

**FINAL MINUTES
REGULAR PLANNING COMMISSION MEETING
FEBRUARY 10, 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:

Bob 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

All the Commissioners were present.

2. PUBLIC COMMENT: None

3. CONSENT CALENDAR: None

4. CONTINUED HEARINGS:

- A. ZONING ORDINANCE AMENDMENT REQUEST-** To amend the Zoning Ordinance to allow additional Lot Coverage for uncovered decks on properties located within the R-1 District and the Special Flood Hazard Area (Flood Zone) and where the house has been raised above the base flood elevation. (Planner: Dan Bell)

Senior Planner Bell presented the staff report for which he used a slide presentation. He explained that on January 13, 2009, the Planning Commission initially heard the request

for amending the Zoning Ordinance to allow additional Lot Coverage for the construction of certain uncovered decks on single family parcels located within the Flood Zone and where the house has been raised above the base flood elevation. He said that the Planning Commission acknowledged the rationale for allowing the additional Lot Coverage, but recommended that review and approval of additional lot coverage for uncovered decks should require the approval of a Design Review Permit. The Commissioners were concerned that adjacent properties would be negatively affected by permitting additional Lot Coverage without appropriate review. The Commissioners asked planning staff to prepare a Zoning Ordinance Amendment that incorporates standards for the additional Lot Coverage and procedures for filing a Design Review Permit.

He reviewed the range of currently allowable Lot Coverage percentages for single-family parcels based on the net lot area. The proposed Zoning Ordinance Amendment would allow an additional 2% of Lot Coverage above the current range for uncovered decks constructed at the same height as the first floor of a home raised above the base flood elevation that is located in the Flood Zone with approval of Design Review. If one were to request more than an additional 2% of Lot Coverage for construction of such an uncovered deck, a Variance Permit in accordance with Section 18.28 would be required.

He said that under the current Ordinance, any deck more than 3 feet above grade would require Design Review. The amendment affects only those properties located within the R-1 district and requires that a Design Review Permit be approved. The height of the uncovered deck would be the same height as the first floor. The Design Review process would ensure that the raised deck would not negatively impact any neighbor's privacy with the additional 2% allowed for an uncovered deck. Rear and side yard fences can be raised to 8' in height by mutual agreement between neighbors.

Commissioner Pagnillo asked if such a proposal would need to come before the Commission. Senior Planner Bell said such a proposal would undergo Minor Design Review by the Zoning Administrator, and could be appealed to the Commission.

Commissioner Bailey said it is a philosophical issue whether the amendment would be correcting an otherwise slightly onerous requirement or granting additional rights. He said that because privacy impacts can be mitigated by mutual agreement in regard to the fence height, he sees no problem with the amendment.

Commissioner Schwartz asked what the trigger was for the Design Review requirement. Senior Planner Bell said if an owner wants to take advantage of the extra 2% lot coverage allowance.

Chair Mace said his comment at the previous hearing had been that, as the deck moves toward the property line, its' increased height might cause privacy issues as residents could now be on a 4' deck 5' from the fence looking into neighbors yard. He acknowledged that such a project would be noticed to all residents within 300 feet and reviewed by the Zoning Administrator and could be appealed.

Commissioner Esteb reiterated the comments regarding the special condition created by the necessity of a ramp, which, though it would create more coverage, would also warrant the required findings for a Variance due to the handicap.

Commissioners Esteb and Pagnillo each said they were fine with the Ordinance Amendment.

MOTION: Motioned by Commissioner Bailey, seconded by Commissioner Esteb and passed unanimously to amend the Zoning Ordinance to allow additional Lot Coverage for uncovered decks on properties located within the R-1 District and the Special Flood Hazard Area (Flood Zone) and where the house has been raised above the base flood elevation.

5. NEW HEARINGS

- A. 201 CORTE MADERA TOWN CENTER, DESIGN REVIEW APPLICATION NO. 08-040, 770 TAMALPAIS DRIVE INC. CORTE MADERA TOWN CENTER (PROPERTY OWNERS), THE COUNTER RESTAURANT (BUSINESS OWNER)-** To allow interior and exterior remodel including new entry, signage, outdoor dining and landscaping (Zoning: C-2 Regional Shopping District) (Planner: Dan Bell).

