



TOWN OF TIBURON
Tiburon Town Hall
1505 Tiburon Boulevard
Tiburon, CA 94920

Action and Approved Minutes - Regular Meeting
Tiburon Planning Commission
June 24, 2009 – 7:30 PM

ACTION MINUTES

TIBURON PLANNING COMMISSION

CALL TO ORDER AND ROLL CALL 7:30 PM

Chairman O'Donnell, Vice Chairman Kunzweiler, Commissioner Corcoran, Commissioner Fraser, Commissioner Frymier **All Commissioners Present**

ORAL COMMUNICATIONS **There Were None**

Persons wishing to address the Planning Commission on any subject not on the agenda may do so under this portion of the agenda. Please note that the Planning Commission is not able to undertake extended discussion, or take action on, items that do not appear on this agenda. Matters requiring action will be referred to Town Staff for consideration and/or placed on a future Planning Commission agenda. Please limit your comments to no more than three (3) minutes. Testimony regarding matters not on the agenda will not be considered part of the administrative record.

COMMISSION AND STAFF BRIEFING

Commission and Committee Reports
Director's Report

PUBLIC HEARING

1. 46 MAIN STREET: CONDITIONAL USE PERMIT; REVIEW OF A CONDITIONAL USE PERMIT GRANTED TO ALLOW THE SERVING OF ALCOHOLIC BEVERAGES FOR CONSUMPTION ON THE PREMISES AT AN EXISTING ART GALLERY (THE ART BAR MOLINAR); FILE #10801; Main Street Properties, Owner; Deborah Molinar, Applicant; Assessor's Parcel Number 059-102-19 [LT] **CONTINUED TO JULY 8, 2009**
2. 9 CECILIA COURT: REQUEST TO AMEND THE TIBURON HIGHLANDS PRECISE PLAN (PD #15) TO CREATE A LANDSCAPE ENVELOPE; FILE #30901; Ronald and Alice Lando, Owners; Troy Martinez, 5 Elements Design, Applicant; Assessor's Parcel Number 034-360-18; [DW} **Denied (4-1)**

3. 215 BLACKFIELD DRIVE: REQUEST TO AMEND CONDITIONAL USE PERMIT FOR KOL SHOFAR SYNAGOGUE AND APPURTENANT DAY SCHOOL TO REDUCE MAXIMUM ALLOWABLE DAY SCHOOL ENROLLMENT FROM 150 STUDENTS TO 100 STUDENTS; FILE # 10901; Congregation Kol Shofar, Owner and Applicant; Assessor's Parcel No. 034-291-31 [DW] **Approved (5-0)**
4. INTRODUCTION AND OVERVIEW OF COMPREHENSIVE REFORMATTING AND TEXT AMENDMENTS TO THE TIBURON ZONING ORDINANCE; FILE #MCA 2008-09; CONTINUED FROM JUNE 10, 2009 [DW] **Continued to July 2, 2009**

MINUTES

5. PLANNING COMMISSION MINUTES – Regular Meeting of June 10, 2009
Approved As Amended (5-0)

ADJOURNMENT 9:30 PM

PLANNING COMMISSION
APPROVED MINUTES NO. 983
June 24, 2009
Regular Meeting
Town of Tiburon Council Chambers
1505 Tiburon Boulevard, Tiburon, California

CALL TO ORDER AND ROLL CALL:

Chair O'Donnell called the meeting to order at 7:30 p.m.

Present: Chair O'Donnell, Commissioners Corcoran, Fraser, Frymier, and Kunzweiler

Absent: None

Staff Present: Planning Manager Watrous, Director of Community Development Anderson and Minutes Clerk Levison

ORAL COMMUNICATIONS: None

COMMISSION AND STAFF BRIEFING:

Planning Manager Watrous stated that the item for 46 Main Street is continued to the July 8, 2009 meeting.

