

REGULAR MEETING of the ROSS TOWN COUNCIL

THURSDAY, JANUARY 12, 2023

Held In-Person and Teleconference via Zoom

1. 5:15 p.m. Commencement.

Mayor Beach Kuhl; Mayor Pro Tem Elizabeth Brekhus; Council Member Bill Kircher, Jr.; Council Member Julie McMillan; Council Member Elizabeth Robbins; Town Attorney Benjamin Stock.

2. Posting of agenda.

Town Manager Johnson reported that the agenda was posted according to government requirements.

3. Open time for matters pertaining to the Closed Session Item in Agenda Item 4.

There were no speakers.

4. Closed Session.

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: (1 Ross Common, Ross CA 94957)

Town negotiator: (Town Manager)

Negotiating parties: (United States Postal Service)

Under negotiation: (Instruction to negotiator on both price and terms of lease payments)

6:17 p.m. Open Session. Council will return to open session and announce actions taken, if any.

Mayor Kuhl announced there was no reportable action taken in Closed Session.

5. Employee appreciation and recognition of Town employee: Recreation Specialist - Jeneane Wagner (5 years).

Gretchen Castets, Recreation Manager, introduced Jeneane Wagner who has been with the Town for over 5 years as a Recreation Specialist. She spoke about her background, education, said she has grown up in Ross, is passionate about enriching the Ross community, and thanked her for all she does for the Town.

Mayor Kuhl, on behalf of the Council, presented Ms. Wagner with a Certificate of Appreciation and a small gift, and a round of applause followed.

6. Introduction and welcome to new employee new employee Maureen Borthwick, Recreation Manager. (Johnson)

Town Manager Johnson introduced Maureen Borthwick, the Town's new Recreation Manager. She spoke about her experience, background, education, said she and her family recently moved from San Anselmo to Petaluma, and she welcomed Ms. Borthwick to the Town.

Maureen Borthwick thanked the Town Manager and Town Council. She briefly described her experience and said she is excited to work with the Town of Ross staff and the community.

Mayor Kuhl and Council Members welcomed Ms. Borthwick to the Town.

7. Open Time for Public Expression.

None.

8. Mayor's Report

Greetings and Happy New Year. As we persevere through the cold and rainy days of winter, we can look forward to nicer, longer days and more time outdoors. We can also look forward to Town Council activities which will have a significant impact on our town.

Most immediately, the Council will shortly have to consider changes in the way the Ross Valley Fire Department, of which the Town is one of four participant communities, operates. Currently, our chief and administrative services are provided under a contract with the Marin County Fire Department which terminates on June 30, 2023. So RVFD has engaged a consultant expert in fire department administration to advise on possible new arrangements. Those consultants have reported to the board of RVFD, which will shortly reach a decision, subject to the approval of the member entities. Our Council will consider this subject in upcoming Council meetings.

Next, our flood control project, and those of neighboring communities, are being led by the County of Marin. Compliance with federal floodway regulations have apparently slowed progress but we expect shortly to receive a status report and a plan for moving forward.

In the coming months, the Council will receive from our design consultants a proposal for reconstruction of our Civic Center once our Fire house is closed in 2025. We need to design a new facility to house our police department, ambulance and paramedics and administrative services. The process of planning those new facilities will be ongoing over an extended time.

In addition to these major activities, we expect to continue improvements to the Commons and to work on our housing plan.

Finally, by the end of the year municipal election campaigns will be starting up. We expect the Ross Town Council to have at least two openings to be filled in 2024.

It should be a busy year and a productive one for the Council. I urge you to continue to provide your input. Resident participation really does assist the Council in providing our community the best quality results.

9. Council Committee & Liaison Reports.

a. Ross Valley Fire Department – January 11, 2023 Board meeting

Mayor Kuhl reported he and Mayor Pro Tem Brekhus serve as the representatives of the Town on the RVFD Board. Last night, they received a report from consultants on their initial thoughts on how they should re-arrange their governance and administration. He referred to the report which is public and on the [website](#). At some time in the future, a representative of the Fire Department will be presenting on choices, pros, and cons, etc.

