

LARKSPUR PLANNING COMMISSION  
MEETING MINUTES OF SEPTEMBER 27, 2016

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

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

Commissioners Absent: Todd Ziesing

Staff Present: Planning Director Neal Toft  
Assistant Planner Nicholas Armour

### OPEN TIME FOR PUBLIC EXPRESSION

There were no comments.

### PLANNING DIRECTOR'S REPORT

- The heavy construction is completed at 285 Magnolia Avenue. They are doing the finish work and starting to advertise the buildings for sale. Staff anticipates at least one to two months before occupancy occurs.
- Most of the work at the Lark Creek center is largely finished and it is exciting to see the street become more active and less construction vehicles.
- PG&E is working with the Public Works Department for a gas main replacement at the end of Madrone Avenue in the spring of next year. It is a very narrow street so a lot of public outreach will occur.
- The filming of "13 Reasons Why" will conclude on Friday, September 29<sup>th</sup>. Late night filming and/or activities (after 10:00 p.m.) are no longer permitted.
- The City Manager announced the hiring of Ms. Janice Hammond Ackel as the new Library Director. She will start on Monday, October 10<sup>th</sup>.

Commissioner Kunstler asked if staff would be distributing a schedule (starting and completion date) for the Madrone Avenue project. Planning Director Toft stated the City typically receives a schedule and work to mitigate construction activities. Complications do occur. The Public Works Department would post the schedule on the City Website with status updates and contact information.

### CONSENT CALENDAR ITEMS

1. **DR/UP #15-40; 575 Magnolia Avenue (AP #022-033-16); Max Chrome Architecture, Applicant 575 Sir Francis Drake Blvd., LLC, Owner; C-2 (Commercial) Zoning District. Request for the following permit approvals to allow construction of a 382 square-foot addition at the southeast (rear, right) corner of the existing building currently occupied by an outpatient surgical center and to allow a medical/surgical use within an approximately 2,616 square-foot portion of the existing structure that was previously occupied by a bank; 1) Design Review; and 2) Conditional Use Permit  
Recommendation: Conditional Approval**

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

M/s, Deignan/Kunstler motioned and the Commission voted 4-0-1 (Ziesing absent) to approve DR/UP #15-40, 575 Magnolia Avenue, subject to the findings and conditions set forth in the staff report.

## **PUBLIC HEARING ITEMS**

- 2. FHE #16-20: 11 Willow Avenue (AP #020-241-21); Nick & Joanne Desin, applicants and property owners; R-1 (First Residential) Zoning District. Applicants are requesting post-facto approval for a Fence Height Exception to legalize a wood-frame trellis and wood siding built without permits on the six-foot side yard setback, reaching a maximum height of approximately 14 feet above grade and incorporating a vegetative row of shrub and tree plantings greater than six (6) feet in height along the side property line.**

Assistant Planner Armour presented a staff report.

Chair Tauber stated the agreement with the neighbors to top the Laurels to keep them at the same height as the trellis would be very difficult to enforce. Planning Director Toft agreed. The City does identify hedgerows as “fences” with height limits but enforcement can be challenging. Commissioner Kunstler asked if this condition would apply to a future homeowner. Planning Director Toft stated “yes”- the City would respond to a complaint.

Chair Tauber opened the Public Hearing

Mr. Nick Desin, applicant, made the following comments:

- The Laurels were not planted as the same time as the application.
- They will work with the neighbors and have agreed on a height for the hedgerow and Laurels.
- The original trellis structure design had a fence- they removed the fence.
- They thought they were just doing a decorative arbor.
- He had a letter from his landscaper.

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

- The Commission has a long and laudable record of disfavoring Fence Height Exceptions in side yards unless the neighbors agree on them.
- It would be worthwhile to continue this record and to permit what has been proposed only to the extent authorized by the neighbor. They should also require a deed condition.
- He discussed a similar situation that occurred years ago.
- He discussed the required findings for granting a Fence Height Exception and in particular Finding #2- “The fence height will not impair the access to light and air of structures on the subject and neighboring properties”.
- The staff report refers to a significant view that is interfered with from a “first level side yard window”.
- He is concerned that someone can put in a pool and then attempt to wall of his or her neighbors based on privacy concerns.
- There should be a balance of interests.
- This application should be approved only to the extent that it is accepted by the neighbor and conditioned on a deed restriction.

