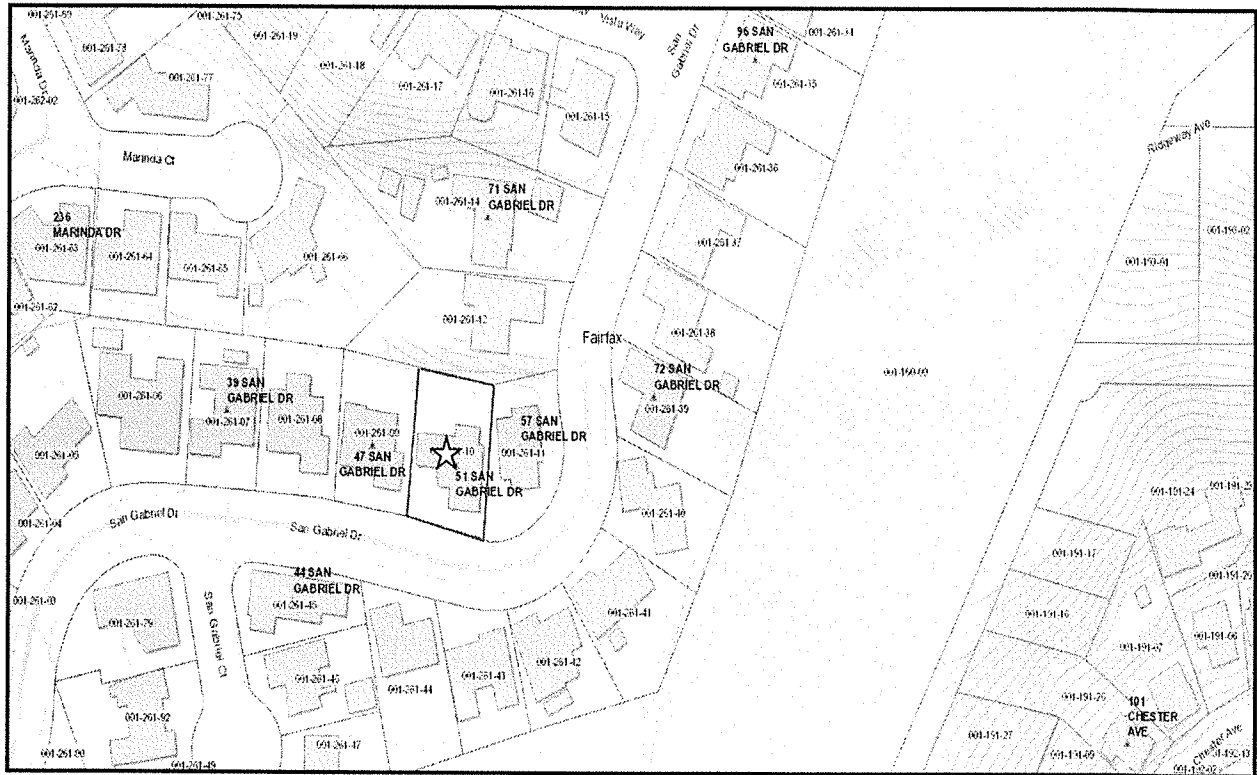


**TOWN OF FAIRFAX  
STAFF REPORT**  
Department of Planning and Building Services

**TO:** Fairfax Planning Commission  
**DATE:** August 16, 2018  
**FROM:** Linda Neal, Principal Planner  
**LOCATION:** 51 San Gabriel Drive; Assessor's Parcel No. 001-261-10  
**PROJECT:** 282 square-foot office ½ bath addition over garage  
**ACTION:** Use Permit; Application # 18-13  
**APPLICANT:** Robert Suttman  
**OWNER:** Colin Parker  
**CEQA STATUS:** Categorically exempt, § 15301(e)(2)



**51 SAN GABRIEL DRIVE**

## BACKGROUND

The 7570 square-foot site slopes up from San Gabriel Drive at an average rate of 8% and it is developed with a 1,584 square-foot, 3 bedroom, 2 bathroom residence that was constructed in 1955. The structure complies with the setbacks that were in place when the building was constructed. The setbacks became legal non-conforming in 1973 with the adoption of Ordinance 352 which divided the then 2 residential zones into 4 separate zone districts, included a slope component and increased all the required setbacks for all the residential zones. This resulted in most of the Town's residential properties containing residences with legal non-conforming setbacks that did not comply with the new regulations.