Mayor Pro Tem Brekhus added that discussion focused on an independent or dependent Fire District which requires LAFCO approval and there was a discussion about a JPA and a JPA agreement, or continuing as is, or merging with another entity which was proposed as Central Marin Fire.

Council Member McMillan reported attending the Ross Valley Emergency Preparedness Climate Action and Age-Friendly meeting on January 6th at the Fairfax Library. She reiterated the 5 simple steps people need to take to ready themselves for emergencies: 1) Make sure you have signed up for alerts, [Alert Marin](#) and [Nixle](#); 2) Make a plan so if there is an evacuation you have a place to meet your loved ones; 3) Organize supplies and pack a go-bag to keep by your door; 4) Organize supplies to use if you are ordered to shelter in place with the presumption you will be on your own for up to 72 hours; and 5) Connect with your neighbors.

10. Staff & Community Reports.

a. Town Manager

Town Manager Johnson provided the following updates:

- She thanked Ms. Castets for giving the Town an extra month of service before she departs on her next life adventures, and a round of applause followed.
- She reported on significant rain events and in December alone the Town received a total of 17.8 inches of rain. As of Tuesday, the rainfall has totaled 35.4 inches of rain or 155% above normal for the water year.
- Ross has weathered the storms relatively well thanks in part to winter preparedness efforts by residents, Marin County EOC personnel, and Town staff.
- After the annual “Winter is Coming” notification that went out on November 2nd, the Public Works staff took note of residents clearing out roadside ditches and drainage ways throughout the Town.
- Public Works Maintenance staff have continued to clear drains, trees, and debris from drainageways and to restock the sand and sandbags which are stationed at the entrance to Natalie Coffin Greene Park for residents to use. Rains are forecasted to continue well into next week.
- Staff will be monitoring the creek and streets for flooding and downed trees, and will call in for reinforcements as needed to respond.
- The Ross Valley Fire Department and the County of Marin have shown considerable leadership during these series of storms.
- Tomorrow, the road into Natalie Coffin Greene Park and the parking lot there will be closed all day due to the use of a large crane for a tree removal project by the Town. The road will re-open early Saturday morning.

b. Ross Property Owners Association

Alexandra Hudson, RPOA, gave the following report:

- In 2022 they had a benefactor level of about 40% of their budget, have 325 members and raised over \$65,000;
- A new Post Office table is in development; they are looking at modifying or adding brochure holders to the outdoor waterproof bulletin board, and they contributed to the Post Office break-in by fixing the front door lock and are acquiring security cameras that will have a monitor;
- The next Live on the Common will be May 12th and the artist is a member of the Mother Hips which is Indie Alternative Folk Rock music;
- The Ross Auxiliary will be hosting Spring Fling on Sunday, April 2nd;

- Age-Friendly will be holding a luncheon on February 15th at 11:30 a.m. at Marin Art and Garden Center, honoring residents 80+ years of age;
- New resident welcome kits are at the Post Office and they will track metrics over the next 4 months; and
- RPOA is proposing an Historic Story Walk along Shady Lane or Ross Common with facts and stories of the Town

11. Consent Agenda.

The following items will be considered in a single motion, unless removed from the consent agenda:

a. Minutes: 12/8/22.

b. Demands.

c. Town Council consideration of adoption of Resolution No. 2289 Assembly Bill 361 Amending Open Meeting Laws to Expand Teleconference Meeting Options During Proclaimed State of Emergencies.

d. Resolution 2290 approving an amendment to the Agreement for Town Attorney Services.

Council Member Robbins moved and Council Member McMillan seconded, to approve Consent Calendar Items a, b, c, and d. Motion carried unanimously (5-0).

End of Consent Agenda.