Chair Tauber closed the Public Hearing.

Commissioner Deignan provided the following comments:

- Reading the staff report, he was concerned about the situation.
- He went out to the site and saw that the structure was between two neighbors and hardly visible from the street.

- The living spaces are elevated above grade.
- The Commission looks at applications on a case-by-case basis.
- It is a stretch, but he can make the findings based upon the unique site conditions and the amicable agreement reached with the neighbors.

Commissioner Kunstler provided the following comments:

- He agreed with the comments made by Commissioner Deignan.
- This is a unique situation- the application is governed, to some extent, by the agreement between the neighbors.
- The structure cannot be seen from the street.
- The privacy considerations were reciprocal.
- He can support the application.

Commissioner Sandoval provided the following comments:

- He agreed with the other Commissioners.
- The application is somewhat driven by the agreement.
- He would normally have a difficult time with this type of application but this is a unique situation given the site and the privacy issues between the two neighbors.
- He could support the application.

Chair Tauber provided the following comments:

- She agreed with the other Commissioners.
- This is a unique site.
- The agreement with the neighbors is key.
- She could support the application.

Planning Director Toft asked if the Commission wanted to add the following condition: *the height of the hedgerow shall be limited to the height of the lower trellis as indicated on the plans*. He noted that the Planning Commission did not indicate that a deed restriction a deed restriction was necessarily needed.

M/s, Kunstler/Deignan motioned and the Commission voted 4-0-1 (Ziesing absent) to approve FHE #16-20, 11 Willow Avenue, subject to the findings and conditions set forth in the staff report and the following condition: The planting shall not exceed the height of the lower trellis as agreed upon by the residents of 7 and 11 Willow Avenue.

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

- 3. DR/FAR/SUP/HTR/V/EXC #15-61; 75 Francis Avenue; (AP# 020-062-03) Aurora Morris applicant; Carlo Khatchi, property owner. R-1 (First Residential) Zoning District. The applicant is requesting approval of the following permits to allow substantial demolition and renovation of an existing single-family dwelling to construct a new two-story residence, as well as renovations and expansion of an existing garage with a nonconforming second unit on the second floor of an accessory garage structure; 1) Design Review; 2) Floor Area Ratio (FAR) Exception to allow a 0.29 FAR where code permits a 0.22 FAR; 3) Slope Use Permit to allow excavation and off-haul of 70 cubic yards of earth on a lot with an average grade of 28%; 4) Heritage Tree Removal Permit to allow removal of 4 heritage-sized trees; 5) Variance to allow expansion of a nonconforming second unit, built prior to September 3, 1983; 6) Exception Permit to retain a portion of the existing main residence located within the required 20-foot front yard setback.**

Assistant Planner Armour presented the staff report.

Commissioner Sandoval asked if there have been any updated civil drawings that correlate to the architectural drawings. Assistant Planner Armour stated “no”. He indicated that the rear expansion is largely in line with the original design.

Commissioner Kunstler stated the Municipal Code seems very clear with respect to the non-conforming second unit. He had a question about a statement made in the architect’s letter dated February 2016 that asserts that “other properties in the R-1 Zone with newer buildings have the right to expanding existing nonconforming units in the manner proposed”. He asked if that was accurate. Assistant Planner Armour stated staff’s interpretation is that nonconformities could not be exacerbated in second units built prior to September 3, 1983. The height is not increasing but the expansion itself does not meet the code and would need a variance. Planning Director Toft stated this is an unusual request- a non-conforming second unit that has been in existence prior to the Second Unit Ordinance. It is now a permitted use under the ordinance but it does not meet all the standards- it cannot be enlarged unless a variance is granted.

Chair Tauber opened the Public Hearing.

Mr. Carlo Khatchi, property owner, made the following comments:

- He bought the house from his landlord about 2 ½ years ago.
- His daughter lives in the second unit and pays a \$100 rent.
- His house is about 1,200 square feet. He wants to make this a beautiful house that matches the neighborhood.
- He did not want to “drag it out” tonight.
- He will take the Commission’s suggestion into consideration and come back.

Mr. Kirk Bergstrom, Frances Avenue, made the following comments:

- The stakes are high.
- He was very impressed by the City’s design guidelines- they are thoughtful and provide a clear compass for making decisions.
- He presented a petition signed by 18 residents of Frances who object to the application.
- He commended staff for doing their due diligence.
- The application should be denied, with prejudice, so the owner could start from scratch and work with the applicant to come up with a design that is in keeping with the character of the neighborhood, the topography, and the other homes that have been there for a long time.
- This project could set a dangerous precedent for the neighborhood and Larkspur.