Senior Planner Bell presented the staff report for which he used a slide presentation. He explained that the applicants are requesting Design Review approval to allow an interior and exterior remodel. The building and site work are subject to discretionary Design Review approval by the Town. The proposed use does not trigger a Conditional Use Permit, since it is replacing a similar size restaurant.

The design of all storefronts, facades, signage, and landscaping at the center is regulated by Corte Madera Town Center Design Guidelines, which provide parameters

for acceptable design, but do not impose a strict prescriptive architectural style. They allow design flexibility, but prohibit storefronts that lack visual interest. They state that the storefront façade treatment, including color, material and patterns should strongly consider the design of the neighboring stores.

The massing of the new storefront will not change since the stucco siding feature and clay tile roof would remain. The color palette includes the earth tone colors “Brown Eyes” for the building walls and “Trail Dust” for the cornice, canopies, and area below roll-up windows.

Three 8'-wide aluminum clad roll-up windows are proposed on the east elevation. New outdoor dining areas would be delineated with stainless steel posts and top rails, as well as cable railing on either side of the main door entry. New flush landscaping will be located to the outside of the new perimeter railing to soften the affect.

The Design Guidelines for the shopping center regulate signage. The proposed Counter Restaurant signs total 41 sq. ft. with a combination of individual letter signs, icon signs, and a double-sided blade sign. The lineal width of this corner commercial space is approximately 100 feet, so the sign program is consistent with the Design Guidelines, and is clearly not oversized for this location.

He concluded that staff believes the proposed remodel of this restaurant commercial space and site improvements generally conforms to the Corte Madera Town Center Design Guidelines, though the Commission should review the appropriateness of various exterior features and materials.

Commissioner Schwartz asked whether there is any reference to enclosures or fencing in the Corte Madera Town Center Design Guidelines. Senior Planner Bell said the document is not that prescriptive.

Chairman Mace asked for a presentation from the applicant.

Sudhish Mohindroo of SZFM Design Studio said they assist in interpreting the guidelines for this proposal. The design should fit in with neighbors and be true to their corporate design. The current McDonald's entrance is turned back to interior. The new main entrance will be where people expect it to be, and will energize the entry as the area is becoming more active. The current awning shape is oversized, which dwarfs the storefront. Expanding the storefront with a taller expression will be nicer. The railing will be more fine-tuned as there will be landscaping around it, and because the furniture is more contemporary and stylish with a metallic look to blend.

Jared Taylor of Fancher Development Services said he had reviewed the proposed conditions and was ready to accept them, and that he was available to answer any questions.

Peter Katz introduced himself as one of the owners.

Brian of Brian's Food, the neighbor across the way said he is happy with the proposal.

Commissioner Bailey asked if the outdoor dining area has a planter box.

Commissioner Esteb asked for clarification regarding whether the screens were permanently down when the windows are rolled up.

Jared Taylor said the screens are rolled down only if the windows are rolled up.

Commissioner Pagnillo asked if the fence is a necessity.

Jared Taylor said the fence is required for any restaurant selling alcoholic beverages for consumption.

Commissioner Schwartz pointed out that this is a gathering area where families get things from different vendors and that the fence seems prohibitive, but that he understands its necessity.

Jared Taylor said for health reasons the restaurant cannot allow food from other vendors accept on the patio.

Commissioner Schwartz said the roll-up windows are very nice, as is the screening. He said the lighting in the interior is outdated. Jared Taylor said the interior would be reworked.

Commissioner Bailey complimented Senior Planner Bell and The Town Center on the project's review and said the project seems first class.

Chairman Mace said the roll-up windows and screening would be nice. He appreciated being able to bring foods from other vendors. He said the signage is reasonable in context, as is the coloring in relation to the building. He said he is in favor of the project.