Administrative Agenda:

12. Presentation by Pacific Gas & Electric staff regarding the Vegetation Management Program and public noticing processes in advance of street closures and planned power outages; Town Council discussion and direction to Town staff. (20 minutes)

Recess 6:40-6:50pm (Zoom issues)

Mark Van Gorder, PG&E Government Affairs North Bay Area introduced himself, Andrew Ludwig and Ernie Rivera, Vegetation Program Managers for PG&E. They presented the following information:

- a. PG&E is taking steps every day to improve the safety and reliability of their electric system. This includes working with their customers and communities to manage trees and other vegetation located near powerlines that could cause a wildfire or power outage.
- b. PG&E's Vegetation Management program:
 - Inspects approximately 100,000 miles of overhead powerlines every year
 - Prunes or cuts down more than 1 million trees annually
 - Addresses dead and dying trees in areas affected by drought and bark beetles
- c. Their annual Vegetation Management Program around electric distribution lines includes:

- A clearance of 4 feet around powerlines in high fire-threat areas with recommended minimum clearances of 12 feet or more at time of prune to ensure compliance year-round.
 - Our routine work also includes pruning or cutting down dead, diseased, dying and defective trees.
- d. They continue to address vegetation that poses potential for wildfire risk or outages
- e. They patrol annually and maintain their lines for vegetation issues
- f. Customer outreach materials include:
- Mailers
 - Distribution Programs Fact Sheet
 - Doorhangers
 - IVR Template
 - Tree Work Postcards
- g. PG&E encourage customers to contact them directly with questions at: 1-800-PGE-5000 and pge.com/trees or by emailing Mr. Ludwig or Mr. Rivera at Andrew.Ludwig@pge.com or Ernie.Rivera@pge.com

Mayor Kuhl and Council Members thanked PG&E representatives for their presentation.

13. Town Council consideration of introduction of Ordinance No. 720, an Ordinance of the Town of Ross, amending Ross Municipal Code Chapter 12.24 “Planting, Alteration, Removal, or Maintenance of Trees” (Tree Protection Ordinance).

Public Works Director Rich Simonitch gave the staff report and PowerPoint presentation regarding Council consideration of Ordinance No. 720 amending RMC Chapter 12.24.

Mayor Pro Tem Brekhus asked where in the ordinance would the different proposals of species qualifying as a fire hazard be. Mr. Simonitch confirmed they would be listed under 12.24.020 under “Definitions.”

Mayor Pro Tem Brekhus asked and confirmed with Mr. Simonitch that the list of species is published by Fire Safe Marin which was an advisory agency, and Mr. Simonitch said the list is attached as Attachment 3; however, residents are not currently compelled to use this list.

Council Member McMillan said she spent time talking with the Marin Wildfire Prevention Authority (MWPA) Executive Officer about Fire Safe Marin lists; one is fire-resistant plants, and another are bad plants that are more flammable. Fire Safe Marin is funded by the MWPA and their list is not scientifically based but more experientially based. She is also a Master Gardener and experts will tell you every plant can burn. Most important are plant placement and maintenance. The list Larkspur uses is one she shared with the MWPA Executive Officer who thought (it) was very complete. The Fire Safe Marin list is incredibly long and they are talking about paring it down or eliminating the list altogether.

Mayor Pro Tem Brekhus said this was discussed at the RVFD and they were against the list.

Council Member McMillan asked if input has been received from the RVFD as to how the City is approaching this. Mr. Simonitch said no; they did not provide comments but they defer to the Fire Safe Marin list which is on their [website](#).

Council Member McMillan said in the definition of fire hazard, vegetation must be located within 30 feet of a habitable structure, she asked where this is coming from. Mr. Simonitch said this is coming from the fire-prone plants section of Attachment 3.

Council Member Robbins referred to Section 2 of 12.24.080, number 3; additional criteria for approval of a tree alteration tree removal permit, 3b states "The effect of the requested alteration removal on shade areas with solar access." She asked if this means there could be an approval for an alteration removal so someone could have solar panels. Mr. Simonitch confirmed.

Mayor Kuhl opened the public comment period, and there were no speakers.

Council Member McMillan said she likes the specificity of the list, recommended taking the Larkspur list and adding bamboo. She also proposed another section to state, "Like Marin County" so more species are covered. She also does not support the 30 feet of habitable structure restriction. If there is a large property and a huge acacia tree 31 feet away from a habitable structure, she does not think people should get charged to remove the tree. Therefore, she would delete the 30 foot reference. In 12.24.020, under definitions, number 4 states, "And it has to be located within 30 feet of a habitable structure."

