

**FINAL MINUTES  
REGULAR PLANNING COMMISSION MEETING  
JULY 28, 2009  
CORTE MADERA TOWN HALL  
CORTE MADERA**

**COMMISSIONERS**

**PRESENT:**

Chair Bruce Mace  
Commissioner Patrick Pagnillo  
Commissioner Peter Schwartz  
Commissioner Sloan Bailey  
Commissioner Richard Esteb

**STAFF**

**PRESENT:**

Robert Pendoley, Planning Director  
Larisa Roznowski, Associate Planner  
Dan Bell, Senior Planner  
Nancy Salcedo, Minute Recorder

**1. OPENING**

**A. Call to Order**

**B. Pledge of Allegiance**

**C. Roll Call**

**2. PUBLIC COMMENT:** None

**3. CONSENT CALENDAR:** None

**4. CONTINUED HEARINGS:**

- A. 501 CORTE MADERA AVENUE, DESIGN REVIEW APPLICATION NO. 08-008, TED CHRISTENSEN AND MICHELLE SLADE (OWNERS)-To construct a 4,961 gross Floor Area (GFA) new residence which includes a 618 sq. ft. attached garage. (Zoning: R-1-A Low-Density Residential District) (Planner: Larisa Roznowski)**

Associate Planner Roznowski said the requested materials were not delivered, and that staff recommends continuance to a specific date. The applicant requested August 11, 2009.

Adjoining neighbor, Guy Benstead stated he had made schedule changes to be here tonight, but that they would be out of town August 11.

The applicant stated the item had been continued once already, with a delay for quorum of eligible commissioners. He said they had to change their plans to be present tonight. He suggested that Mr. Benstead send a representative if he cannot attend.

Commissioner Bailey said he would like to know what the opposition is to determine whether a representative could be appointed.

Planning Director Pendoley recalled that Commissioner Bailey had recused himself from the project review.

Commissioner Bailey said he had since spoken with the Town Attorney regarding his eligibility to participate in the project hearing, and it had been determined that he would be able to participate in future hearings for the project.

Commissioner Esteb said he would not be in town August 11, but that he had recused himself from the item's discussion.

It was noted that Commissioners Pagnillo, Schwartz and Chair Mace would attend the August 11 hearing for quorum.

Chairman Mace asked Mr. Benstead to send a written response or a representative.

**MOTION:** Moved by Commissioner Pagnillo, seconded by Commissioner Esteb and approved unanimously to continue the item to August 11, 2009.

## **5. NEW HEARINGS**

None

## **6. ROUTINE AND OTHER MATTERS**

### **A. WORKSHOP DISCUSSION OF DRAFT LOT LINE ADJUSTMENT ORDINANCE (Planner: Larisa Roznowski)**

Ms. Roznowski conducted the discussion of draft Lot Line Adjustment Ordinance. She explained that the Planning Department has historically used findings under 17.21.070 to approve LLA applications under Section 1a of the draft ordinance. She said that staff had originally recommended striking out a portion of the existing title under Section 17.21.070, but upon recent advice of the Town Attorney, staff learned that the section is entirely problematic and out of date. The Section 1 Amendment strikeout will be dropped altogether from this draft ordinance, and staff will have to do major revision or rewriting of this chapter. She recommended the Commission skip this section, and discuss the new LLA chapter outlined in Section 2 of the draft ordinance.

She explained that Section 17.68.010 defines the purpose of the chapter, which is to outline a procedure for processing LLA applications consistent with current state law. Section 17.68.020 defines a LLA as a legal change of boundary between two or four existing adjoining parcels and where a greater number of parcels than originally existed are not created. This includes a last minute update per the Town Attorney's advice to change "adjacent" to "adjoining".

Commissioner Schwartz noted a LLA application is different than a subdivision application, which was confirmed by Planning Director Pendoley, who added that lot line adjustments do not create additional lots.

Commissioner Bailey asked about the difference between "adjacent" and "adjoining".

Associate Planner Roznowski said that the amendment was made to the state code in 2006, and that it was not clear why. She suggested "adjacent" could refer to either a common boundary or nearby property, and that "adjacent" doesn't imply touching where "adjoining" does.