MOTION: Motioned by Commissioner Esteb, seconded by Commissioner Bailey and passed unanimously to approve Design Review Application No. 08-040 to allow interior and exterior remodel including new entry, signage, outdoor dining and landscaping at 210 Corte Madera Town Center.

Planning Director Pendoley read the appeal rights.

6. ROUTINE AND OTHER MATTERS

A. DISCUSSION OF FAR (FLOOR AREA RATIO) CLEAN UP AMENDMENTS (Planner: Dan Bell)

Senior Planner Bell presented the staff report for which he used a slide presentation. The Zoning Ordinance defines FAR as Gross Floor Area (GFA) of all structures on a site divided by the Net Area of Land (NAL). The approved FAR development standards allow a range of FAR values based on lot size.

He said there have been some difficulties in calculating the FAR for residences that are partially excavated. Staff is recommending a minor revision to the method of calculating GFA for residences that are partially excavated. Staff is also recommending a minor revision to the definition of NAL for lots affected by water bodies and waterways.

The purpose of the GFA concept is to regulate the visible outward mass and bulk of a building. If floor area was the result of a hillside excavation and not overly visible and is less than 7.5 feet, it should not be counted toward GFA and likewise FAR. Similarly, if a floor area ceiling has a height of less than 5 feet, it should not be counted toward GFA because the outward mass and bulk of the building is limited. The intent of these regulations was to count floor area and bulk and mass that you see.

He explained that the way it is currently written, the regulations can be manipulated by lowering a drop ceiling, and the intent of the Ordinance would be lost. He said staff feels that a less ambiguous definition is necessary to regulate GFA that is visible above grade. One solution is to replace the old language with the plate height scenario as proposed for Section 18.08.320 (g)(3)(A)(iv): Where the top plate height elevation is greater than 5 feet above grade measured at the nearest exterior side wall, that horizontal floor area, finished or unfinished, immediately beneath the top plate shall be counted as GFA.

The other revision has to do with NAL for calculating the allowable FAR in the R-1 and R-1-A zoning districts. The current Zoning Ordinance definition subtracts water areas

described in items (A), (B), (C), and (D) of the Ordinance section from the Gross Area of Land to determine NAL. He said there is an easier way to calculate NAL for lots affected by water areas, which employs the standard North American Vertical Datum (NAVD) already used by surveyors in the field. The current ordinance uses mean high tide, which fluctuates and is not as readily surveyed. Staff suggests using a fixed elevation datum of 6.2 feet NAVD, which is similar to mean high tide, therefore the resulting NAL and FAR would not change appreciably. He said staff recommends that the Commission discuss and provide input to the proposed revised text, and if appropriate, direct staff to schedule this matter for a public hearing.

Planning Director Pendoley explained the history of the section of the FAR ordinance on plate height and the heart of the discussion regarding which magic number would determine what would be counted as GFA. He said homes in the Flood Zone are typically lifted 4' to get above the base flood elevation, so the magic number was set at 5'. There was also a debate about how to handle FAR in homes built into the hillside. He said that the existing language can be confusing and has come up in two separate applications.

Commissioner Schwartz said the 5' top plate concept could lend itself to a designer placing a mansard roof on a 4'11" plate height, the language thus creating a loophole for bad architecture.

Planning Director Pendoley said the attic rule would be applied. Senior Planner Bell said that on page 2 of the staff report is the existing language for FAR, which specifies that an attic height greater than 7.5 feet is counted as floor area. Senior Planner Bell suggested we add the qualifying language to the 5' top plate language "or ceiling which ever is higher".

Commissioner Schwartz asked whether the attic ceiling could include a dormer, which Senior Planner Bell affirmed.

Commissioner Esteb suggested the language "or ceiling framing, whichever is higher".

Commissioner Schwartz asked about the use of mean high tide, and whether staff had conducted a related study.

Senior Planner Bell explained that 6.2 NAVD really should have been the standard from the beginning to allow for consistency with preexisting language for the net area of land of new subdivisions.