## DISCUSSION

The applicant is request a Use Permit to construct a 282 square-foot office with a ½ bath above the existing garage. The project site is located in the Residential Single-family RS 7.5 Zone. Town Code § 17.076.050(A) requires that properties in the RS 7.5 Zone with less than a 10% slope have a minimum parcel size of 7,500 square feet and a minimum width of 75 feet. A Use Permit is required prior to any use, occupancy or physical improvement on a site failing to comply with the minimum requirements. Because the site is only 69 feet wide, this project requires the approval of a Use Permit by the Planning Commission.

Project compliance with the regulations for the RS 7.5 Zone is as follows:

	Front Setback	Rear Setback	Combined Front/rear Setback	Side Setbacks	Combined Side Setbacks	FAR	Lot Coverage	Height
<b>Required/ Permitted</b>	10 ft.	10 ft.	30 ft.	5 ft. & 5 ft.	20 ft.	.40	.35	28.5 ft., 2 stories
<b>Existing</b>	13 ft.	25 ft.	38 ft.	8 ft. & 6 ft.	14 ft.	.22	.30	25.5 ft., 1 story
<b>Proposed</b>	no change	no change	no change	no change	no change	.26	.31	no change

The 282 square-foot addition will increase the living space square footage of the residence from 1,611 square feet to a 1,893 square-foot, 3 bedroom, 2½ bathroom residence. The office over the garage will be accessed via a rear stairway located at the northwest corner of the house. The office would not be internally connected with the main residence living space. An existing 64 square-foot shed will remain on the property.

Other residence in the Marinda Oaks Subdivision on similar sized and sloped lots vary in size and Floor Area Ratio as indicated in the table below:

Address	Avg Slope (%)	Lot Area (square feet)	Residence Area (square feet)	No. Bedrooms	No. Bathrooms	Floor Area Ratio
39 San Gabriel Dr.		7548	1595	2	2	.21
48 San Gabriel Dr.		7437	1487	3	2	.19
41 San Gabriel Dr.		7590	1478	3	2	.19
8 San Gabriel Dr.		7877	2717	6	3	.27
7 San Gabriel Dr.		6400	1922	4	2	.30
46 San Gabriel Dr.		7800	1668	3	2	.21
Project site						
51 San Gabriel Dr.		7521	1858	3	2 1/2	.24

The proposed residence square footage and number of bedrooms and bathrooms is consistent with other residences on similar sized and sloped sites in the Marinda Oaks Subdivision.

There also are numerous other residences in the Marinda Heights neighborhood with second story living space over the garage (including 16, 46, 68 and 96 San Gabriel Drive). However, it is atypical for the design of the proposed office space to be unconnected by an internal stairway with the rest of the residence living space. Therefore, staff has included in the conditions of approval, that prior to issuance of the building permit, the owner must sign and record a deed restriction document indicating that the office is for the use of the residents only and conversion to another Accessory Dwelling Unit, construction of additional improvements within the space, or use by persons not residing in the main residence, will require either a modification of the Use Permit and/or issuance of a building permit. For instance, a building permit will be required if the area is converted into an Accessory Dwelling Unit. If the area is converted into an artist studio, with a sink outside the ½ bathroom, a modification of the Use Permit and a building permit will be required.

Another concern is the installation of a standard window in terms of sill height above finished floor, in the west wall of the second floor addition. The area is adjacent to the side yard of the neighboring residence at 43 San Gabriel Drive. Staff believes the height above floor of this western window on the second floor, 8 feet from the western

side property line, would negatively impact the neighbor's privacy. Also, the addition has been designed with 2 windows in the northern wall of the addition, adjacent the access door, which also contained mullioned panes to let in light. Staff is recommending a condition of approval that if a window is installed in the western wall of the addition, it shall be clerestory window with a minimum height above finished floor or 6 feet, so as to allow let light into the office without adversely affecting the westerly neighbor's privacy.

