

PLANNING COMMISSION SUBCOMMITTEE REPORT PRESENTED AT
SEPTEMBER 21, 2006 PLANNING COMMISSION MEETING

Committee Members: Dan Miller, Gray Sprader, Craig Riddell, Staff Jon Biggs & Sally Rideout

After several meetings and review of substantial material presented to us by Jon Biggs the committee has come to the following conclusions and recommendations.

1.

The committee received well over 100 pages of memorandums, legal opinions and notes on policies, understandings and interpretations of policies. We also interviewed staff and Councilperson Susan Goldbeck. After review of this material the committee came to the following conclusions:

- A) The material reviewed often becomes staff's reasoning for policy related to the implementation of ordinances and is necessary to consistent application of our City's ordinances.
- B) It would be difficult to codify all such materials and the resulting documentation would be cumbersome and staff intensive.
- C) Implementation and interpretation of ordinances despite such written material is often dependant on institutional memory and the opinion of lead planners and the department head. Much of this does not appear in the materials we reviewed and is undocumented.

The Committee came to realize the scope of the project before them and realized that progress would only result by prioritizing the issues before them. Looking back as to why this task was delegated to the Planning Commission it was determined that issues relating to the Forest Hill Manor (FHM) project was the nexus for many of the issues before us. Therefore, we began with FHM related issues as our first step. (report attached)

Recommendations for the future of this committee:

Committee should considered the materials and testimony already before them as well as such items that are referred to them by the Planning Commission or other bodies. The Committee should prioritize which issues require immediate attention and are suitable for codifying and on an regular basis make their recommendations to the Planning Commission.

Candidates for being codified are opinions or interpretations that substantial impact the implementation of an ordinances and that can concisely defined in an ordinance. Opinions that effect a large number of applications, or impact the health, safety or well being of a neighborhood would also be a priority.

Also the committee would bring to the Planning Commission opinions or interpretations that they feel are inconsistent with the intent of an ordinance or contrary to the well being of the City.

Possible future issues:

1. What constitutes lot coverage. A review of pavers vs coverage.
2. Two substandard lots that come under the same ownership become one lot.
3. Standardizing appeal periods for all permits
4. Appeal and call up of structures on our historic resources list.

Forest Hill Manor Ordinance Related Issues:

Background: In the case of Forest Hill Manor (FHM) they had acquired a permit for expansion that had been reviewed and approved by a number of city boards and commissions. It was then called up by the City Council for review and they approved the proposed project subject to certain conditions and findings (Dates ?). During the next decade, portions of the project were implemented but the bulk of the project was not completed.

A decade later FHM came back to the city requesting significant changes to the approved project, including significant changes to the structure itself, changes to the use permit and variance permit, changes to the site coverage and adding additional structures to the project. Staff determined that the project changes would require ARB review but that the amended discretionary permits would be heard by the City Council not the Planning Commission as they were the last body to review the application.

Noticing for the project was mailed to those within 300 ft of the project and the item was heard by the City Council, the council approved the project changes with little public input. ARB heard the project and a growing number of citizens became concerned about aspects of the project. However, since the City Council had already heard the project there was no way for the project to be appealed or called up by the Planning Commission.

The Planning Commission called up the ARB approval of the project, however the Council also called up the project thus trumping the Planning Commission which lost jurisdiction and was therefore unable to review the ARB approval.

At the request of the applicant a special meeting was held with the Planning Commission to review possible acceptable alternatives to the project. An alternative was agreed upon by the majority of those in attendance including the representatives of the applicant and residents. However, when the alternative was presented to the City Council the applicant agreed that the alternative was acceptable but in response to council questions expressed a preference for the original project. Based on that testimony the council made no significant changes to the approved project.

Residents were concerned about the limited review of the project, the scope of the changes and the limited noticing to neighbors of what was a substantial neighborhood changing project.

Note:

Nothing in this report should be construed as a review or deliberation of the current valid permits related to the Forest Hill Manor or any other proposed project.

