

LARKSPUR PLANNING COMMISSION  
REGULAR MEETING MINUTES OF DECEMBER 10, 2019

The Larkspur Planning Commission was convened at 7:04 p.m. in the Council Chambers by Chair Ziesing.

Commissioners Present: Chair Todd Ziesing, Daniel Kunstler, Ignatius Tsang,  
Brock Wagstaff

Commissioners Absent: Laura Tauber

Staff Present: Planning Director Neal Toft  
Planning Consultant Lorraine Weiss

### OPEN TIME FOR PUBLIC EXPRESSION

There were no comments.

### PLANNING DIRECTOR'S REPORT

- The December 24<sup>th</sup> Commission meeting has been cancelled. The next meeting will be held on January 14, 2020 and will include the Election of Officers.
- Town Hall will be closed from December 25<sup>th</sup> through January 6<sup>th</sup>.
- Staff continues the recruitment process for the Associate Planner position.

Commissioner Kunstler stated there has been a lot of utility work being done in the Heather Gardens area and he asked if there is an inspection of the road after it is patched/repared. Planning Director Toft stated a utility company would be doing the work with a permit through the Public Works Department, which conducts inspections.

### PUBLIC HEARING ITEMS

1. **TEXT #19-48; City of Larkspur, Applicant; Zoning Ordinance Amendment to Update Regulations of Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs); Larkspur Municipal Cod (LMC) Sections 18.23 & 18.24; Citywide. Public Hearing to consider amendments to the City's Zoning Ordinance to update regulations for accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs), per Larkspur Municipal Code Sections 18.23 & 18.24 to comply with recent changes to State of California legislation, Government Code Sections 65852.2 and 65852.22, to accelerate production of accessory dwelling units to help address the State housing crisis. These updates identify new standards including, but not limited to, minimum and maximum floor areas, lot coverage, unit size, parking, and setback regulations, as well as process timing.**

Planning Director Toft presented the staff report and gave a PowerPoint presentation. He noted that staff will present the ordinance to the City Council in January.

Commissioner Kunstler asked if "traffic flow" was a term used in State law. Planning Director Toft stated "yes".

Commissioner Wagstaff asked if the new State regulations included a 16' height limit for ADUs and a 25' limit when built above a garage. Planning Consultant Weiss responded. Planning Director Toft noted the City standard for accessory structures was a 15' height limit- this would be apply except in the case of an ADU that is under 800 square feet. Commissioner Wagstaff asked if

someone could put an ADU on top of a detached garage. Planning Director Toft stated “no” but they could convert the garage.

Commissioner Wagstaff asked for the definition of a JADU. Planning Director Toft stated a JADU cannot be more than 500 square feet and must be within the floor space of an existing dwelling.

Commissioner Kunstler asked if the new law would inhibit the Commission in asking an applicant’s intentions with respect to a project (is this a “gag order”?). Planning Director Toft stated creating a record that a decision was made based on the project including an ADU could create vulnerability. The Commission’s discussion and findings should be based on the facts relative to the greater project and not tied into the ADU.

Commissioner Kunstler asked if a Heritage Tree Removal Permit would still be considered by the Commission. Planning Director Toft stated it would be considered through the Heritage Tree process without being a discussion specifically in relation to the ADU.

Commissioner Wagstaff referred to the sill height of a second story window and asked if an egress window would override the regulations. Planning Director Toft stated he was not sure but would speak to the Building Official.

Commissioner Tsang had questions about the rents with respect to enforcement, maximum rents allowed, etc. Planning Director Toft responded, “If you build it, they will come”. The intent is to follow the mandate to provide housing. The City does not have the resources to oversee these units on an on-going basis.

Chair Ziesing asked how many ADUs were approved in Larkspur in the last two years. Planning Director Toft stated “not a lot, about three to four”. However, it is starting to pick up.

Commissioner Wagstaff asked if someone could add 500 square feet for a JADU even though they are at the maximum FAR. Planning Director Toft stated “no”- a JDAU is a matter of converting existing interior space. A new attached structure or detached accessory structure can be up to 800 square feet. Commissioner Wagstaff asked if that was above and beyond the allowable 0.40 FAR. Planning Director Toft stated “yes”.

Commissioner Kunstler had a question about ADUs in apartment buildings and whether or not an owner could say the entire building is comprised of ADUs. Planning Consultant Weiss stated they could have 800 square foot apartment units for an entire apartment building. If the apartment building exists then they can only add 25% of the number of existing units. Planning Director Toft noted this is for interior conversions.

Commissioner Kunstler asked if the State mandates any enforcement or policing requirements. Planning Consultant Weiss stated “not at this time”. Commissioner Kunstler asked if the State law addresses jurisdiction over exceptions and if they must defer to other agencies such as the Fire Department, etc. Planning Consultant Weiss stated the Fire Marshal has jurisdiction over life/safety issues. Planning Director Toft noted this is a new exercise for all parties involved- a lot is not known at this time regarding what is intended.

Commissioner Kunstler asked about an applicant who is requesting, and is granted, a variance or FAR Exception and then comes back with a request to add another 800 square feet. He asked if the Commission would be unable to deny the additional 800 square feet. Planning Consultant Weiss stated “yes”. Commissioner Kunstler stated they will need to be extremely circumspect with regard to granting an FAR Exception. Planning Director Toft agreed that the Commission will need to be aware of that.