Chairman Mace said this language is important for vertical consistency among documents.

Planning Director Pendoley said the item would be scheduled for public hearing at next meeting.

Commissioner Pagnillo said he had a varying opinion, and that he had had the nay vote on the issue of establishing a FAR standard when it first came up at a Commission hearing in January of 2007. He said the Commission later approved a house with a FAR greater than the guidelines. He said he is opposed to the concept, and that it takes possible decision making out of the Commission's hands.

Senior Planner Bell said that FARs are not entitlements.

Planning Director Pendoley said the Commission, in coming months, could look at all recent FAR approvals and assess the performance of the Ordinance. In terms of administering, the Ordinance has been great. He said the item would be back in two weeks unless the Town's attorneys needed more time.

B. DISCUSSION OF ZONING ORDINANCE CLEAN UP AMENDMENTS (Planner: Larisa Roznowski)

Associate Planner Roznowski presented the staff report and an amendment summary table. She explained that staff has developed a series of proposed amendments to the Zoning Ordinance that are minor and/or typographic in nature. Some may have some discussion merit, which she would mention individually.

Change 4 in the table addresses two sections measuring height of a structure and height of a building from natural or finished grade. For measuring height, "natural" would be deleted so the height is always measured from finished grade, which is easier once a project completed. An old diagram would also be deleted. She referred to page three of the staff report, and explained that the base plane is an imaginary plane created at the perimeter of the structure at the natural or finished grade, which ever is lower. Staff has found it is more practical to measure height starting from the base plane, which is at the finished grade only at the perimeter of the structure, because the final calculated height should represent the visual outward and mass of a building.

Commissioner Schwartz asked for clarification regarding base plane or finish grade as measured from what distance from structure. Associate Planner Roznowski said it is measured at the structure.

Commissioner Schwartz said builders typically dig down and berm up, and that visual mass and bulk may be mitigated by a berm. Planning Director Pendoley said this is an issue controlled by design review.

Commissioner Schwartz asked about a typographical error in the old graphic in the Code proposed to be eliminated related to fences. Associate Planner Roznowski explained that actual height and how it is measured are not changing.

Change 1 in the table is that NAVD is being replaced with NGVD in response to updated FEMA maps. The Department of Public Works is also updating their maps. The amendment also adds a definition of NAVD and converts references from NGVD to NAVD. Planning Director Pendoley said that hopefully by May of 2009, the entire code would be converted to NAVD.

Change 3 in the table involves adding "buffer" after landscaping for clarity. Commissioner Esteb said he doesn't understand the importance. Associate Planner Roznowski explained that the figure goes with diagram. Adding "buffer" would clarify the diagram, which defines the word "buffer".

Change 7 in the table involves deleting the requirement that a planner perform design review of hot tubs. Currently any hot tub not in a completely enclosed structure requires design review. Most of the hot tubs being proposed now are pre-manufactured so there is not much to review that can be modified. There are also existing requirements about hot tub location in relation to setbacks.

Commissioner Schwartz asked about a linkage to the noise ordinance. Planning Director Pendoley said once or twice noise in relation to hot tubs has come up, but that human voices are basically exempt under Ordinance, and the equipment is subject to noise requirements as manufacturers make them quiet.

Change 8 in the table would include the language "entry gates" with allowed fencing in front yard setback, as now the Ordinance mentions only that fences are allowable. As long as they meet required dimensions, no design review would be required for the entry gate.

Commissioner Schwartz said 8' fences in front yards are not good, but gates are fine. He asked if the dimensions were arbitrary.

Chairman Mace suggested 6'-6" verses 5' in width.

Commissioner Esteb asked about gates with an arbor, and that the language “vertical elements” leaves more room, but that solid elements should be excluded. Planning Director Pendoley said staff would work on this.

Commissioner Mace asked if this had been a problem. Planning Director Pendoley said a lot of arbors go up without complaints, but that every now and then staff gets a call and has to say they are not allowed. He said in this case you have to regulate depth, which is the distinguishing factor.