Questions Related to Forest Hill Manor Permit:

1)

Why were FHM's discretionary permits considered still valid even though the project had not been completed in over a decade?

Staff felt that the applicant continued to retain a valid permit in that the applicant had applied for and received a construction (building) permit. It has been the policy of staff that if a valid building permit is secured within 12 months subsequent to receiving discretionary permits then the applicants rights to the project are secured.

2)

Why was FHM's construction (building) permit considered still valid even though the project had not been completed in over a decade?

Staff felt that the applicant retained a valid building permit even though the bulk of the work was not completed in the span of ten years because ongoing work was done on the project and inspections had taken place. How much work was completed and whether inspections were made every six months as required is not known.

3)

Why was FHM's changes to their discretionary permit heard by the City Council instead of the Planning Commission?

Staff relied upon a in-house policy that sent projects requiring changes, even substantial changes back to the last body that had heard them.

4)

Why was the project noticed to neighbors in a radius of only 300 ft. from the project?

There is no requirement within our ordinances to notice large projects even very large projects to any greater distance than 300 ft.

Issues for review and recommendations by the Committee:

1.

Which board or body should review a permit for an ongoing project or proposal that has previously acquired permit approval but now is proposing changes to the application.

Recommendations:

A.

Minor changes within 12 months of approval should go back to the last body that reviewed it. Minor changes shall be changes that do not increase the nonconformity of the project with current zoning law by more than 1% and /or are unlikely to substantially impact the health, safety and well being of the neighborhood.

B.

After 12 months or if an application requires significant changes to it's use permit or variance permit

review would begin at either the Planning Commission or ARB whichever is appropriate. The project review would be based on the ordinances in place at the time of such review.

2.

How long shall a discretionary permit (variance / use permit/ARB approval) be considered valid. and under what circumstances shall a discretionary permit be considered, no longer valid.

Recommendations:

A.

A discretionary permit shall be considered valid as long as a building permit has been applied for by the applicant within 12 months of receiving their discretionary permits and such building permit has not been allowed to lapse for a period of more than 6 months.

B.

A discretionary permit shall be deemed valid for a period of five years assuming the applicant has properly secured a building permit and kept it valid (see 2A). After five years the applicant may apply for an extension of their permit from the appropriate body (last body), which may or may not grant such extension. The reviewing body may require changes to the conditions of the permit at their discretion

The criteria for extension of said permits is whether the applicant has been making good faith efforts to complete the project and / or whether they have made substantial progress on the project and / or whether or not the reviewing body feels the project will be completed in reasonable period of time and / or whether or not current ordinances currently would allow for such a project.

The application may be extended for either one or two years. No additional extensions can be applied for. Failing to receive an extension would require the applicant to resubmit an application and begin the review process again.

C.

Applicants that feel their project might likely need a longer period than five years for the completion of their project could make such a request at time of application.

Under what circumstances shall an applicant's valid permit that is requesting modification /changes be required to be reviewed by applicable boards and committees.

Recommendations:

A. After 12 months have elapsed since a building permit has been issued (See 1B).

B. If significant changes to the project are made (See 1A)

C. In the event that a valid building permit has been allowed to lapse.

5. Under what circumstances shall a building permit be considered lapsed.

Recommendations:

A.

A building permit shall be considered valid as long work is taking place and inspections of the project are conducted at least every six months and that all work is completed on the project within the five year window allotted the discretionary permit (see 3A) and/or a valid extension has been applied for and approved.

B.

A building permit that has lapsed due to lack of progress and/or inspections and not reapplied for within six months of lapsing shall be considered no longer valid and discretionary permits associated with said building permit shall also lapse.