Mr. Simonitch said he wanted to include some parameter for the replacement tree idea, except it is redundant since they cannot use a fire-prone tree anyway, and he supported the recommendation. He clarified that Council Member McMillan is recommending using the Larkspur list plus adding bamboo species OR the tree has been identified by the fire inspector as a fire hazard.

Council Member Robbins referred to the 30 foot requirement and said even if it is 31 feet, a fire hazard trees should not be allowed.

Council Member McMillan said she does not believe there should be any restriction on the location of the tree in order to have the fee removed. She did not think the Town should be charging people to remove flammable trees, so she would remove "...and located within 30 feet of a habitable structure." She was not sure what this is based on.

Council Member Kircher said there are a couple of other distinctions that could be made. Some properties are in the high fire risk zones. They also happen to be very hilly and steep regions so fire can spread rapidly. This is perhaps another reason for not having a distance limit. So, he would suggest eliminating the distance requirement or treating homes in the hills or those in high fire risk areas differently.

Mayor Kuhl said if they eliminate the 30 feet they should substitute something about a fire official deciding whether it is a danger.

Council Member McMillan said it could be on the list or if a fire inspector deems the tree to be a hazard it could be removed without a fee. She agrees with Mayor Pro Tem Brekhus about the 50 feet in height. She said Mill Valley has no height limit for Acacia trees, as well as San Rafael.

Mayor Pro Tem Brekhus said they had some discussion after Mill Valley passed their ordinance and they declined to do that for the reason there can be trees that are fire hazards that are not on the list or trees in good shape, some of which could be on certain lists.

Town Manager Johnson referred to Council Member McMillan's request to remove the 30 foot limit. There are easily costs involved with removal, so if the Town is not getting reimbursed for costs of a permit fee for any tree on someone's property that is removed that is on the Larkspur list plus bamboo. She asked Mr. Simonitch if these costs would be significant and asked what staff costs would be involved.

Mr. Simonitch said this type of impact is not that significant at all and he confirmed the Fire District identifies which trees are to be removed, and staff would check it against the list and issue the permit, as well as a follow-up visit to ensure it was done properly.

Town Manager Johnson said staff sometimes inspects trees, but when Mr. Gerka inspects them, the Town is paying an invoice because he is an outside contractor. Mr. Simonitch said there are ways to ask the property owner to forward a picture so there is not the need to go out to every site.

Council Member McMillan said she did not feel the community would be subsidizing the homeowner removing the tree because by removing the tree they are making the community safer. She said the staff report indicated it is \$3,000 per year which she supported.

Mayor Pro Tem Brekhus moved and Council Member Robbins seconded, to introduce Ordinance No. 720 amending Ross Municipal Code 12.020.24 with modifications discussed to replace references to the Fire Safe Marin list with the Town of Ross list which includes the Larkspur list, plus the inclusion of Bamboo, remove the "30 foot from habitable structure" requirement, remove the height limit on Acacia trees, and also defer the recommendation from the fire inspector as part of the decision process. Motion carried unanimously (5-0).

Town Manager Johnson asked and confirmed with the Town Attorney that the amendments are not substantive enough so that staff can return for a second reading in February.

14. Discussion regarding potential citizen recognition strategies and providing direction to staff on next steps. (Kuhl and McMillian, 10 minutes)

Mayor Kuhl requested moving this item and Item 14a to be heard after Item 16, and there were no objections. Town Manager Johnson asked if it is possible to hear Item 14a now, and Councilmembers concurred.

14a. Recommendation to authorize the Town Manager to negotiate and execute an agreement with the Town of Fairfax to provide the Town of Ross with temporary police officer staffing during the period January 12, 2023 through June 30, 2023 in an amount not to exceed \$75,000.

Town Manager Johnson gave the staff report and overview of the request to authorize the Town Manager to negotiate and execute an agreement with the Town of Fairfax to provide the Town of Ross with temporary police officer staffing during January 12, 2023 to June 30, 2023 in an amount not to exceed \$75,000. She then spoke about vacant positions, overtime, injuries resulting in 50% staffing, and noted there are salary savings in the budget because of vacancies, so the action would not require an appropriation.