PUBLIC HEARING:

1. **46 MAIN STREET: CONDITIONAL USE PERMIT; REVIEW OF A CONDITIONAL USE PERMIT GRANTED TO ALLOW THE SERVING OF**

ALCOHOLIC BEVERAGES FOR CONSUMPTION ON THE PREMISES AT AN EXISTING ART GALLERY (THE ART BAR MOLINAR); FILE #10801; Main Street Properties, Owner; Deborah Molinar, Applicant; Assessor's Parcel Number 059-102-19 CONTINUED TO JULY 8, 2009

2. 9 CECILIA COURT: REQUEST TO AMEND THE TIBURON HIGHLANDS PRECISE PLAN (PD #15) TO CREATE A LANDSCAPE ENVELOPE; FILE #30901; Ronald and Alice Lando, Owners; Troy Martinez, 5 Elements Design, Applicant; Assessor's Parcel Number 034-360-18

Mr. Watrous presented the staff report, stating that the applicants propose to amend the Tiburon Highlands Precise Plan for property located at 9 Cecilia Court. The amendment seeks to create a new landscape envelope beyond the existing building envelope on the site that would allow the property owners to construct fencing and a possible gazebo and swimming pool in the area below the existing single-family residence. The new landscape envelope would cover most of the rear of the lot and extend to within 15 to 20 feet of the side property lines and within 30 to 45 feet of the rear property line. The intent of the landscape envelope is primarily to allow fencing that would prevent deer from entering the property.

Chair O'Donnell opened the public hearing.

Troy Martinez, designer/contractor, stated that this application is driven by the desire to exclude deer from the play area on the property. He said the applicant is willing to amend its request to eliminate the possibility of a gazebo and swimming pool and to include any fence material requirements the Commission should deem appropriate. The applicant is also amenable to accepting a maximum fence height of 6 feet, with the option to return for a variance if that should prove necessary. He detailed the property's constraints, explaining that the applicant would very much like to keep as much of the southern, flatter area proposed within the requested envelope. Mr. Martinez said all neighboring owners have reviewed and signed off on the project.

Commissioner Frymier asked for clarification on the boundaries of the proposed landscape envelope. Mr. Martinez stated that the applicant requested an envelope which extends 30 feet in from the property line. He estimated that the fence line could be brought back another 10 to 15 feet while still accommodating the existing play structure.

Vice-Chair Kunzweiler asked why the applicant is requesting such a large envelope if the goal is simply to bar deer from entering the play area. Mr. Martinez stated that the proposed envelope would extend to the furthest tangent line. He noted that the property contains a large flat area that would also be suitable for play as well as a series of footpaths that would be more easily accessed from within the fenced area.

Commissioner Fraser stated that he visited the property and was challenged to identify where the existing building envelope and proposed landscape envelope lie. He asked if there are any other properties within that community that have fenced in a portion of the rear yard. Mr. Martinez said that 18 Upper Cecilia Court has a small deck surrounded by a solid wall.

Commissioner Fraser said that the intent of the Tiburon Highlands Precise Plan is to preserve public as well as private open space. He said that there is no rear yard fencing anywhere within this development and cautioned that granting this application would set an unwelcome precedent.

He asked if the existing play structure is situated outside of the existing building envelope and Mr. Watrous confirmed that it is outside the envelope.

Commissioner Fraser asked if the proposal has been submitted to the Tiburon Highlands HOA. Mr. Martinez confirmed that they had discussed the request with the HOA and that the board directed him to go through the Town's process.

Mr. Martinez stated that the proposed fence line does not appear to be visible from any neighboring properties and said that the applicants have met with neighbors to discuss the implementation of suitable landscaping, should that be necessary.

The public hearing was closed.

Vice-Chair Kunzweiler concurred with Commissioner Fraser and stated that this would establish a precedent in violation of the agreement upon which the entire area was developed. He said he could understand the applicant's motivation but could not support the concept or make the necessary findings to support the application.

Commissioner Corcoran concurred. He said that he walks the adjacent fire roads regularly and thought it would be unfortunate if most of those properties were fenced. He said the intent behind this development was to keep the area open and natural and noted that the applicant was aware of these constraints when they purchased the property. He said that even if the fence was not visible, it would begin to change the character of the neighborhood.

Commissioner Fraser acknowledged the desire behind the applicant's request but said this reaches a bit too far in terms of attempting to enclose almost the entire property. He suggested the applicant consider natural vegetation that would, in time, provide the same protection as a fence. He said that the Tiburon Highlands precise plan was very specific regarding the need to preserve public and private open space. He stated that adding fences to an unfenced area in this development would set an improper precedent and he could not make the findings necessary to approve the application.