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: Councilmember Susan M. Goldbeck

MEETING DATE:

COUNCIL TO DIRECT PLANNING COMMISSION TO
CONSIDER AND MAKE RECOMMENDATIONS
REGARDING REVISIONS TO THE CITY'S ZONING CODE
TO ELIMINATE UNNECESSARY UNWRITTEN POLICIES
REGARDING THE APPEALS PROCESS, AMENDMENTS TO
PERMITS, AND THE EXPIRATION OF PERMITS

SUBJECT:

RECOMMENDATION:

Council to direct the Planning Commission to initiate hearings and make recommendations on ordinance revisions to Title 23 of the Pacific Grove Municipal code related to the appeals process, amendments to permits and the expiration of permits. Specifically, the Planning Commission is directed to:

1. Make recommendations for revision of ordinances that define a process for minor revisions to permits with the goal of eliminating unwritten rules on amendments to permits.
2. Review and make recommendations for revision of ordinances to improve, simplify and standardize the rules related to the expiration of permits.
3. Review and make recommendations for revision of ordinances to improve, simplify and standardize the periods of appeal for all permits.
4. Review and make recommendations for revision of ordinances to improve, simplify and standardize the appeal process for all permits.
5. The Planning Commission's review and recommendations need be in the context that policies, written or unwritten, as opposed to ordinances changes, related to appeals, the expiration of permits or the permit application process that alter, revise, or in any way, modify specific rules expressed in City ordinances violate Article 15(f) of the City Charter.

DISCUSSION:

The most frequently heard complaints from our citizens are concerning our land use policies and regulations. This has been described in house by a high level planner as "planning P.G. style." It is clear that many of these complaints have validity and that changes need to be made to assure clarity consistency and fairness in our planning process.

On numerous occasions in the past few years both this Council and others have wrestled with the issue of the propriety of the Community Development Department's unwritten policies particularly regarding appeals and the expiration and amendment to permits.

This has resulted in a tremendous amount of confusion and rancor in the community and in one case, the Forest Hill Manor project, expensive litigation against the City.

On our last agenda we revisited the issue of whether the CDD policy of returning all aspects of a project to the City Council after it has called it up for one reason or another came before us in connection with the City's senior housing project.

This policy is effectively precludes any right of appeal other than costly litigation in the superior court and often results in one hearing on an issue rather than several. This short-cut of public process is particularly important with regard to large projects that not only affect the project's immediate neighbors but have a significant impact on the entire town.

Forest Hill Manor you may recall was one of the largest projects in recent memory and unquestionably will result in a massive change in the area which is on one of our most important streets (Forest Ave). This significant project was brought directly to the City Council after years of lying dormant and was approved in a matter of minutes in one hearing before the City Council.

Tightening up our code on this and the other issues raised here will provide both clarity and consistency in the administration of our land use regulations.

The problems we have seen over the past few years and in particular those that led to the Forest Hill Manor debacle were a direct result of unwritten policies created informally, out of the public process by our planning staff with respect to issues such as when a building permit exists or expires, the process for amending a building permit and what the appeal process should be.

Our existing ordinances make it clear that zoning applications cannot originate with the Council and that they must begin at ARB or Planning Commission. The procedure which is followed now allows an applicant to go directly to the Council for an amendment of their existing permit and is a violation of this provision for this reason.

CDD has also allowed permits to continue which should have expired based upon some unwritten criteria and which appears to fly in the face of existing ordinances under any reasonable interpretation of those sections.

Our ordinances should provide clearly that applicants should have a real, vested interest in a building permit before it is deemed active. Right now all that is required is that an application

for a building permit be on file. If a building permit is issued but allowed to expire, the zoning permit should expire with it.

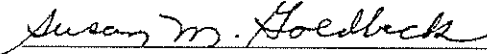
If we refer this matter to the Planning Commission for study and recommendations, the planning staff at CDD who works hand in hand with all of our land use bodies including the Planning Commission can weigh in and give the benefit of their experience on these issues.

This effort by this council will be a start on the long needed overhaul of our land use practices, procedures and regulations with the view towards making them more user-friendly and fair to all members of our community.

FISCAL IMPACT:

ATTACHMENTS:

RESPECTFULLY SUBMITTED:


Susan M. Goldbeck
COUNCILMEMBER