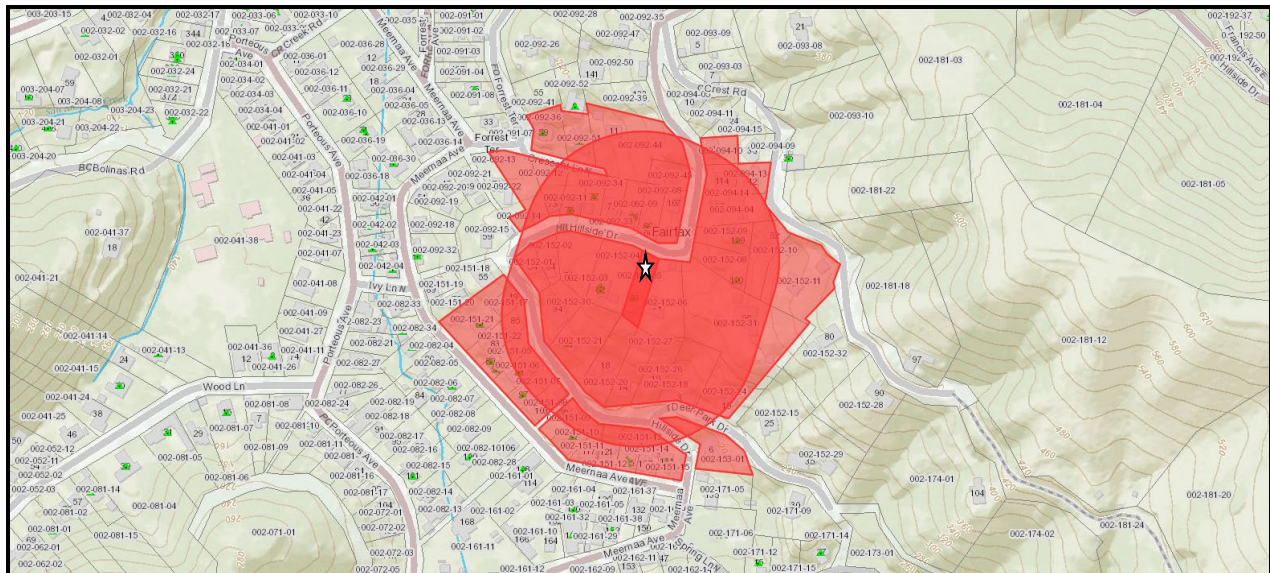


TOWN OF FAIRFAX STAFF REPORT

Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: April 18, 2024
FROM: Linda Neal, Principal Planner
LOCATION: 88 Hillside Drive; APN # 002-152-05
ZONING: RS-6 Single-family Residential
PROJECT: 120 square-foot accessory storage/music room structure
ACTION: Conditional Use Permit; Application # 24-03
APPLICANT: Jessica Gray and Alexis Razon
OWNER: Same
CEQA STATUS: Categorically exempt, § 15303(e)



**88 HILLSIDE DRIVE
APN # 002-152-05**

PROJECT DESCRIPTION

Construction of a 120 square-foot accessory structure with electrical service that will be used for storage and as a music room in the front yard of a property developed with a single-family residence. The accessory structure siding will be horizontal cement cladding painted gray (Benjamin Moore Anchor Gray #76756F) and the trim will be white (Benjamin Moore Simply White #2143-70).

Sound mitigation measures provided in the structure will include acoustical batt wall insulation and mass loaded vinyl behind the drywall (see page A101 of the project plans under project data).

One light is proposed on the south side of the accessory structure.

The project is not subject to the Design Review Ordinance and the site is not within ¼ mile of any known Northern Spotted Owl nesting site and not subject to the regulations prohibiting construction during the nesting season.

BACKGROUND

The 7,710 square-foot site slopes up from Hillside Drive at an average rate of 27%. The site is developed with a two-bedroom, one-bathroom, single-family residence that was originally constructed in 1923. There is no garage on the site but there are approximately one to two parking spaces in the widened driveway apron accessing 84 Hillside Drive although they do not meet the Town minimum size requirements of nine-feet by nineteen-feet in size.