Commissioner Frymier concurred and said that she exercises extreme caution in setting any precedent related to land management. She said the intent of the Town Council was very clear when it established the need to preserve this area. She expressed sympathy for the steep lot the applicant has but noted that they were aware of it when they purchased the home.

Chair O'Donnell said he visited the property and he can clearly see the need to limit deer access and he empathized with the applicant to a large extent. He said that the intent expressed in the Town Council meeting minutes was to limit, but not exclude, the extent to which a property was fenced off from its neighbors. He said this property possesses an unusual shape and drops off dramatically and would allow transparent deer fencing that would have little impact on the surrounding area. He felt that an open deer fence would not be offensive or set a precedent. He suggested the applicant return with a more definitive plan that reduces that size of the landscape envelope and eliminates the request for the gazebo and pool. He was willing to work with the applicant and felt that there was an element of reasonableness to the request. He felt that a 6 foot fence could effectively keep deer out because of the particular topography of this lot. He said the needs of this property and the intent of the CC&R do not appear to directly conflict.

Commissioner Frymier noted the staff report indicates that a 6 foot fence would be inadequate. Chair O'Donnell respectfully disagreed with staff. He said the property's slope would effectively create a hurdle much higher than 6 feet for deer to negotiate. Mr. Watrous said staff has found that the necessary fence height is strongly dependent upon slope and that deer have a much easier time jumping downhill, as opposed to uphill, into an enclosed area.

Vice-Chair Kunzweiler asked if it is common for homes within the area to have 6 foot fences within the building envelope. Mr. Watrous said no and noted that most building envelopes in the area are fairly close to the home's footprint.

Chair O'Donnell said the applicant could, out of frustration, erect a 6 foot high wall along the building envelope and noted that would have a much greater impact on the neighborhood. Commissioner Fraser said the Tiburon Highlands HOA would most likely intervene if the applicant attempted to erect something like that.

Vice-Chair Kunzweiler said that the entire community has deer issues and the applicant must find a way to address their problem in a manner that is consistent with the precise plan. He reiterated that he could not make the necessary findings to support the application and felt that precedents for projects such as this carry a lot of weight.

Commissioner Frymier said she visited the site and in light of the side vegetation, could see how a fence may not be that objectionable. She said however, that the applicant accepted these limitations when they purchased their home. She noted that the play structure is situated much further from the house than is typically found.

<p>ACTION: It was M/S (Kunzweiler/Fraser) to direct staff to prepare a resolution denying the request. Vote: 4-1 (O'Donnell voted no).</p>

3. 215 BLACKFIELD DRIVE: REQUEST TO AMEND CONDITIONAL USE PERMIT FOR KOL SHOFAR SYNAGOGUE AND APPURTENANT DAY SCHOOL TO REDUCE MAXIMUM ALLOWABLE DAY SCHOOL ENROLLMENT FROM 150 STUDENTS TO 100 STUDENTS; FILE # 10901; Congregation Kol Shofar, Owner and Applicant; Assessor's Parcel No. 034-291-31

Mr. Watrous presented the staff report, stating that Congregation Kol Shofar is requesting to amend its conditional use permit authorizing the operation of a synagogue and day school at 215 Blackfield Drive for the purpose of reducing the maximum day school enrollment from the previously approved level of 150 children to 100 children. The Town has determined that the increased day school enrollment would generate the equivalent of 47 PM peak hour traffic trips and in accordance with the Town's traffic mitigation fee program, triggered traffic mitigation fees of \$248,066. Congregation Kol Shofar has paid their traffic mitigation fees and the building permit has been issued for their expansion project. CKS has now applied to amend their conditional use permit to reduce the day school enrollment to 100 children in order to obtain a refund of their traffic mitigation fees.

Commissioner Corcoran asked if the fee of \$248,066 is payable annually. Mr. Watrous stated it is a one-time payment.

Commissioner Corcoran asked how traffic mitigation fees are calculated. Mr. Watrous said it is a fairly complicated formula based on the number of PM peak hour traffic trips.