Police Chief Pata spoke about the difficulties in 2020 with reduced staff, recruiting, trying to leverage resources, said they hope to bring a new officer on board next month which will require 12 weeks of training and had another candidate come in today to interview. He then described contacting the Fairfax Police Chief about providing services, noting that they share dispatch services, they are a natural fit for the Town, they cover them on calls, train with each other, and policies and procedures are the same. He proposed determining the number of shifts needing to be filled each week and Fairfax officers will sign up on the needed shifts.

Council Member McMillan asked if it would be confusing to have Fairfax police driving Ross vehicles, and Chief Pata said the only difference in their uniform is a patch and the department can educate the community, which would help offset any confusion.

Mayor Kuhl opened the public comment period, and there were no speakers. He closed the public comment period, and suggested a motion.

Council Member Robbins moved and Mayor Pro Tem Brekhus seconded, to authorize the Town Manager to negotiate and execute an agreement with the Town of Fairfax to provide the Town of Ross with temporary police officer staffing during the period January 12, 2023 through June 30, 2023 in an amount not to exceed \$75,000. Motion carried unanimously (5-0).

End of Administrative Agenda.

Public Hearings on Planning Projects.

15. 78 Shady Lane, Demolition, Design Review, and Variance, and Town Council consideration of adoption of Resolution No. 2285.

Tatyana Mirnova, 78 Shady Lane, A.P. No. 073-101-41, Zoning: R-1:B-10, General Plan: ML (Medium Low Density), Flood Zone: AE (High Risk).

Project Summary: The applicant requests approval of Demolition, Design Review, and a Variance to remodel the existing home, additions to the existing home, demolish the existing carport, and construct a garage in the side yard setbacks. The project also proposes a Nonconformity permit to construct two small second story additions. The project is categorically exempt from the requirement for the preparation of environmental documents under the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15301 (Existing Facilities), because it consists of the minor alteration of existing private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

Recusal:

Mayor Pro Tem Brekhus recused herself due to her proximity to the project, and she left the room at 7:55 p.m.

Planning and Building Director Rebecca Markwick gave the staff report and overview of the request for approval of Demolition, Design Review, Non-Conformity and a Variance to remodel the existing home, additions to the existing home, demolish the existing carport, and construct a garage in the side yard setbacks which requires a variance. The project also proposes a Nonconformity permit to construct two small second story additions.

The project has been before the ADR three times in August, September, and November 2022. Two ADR members were recused from the project. She then described conceptual support of the project at the first meeting; however, the garage was proposed in the side and rear yard setbacks and asked it be moved to meet the 10 foot rear yard setback requirement. Also, the ADR asked for a landscape plan.

At the September meeting, all members were supportive and were adamant they wanted a landscape plan prepared by a landscape architect. The item was therefore continued and return to review the landscape plan only, and at the November meeting, the ADR recommended approval to the Town Council pending staff work with an ADR member on the final landscape plan, which has occurred, and the ADR is recommending approval of the project and landscape plan.

Comments were received from the adjacent neighbor at 1 Locust Avenue. They are concerned that the carport was not constructed prior to the floor area requirement of 1967. The project applicant has provided evidence which is included in the packet indicating the structure was constructed prior to 1967 and therefore it is conforming.

Two additional emails were received from neighbors; one in support and one opposed. The neighbor opposed emailed a letter of opposition to the ADR in August. Additionally, the neighbor did not provide an address but is concerned with the variance findings as well as the bulk and mass of the structure.

Staff recommends the Town Council consider adoption of Resolution 2285 approving demolition, design review, non-conformity, and variance for the project.

Council Member McMillan asked and confirmed the variance pertains to the side setback.

Mayor Kuhl called on the applicant to make a presentation.

Tatyana Mirnova, owner/applicant, said she has addressed all concerns of the neighbors and recommendations of the ADR group. She did extensive research and due diligence. She introduced Sean Kennings and said her architect, Will Jones, and her landscape architect, Robert Adams were available, as well.

