

LARKSPUR PLANNING COMMISSION MEETING
MINUTES OF AUGUST 28, 2007

The Larkspur Planning Commission was convened at 7:30 p.m. in the Council Chambers by Chair Heitkamp.

Commissioners Present: Chair Helen Heitkamp, Monte Deignan, Chris McCluney,
Jeff Stahl, Richard Young

Staff Present: Nancy Kaufman, Planning Director
Neal Toft, Senior Planner

OPEN TIME FOR PUBLIC EXPRESSION

There were no comments.

PLANNING DIRECTOR'S REPORT

- The City Council granted the appeals and overturned the Planning Commission's decision regarding 7 Palm Court. The applicant has submitted a request for a rehearing since there were only three Councilmembers present of the four that could vote on the project. Chair Heitkamp had a question about whether or not three Councilmembers represented a quorum and whether a 2-1 vote can carry a decision. Planning Director Kaufman stated the definition of a "quorum" for an appeal is contained in the ordinance and three is enough for quorum. But a majority of the Council membership is required to reverse or modify a decision.
- The City Council adopted the Green Building Ordinance and it will take effect on September 14th.
- The City Council continued the review of the Twin Cities Police Facility/Corporation yard to a future meeting.
- The Initial Study and Mitigated Negative Declaration for the Niven property would be sent out by staff on Friday, along with the application.
- She will be out of town from September 10th thru the 25th. Senior Planner Toft will be the Acting Planning Director.

Commissioner McCluney asked about the status of the Design Guidelines pamphlet. Planning Director Kaufman stated she would be contacting someone to do the layout and design. Staff would like to submit it to the Commission sometime in November.

APPROVAL OF CONSENT CALENDAR ITEMS

- 1. DR/FAR/HR/FHE 07-43: 68 Madrone Avenue (APN 021-085-15). Ms. Terry Yung, applicant/property owner. Applicant requests approval of the following applications: (1) Design Review; (2) Floor Area Ratio (FAR) Exception to permit**

a total of 529 sq. ft. in additions and a .38 FAR where .34 if permitted by code. Additions involve enclosure of main floor porch and raising rear floor roof dormer to meet minimum ceiling heights in second floor bedroom; (3) Fence Height Exception to permit the replacement of an existing 5'6" dilapidated grape stake fence on top of an existing 4' retaining wall with a new 5'10" solid wood panel fence above the 4' retaining wall, along the westerly side lot line. Fence to measure approximately 6' in height on the uphill side (74 Madrone Avenue) and approximately 10' in height from the downhill side (68 Madrone Avenue). The Larkspur Heritage Preservation Board reviewed this project application on August 20, 2007 to ensure preservation of the historic character of the residence.

Staff Recommendation: Conditional Approval

Commissioner McCluney had questions about the issue regarding the removal of a load-bearing wall. Planning Director Kaufman stated there is a condition of approval that this must be addressed at the Building Permit stage.

On the Consent Calendar, M/s, Young/McCluney motioned and the Commission voted 5-0 to approve DR/FAR/HR/FHE 07-43, 68 Madrone Avenue, based on the findings and conditions set forth in the staff report.

PUBLIC HEARING ITEMS

- 2. DR/FAR/SUP 06-42: 63 Laurel Avenue (APN 021-072-02). Chris and Colleen Geiger, applicants/property owners. Post-Facto request for the following permits to amend approvals SUP/FAR/VAR 01-46 and VAR 00-93 granted by the City Council to construct a new single family dwelling of no more than 2,794 square feet of floor area (.52 FAR), including a detached two-car garage and guest parking located within the Hazel Avenue public right-of-way: (1) Design Review; (2) Amend FAR Exception to modify exterior design, site grading, and interior floor area Approved for a .52 FAR where no more than .27 FAR is permitted due to lot slope; and (3) Amend Slope Use Permit to 425 cubic yards (CY) of grading (319 CY of excavation and 106 CY of fill) where 100 CY of grading (78 CY excavation and 22 CY of fill) was previously approved. Proposed site grading includes front yard and driveway improvements located partially within the public right-of-way. The project also includes a proposed "grade restoration" plan composed of 41 CY of fill material, to mitigate unauthorized grading and improvements in the building crawlspace.**

Senior Planner Toft presented the staff report.