Chair O'Donnell opened the public hearing and, as there was no public comment, closed the hearing.

Commissioner Frymier acknowledged the factors that determine these fees and expressed her disappointment that Kol Shofar is looking to reduce their enrollment when there is a need for day school space in the community.

Vice-Chair Kunzweiler said it is clearly up to the applicant to request this amendment.

Commissioner Corcoran acknowledged the complexity of the fee formula but said it is very unfortunate that a brand new facility must reduce the number of currently allowed students because of it. He noted the Commission has voiced the need for additional day care opportunities on numerous occasions. He thought that perhaps the Town should re-examine the fee schedule for traffic mitigation.

Chair O'Donnell stated support for the application. He suggested the Planning Commission and Design Review Board would benefit from being better apprised of the fee structures associated with the projects that come before them.

ACTION: It was M/S (Corcoran/Kunzweiler) adopt the resolution as drafted approving the request. Vote: 5-0

4. INTRODUCTION AND OVERVIEW OF COMPREHENSIVE REFORMATTING AND TEXT AMENDMENTS TO THE TIBURON ZONING ORDINANCE; FILE# MCA 2008-09; CONTINUED FROM JUNE 10, 2009

At the June 10, 2009 Planning Commission meeting, Town Staff provided an overview and introduction to the Town's update to the Tiburon Zoning Ordinance. At that time, the Commission recommended that the updated Zoning Ordinance be reviewed in segments, perhaps consisting of one or two articles at a time, over a series of meetings. This would allow the Commission to conduct a thorough review of the Zoning Ordinance before making a recommendation of adoption to the Town Council.

Commissioners provided various corrections and minor wording changes. They discussed the following sections in greater detail for the purpose of clarification and/or further amendment:

ARTICLE I

Section 16-10.020 - Purpose of the Zoning Ordinance

Vice-Chair Kunzweiler suggested that the phrase "and Natural" be added to "environment" under Subsection N.

Section 16-10.040 – Authority and Relationship to General Plan

Vice-Chair Kunzweiler requested clarification on Subsection B (Relationship to the Town of Tiburon General Plan). Director of Community Development Anderson explained that most General Plan Policies are qualitative in nature. He said there are some however, which contain quantitative requirements and the approval of any application inconsistent with those requirements should immediately trigger a General Plan amendment.

Section 16-10.050 – Applicability of Zoning Ordinance

Vice-Chair Kunzweiler requested clarification on Subsection B (Vested right exception). Mr. Anderson said that vested rights address properties for which there is an existing development agreement, court ruling, or vesting tentative map that may provide provisions which could conflict with the newer Zoning Ordinance. Those provisions must be considered vested or locked into the previous ordinance.

Commissioner Corcoran requested that a definition for “vested” be provided in the ordinance.

Chair O’Donnell requested clarification on Subsection C (Master and precise plan exception). Mr. Anderson said this section is a direct carryover from the previous version and agreed that the language could be improved. He explained that when the ordinance was last adopted in 1990, there were a large number of approved precise plans with very specific floor area requirements. This states that although the updated ordinance changes those requirements, the old ordinance, if more restrictive, would remain in effect.

Vice-Chair Kunzweiler referred to Subsection E (Issuance of building permits), Subsection 2, said that “materials” is unclear, and asked that it reference policies or procedures within the building department to help the public understand these requirements. Mr. Watrous said they provide applicants with handouts that outline that information and agreed to reference those within the ordinance.

Commissioner Frymier suggested that the word “only” be deleted from Subsection F.

Vice-Chair Kunzweiler referred to Subsection H (Effect of Zoning Ordinance changes on projects in progress) and requested clarification on when an application is considered complete and therefore governed by the ordinance in effect at the time of application. Mr. Watrous said it is ultimately up to the Commission to establish that threshold. He said the general practice has been to consider an application complete and grandfathered under the old ordinance once all pertinent materials or information has been supplied.

Commissioner Corcoran suggested moving the phrase “after the effective date” on Subsection J to the front of the sentence.