Ms. Joan Lundstrom, Frances Avenue, made the following comments:

- The design guidelines could work in this case.
- The issue is not enlargement or change- it is how it is done.
- A number of homes in the neighborhood have “wedding cake” structures- the second story is stepped back.
- This design has the second story stepping out from the first level- this adds to the issues of bulk and mass.
- The upper story has a roof deck- there are none in the neighborhood. This is a privacy concern.
- The entry way to the accessory structure is being changed to the outside, rather than the interior, of the lot. This will directly impact the neighbors.
- She is pleased that the owner is willing to work with the neighbors.
- There is an adequate, level area on the lot. Grading could occur but it would not be justified.
- She recommended that the Commission deny the application.
- This is solvable. The main problem is the bulk and mass.

Ms. June Maselbas, Frances Avenue, made the following comments:

- She submitted a letter to staff.
- She has multiple concerns about the changes.
- The height of the home is excessive and will dramatically invade her privacy, greatly reduce the value of the home, and create more shade.
- She distributed photographs of views of the story poles from her living room, bathroom, and bedroom windows.
- The rooftop deck would be level with her living room window.
- The size of the home is much too large and should not exceed the FAR given the slope of the lot. This would set a precedent for other homeowners to do the same.
- The non-conforming second unit should not be expanded- it would create a look of two, single-family homes on one lot.
- She opposes the removal of the heritage trees.
- She opposes the removal of the soil in the back yard area given that the area has experienced landslides in the past.
- She submitted a photograph of a retaining wall constructed by the County of Marin that is holding up Briar Road on her property.
- She questioned whether the retaining walls built on the subject property have been done with permits.
- She asked the Commission to deny the application with prejudice.
- She submitted a letter from a neighbor.

Ms. Katherine Williams, 74 Briar Avenue, made the following comments:

- They recently removed a massive Heritage Pine tree for no reason.
- Removal of other trees would open up the valley- she would be seeing their house and they would be seeing her house.
- She is opposed to the project.

Mr. Arzhang Derakhshani, 67 Frances Avenue, made the following comments:

- He is speaking on behalf of his parents.
- The application does not serve the needs or expectations of the surrounding neighbors.
- The application will alter the character of the neighborhood.
- The application places the main entrance to the garage unit directly next to the windows of his living and dining room and master bedroom.
- The deck above the stairwell will look directly into his home.
- The extension unit behind the garage will look directly into the master bedroom.
- They have privacy and noise concerns.
- The scale and impact of the application will impact the value of their home.
- The application includes space for five cars- one of the spaces is pointed directly into their living room.
- They have concerns about the work the applicant has conducted from April 2014 to the present. He asked the City to review the work in terms of compliance. This includes retaining walls.
- He distributed some photographs.

Mr. Phillip Harris, Frances Avenue, made the following comments:

- He reviewed the submittal.
- The neighbors will be impacted.
- The proposed alterations will invade the neighbor's privacy.
- He agreed with the staff's conclusion- the alterations should not be permitted.
- The application should be denied with prejudice.
- Recently added, non-conforming alterations should be removed as a condition to any future approvals.

Mr. Dan Orsine, Frances Avenue, made the following comments:

- The non-conforming unit “sticks out like a sore thumb”. It is above the height limit.
- The addition of another unit would result in multiple cars.
- The application should be denied.
- The applicant should work with the neighbors to come up with a resolution that would fit in with the neighborhood.

Mr. Carlo Khatchi, property owner, made the following comments:

- He has plans and permits for the work he has done since owning the property (retaining walls, fencing, etc.)- He presented a case of plans to staff.
- He will not do anything without the City’s approval.

Chair Tauber closed the Public Hearing.

Commissioner Sandoval provided the following comments:

- He commended staff on the report- it is very straightforward.
- It is a massive structure.
- There is no updated civil plan and there are areas which he questions the capability of executing what is in the existing plan.
- It does not seem possible to achieve some of the architecture due to some of the grades.
- There does not seem to be any sort of outfall for some of the steep slopes.
- He appreciated the neighbors expressing his or her concerns. He shares a lot of them.
- The vertical mass as proposed would not work in that neighborhood.
- Having the two structures side-by-side would seem like two single-family dwellings. This must be avoided.
- The removal of the Heritage trees is driven by the project. There could be some legitimate concerns on the part of the arborist.
- Removing some of these trees would open up the question of the stability of the hillside.
- They need to submit a plan that is workable for the site and is more in line with the character of the neighborhood.