Commissioner McCluney referred to the photographs in the staff report dated 11-16-05 and asked if the pictures depicted the offending space. Senior Planner Toft stated the pictures

showed areas of the basement that were supposed to remain natural grade. Commissioner McCluney had questions about the staff recommendation for rat proofing and installing shotcrete. Senior Planner Toft stated the restoration would require removal of the floor slab and filling in to create grade and cementing over the fill material. Commissioner McCluney asked why they would remove the floor. Commissioner Stahl stated this was to prevent the use of the floor.

Commissioner McCluney asked if they were living in the house. Senior Planner Toft stated that it appeared so, but they have not been granted an occupancy permit.

Commissioner McCluney asked what would happen if the Commission denied the request. Senior Planner Toft stated that would depend on the applicant's next decision. The applicant could appeal it to the City Council or further correct the infractions. Staff would need to consult with the City Attorney. Commissioner McCluney had questions about enforcement relative to them living in the home. Planning Director Kaufman stated when staff determined that they may be living in the house in violation of the permits, it was not expected that it would take this long to resolve the matter. Staff decided not to pursue attempts to remove them from the house.

Commissioner Deignan asked if the City had any process or leverage to make sure the approved improvements were not changed. He asked if there were any inspections that would be made if the house were put up for sale. Planning Director Kaufman stated the resale inspection would be the City's leverage and the history of the property would be disclosed to the new owner.

Commissioner Young had questions about the restoration plans. Senior Planner Toft stated there were two pages of plans specific to the grade restoration, one showing sections to be refilled and another showing a plan view of the basement area that identifies grades, areas of fill, and slab removal. Commissioner Young asked if the plans conformed to staff's specific conditions. Senior Planner Toft stated "no" and he has outlined a condition that would require a greater level of fill in the basement area than is shown on the plan in order to meet the previously existing grade. The fill may require minor reconstruction of the foundation and support walls in the basement area. Commissioner Young asked if the applicant would be required to relocate the floor heater and furnace. Senior Planner Toft stated they were proposing to replace them in the same locations but maintain a platform within that landscape area.

Commissioner Stahl asked how much "bootlegged" square footage exists in the basement beyond what was approved. Senior Planner Toft stated there was some confusion because there was a bit of cutout basement area in the original approval that was not shown on the original plans. He stated it was roughly 350 to 400 square feet.

Chair Heitkamp had questions about the special inspector that would be hired by the City and paid for by the applicant. She asked if they have set some sort of time deadline for the work since they have had problems in the past. Senior Planner Toft stated the applicant has recently

been very eager to get the approvals and the work done. Both parties would like to see resolution. Chair Heitkamp stated the City is letting them occupy the building without final approvals and she thought it would be a good idea to set a deadline. Planning Director Kaufman stated the Commission could set a date that the project should come back if it is not completed. Chair Heitkamp asked if a bond should be required. Senior Planner Toft stated he did not think this was necessary for this situation. Chair Heitkamp asked how they could be assured that the work would not be undone. Senior Planner Toft stated there were no assurances.

Commissioner McCluney had questions about the drainage plans. Senior Planner Toft stated the applicant could address this issue. Staff is concerned that the existing drainage system is not complete.

Chair Heitkamp opened the Public Hearing.

Mr. Chris Geiger, applicant, made the following comments:

- He thanked the Commission for the opportunity to present this application.
- He was sorry for not obtaining the necessary permits and approvals.
- He apologized to his family and staff for putting them through this ordeal.
- He hoped they could work toward a constructive and practical resolution.
- There were two main issues in question: 1) the grassy play area in the backyard, and 2) the basement backfill.
- They are living in the house with their three children. It did not seem like a big deal in the beginning since there were no impacts to the neighborhood.
- He pointed out the approved excavated area and stated it was called for and approved in the original plans. What he did not do was backfill. He is now willing to backfill and the fill could be generated from the columns, stairs, and other construction materials.
- He would like to keep the grassy area for the children.
- He has identified another way to address the legitimate concerns regarding the City's concern about the conversion of the basement to habitable space- a recorded deed restriction that passes with the property.
- They are eager to find a resolution to the situation and have made enormous efforts to get this far.
- The original habitable basement space approved was 613 square feet. The floor plan changed as his family grew.
- There have been no drainage problems on his property but the Public Works Department has called for the installation of a retention basin.