### **Other Agency/Department Condition/Comments**

#### **Ross Valley Fire Department (RVFD)**

RVFD submitted written comments which have been incorporated into the conditions of approval and are summarized as follows: construction materials are to be maintained away from the residence during construction, smoke detectors and carbon monoxide detectors shall be installed throughout the building in compliance with the Building Code and shall be interconnected for simultaneous alarm, address numbers at least 4 inches tall and permanently or automatically illuminated shall be visible from the street and the owner must maintain an effective firebreak around the structure by removing and clearing all flammable vegetation and/or other combustible growth in compliance with Ross Valley Fire Department Standard 220.

#### **Marin Municipal Water District (MMWD)**

MMWD submitted written comments which have been incorporated into conditions of approval in the attached resolution and are summarized as follows: The plans must comply with all the indoor and outdoor District Code requirements 13, indoor plumbing fixtures must meet specific efficiency requirements, a gray water system may be required and backflow prevention requirements met.

#### **Ross Valley Sanitary District (RVSD)**

RVSD submitted written comments which have been incorporated into the conditions of approval and are summarized as follows: A Sanitary District sewer connection permit is required to either replace the existing sewer lateral, or demonstrate to a District Inspector that the existing lateral meets current requirements, prior to the project final inspection and issuance of an occupancy permit for the residence and the size of the lateral will depend on the fixture count calculated during the permitting process with a hold placed on the property so the certificate of occupancy cannot be issued until the Sanitary District conditions are met. .

#### **Fairfax Police, Public Works and Building Departments**

The police, public works and the building departments did not provide conditions of approval or comments on the project.

## **RECOMMENDATION**

1. Conduct the public hearing.
2. Move to approve application # 18-13 by adopting Resolution No.2018-12 setting forth the findings and conditions for the project approval.

## **ATTACHMENTS**

Attachment A - Resolution No. 2018-12

## RESOLUTION NO. 2018-12

### **A Resolution of the Fairfax Planning Commission Approving a Conditional Use Permit (CUP) to Expand an Existing 1,611 Square-Foot Residence by 282 Square Feet at 51 San Gabriel Drive**

**WHEREAS**, the Town of Fairfax has received an application for a Conditional Use Permit to expand an existing 1,611 square-foot, 3-bedroom, 2-bathroom residence by 282 square feet adding an office and ½ bathroom in a new second floor over the garage at 51 San Gabriel Drive; and

**WHEREAS**, the Planning Commission held a duly noticed Public Hearing on August 16, 2018, at which time all interested parties were given a full opportunity to be heard and to present evidence; and

**WHEREAS**, based on the plans and supplemental information provided by the applicant, the Planning Commission has determined that the applicant has met the burden of proof required to support the findings necessary for the project's requested discretionary Conditional Use Permit as long as certain conditions, as listed below, are met; and

**WHEREAS**, the Commission has made the following findings:

1. The proposed 282 square-foot office and ½ bathroom addition is similar in size, mass and design on the site to other residential structures in the San Gabriel subdivision. Therefore, the approval of the use permit, with incorporation of the conditions listed below, shall not constitute a grant of special privilege, shall not contravene the doctrines of equity and equal treatment and would not be detrimental to the public welfare or injurious to other properties in the vicinity.
2. The residence will continue to comply with the setback, height, Floor Area Ratio and Lot Coverage limitation(s) with construction of the addition. The addition to the residence will reach a maximum of 21 feet 6 inches, 7 feet less than the maximum permitted 28.5 foot height limit. Therefore, the development and use of the property as approved under the use permit and variance 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 and variance.
3. Approval of the use permit is not contrary to those objectives, goals or standards pertinent to this particular project 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 use permit and variance will result in equal or better development of the premises than would otherwise be the case. Therefore, the project is in the public interest and will enhance the general health, safety and welfare of the community.
5. Locating the addition over the existing garage minimizes site disturbance will result in equal or better development of the premises than would otherwise be the case, and said approval, as conditioned, is in the public interest and protects the general health, safety and welfare of the neighboring properties and the community.

