft asked for comments regarding the application requirements. Commissioner Kunstler asked if they could include a provision to allow staff to grant a waiver for particular requirements. Associate Planner Camarota stated "yes"- they could add language requiring sufficient evidence to demonstrate compliance with the code and waive requirements that are not applicable to a particular case. This allows some flexibility. Commissioner Kunstler stated he would support this wording. Planning Director Toft stated staff would soften the language. Commissioner Sandoval asked if a reduction in fees would be feasible. Planning Director Toft stated the City was in the process of a fee study and this could be included. The State has mandated some flat fees including for solar permits and others. Promotion and encouragement of this form of housing is one of the Housing Element Program Policies. Commissioner Ziesing stated this policy would have an overall positive tax effect and positive effect on the community.

Planning Director Toft asked for comments regarding the provision that no additional parking would be required. He noted the parking has to be according to the current approved configuration for the site which might not meet the standard. It was the consensus of the Commission to support that approach.

Chair Tauber closed the Public Hearing.

Chair Tauber asked staff to take all these comments and bring back a revised ordinance for the Commission to review at the next meeting.

M/s, Sandoval/Kunstler, motioned and the Commission voted 5-0 to continue TEXT #16-21 to the next meeting and direct staff to submit a revised ordinance.

## **BUSINESS ITEM**

### 1. Commissioners Reports

Commissioner Kunstler discussed the Airbnb issue and how to reconcile the two different, apparently conflicting prerogatives- the public order prerogative and the social prerogative. He would like the Commission to discuss this issue in the near future. Planning Director Toft stated this was a challenging issue. The Council has concluded to enforce this as a prohibition although the City does not have a robust Code Enforcement Division or program. It would be enforced on a complaint basis. Commissioner Deignan noted the Commission was a review body and does not originate policy so this should be vetted by the City Council. The Commission concurred that a joint discussion with the City Council would be the best way to move this forward.

Commissioner Deignan stated the upcoming workshops at Sonoma State University were very worthwhile and he encouraged the other Commissioners to attend.

### 2. Approval of minutes of Planning Commission meeting on June 28, 2016

M/s, Kunstler/Deignan motioned and the Commission voted 4-0-1 (Chair Tauber abstained) to approve the June 28, 2016 minutes as submitted.

The meeting was adjourned at 9:32 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 on August 9, 2016.

A handwritten signature in black ink, appearing to read 'Neal Toft', is written over a light beige rectangular background.

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Neal Toft, Planning Director