Commissioner Young asked if he planned to install the retention basin. Mr. Geiger stated "yes".

Commissioner Stahl noted the extent of the existing excavation was unclear at the beginning of the project and asked why the agreed upon remediation plan was not done. Mr. Geiger stated he

was being a “maverick”. The permits expired, he got red tagged, and he could not complete the project. The only thing he has done since the red tag has been the removal of some of the columns and posts near the driveway

Commissioner McCluney asked about an illegal gas connection. Mr. Geiger stated there was a house on the site and he used the same meter, although he was not allowed to do so. Commissioner McCluney asked if he paid for the gas. Mr. Geiger stated he received a bill every month and he does not owe PG&E any money.

Mr. Roger Denal, Laurel Avenue, made the following comments:

- He drives by the house every day and they are good neighbors.
- They should be supported regardless of the mistakes that have been made.
- The City should have done a more thorough inspection.
- Something reasonable should be approved.
- The level lawn area looks nice and should remain.
- He was puzzled by the proposal to backfill the basement and it made no sense. It was excavation that needed to be done for the foundation.

Mr. John Larson, Laurel Avenue, made the following comments:

- He has known the Geigers for years.
- Mr. Geiger has been contrite and the City’s actions should not be punitive.

Mr. John Mayerhofer, Laurel Avenue, made the following comments:

- It is a testament to the City that the Geigers have not been evicted.
- It has been a tough two years for the family.
- He would hate to see removal of the grassy area since it is used by the kids in the neighborhood.
- The deed restriction option was a good idea.

Mr. Chris Hollenback, Laurel Avenue, made the following comments:

- The Geigers are good people.
- This is a problem of their own making but they have suffered enough.
- They have the support of their neighbors.

Mr. Derick Berk, Chevy Chase Court, made the following comments:

- He has known the Geigers for a long time and could vouch for their character. They are an attribute to the community.
- Mr. Geigers remorse is genuine and sincere and this is an isolated incident.
- The site is in many ways dramatically improved.
- The grassy area is not large and should remain.

Chair Heitkamp closed the Public Hearing.

Planning Director Kaufman stated this situation is not stopping anyone else from violating the codes. The City has one building inspector and it is difficult to catch things as they are being constructed. Staff has asked for plans indicating certain things and have not received what has been requested. They have been living in a house that has not been inspected or finalized and tapped into a gas line without permits. The Geigers' character is not at issue. She could not think of any instance where the City would allow the use of construction debris to fill in a space. Construction debris should be removed from the site.

Commissioner Deignan provided the following comments:

- They have seen the evolution and history of this complex application.
- Staff deserves praise for their handling of the application and their patience.
- This is not a popularity contest.
- This application was reviewed at numerous Public Hearings and it was explicitly pointed out what was allowed and what was not allowed.
- This was not just "coloring outside of the lines" and they need to show that there are consequences for not following the approvals.
- They need to put this back to what was allowed and approved- this is not a punitive measure.
- The deed restriction was a good idea and should be added to the remediation efforts.
- They need to make sure ordinances are upheld.
- He is on the fence about the removal of the grass area given its size.
- The remediation and restoration of the crawlspace was very important. He would consider the importing of fill.