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

1. This approval is limited to the development illustrated on the plans entitled, "Office Addition to the Parker Residence, 51 San Gabriel Drive, Fairfax, CA", by architect Robert Suttman, Sheets A0.0, 01.0 and A2.0 dated 4/16/18, except as amended in the following conditions.
2. Prior to the building permit final inspection the 282 square-foot office addition shall be constructed as shown on the above referenced plans.
3. During the construction process, all construction-related vehicles including fixture/supply or equipment delivery, cement trucks and construction materials shall be situated off the travel lane of the adjacent public right(s)-of-way at all times. This condition may be waived by the building official on a case-by-case basis with prior notification from the project sponsor.
4. Additionally, 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.
5. The Building Official shall field check the completed project to verify compliance with the approved plans and building code requirements.
6. The Planning Department shall field check the completed project to verify that the construction reflects the plans approved by the Planning Commission and to verify that all planning commission conditions have been complied with.
7. The roadways shall be kept clean and the site free of dust by watering down the site if necessary. The roadways shall be kept free of dust, gravel and other construction materials by sweeping the roadway, daily, if necessary.
8. During construction, the developer and all employees, including contractors and

subcontractors must comply with all requirements set forth in Chapter 8.32 of the Town Code, "Urban Runoff Pollution Prevention".

9. Any changes, modifications, additions or alterations made to the approved set of plans will require a modification of Application # 18-13. **Any** construction based on job plans that have been altered without the benefit of an approved modification of Application No. 18-13 will result in the job being immediately stopped and red tagged.
10. 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.
11. 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, Design Review Board 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.

### **Ross Valley Fire Department**

12. The site shall comply with the Ross Valley Fire Department Fire Protection Standard 220 Vegetation/Fuels Management Plan by maintaining an effective firebreak/defensible space zone around the site structures.
13. All smoke detectors in the residence shall be provided with AC power and be



interconnected for simultaneous alarm. Detectors shall be located in each sleeping room, outside of sleeping rooms centrally located in the corridor and over the center of all stairways with a minimum of one detector per story of the occupied portion of the residence.

14. Carbon monoxide alarms shall be provided in existing dwellings Carbon monoxide alarms shall be located outside each dwelling unit sleeping area, in the immediate vicinity of bedroom(s) and on every level of a dwelling unit including basements.
15. Address numbers at least 4 inches tall must be in place adjacent to the front door. If not clearly visible from the street, additional numbers are required. Residential numbers must be internally illuminated, placed next to a light or be reflective numbers.

### **Marin Municipal Water District**

16. Compliance with all indoor and outdoor requirements of District Code Title 13 – Water Conservation is a condition of water service with fixtures meeting specific efficiency requirements.
17. Should backflow protection be required, it shall be installed as a condition of water service.

### **Miscellaneous Conditions**

18. The applicant must comply with any all conditions listed above unless a specific agency waives their conditions in a written letter to the Department of Planning and Building Services.
19. Planning Conditions acted upon by the Planning Commission may only be waived by the Commission at a future public hearing.
20. The applicant shall comply with any and all conditions placed upon the project by the Building Official/Public Works Manager.
21. A construction management plan shall be submitted to the Building Official with the building permit application and shall become a condition of building permit issuance.
22. All exterior lighting, including landscape lighting, shall be LED and shall direct light downward.
23. Prior to issuance of the project building permit the applicant shall sign, notarize and record a deed restriction at the Marin County Recorder's Office indicating that the room over the garage is for use as an office by the residents of the single

family residence only unless the Use Permit is modified by the Planning Commission and/or a building permit is issued to construct improvements that modify the area for a permitted use.

24. If window(s) are installed in the western wall of the office they shall be clerestory window(s) with a minimum sill height above finished floor of 6 feet..

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

The approval of the Use Permit can occur without causing significant impacts on neighboring residences; and

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 16<sup>th</sup> day of August, 2018 by the following vote:

AYES:

NOES:

ABSTAIN:

\_\_\_\_\_  
Chair, Mimi Newton

Attest:

\_\_\_\_\_  
Ben Berto, Director of Planning and Building Services