Section 16-12.020 – Authority and Procedures for Interpretation

Commissioner Corcoran asked if the procedures outlined in this section are those currently in practice. Mr. Watrous said that this section is new and explained that nothing in the current ordinance specifies the appropriate course of action when a decision is challenged.

ARTICLE II

Section 16-20.030 – Allowable Land Uses and Zoning Permit Requirements

Commissioner Fraser requested examples of the uses in Subsections 2 and 3. Mr. Watrous said if a use is not listed as permitted, it is essentially prohibited.

Vice-Chair Kunzweiler asked how a new use would be added. Mr. Anderson said a Zoning Ordinance amendment would be required although he noted that there are several exceptions, as outlined.

Commissioner Corcoran suggested that the phrase “when applying the Zoning Ordinance” be added to Subsection 3 (b).

Section 16-20.040 – Exemptions from Zoning Permit Requirements

Commissioner Fraser requested clarification on Subsection A, Subsection 5 and asked if there are any guidelines regarding solar energy systems. Mr. Watrous explained that the State has severely limited local input on the matter. Mr. Anderson confirmed and added that the State has prohibited local governments from subjecting solar installations to Design Review, except in applying maximum height requirements.

Chair O’Donnell requested that the ordinance discourage the placement of solar units at ground level. Mr. Anderson said it would be unusual to reference such a policy in the Zoning Ordinance. He noted the Town Council has adopted a written policy that discourages ground-mounted installations to the extent possible. He added that the Town waives building permit fees for most roof-mounted installations, but not for those that at ground level.

Vice-Chair Kunzweiler suggested that the phrase “per requirements of State law” be added at the beginning of Subsection 5.

Section 16-20.050 – Conflicting Requirements

Vice-Chair Kunzweiler referred to Subsection B and requested clarification on the authority of CC&Rs versus the Zoning Ordinance. Mr. Anderson stated that the Town has the authority to approve a request that violates CC&Rs.

Section 16-21.030 – Residential Zones Allowable Land Uses and Permit Requirements

Referring to Subsection D, Chair O’Donnell acknowledged the intent behind preserving the housing stock in Old Tiburon, but suggested that requiring a conditional use permit to convert a duplex into a single-family home discourages much needed rehabilitation of certain properties.

Chair O’Donnell asked if the requirement of a CUP for seasonal rentals is an enforceable prospect, noting that the current house swap market is thriving. Mr. Watrous explained that the term “seasonal rental” only applies to rentals of shorter duration than 31 consecutive days. He said the intent is to avoid a constant turnover like that seen with timeshares and he agreed that enforceability would be an issue.

Vice-Chair Kunzweiler referred to Table 2-1 and requested distinction between a use requiring a CUP and a use not allowed. He noted there are a number of situations where, realistically, that use would never be allowed in that area yet it is not listed as such. Mr. Anderson acknowledged the point and explained that if the Town does not create potential allowances for certain uses, no matter how unrealistic, it opens itself up to discriminatory lawsuits.

ACTION: It was M/S (Corcoran/Frymier) to continue the hearing to the July 8, 2009 meeting.
Vote: 5-0

MINUTES:

5. PLANNING COMMISSION MINUTES – Regular Meeting of June 10, 2009

Chair O'Donnell requested the following amendments to the minutes:

- Page 2, 7th paragraph – “Chair O'Donnell said people make best practice **building** decisions ~~because it is in their best interest~~ **which include being environmentally responsible.**”
- Page 3, 4th paragraph – “Chair O'Donnell agreed and **said...**”
- Page 3, 8th paragraph – “Chair O'Donnell ~~confirmed~~ **questioned if the...**”

Commissioner Corcoran requested the following amendment:

- Page 2, 6th paragraph – “Commissioner Corcoran asked if the **Town's green building** program guidelines provide any guidance for a ~~an~~ **residential** applicant wishing to utilize the LEED rating system **instead of the green points rating system.**”

ACTION: It was M/S (Kunzweiler/Fraser) to approve the minutes of June 10, 2009, as amended.
Vote: 5-0.

ADJOURNMENT:

The Planning Commission adjourned the meeting at 9:30 p.m.

EMMETT O'DONNELL, CHAIRMAN

ATTEST:

SCOTT ANDERSON, SECRETARY