Commissioner Stahl provided the following comments:

- Everyone here is in a horrible position due to the actions of the applicant.
- The Commission's job is to enforce the City ordinances.
- Staff has gone the extra mile throughout this process. The current submittal is inadequate and staff is attempting to give the applicant the benefit of the doubt as to his intentions to follow through this time.
- The applicant now has one of the biggest homes in the neighborhood. He is using the front yard that belongs to the City as his front yard. He has pushed all the rules with the original application that was approved by the City. But he kept pushing beyond even that and now the Commission has to deal with the mess.
- None of the City's requests are unreasonable. The rules apply to everyone.
- The idea of the deed restriction was a good one. He would narrow it down to the exact area of the basement that is permitted along with the rat slab that needs to remain in perpetuity.
- No second unit should be ever permitted on the property. The final allowable floor area is the most that should be built on the lot.

- He would be in favor of a time deadline in terms of when the work should be completed with the possibility of eviction proceedings if they exceed the deadline.

Commissioner Young provided the following comments:

- He agreed with the comments made by Commissioners Deignan and Stahl.
- One positive note is that the applicant has great neighbors.
- This is a very pleasant house.
- The grassy area was an improvement and he would hate to see it go.
- He could support all the staff recommendations except for the removal of the slab on grade. Fill could be put in and then the rat slab could be put over that.

Commissioner McCluney provided the following comments:

- It was nice to see that the applicant had good friends and neighbors in the community. That is a real positive.
- He stated the applicant's contrition was great but he wanted to make sure it would not happen again.
- He was concerned about the wanton disregard of the code, the City Council, the staff, and the Planning Commission.
- He agrees with the staff recommendations for remediation of the basement and the grassy area. He did not want the grass area to remain as is.
- This is a nice looking house.
- He asked staff about the use of construction material for fill. Planning Director Kaufman stated she could not think of any instance where this has even been proposed. Installing shotcrete over it might be acceptable but the Building Inspector should approve this. Senior Planner Toft stated this type of material could not be used for engineered fill.
- He asked about the clearance from the top of the shotcrete to the joists. Senior Planner Toft stated the fill would follow grade as if it were a crawlspace.
- The time deadline to perform the work was reasonable.
- He would stay quiet on the "eviction" proceedings.

Chair Heitkamp provided the following comments:

- She agreed with the comments made by the other Commissioners.
- She noted there was consensus regarding the deed restriction.

Planning Director Kaufman suggested the following language: "Prior to issuance of occupancy permit a deed restriction to the satisfaction of the Planning Director shall be recorded on the property that prohibits excavation of the under story area of the home and maintenance of a 4" rat proofing around the perimeter. If the work is not completed in "X" months, it should be brought back to the Commission for review and consideration of initiating an eviction process".

Commissioner Deignan asked about including a limitation to the size of the house in the deed restriction. Senior Planner Toft stated they were currently maxed out and he was not sure this should be included in a deed restriction. Commissioner McCluney asked why there was a problem with them using some of the existing approved basement area as a second unit. Planning Director Kaufman stated that was up to the Commission, but that to provide the necessary parking they would have to rely on the City right-of-way. Commissioner Stahl stated he would like to include this in the deed restriction due to the City's limited resources for enforcement and a larger development has been approved that has great benefits to the applicant. They should not be rewarded with the future ability to add a second unit. Commissioner Young stated he felt it was not necessary. Commissioners McCluney and Deignan agreed. Chair Heitkamp stated this issue should be a condition of approval but not included in the deed restriction.

Chair Heitkamp referred to the timeline proposal and asked the applicant how long it would take to do the work. Mr. Geiger stated it should take about 90 days. He had no intention of dragging it out. Planning Director Kaufman stated the deadline could be six months.

Planning Director Kaufman noted the following correction to condition #13: "A special inspector, *hired by the City and paid for by the applicant*, shall be retained for daily inspection inspections....". She recommended adding the following conditions: 1) "Prior to issuance of a Building Permit the applicant shall pay all fees applicable for work done without a permit"; 2) "Debris from dismantling of pillars, steps, etc. may be used for remediation of excavated area subject to approval of the Building Inspector and application of shotcrete or other material per Building Inspectors approval".

Planning Director Kaufman noted there was the issue of the floor removal and the yard area. Commissioner McCluney stated he did not see why they need to remove the floor if cement would be poured over the dirt. Commissioner Deignan stated it would be more difficult to use that space if the floor were removed. Commissioner Young disagreed with the need to remove the floor. Chair Heitkamp stated it was the consensus to remove the floor.