Sean Kennings, land use environmental planning consultant, said he was contacted in December by the applicant to help her with the non-conformity research and review, speak with the Assessor to obtain historical information, and to prepare the memo. He was not involved in design review but the project has been reviewed multiple times by the ADR, is sensitive to bulk and mass, privacy of the neighbor, the garage was pulled back and needed an upgrade. He was unsure as to how the neighbor was able to obtain historical files and pointed out annotations were from the neighbor and not from the Assessor.

He met with the Assessor and homeowner and then spoke of the historical events that occurred on the property. The concrete covered patio in her description was enclosed sometime between 1967 and 1969 and therefore converted into a carport. One could deduce logically where there once used to be a garage there no longer was one, so instead of rebuilding a garage at the end of the driveway, someone enclosed it. This makes sense, and the Assessor confirmed the concrete patio was struck from the Assessor's roll and the detached carport showed up. The neighbor commented about a CCP or a CEP in one of her emails. The CEP is a concrete enclosed porch. That is the portion in the front of the house and they do not know where the CCP is, it is not documented in the Assessor's rolls.

Another thing the Assessor explained to him is that when an Assessor comes out and sees new construction, they notate it on the plans "New Construction." The detached carport was not indicated as "new" when they came back in 1969, so in the Assessor's professional opinion, would mean that it existed for some time and that the Assessor was just picking it up.

Mr. Kennings concluded and stated this is a good project and he asked the Council to approve it.

Mayor Kuhl opened the public hearing.

Len Rifkind, Attorney, gave a slide presentation, stating the key issue is when this carport was constructed. If it was before 1967 it is potentially a legal non-conforming use because Ordinance 264 came into effect in April 1967, and this is when FAR came into effect. So, if the carport was built before April 1967 it would be a legal non-conforming use and there is no variance for it.

He said Mr. Kennings indicated he was not sure whether it could have been built up to as late as 1969, so he admitted he is not sure. The Ordinance says in 18.52.040(f1) that you must have a legal structure for it to be a legal non-conforming use so that the footage from the carport structure can count towards the second floor. And, the property owner has the burden of proof by substantial evidence.

He referred to Exhibit 7 of the packet he provided which are the Assessor's records which are almost impossible to decipher and said on the first page there are two arrows; one says "CCP" which is the concrete covered patio and the other lower arrow refers to a detached carport. So, these are two separate structures. The CCP has 180 square feet and the detached carport is 580 square feet, and they know when these existed. What these records show is that in 1965 and 1967 there is no carport, but there is a concrete covered patio. The records show how much was assessed for the carport of \$1,331. This is proof that this carport did not get built until after 1967. He encouraged the Council to continue the hearing to give staff an opportunity to review this.

Cheryl Untermann said she and her husband Dennis live at 1 Locust Avenue next door to 78 Shady Lane. They oppose the project approval to place a new garage in a required side yard setback, oppose over-development of 78 Shady Lane primarily regarding the second story addition which is 117 square feet larger and approximately 8 feet closer to their shared property line. She described impacts to privacy and window locations from the second floor, said there are first story additions of approximately 100 square feet on the same property line as well as a separate application made for an ADU in the rear right corner of the property, 4 feet from the same property line and 16 feet in height.

She understands there is no discretionary approval for the ADU but all proposed additions are moving closer to their common boundary line. If the ADU must be placed along the fence line she asked not to approve the entire project also moving 8 feet closer, and asked that design review approval should not be granted. The existing carport was never legally built and, therefore, the applicant cannot use the square footage elsewhere in the project, primarily on the second floor of the existing dwelling. There are no records of the carport in December 1965 or August 1967 from site visits from the Assessor and building records. Therefore, they know it was built after August 1967 and by October 1969. The Town adopted FAR requirements in April 1967. There is no record of a required FAR variance for the carport as the property exceeds FAR limitations by 20%.

Secondly the carport still did not comply with setback requirements. At the time, the setbacks for the rear yard were 40 feet and the illegal carport was built only 13'10" from the rear property line. The Assessor's records make clear the carport and the concrete covered patio porch and sunroom are different structures. The illegal carport is 580 s.f. and the CCP is 180 s.f.