The existing house layout provides very little storage space and the applicants would like the accessory structure to provide storage space for bicycles, music equipment, camping gear and other recreational belongings in a secured location that has easy access to their parking area for loading the car.

DISCUSSION

Town Code § 17.080.050(C) adopted in 1973 requires properties created by new subdivisions on land zoned RS-6 with a 27% slope to be a minimum of 19,000 square-feet in size and at least 101 feet wide. The project site was created by the recording of Map No. 3 Deer Park Subdivision on the seventh day of March in 1916. Therefore, the site's 45-foot width and 7,710 square-foot size is legal non-conforming.

Town Code § 17.080.030(I) indicates that accessory uses other than the permitted uses allowed in Town Code § 17.080.040, require a Conditional Use Permit from the Planning Commission. Therefore, the combined storage/music room use of the proposed accessory structure requires the approval of a Conditional Use Permit by the Planning Commission.

The legal non-conforming status of the site makes any new construction subject to Town Code § 17.080.050 which requires that a Conditional Use Permit or a Hill Area Residential Development Permit be obtained from the Planning Commission prior to any physical improvements to the site or the existing structures. Therefore, the construction of a new storage/music room accessory structure requires the approval of a Conditional Use Permit. The project does not require a Hill Area Residential Development permit because the construction will require the excavation/fill of a minimal amount of material and the structure is less than two hundred square-feet in size [Town Code §§ 17.072.020(A)(3) and 17.072.050(B)].

The project complies with the regulations set forth in the RS-6 Zone District as follows:

	Front Setback	Rear Setback	Combined Front/rear Setback	Side Setbacks	Combined Side Setbacks	FAR	Lot Coverage	Height, Acc. Structures
Required/ Permitted	6ft	12ft	35ft	5ft & 5ft	20ft	.40	.35	15 ft., 1 story
Existing	76 ft.	16 ft.	92 ft.	10 ft. & 6 ft.	16 ft.	.15	.15	N/A
Proposed	12 ft.	16 ft.	28 ft.	No change	No change	.16	.16	10 ft., 1 story

Conditional Use Permit [17.032.060(A) through (C)]

To approve a Conditional Use Permit (CUP) the Planning Commission must consider all adjacent uses and structures, to the physical environment of the proposed use and to the public health, safety, and general welfare [Town Code § 17.032.010(B)]. The Planning Commission must also be able to make the following required legal findings (*staff recommended findings are in bold italicized print*):

The approval of the use permit shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.

It is common for older homes built in the early 1900s to have very little storage space. Since many of Fairfax’s older homes were built between 1910 and 1940, there are a lot of similar sites with older homes that rely on accessory buildings to provide storage or additional living space for the residents and there are accessory structures that have been approved by the Planning Commission as home offices, playrooms, yoga studios, etc. when expanding an existing house would either be very expensive, would negatively impact the historic architecture of the home or require too much excavation or other site disturbance. Therefore, construction of the accessory storage/music room will not constitute a grant of special privilege.

The development and use of property as approved under the use permit 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 use permit.

The accessory structure maintains all the required minimum setbacks and the combined side yard setbacks and does not encroach further into the required combined front/rear setback than the front access stairway, fence and parking retaining wall. Therefore, the impact of the structure on adjoining properties is minimal.

Approval of the use permit is not contrary to those objectives, goals, or standards pertinent to the particular case and contained or set forth in any Master Plan, or other plan or policy, officially adopted by the City.

The proposed accessory structure complies with all the zoning regulations including setbacks, height, floor area ratio and lot coverage of the RS-6 Zone. Therefore, approval of the use permit is not contrary to those objectives, goals, or

standards pertinent to the particular case and contained or set forth in Title 17 of the Town Code, Zoning; and

Approval of the use permit 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.

Accessory structures used for storage (tool sheds) are listed as a permitted accessory uses in the RS-6 Zone and the Commission approval of a Conditional Use Permit for the combination storage/music room accessory structure and the structure size and design results in a use that will fit in with the residential character of Hillside Drive neighborhood, is not out of scale with the site, and will enable the owners to keep the site organized and secure while providing a sound limiting musical instrument practice space which is in the private and public interest.