Chair Heitkamp referred to the removal of the lawn area and stated there was another level area on the property. Commissioner Stahl asked about the square footage of lawn area. Senior Planner Toft stated it was a pretty broad area. Commissioner Young noted it was about 500 square feet of lawn area. Chair Heitkamp asked about the height of the retaining wall. Senior Planner Toft stated it goes up to four feet in height and was a continuous wall. Commissioner Stahl asked if the original proposal included the retaining wall on "left-hand side of the page". Senior Planner Toft stated there was an existing concrete pad. Chair Heitkamp asked what would happen to the retaining wall if the fill were removed. Senior Planner Toft stated they would need to submit a revised plan that would scale back the lawn area and he did not think it would require all the lawn area to fill in the basement area. Commissioner Young stated the area does slope up and they would be taking quite a bit of surface area. Senior Planner Toft stated

staff would suggest they take the fill from the edges and step it back from the property line. Chair Heitkamp stated she would prefer they use the construction debris as opposed to destroying the lawn area and retaining walls. However, the slab in the under area should be removed. Planning Director Kaufman stated staff was trying to avoid additional truck trips in the neighborhood. Chair Heitkamp asked about the number of possible truck trips. Senior Planner Toft stated that 40 cubic yards would equal about 8 to 10 truck trips. Chair Heitkamp stated she would prefer to use the construction material and save the lawn area. Commissioner Deignan and Young agreed. Commissioner Stahl stated he was still “on the fence” because of the location of the retaining wall. Senior Planner Toft stated the retaining wall has never been part of the plan or approved and staff is not sure about its effectiveness. Commissioner McCluney stated this was an improper yard and a reflection of a well-thought out and strategized disregard for the rules. Planning Director Kaufman suggested they allow them to use the construction debris, subject to the approval of the Building Inspector, and if it were not a sufficient amount they would use the fill from the lawn area.

Senior Planner Toft noted the estimation of excavation that has occurred is substantial (over 300 cubic yards) and the remediation plan that staff is recommending would require more fill and foundation work than the applicant has proposed. Staff’s intent is only that the site be corrected to reflect the approved topographic condition while minimizing hauling in City streets.

M/s, Deignan/Stahl motioned and the Commission voted 5-0 to approve DR/FAR/SUP 06-42, 63 Laurel Avenue, subject to the findings and conditions set forth in the staff report including the following conditions (precise wording was left to staff): 1) The debris from the dismantling of on-site features may be used for remediation of excavated areas subject to the approval of the Building Inspector and with application of shotcrete or other material per the Building Inspector’s approval. If not approved by the Building Inspector, or if additional fill is required, fill could be used from the lawn area in accordance with plans approved by the Planning Department and the Department of Public Works Department which may entail reduction of the retaining wall depending on the amount of fill removed; 2) There shall be a 6 month deadline for completion of the project or it comes back to the Planning Commission for review and consideration relative to recommending to the City Manager and City Council that the family move from the home; 3) Due to the excessive amount of site development, no second unit and/or enclosed accessory structure shall be permitted on the property; 4) There shall be a recorded deed restriction prohibiting excavation of the understory area of the dwelling and any alteration and/or removal of the 4 inch ratproofing; 5) Condition #13 shall be revised to clarify that the inspector would be hired by the City at the applicant’s expense; and 6) applicant shall pay all fees applicable for work done without a permit.

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

BUSINESS ITEMS

1) Commissioner's Reports

Commissioner Young asked about the removal of some of the downtown street trees. Planning Director Kaufman explained why some of the trees had been removed and the status of the Downtown Street Tree Plan.

2) Planning Commission Minutes of August 14, 2007

M/s, Stahl/McCluney motioned and the Commission voted 5-0 to approve the minutes of August 14, 2007 as submitted.

The meeting was adjourned at 9:37 p.m.

Respectfully submitted,

Toni DeFrancis
Recording Secretary