Commissioner Kunstler asked if it would be plausible for an applicant to submit a design that has a lot of massing triggered by an ADU and state to the Commission that they have no jurisdiction over that. Planning Consultant Weiss stated “yes”. Planning Director Toft stated per State law that if an ADU is part of a new single family dwelling project or a substantial renovation the project can be treated as a singular whole. Commission does not need to pay attention to whether or not it involves and ADU.

Chair Ziesing asked if they were allowed to use the supposition, in consideration of an application, that a subsequent ADU could impact the site. Planning Director Toft stated they would create a liability.

Commissioner Kunstler referred to the language “unique local climatic, geographic, and topographic conditions” and asked that they change the word “unique” to “acute”. Planning Director Toft stated he would check with the Town Attorney- this language is boilerplate in relation to local building code amendments.

Chair Ziesing asked if the City can define “short-term rentals” as longer than 30 days and allow a minimum lease term of six months. Planning Director Toft stated staff could look at this. Chair Ziesing stated short-term rentals have exacerbated the housing crisis- it has taken real “rentable” housing and turned it into “non-rentable” housing.

Chair Ziesing asked how this law would change the current Zoning Codes (R-1, etc.). Planning Director Toft stated to some degree an R-1 Zone becomes and R-2 Zone. There are natural constraints in Larkspur due to the hills, need for parking, etc. However, this is a “one size fits all” approach and will create some “shoe boxing” situations.

Chair Ziesing asked about the impacts of the provision that the jurisdiction may not require the correction of non-conforming zoning conditions as a condition of an ADU. This could be problematic. Planning Director Toft stated this has to do with setbacks, floor area, etc. and the project would still need to meet code requirements.

Chair Ziesing referred to AB 761 which encourages local government to have a plan to incentivize these units and he asked how staff envisions this being implemented. Planning Director Toft stated the state has overrode a lot of zoning and they could attempt to implement more waivers for parking, floor area, etc. He discussed the practicality of applying affordability restrictions to single-family dwellings.

Chair Ziesing opened the Public Hearing.

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

- He recommended expanded the restricted areas as much as possible.
- He discussed the issue of public safety and pointed out areas where there was no parking.
- He referred to an article in the Independent Journal about the demise of single-family zoning.
- He was concerned that the law will allow a homeowner to build a larger home under the guise of an ADU/JADU.
- He stated variances and other discretionary allowances are based on the facts presented at the time. If these facts change then the jurisdiction should have the ability to revisit the prior decision.

Chair Ziesing closed the Public Hearing.

Commissioner Kunstler provided the following comments:

- He referred to an ADU and asked if the principal residence must be owner occupied. Planning Director Toft stated “no owner occupancy restriction is allowed”. Commissioner Kunstler asked if they could require this for a JADU. Planning Director Toft stated “yes”.
- The ordinance is quite good given the “box” that the State has painted the City into.
- He could support submitting the Draft Ordinances to the Council.

Commissioner Wagstaff provided the following comments:

- He has designed a lot of AUDs and most were for family members.
- They will lose control of the Design Review process with some of these ADUs.
- Enforcement will be nearly impossible.
- Life/safety issues need to be the prominent thing.
- He was concerned that the 16’ height limit could result in units being dug into the hillside with a 16’ façade. He asked if they could add some exceptions on slopes. Planning Director Toft discussed how height is measured and how the City could require a Slope Use Permit for substantial grading - however, it is possible this could be challenged.
- Staff did a great job on drafting the Ordinances.

Commissioner Tsang provided the following comments:

- He did not support the new parking provisions.
- Not having to replace parking during a garage conversion is problematic. This puts cars on the street and results in a lot of curb cuts.
- Some people may use this as a way to expand his or her house without intending to rent the unit.
- They need to figure out a way to achieve affordability without the negative impacts to the community.
- He referred to second story additions and stated he had concerns with privacy and life safety issues.

Chair Ziesing provided the following comments:

- He asked about the definition of “restricted areas” and asked if they could be updated.
- There might be an opportunity to be more thoughtful and restricted in this definition.
- He would like staff to update these “restricted areas” by June of next year along with examining “public safety” and “traffic studies”.
- He supports the notion of expanding housing but not without any planning or thought.
- He wants the City to encourage ADU's and JADU's but in the context of public safety and traffic flow.
- The change in parking will have an impact and needs to be studied.
- Staff did a great job responding to this new law.

M/s, Kunstler/Tsang, motioned and the Commission voted 4-0-1 (Tauber absent) to adopt the resolution recommending the City Council approve the Draft Ordinances with the recommendation that the City make clear that it will exercise its authority to amend the Restricted Area Map based on an analysis of public safety conditions and traffic flow conditions that would be impacted by various factors including the removal of parking restrictions subsequent to the addition of an ADU or JADU. The Commission would like a study completed and submitted by June, 2020.

## **BUSINESS ITEMS**

1. Approval of the November 12, 2019 draft meeting minutes

M/s, Wagstaff/Tsang, motioned and the Commission voted 4-0-1 (Tauber absent) to approve the minutes from the meeting of November 12, 2019 meeting as submitted.

2. Meeting Schedule

Chair Ziesing noted the next meeting would be held on Tuesday, January 14, 2020.

3. Planning Commissioner's Reports

The Commission discussed a date for its upcoming Holiday Party.

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 on February 11, 2020.



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Neal Toft, Planning Director