Front/Rear Setback Variance [Town Code § 17.028.020(A)(1) through (4)]

Town Code § 17.028.010, (Variance) Purpose allows the Planning Commission to grant variances based on a number of site features including narrowness and topographic conditions when the literal enforcement of the requirements would involve practical difficulties or would cause undue hardship unnecessary to carry out the spirit and purpose of the RS-6 code regulations including the setbacks.

Because of special circumstances applicable to the property, including size, shape, topography, location of surroundings, the strict application of this title will deprive the applicant of privileges enjoyed by other property owners in the vicinity and under identical zone classification.

Enforcing the combined 35-foot front setback requirement would make access to the 120 square-foot storage structure on this site with a 27% slope difficult and deprive the owners of the ability to have storage close to the street where it is easily accessible from the parking area on a property developed with a 1923 residence that, typical for houses built during that time period, has little to no storage space. This would be an unnecessary hardship for the owners.

The variance or adjustment will not constitute a grant of special privilege, is consistent with the limitations upon other properties in the vicinity and under identical zone classification and is consistent with the objectives of this title.

The approval of the Variance to allow the storage/music room accessory structure to encroach seven feet into the combined 35-foot combined front/rear setback will not be a grant of special privilege because the accessory structure will exceed the required ten-foot minimum front-yard setback required for accessory structures by two feet [Town Code § 17.040.020(A)].

The strict application of this title would result in excessive or unreasonable hardship.

Locating the accessory structure further away from the parking at the street would make it more difficult to carry heavy items such as bicycles from the

storage/music room accessory structure to the car. This would be an unreasonable hardship when locating the accessory structure twelve feet from the front property line as proposed does not impact neighbors' views or access to their properties in any way.

The granting of the variance of adjustment will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated.

The proposed accessory structure location is twenty-two feet away from the improved Hillside Drive roadbed and the accessory structure will not obstruct visibility for vehicles traveling on Hillside Drive. Therefore, granting the variance will not be detrimental to the public welfare or injurious to other property in the vicinity.

Other Agency/Department Comments/Conditions

Building Department

The sound limiting insulation and all the windows must be fire rated.

Note: The Fire Department does not review building permit applications for accessory structures that are 120 square-feet or less in size even when they have electrical and are used for living space.

Planning Department

1. The windows and doors used for the prefabricated accessory structure must be noise cancelling/limiting. The Building Official has indicated that dual paned windows will comply with this condition.
2. Noise generated by the dual use of the accessory structure as a storage area and a music room must not violate the Town Noise Ordinance [Town Code § 8.20.050(B)(1) and (2)]. Repeated violation of the Noise Ordinance may result in scheduling the Conditional Use Permit for a hearing before the Planning Commission to consider permit modification/revocation.'
3. The exterior light fixture proposed on the south side of the accessory structure shall be dark sky compliant (fully shielded and emit no light above the horizontal plane with no sag or drop lenses, side light panels or up light panels) as well as complying with color temperature to minimize blue rich lighting and the lighting plan shall be submitted with the building permit application and be approved by the Planning Department prior to issuance of the project building permit. The lighting shall not emit direct offsite illumination and shall be the minimum necessary for safety.

Staff received no comments from Fairfax Police Department, Public Works Department, Ross Valley Fire Department, Ross Valley Sanitary District or Marin Municipal Water District.

RECOMMENDATION

Move to approve application # 24-03 by adopting Resolution No. 2024-06 setting forth the findings and the conditions of the project approval.

ATTACHMENTS

A – Resolution No. 2024-06

B – Project plans

RESOLUTION NO. 2024-06

A Resolution of the Fairfax Planning Commission Approving Application # 24-03 for a Conditional Use Permit and Combined Front-Rear Setback Variance for Construction of a 120 Square-Foot Accessory Storage/Music Room at 88 Hillside Drive

WHEREAS, the Town of Fairfax has received an application from Jessica Gray and Alexis Razon to construct a 120 square-foot accessory storage/music room on their property at 88 Hillside Drive; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on April 18, 2024 at which time the Planning Commission determined that the project does not conflict with any of the 2023-2031 Fairfax General Plan goals, objectives, policies or programs and complies with the Conditional Use Permit Chapter and Variance Chapter of the Zoning Ordinance; and

WHEREAS, based on the plans and other documentary evidence in the record the Planning Commission has determined that the applicant has met the burden of proof required to support the findings necessary to approve the Conditional Use Permit and the Combined Front/Rear Setback Variance; and

WHEREAS, the project is exempt from CEQA in accordance with categorical exemption § 15303(e).