She said staff was soliciting the Commission's opinion regarding Section .040 and whether the Planning Commission should process the applications or whether they should be processed by the Zoning Administrator, which is the staff recommendation, unless the application involves "a significant policy issue or that there is substantial public controversy". She said this language works well for noncontroversial projects.

Commissioner Bailey cautioned against the use of the wording "*significant issue or significant public controversy*". He said lot line adjustment applications should be determined by the Zoning Administrator unless the Town receives written objection, or the Zoning Administrator makes a determination that the project should be sent to the Planning Commission.

Commissioner Schwartz questioned whether written objection ought to be a sufficient trigger, and said written objection should first be warranted or substantiated.

Planning Director Pendoley agreed written objection could grant arbitrary discretion. He added that in many jurisdictions lot line adjustment applications are processed over the counter with no public notice. Corte Madera residents are accustomed to public review and public notification.

Commissioner Esteb asked about the cost for review by the Zoning Administrator verses review at the Planning Commission level. He asked if commission review is significantly more costly, which was confirmed.

Planning Director Pendoley said Zoning Administrator review requires less staff time.

Chairman Mace said he is leaning toward having lot line adjustment applications determined at Zoning Administrator level unless there is written objection.

Commissioner Bailey asked about the screening mechanism to bring to the application to the Commission level, adding that the appeal process provides remedy.

Planning Director Pendoley said there would be public notice mailed to all property owners within 300 feet, and that the notice includes information about appeal rights. He said the first level of appeal would be at Planning Commission. The appeal process involves filing a one page appeal form, with payment of a \$300 fee. Appeals must be filed within 10 days.

Commissioner Bailey asked when the 10-day period would begin.

Planning Director Pendoley said of the appeal period begins on the day the decision is made.

Commissioner Pagnillo asked how many of the 2 or 3 lot line adjustment applications the Town processes each year have objection.

Commissioner Bailey said where there is an absence of any follow up with the Zoning Administrator review process, and there would be no public knowledge that a decision had been made.

Senior Planner Bell said as an example that as a result of the lot line adjustment application for 127 Grove Avenue, the Town received an unsubstantiated objection via email at 4 pm the day of the hearing, within the comment period.

Chairman Mace said the responsibility should be on the one with the objection to make their point.

Commissioner Esteb said the review should be at the discretion of the Zoning Administrator, who could determine if there is something to substantiate a complaint.

Senior Planner Bell said that had staff had more time, they would have called the objector of 127 Grove Avenue to determine the nature of the issue. He said that the conservative approach would be bringing the application to the Commission.

Planning Director Pendoley added that whoever objects has a due process right to an appeal.

A man from the audience asked whether those who don't have \$300 for appeal could file.

Chairman Mace responded that an objection could best be addressed in the process prior to the appeal level, and that a resident with a valid objection would have brought it to the Zoning Administrator, who would have brought it to the Commission.

Commissioner Schwartz said it could be problematic when appeal fees are not an adequate qualitative factor in the decision to appeal, noting as an example that neighbors could join together and pay a fraction of the appeal fee as group, amounting to inexpensive, and perhaps repetitive appeals, resulting in harassment to the applicant. He said the fee is designed to ferret out those who are harassing versus those who have a valid issue.

Planning Director Pendoley said setting appeal rates is always controversial. The fee never represents what it really costs. The Council does not want to deny anyone their due process rights, nor do they don't want the decision to appeal to be whimsical. He said the Town's appeal fee is comparable to that charged in the rest of County.

Commissioner Schwartz said the Town could consider a mechanism to reduce the fee for residents with a valid issue and a verifiable lack of funds.

Planning Director Pendoley said appeals average less than one per year, and that he is not aware of any one approaching the Council because appeal fees are too high.

Senior Planner Bell added that the Commission itself could request Commission review of a lot line adjustment application if they become aware of a conflict.

Commissioner Bailey pointed out that the Town may not always have the responsible planners they do now, and in setting this policy the Commission should consider that conscientious review by a Zoning Administrator may not always be the case.

Commissioner Pagnillo said the same could happen at Commission level.

Commissioner Schwartz said staff could routinely inform the Commission of applications approved at the staff level.

Senior Planner Bell said the Directors Report section could be an area on the Commission's agenda to list recent ministerial projects.

Planning Director Pendoley added that staff should be sending Commissioners all decisions on applications where notices were sent out.