Lastly, the development is in a flood zone and must comply with FEMA. The existing dwelling is in the flood zone and will likely need to be raised because the proposed project is considered a substantial construction and will likely exceed 50% of the appraised value. These current storms only heighten FEMA requirements must be met.

Lisa White said she has a 40 year planning background, became familiar with the Marin County Assessor records because property owners would submit them and she would need to review them to ensure structures were legal and non-conforming. Tonight's take-a-ways are 1) the illegal carport was not lawfully constructed, clearly evidenced with written Town Council and Assessor documents, the aerial submitted by the applicant where the markups were incorrect, and a survey. The carport is not eligible for a non-conformity permit, meaning that the floor area of the illegal carport proposed to be removed cannot be transferred to the first- and second-story additions of the dwelling as proposed by the applicant. The reason the applicant is applying for a non-conformity permit is because the existing structures on the property already exceed the FAR and lot coverage maximums, but you cannot legally be granted a non-conformity permit.

The design review findings cannot be made due to the mass and bulk of the design and the privacy impacts, clearly evidenced in the Town code findings and the Town's residential guidelines. This project exceeds the code allowed FAR and lot coverage, and maximizes and pushes everything out toward property lines so the owner can "have a center oasis" at everyone else's expense. This is over-development and legal findings cannot be made to approve it.

Sean Swenson, 84 Shady Lane, said he submitted an email in support of the project, thinks this is much ado about nothing. The applicant has been through multiple iterations with the ADR and the one and only person opposing the design would bring something new each time to delay the approval of the project. Tonight, her counsel is requesting another delay to approve the project for more research. In fact, the applicant has provided substantial documentation and he does not believe anyone in the room can say with absolute certainty what things mean.

She has provided substantial evidence, including aerial photography that this carport existed. However, this is miniscule. This is a nice project. It will improve the neighborhood, the property, and it is sad all the homes are so close together but if the Council wants any evidence tonight to understand what is going on, it is the opposition saying that the house should be elevated when one minute earlier she was complaining the house is encroaching on views and too close. The Town needs to treat people with respect and allow projects to move forward when they have gone through the appropriate review process. Staff and the ADR have reviewed this multiple times and have approved. He asked that the Council approve it and move forward.

Mayor Kuhl asked for the applicant to provide rebuttal comments.

Rebuttal – Applicant

Sean Kennings said in response to Mr. Rifkin, the Assessor's records he provided are annotated by the neighbor themselves. What he provided the Council is the direct commentary from the Assessor, the professional who understands those records. As far as the design goes, he was not part of that, but from the upper story there are smaller windows than there are now. Clearly, privacy, bulk and mass were thought about, and this project is a good one. There was a covered patio prior to 1967. It was enclosed and picked up as a carport. It was clearly there prior to 1967, but unfortunately they do not have records from the Town showing a variance or building permit, but that does not mean it was built illegally.

Mayor Kuhl confirmed there were no other speakers, and he closed the public hearing.

Council Member McMillan asked if the second story windows were discussed by the ADR.

Ms. Markwick said they were brought up by the neighbor, were discussed, and the ADR members were supportive of the size and location of the windows.

Mayor Kuhl confirmed there were no other Council comments or questions, and he suggested a motion.

Council Member Robbins moved and Council Member McMillan seconded, to adopt Resolution No. 2285, finding the project exempt from CEQA provisions, and approve 78 Shady Lane, Demolition, Design Review, and Variance. Motion carried unanimously (4-0-1; Brekhus recused).

Noted Present:

Mayor Pro Tem Brekhus returned to the dais at 8:30 p.m. to participate in the remainder of the meeting.

16. 160 Lagunitas Road, Demolition, Design Review, and Variance, and Town Council consideration of adoption of Resolution No. 2291. (Lopez-Vega, 20 minutes) [📄](#)

AJ and Melissa Rhode, 160 Lagunitas Road, A.P. No. 073-201-07, Zoning: R-1:B-A, General Plan: VL (Very Low Density), Flood Zone: X (Moderate risk).