Regarding Change 9 in the table, Commissioner Bailey asked whether the staff report reference in sections 32 and 33 should include section 19 rather than 18 as listed in the summary table. He said the mathematical formula seems straightforward. He said the staff report references changing parenthesis differently in each instance. Planning Director Pendoley said the important thing is to be consistent.

Commissioner Esteb asked if, for the sake of semantics the formula should read 55%, rather than 55. Associate Planner Roznowski clarified that to really make the equation accurate and clear, the formula should read maximum % lot coverage =. This modification will be included in the amendments for the next meeting.

Change 17 in the table pertains to Lot Coverage and uncovered parking. Now uncovered parking is included in Lot Coverage. The amendment is proposing to eliminate this requirement from the lot coverage calculation, while the requirements for covered parking would not change.

Commissioner Esteb said he is in favor.

Chairman Mace brought up the example of Manzanita Avenue, where there is a row of covered parking spaces. Planning Director Pendoley said the change would give them an advantage, but that it is a mute point because of FAR.

Commissioner Schwartz asked how the Ordinance would work for those who park in their yard. Senior Planner Bell said one must park on an approved apron, and cannot park on the lawn.

Chairman Mace said he is fine with change.

Associate Planner Roznowski said another part of that change is altering part of definition for Lot Coverage to read Net Area of Land rather than total area of the site. The Commission is in agreement.

Change 18 in the table involves the expiration of a Use Permit, Variance, and Design Review Permit that is active per the building code. The revision states that the permit expires 12 months after approval unless a building permit has been issued and is active per the Building Code.

Commissioner Esteb cautioned against using Use Permit, Variance and Design Review expiration for items are not included in the Building Code. Planning Director Pendoley said Variance and Design Review permits are implemented by a Building Permit, but agreed that for a Use Permit we would enforce with something else, for example business license.

Senior Planner Bell said situations have arisen where we have an approved Design Review and the applicant has 12 months to obtain a Building Permit and start work. Then an applicant obtains another 12 month extension for the Design Review if needed. Then, for example, the Building Permit is issued, and 3-5 years pass and the Building Permit is stale which begs the question is the Design Review stale given the current Design Review expiration language which is ambiguous. With this new language, as long as the Building Permit is kept active per the Building Code requirements, the Design Review does not go stale. If the Building Permit has expired, then the Design Review is expired.

Commissioner Esteb asked whether in that scenario where the applicant has done the framing but the Building Permit has expired and therefore the Design Review is expired, would it be required to tear down that work.

Planning Director Pendoley said that if the project is abandoned, the Town could argue that the applicant must restore the site, and that it would require attorney work.

Commissioner Esteb asked about derelict properties being incorporated into Ordinance. Planning Director Pendoley said there are a few in Town, and addressing them would involve a Property Maintenance Ordinance. It is controversial, and few cities have done it with limited success. However, an implementation program has been included in the Town's Draft General Plan to devise a Property Maintenance Ordinance.

Planning Director Pendoley said this draft ordinance would require more attorney work, and that he would schedule this for the same night as the FAR if possible. However, it is unlikely that the two will be ready to go on the same hearing because there is a lot more attorney work to do on this ordinance than the FAR ordinance.

C. REPORTS AND ANNOUNCEMENTS

- i. **Commissioners:** Commissioner Bailey said that he attended the Town Council meeting.
- ii. **Director:** Planning Director Pendoley said Stan Hoffman completed changes to the exhaust fan on PF Chang's, concluding that there is no good color.

The Town Council will hold the first public hearing on the General Plan Draft Final EIR on February 17, 2009.

D. MINUTES: Planning Commission Meeting Minutes of January 27, 2009.
Motioned, seconded and approved.

7. **ADJOURNMENT:** The meeting was adjourned at 9:15 p.m. in honor of Chairman Mace's grandfather, a longtime Planning Commissioner in his hometown. The next Planning Commission Regular Meeting is February 24, 2009 at 7:30 p.m. in the Corte Madera Council Chambers, 300 Tamalpais Drive.