Commissioner Esteb said he would also like notices on building permit applications.

Planning Director Pendoley said the Building Inspector has funds in the budget to put all building permits online.

Associate Planner Roznowski asked if the Commission notices should include tree permit applications.

Commissioner Bailey asked about the cost of notification, as that would influence his decision.

Planning Director Pendoley said the cost amounts to postage.

Associate Planner Roznowski added putting it on the website would cost more in terms of staff time.

Planning Director Pendoley said staff would provide options for the Commission's consideration.

Associate Planner Roznowski said the next area of review is the specific findings in Section 17.68,060, which are taken from State Law. Finding 1 says the application must comply with the general plan and specific plan. Finding 2 says the application must comply with the zoning and building ordinances, including but not limited to minimum lot size, required lot coverage, lot width at the front yard setback, building setbacks, building lot coverage, and floor area ratio. The Town Attorney has recommended deletion of the last sentence regarding variances when findings cannot be made. If findings can't be made, the project must be denied, or, if conformance is possible, the project can be approved with appropriate conditions.

In the case of general or specific plan inconsistency, the Commission cannot grant a variance. Rather, the applicant would have to apply for a plan amendment to get the lot line adjustment application approved with affirmative findings.

If an application requires a variance for a zoning ordinance requirement, a Condition of Approval would be included that the application is pending approval subject to approval of the variance.

Planning Director Pendoley said that adding layers of variances and plan amendments would trigger a public hearing.

Associate Planner Roznowski concluded that that section .090 states the LLA adjustment is completed with the recordation of a deed or record of survey at the Marin County Recorder's office.

Commissioner Schwartz asked about the possibility that the adjustment gets stalled at the Marin County Recorders Office.

Planning Director Pendoley said the adjustment is not legal until it's been recorded.

Associate Planner Roznowski said that per Section .100, the adjustment must be recorded within 1 year, and that the legal description would need to be recorded at end of the process. She concluded that the remainder of the draft ordinance consists of straightforward language copied from that already in effect in other sections of the Zoning Ordinance.

Commissioner Schwartz asked about enforcement where an approved lot line adjustment application is completed, and it is later found that there is a violation of a lot line adjustment Condition of Approval.

Senior Planner Bell said a Condition of Approval must be satisfied prior to recording.

Planning Director Pendoley said a violation occurring after the fact is a new violation. He added that Section 17.68.110 addresses revocation of a lot line adjustment approval granted if conditions are not complied with. He added that the section should reference the appeal procedure in the Zoning Ordinance.

## **B. REPORTS AND ANNOUNCEMENTS**

### **i. Commissioners**

Commissioner Bailey said that the Town Council meeting had been cancelled.

### **ii. Director**

At their last meeting the Town Council authorized the Planning Commission to appoint a member to represent the Commission on the Citizens Advisory Committee for the Housing Element. The Commission will soon be reviewing an application from the Police Authority regarding its relocation to the gravel parking lot.

### **iii. Election of Chair and Vice Chair**

A nomination of Chairman Bruce Mace for Chair was moved by Commissioner Esteb, seconded by Commissioner Schwartz and approved unanimously. A nomination of Commissioner Schwartz for Vice Chair was moved by Commissioner Esteb, seconded by Commissioner Pagnillo and approved unanimously.

## **C. MINUTES:** Planning Commission Meeting Minutes of July 14, 2009 were motioned, seconded and approved.

Mr. Benstead asked if it would be appropriate to address the Commission, and asked that the Commission come and view the site from his property. He said he had submitted to the Town a significant amount of material, and that he had no knowledge whether it had been addressed.

Chairman Mace said the Commission was conscientious about their due diligence to view project sites and review the project materials, which would be presented to the Commission as part of the packet. Chairman Mace promised due diligence, and asked

that any materials portraying Mr. Benstead's position be submitted for inclusion in the packet. He said each Commissioner would independently determine whether they would visit the Benstead household to view the project.

Commissioner Schwartz explained that the Commission is a quasi-judicial body, and must respond to the project as presented by the applicant. He said it is easier for them to weigh issues if all comments are presented as part of the hearing package.

**7. ADJOURNMENT:** The meeting was adjourned at 8:30 p.m. The next Planning Commission Regular Meeting is to be August 11, 2009.