Project Summary: The applicant requests approval of Demolition, Design Review, and Variance applications. The project includes demolishing the existing single-family residence, detached carport, and pool. The project proposes to construct a new 6,233 SF two-story single-family home in the same location as the existing home and a 394 SF matching detached garage. The applicant is requesting to build a new pool and deck in the same location as the existing pool, which requires a variance due to the pool encroaching into the side yard setback. The project is also proposing a vehicular and pedestrian gate located on the south side of the property. New landscaping and hardscape are being proposed throughout the property. The project is categorically exempt from the requirement for the preparation of environmental documents under the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15303 (New Constructions), which exempts the construction of a new single-family homes

Assistant Planner Alex Lopez-Vega gave the staff report and overview of the request for approval of Demolition, Design Review, and Variance applications. The project includes demolishing the existing single-family residence, detached carport, and pool. The project proposes to construct a new 6,233 SF two-story single-family home in the same location as the existing home and a 394 SF matching detached garage. The applicant is requesting to build a new pool and deck in the same location as the existing pool, which requires a variance due to the pool encroaching into the side yard setback. The project is also proposing a vehicular and pedestrian gate located on the south side of the property. New landscaping and hardscape are being proposed throughout the property.

The project was reviewed by the ADR Group on December 13, 2022 and found the project complied with design review guidelines and criteria. The applicant has amended the plans according to ADR's advice, which include relocating the generator out of the front setback, making the front fence facing Lagunitas Road more transparent, and lowering the garage height by 1 foot, as well as removing the dormer. Staff recommends the Council adopt Resolution No. 2291 approving demolition, design review, and variance for the project at 160 Lagunitas.

Mayor Kuhl asked for the applicant to present.

Steven Sutro, representing the applicant A.J. and Melissa Rhode. He said he was able to speak to most Council Members after they made a visit to the property, and he thinks the staff report is clear and he is available for questions. Eric Glazen who is the landscape designer is present as well for questions relating to landscaping.

Council Member McMillan asked why there is a variance needed for the pool.

Ms. Markwick stated the existing pool is in the setbacks and they are proposing a pool in a similar location so there is justification for the variance because there is a pool already in both the side and rear yard setbacks.

Mayor Kuhl opened the public hearing. There were no speakers, and the public hearing was closed.

Mayor Pro Tem Brekhus stated the Town has a guideline that states no accessory buildings in the front, and it probably warrants mention in the staff report because it is a guideline. She was satisfied with the ideas around having it there and landscaping which will allow it to blend in. She thinks it is a great project and she voiced support.

Mayor Kuhl suggested a motion.

Mayor Pro Tem Brekhus moved and Council Member McMillan seconded, to adopt Resolution No. 2291, finding the project exempt from CEQA provisions, and approve 160 Lagunitas Road demolition, design review and variance. Motion carried unanimously (5-0).

14. Discussion regarding potential citizen recognition strategies, staff next steps

Council Member McMillan said this idea was proposed by a long-term resident which is to recognize good citizens for work that would otherwise remain unappreciated and under the radar. She thought that instead of having people lobbying Town Council Members, she suggested people submit nominations to the Ross Recreation Director once a year and the recognition can occur at the 4th of July Parade.

Council discussion ensued regarding how this might work during the 4th of July parade, the example given as Robert Smithton who picks up trash throughout the town, how citizens would be recognized and a suggestion for the event to be held at Town Hall with an article in the Morning After, questions on how to advertise the event, existing Council policies and procedures regarding recognition, and Mayor Kuhl and Council Members agreed that the matter will return on a future agenda with the intent to recognize Mr. Smithton.

End of Public Hearings on Planning Projects.

17. No Action Items:

- a. Council correspondence – None.**
- b. Future Council items**

Council Member McMillan stated her neighbor is very concerned about the home across the street being used as a short-term rental and thinks the Town Council should discuss rules relating to these. Council Member Robbins voiced support to discuss this, and Mayor Kuhl suggested agendaing a discussion regarding short-term rentals.

Town Manager Johnson asked to be able to work with the Mayor and Mayor Pro Tem on scheduling the item, as there are substantive matters coming forward on the next few agendas, which she described.

18. Adjournment.

Mayor Kuhl adjourned the meeting at 8:46 p.m.

Beach Kuhl, Mayor

ATTEST:

Cyndie Martel, Town Clerk