WHEREAS, the Commission has made the following findings:

The project is consistent with the 2023-2031 Fairfax General Plan as follows:

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-7.2.2: To the extent feasible natural features including the existing grade, mature trees and vegetation shall be preserved for new and renewed development.

Conditional Use Permit Findings [Town Code Sections 17.032.060(A) through (D)]

1. It is common for older homes built in the early 1900s to have little storage space. Since many of Fairfax's older homes were built between 1910 and 1940, there are a lot of similar sites with older homes that rely on accessory buildings to provide storage or additional living space for the residents and there are accessory structures that have been approved by the Planning Commission as home offices, playrooms, yoga studios, etc. when expanding an existing house would either be very expensive, would negatively impact the historic architecture of the home or require too much excavation or other site disturbance. Therefore, construction of the accessory storage/music room will not constitute a grant of special privilege.

2. The accessory structure maintains all the required minimum setbacks and the combined side yard setbacks and does not encroach further into the required combined front/rear setback more than the existing residence on the site. Therefore, the impact of the structure on adjoining properties is minimal.
3. The proposed accessory structure complies with all the zoning regulations including setbacks, height, floor area ratio and lot coverage of the RS-6 Zone. Therefore, approval of the use permit is not contrary to those objectives, goals, or standards pertinent to the particular case and contained or set forth in Title 17 of the Town Code, Zoning; and
4. Accessory structures used for storage (tool sheds) are listed as a permitted accessory uses in the RS-6 Zone and the Commission approval of a Conditional Use Permit for the combination storage/music room accessory structure and the structure size and design results in a use that will fit in with the residential character of Hillside Drive neighborhood, is not out of scale with the site, and will enable the owners to keep the site organized and secure while providing a sound limiting musical instrument practice space which is in the private and public interest.

Front/Rear Setback Variance [Town Code § 17.028.070(A)(1) through (4)]

5. Enforcing the combined 35-foot front setback requirement would make access to the 120 square-foot storage structure on this site with a 27% slope difficult and deprive the owners of the ability to have storage close to the street where it is easily accessible from the parking area for the site developed with a 1923 residence that, typical for houses built during that time period, has little to no storage space. This would be an unnecessary hardship for the owners.
6. The approval of the Variance to allow the storage/music room accessory structure to encroach seven feet into the combined 35-foot combined front/rear setback will not be a grant of special privilege because the accessory structure will exceed the required ten-foot minimum front-yard setback required for accessory structures by two feet [Town Code § 17.040.020(A)].
7. The strict application of this title would result in excessive or unreasonable hardship.
8. Locating the accessory structure further away from the parking at the street would make it more difficult to carry heavy items such as bicycles to and from the storage/music room accessory structure to the car. This would be an unreasonable hardship when locating the accessory structure twelve feet from the front property line as proposed does not impact neighbors' views or access to their properties in any way.
9. The granting of the variance of adjustment will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated.
10. The proposed accessory structure location is twenty-two feet away from the

improved Hillside Drive roadbed and the accessory structure will not obstruct visibility for vehicles traveling on Hillside Drive. Therefore, granting the variance will not be detrimental to the public welfare or injurious to other property in the vicinity.

