



FAIRFAX TOWN COUNCIL MEETING SUPPLEMENTAL STAFF REPORT

MEETING DATE: April 3, 2024
PREPARED FOR: Mayor and Town Council
PREPARED BY: Linda Neal, Principal Planner
Jeff Beiswenger, Planning and Building Services Director
Janet Coleson, Town Attorney
SUBJECT Supplement to Agenda Item #4 Appeal of Planning Commission action approving a Conditional Use Permit legalizing the improvement of the bedroom level of the residence and denying the requested Height Variance for the unpermitted ground floor level improvements, for the residential property at 80 Crest Road.
CEQA Categorically exempt per sections 15301(a).

RECOMMENDATION

Minor clarification changes were made to Attachment A2 - Alternative Resolution of the Town Council upholding the Planning Commission decision but delaying enforcement until such time as the property transfers ownership, by sale, inheritance, or otherwise.

ATTACHMENT

Alternative Resolution of the Town Council upholding the Planning Commission decision but delaying enforcement until such time as the property transfers ownership, by sale, inheritance, or otherwise.

RESOLUTION NO. 24-__

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION ACTION APPROVING
A CONDITIONAL USE PERMIT, APPLICATION 19-10, LEGALIZING THE EXPANSION OF THE
BEDROOM LEVEL OF THE RESIDENCE AND DENYING THE REQUESTED HEIGHT VARIANCE
FOR THE UNPERMITTED GROUND FLOOR LEVEL FOR THE RESIDENTIAL PROPERTY AT 80
CREST ROAD BUT DELAYING ENFORCEMENT, DUE TO HARDSHIP, UNTIL THE PROPERTY
TRANSFERS OWNERSHIP**

WHEREAS, on February 25, 2019 the Town of Fairfax received an application from Verle and Marene Sorgen for a Conditional Use Permit and a Height Variance to legalize the following unpermitted construction at 80 Crest Road; 681 square feet of unpermitted, partitioned living space (509 square feet conditioned living space including a sitting room, hallway, photo lab, closet, 172 square feet unconditioned office/storage, and closet) and a 1,020 square-foot, 4th (ground floor) level underneath the existing permitted three-story structure that includes a conditioned wine cellar, a room with a toilet, another room with a sink and a workshop with minor electrical improvements throughout the entirety of the space, two windows, and an exit door and stairway on the north side; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on October 17, 2019, to consider approval of the owner's requested Conditional Use Permit and Height Variance and at which time all interested parties were given a full opportunity to be heard and to present evidence; and

WHEREAS, at the conclusion of the October 17, 2019, Planning Commission meeting, that body did approve, by way of its adoption of Resolution 2019-13, the plans dated 5/5/18, prepared by Henry Taylor, Architect, pages 1 through 7, which the Commission conditioned to be modified to eliminate the following:

The 1,020 square feet of improvements in the ground floor 4th level, including all the stairways, flooring, any interior walls not necessary for the structural integrity of the building as recommended by the project structural engineer and verified by the Town Engineer after a peer review, the toilet, sink and wine storage room and any electrical not required to provide minimal visibility when accessing the underfloor area, as well as the 2 windows in the west side of the building.

WHEREAS, the Town Council has made the following findings provided the ground floor 4th story of the structure is abated:

The project conforms to the following 2010-2030 Town of Fairfax General Plan Policies:

Policy LU-7.1.5: New and renewed residential development shall preserve and enhance the existing character of the Town's neighborhoods in diversity, architectural character, size, and mass.

Policy LU-7.2.1: New and renewed development shall be compatible with the general character and scale of structures in the vicinity.

1. Legalization of the 509 square-foot conditioned living and 172 square feet of unconditioned space including the sitting room, hallway, photo lab and closet, and office/storage closet, are similar in size, mass, design, and location on the site to other three-story residential structures in the Crest Road neighborhood. Therefore, the approval of the use permit regarding these issues shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment. However, granting approval of the four story, fifty-foot-tall structure, in this

neighborhood of three-story structures, would result in a structure with a design out of character with the surrounding neighborhood.