Commissioner Kunstler provided the following comments:

- He commended staff for the excellent report.
- He looked at the application and tried to find the most commendable elements. However, there were not many redeeming qualities.
- The application does offer an affordable rental unit.
- He looked at the FAR’s and sizes of the neighboring lots.
- He found some of the statements from the architect in her letters to staff troubling- they did not seem to comport with the design as it was submitted, in particular relative to the bulk and looming quality of the structure.
- There is a sheerness to the wall facing 79 Frances and no attempt to break up any of the design features to help with the sensation of mass.
- Access on the side next to 67 Frances is very dismissive of the privacy rights of that neighbor.
- All of the elements of the application are inter-twined and related to one another.
- The question boils down to: Does the design make any sense for this property? The answer is “no”.
- With regard to the heritage tree removals, some only need to be removed because of design.
- The program is excessive.
- They are not wedded to the FAR guidelines but they do have some “teeth”.
- The overall program is excessive and does not work.
- It is out of scale with the neighborhood.

- He cannot support the application. It cannot be tweaked to his satisfaction.
- This is a “back to the drawing board” situation.

Commissioner Deignan provided the following comments:

- Most initial applications submitted to the Commission are overly ambitious. This is a good example.
- He is encouraged that the applicant knows he will need to do something different.
- The staff report is a good template as to what needs to be addressed.
- The design needs to fit into the context of the neighborhood.
- A stucco building with a steeply pitched roof is inconsistent. They need to look for ways to break up the design and use materials that are more characteristic of that part of Town.
- The privacy issues should be addressed.
- The FAR numbers are not hard and fast and some expansion over these numbers would probably be allowed. There should be a reason why it makes sense, not just a desire for it.
- The plan should be smaller and more in character with the neighborhood in style, color, etc.
- The applicant needs to address everything that has been pointed out.

Chair Tauber provided the following comments:

- She agreed with the comments made by the other Commissioners.
- She might be able to grant an FAR Exception for the main house but she has an issue with expanding the second unit. Making it bigger would make it look like a second house on the lot.
- She cannot make any of the findings.
- She agreed with the staff recommendations.

Planning Director Toft stated if the Commission did not think there were some simple or direct approaches to resolving issues then they should deny the application. The Commission does not typically deny an application with prejudice unless they are presented with an application that is repeatedly presented with few changes.

M/s, Kunstler/Sandoval motioned and the Commission voted 4-0 (Ziesing absent) to deny with prejudice DR/FAR/SUP/HTR/V/EXC, #15-61, 75 Frances Avenue based on the information provided in the staff report and comments made by the Commission and the community.

Planning Director Toft stated staff would submit Findings for Denial for the Commission to adopt at the next meeting.

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

## **BUSINESS ITEM**

1. Adoption of Findings and Conditions of Approval for Application DR/H/UP #16-37: 286 Magnolia Avenue; Fabrizio Laundati/Douglas Mighell, applicants; Westshore Investments LLC, property owners; GD (Garden Downtown Commercial) Zoning District. This application was previously heard on September 13, 2016

M/s, Sandoval/Deignan motioned and the Commission voted 4-0 (Ziesing absent) to adopt the Findings and Conditions of Approval for Application DR/H/UP #16-37, 286 Magnolia Avenue

2. Commissioners Reports

There were no reports.

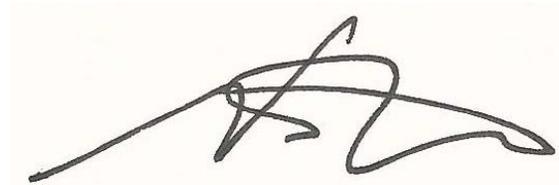
3. Approval of minutes of Planning Commission meeting of September 13, 2016

M/s, Deignan/Sandoval motioned and the Commission voted 4-0-1 (Ziesing absent) to approve the September 13, 2016 minutes as submitted.

The meeting was adjourned at 8:27 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 the 11th of October, 2016.

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

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Neal Toft, Planning Director