WHEREAS, the Commission has approved the project subject to the applicant's compliance with the following conditions:

1. The project is approved per the plans prepared by Peter Brandelius received by the Town on March 20, 2024.
2. During the construction process the following shall be required:
 - a. All construction-related vehicles including equipment delivery and contractor vehicles shall be situated off the travel lane of the adjacent public right-of-way at all times. Construction materials and tools shall be stored on site and out of the public right-of-way and site parking area. This condition may be waived by the Building Official on a case-by-case basis with prior notification from the project sponsor.
 - b. Any proposed temporary closure of a public right-of-way shall require prior approval by the Fairfax Police Department and any necessary traffic control, signage or public notification shall be the responsibility of the applicant or his/her assigns. Any violation of this provision will result in a stop work order being placed on the property and issuance of a citation.
3. Any changes, modifications, additions, or alterations made to the approved set of plans will require a modification of Application # 24-03. Modifications that do not significantly change the project, the project design or the approved discretionary permits **may** be approved by the Planning Commission or the Planning Director. Any construction based on job plans that have been altered without the benefit of an approved modification of Application 24-03 will result in the job being immediately stopped and red tagged.
4. Any damages to the public portions of Hillside Drive or other public roadway used to access the site resulting from construction-related activities shall be the responsibility of the property owner.
5. The applicant and its heirs, successors, and assigns shall, at its sole cost and expense, defend with counsel selected by the Town, indemnify, protect, release, and hold harmless the Town of Fairfax and any agency or instrumentality thereof, including its agents, officers, commissions, and employees (the "Indemnitees") from any and all claims, actions, or proceedings arising out of or in any way relating to the processing and/or approval of the project as described herein, the purpose of which is to attack, set aside, void, or annul the approval of the project, and/or any environmental determination that accompanies it, by the Planning Commission, Town Council, Planning Director, or any other department

or agency of the Town. This indemnification shall include, but not be limited to, suits, damages, judgments, costs, expenses, liens, levies, attorney fees or expert witness fees that may be asserted or incurred by any person or entity, including the applicant, third parties and the Indemnitees, arising out of or in connection with the approval of this project, whether or not there is concurrent, passive, or active negligence on the part of the Indemnitees. Nothing herein shall prohibit the Town from participating in the defense of any claim, action, or proceeding. The parties shall use best efforts, acting in good faith, to select mutually agreeable defense counsel. If the parties cannot reach agreement, the Town may select its own legal counsel and the applicant agrees to pay directly, or timely reimburse on a monthly basis, the Town for all such court costs, attorney fees, and time referenced herein, provided, however, that the applicant's duty in this regard shall be subject to the Town's promptly notifying the applicant of any said claim, action, or proceeding.

6. The applicant shall comply with all applicable local, county, state and federal laws and regulations. Local ordinances which must be complied with include, but are not limited to: The Noise Ordinance, Chapter 8.20, Polystyrene Foam, Degradable and Recyclable Food Packaging, Chapter 8.16, Garbage and Rubbish Disposal, Chapter 8.08, Urban Runoff Pollution Prevention, Chapter 8.32, and the Americans with Disabilities Act.
7. The sound limiting insulation and all the windows must be fire rated.
8. The windows and doors used for the prefabricated accessory structure must be noise cancelling/limiting. The Building Official has indicated that dual paned windows will comply with this condition.
9. Noise generated by the dual use of the accessory structure as a storage area and a music room must not violate the Town Noise Ordinance [Town Code § 8.20.050(B)(1) and (2)]. Repeated violation of the Noise Ordinance may result in scheduling the Conditional Use Permit for a hearing before the Planning Commission to consider permit modification/revocation.'
10. The exterior light fixture proposed on the south side of the accessory structure shall be dark sky compliant (fully shielded and emit no light above the horizontal plane with no sag or drop lenses, side light panels or up light panels) as well as complying with color temperature to minimize blue rich lighting and the lighting plan shall be submitted with the building permit application and be approved by the Planning Department prior to issuance of the project building permit. The lighting shall not emit direct offsite illumination and shall be the minimum necessary for safety.
11. The above conditions of approval shall be included as a page in the building permit plan set when the application is filed for the required electrical permits for the accessory structure.

NOW, THEREFORE BE IT RESOLVED, the Planning Commission of the Town of Fairfax hereby finds and determines as follows:

The approval of the Conditional Use Permit is in compliance with the Fairfax Town Code and the Fairfax Zoning Ordinance, Town Code Title 17; and

Construction of the project can occur without causing significant impacts on neighboring residences and the environment.

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 18th day of April 2024 by the following vote:

AYES:

NOES:

RECUSED:

ABSENT:

Chair Robert Jansen

Attest:

Jeff Beiswenger, Planning Director