2. The project will not exceed the Floor Area Ratio or Lot Coverage limitations, will comply with the RS-6 Zone District setback requirements and once the project is modified to eliminate the 4th, ground level story, it will comply with the height regulations reducing the height of the improved area of the structure from fifty to thirty-three feet in height. Therefore, the development and use of the property as approved shall not cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects thereto, or create undue or excessive burdens in the use and enjoyment thereof, or any or all of which effects are substantially beyond that which might occur without approval or issuance of the Conditional Use permit.
3. Approval of the Conditional Use permit, with the plans modified to eliminate the 4th, ground level of the house structure, is not contrary to those objectives, goals, or standards pertinent to the particular case and contained or set forth in the 2010 to 2030 Fairfax General Plan and Zoning Ordinance, Title 17 of the Fairfax Town Code.
4. Approval of the Conditional Use permit, with plans modified as described above, will maintain the remainder of the site in its natural state requiring no significant excavation and/or removal of trees or vegetation and will provide the owners with additional living space and storage that is not available on the remainder of the site with its 48% slope. Approval of the Conditional Use permit, as modified in accordance with the above, will result in equal or better development of the premises than would otherwise be the case, and that said approval is in the public interest and for the protection or enhancement of the general health, safety, or welfare of the community.

WHEREAS, at the conclusion of the April 3, 2024 public hearing, the Town Council found that the findings required by § 17.028.070 of the Town Code to approve a Height Variance for a 50-foot-tall residential structure at this location could not be made and made the following findings to deny the Height Variance:

1. The Town has not granted any height variances for a fifty-foot-tall residence that staff can find any record of since its incorporation in 1931 nor have the codes ever allowed for the creation of a fifty-foot tall and four-story residential structure. Therefore, approval of the project with a 4th level, creating fifty feet of improved residence area would constitute a grant of special privilege; and
2. There are no special circumstances applicable to this 33,632 square-foot site that require additional square footage to be designed only as a 4th level resulting in a 50-foot-tall structure. There are opportunities, and it is physically possible, to design additional space as extensions to the other floors of the existing structure. Therefore, denial of the requested height variance for a fourth level will not deprive the applicant of privileges enjoyed by other property owners in the vicinity and in the RS-6 Zone District or of the ability to enlarge their residence in compliance with the Zoning Regulations.
3. The strict application of the thirty-five-foot height limit, would not result in excessive or unreasonable hardship for the owners as the removal of the unpermitted work and compliance with other agencies conditions is physically possible and would bring the property into compliance with the height regulations.
4. The denial of the height variance to allow a 4-story, 50-foot-tall residence will protect the public welfare, maintain the site in a compatible manner to the hillside development on Crest Road and

will protect the property values of other property in the vicinity where the 3-story height limit is being adhered to and in which the property is situated.

WHEREAS, As a result of the hardship request made by the appellants relating to the interior stairway access being necessary for safe access to the wine room and workshop areas, the Town Council has agreed to delay enforcement of all provisions of this resolution until such time as the property transfers ownership, whether by sale, inheritance, gift, or other means. At that time, the new owner will have sixty (60) days to apply for permits to legalize the unpermitted improvements within the bedroom level of the structure and a demolition permit to remove the wine cellar, workshop, flooring unnecessary to maintain the building foundation, and interior stairway between the subfloor foundation area and the bedroom level of the structure. The only exterior or interior improvements allowed to remain in the subfloor area are those necessary to retain the existing stability of the structure, which shall be legalized with a building permit after the Town Engineer determines on what exterior/interior sheathing improvements are to be retained, including, but not limited to, full-height sheathed cripple walls, properly connected to the floor diaphragm above and the foundation below.

WHEREAS, this action is exempt from the California Environmental Quality Act (CEQA) Guidelines under Section 15301 as an existing facility; Section 15061 (b)(3) since the project will have no significant effect on the environment; and Section 15270 since projects which are disapproved do not require environmental analysis.

NOW, THEREFORE, BE IT HEREBY FOUND AND RESOLVED by the Town Council of the Town of Fairfax:

Section 1. The recitals set forth above are incorporated herein.

Section 2. Based on the foregoing, the Town Council of the Town of Fairfax does deny the requested appeal and upholds the Planning Commission approval of the Conditional Use Permit and denial of the Height Variance as set forth in Attachment A, Planning Commission Resolution 2019-13.

The foregoing resolution was adopted at a regular meeting of the Town Council held in said Town, on the 3rd day of April, 2024, by the following vote:

AYES:

NOES:

ABSENT:

Barbara Coler, Mayor

Attest:

Christine Foster, Deputy Town Clerk