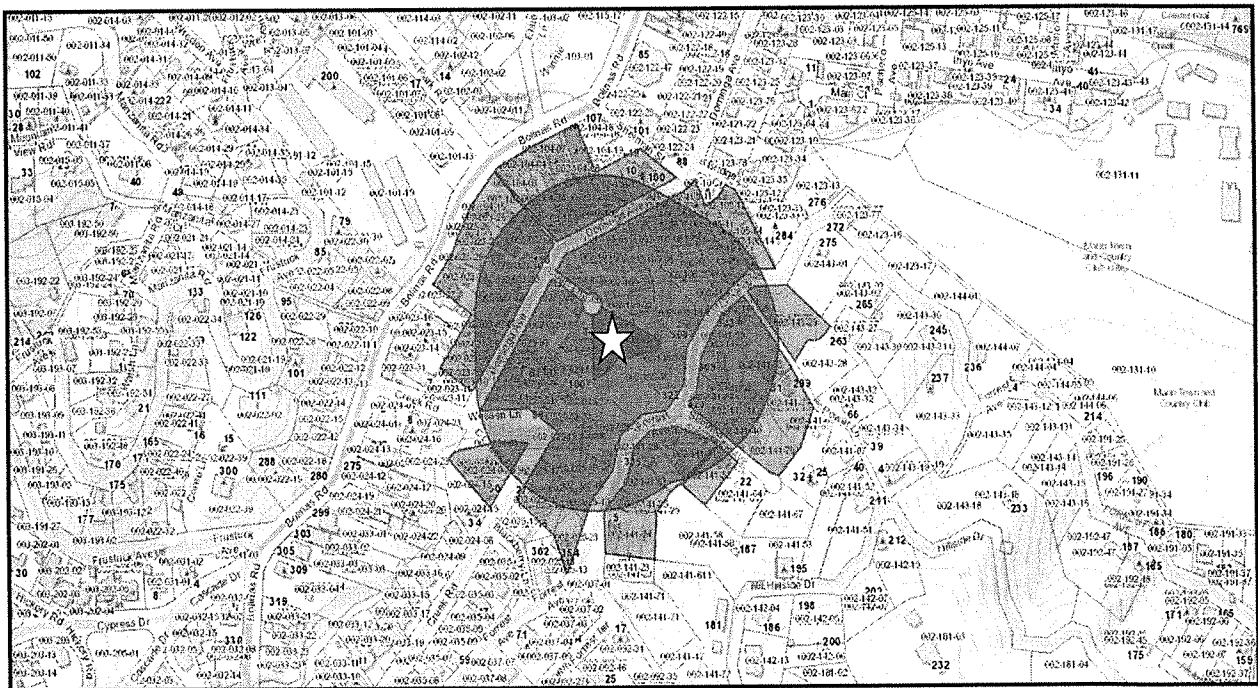


**TOWN OF FAIRFAX
STAFF REPORT
Department of Planning and Building Services**

TO: Fairfax Planning Commission
DATE: April 19, 2019
FROM: Linda Neal, Principal Planner
LOCATION: 10 Court Lane; Assessor's Parcel # 002-105-01
ZONING: Residential RD 5.5-7 Zone
PROJECT: Stabilization of existing accessory storage "barn"
ACTION: Creek Setback Variance, Use Permit; Application # 18-02
APPLICANT: Gary Roth, Landscape Architect
OWNER: Talia Friedman and Alex Shuldiner
CEQA STATUS: 15301(d) and 15305(a)



10 COURT LANE

BACKGROUND

The project site is 10,400 square feet in size and mostly level but slopes down at the rear to San Anselmo Creek. The site is developed with a single-family residence that was constructed in 1919 and the historical records from the Marin County Tax Assessor's Office indicate that the 2 accessory structures on the site, the garage and the storage "barn", existed on the property when they first inspected it in 1958.

The first notation in the property file that the site was experiencing significant erosion that was threatening the structures is 1982. At that time the previous owner had to remove a rear deck that was undermined by flood waters and although the owners at the time applied for a permit to retain the bank with a wall there are notations in the file that work never commenced.

Subsequent owners have constructed various walls along the creek bank to try and halt erosion from stream flow. None of the work done to date has been effective at halting the natural erosive progress of the creek bank. Significant deterioration of the bank occurred during the winter of 2016-2017 when flows in the San Anselmo Creek were atypically higher than during a normal winter.

The Federal Emergency Management Agency's Flood Insurance Rate Map (FIRM) shows that the San Anselmo Creek Floodway crosses the property at the area where the barn is located (see project plans, sheet L0.2). However, the local FEMA representative has also concluded that the elevation of grade at the barn is above maximum flood height.

DISCUSSION

The applicant is applying to stabilize the shed located at the eastern corner of the property, adjacent to the San Anselmo Creek, in one of the following ways:

With a grade beam at the perimeter of the storage barn and cast in place piers only:

With a grade beam at the perimeter of the storage barn, with cast in place piers and an additional middle grade beam.

Either alternative will require the approval of the Town Engineer prior to issuance of the building permit.

The pier caps and the piers will project out 18 inches from the walls of the storage barn, 18 inches further into the required creek setback than the walls and foundation of the existing storage barn.

The project requires the approval of the following discretionary permits:

Use Permit

Town Code § 17.084.050(A) requires that properties in the Residential RD 5.5-7 Zone such as 10 Court Lane have a minimum parcel size of 5,500 square feet and a minimum width of 60 feet. The same section requires that prior to making any improvement of or on a building site failing to meet the minimum requirements of either size or width, a Use Permit must be obtained from the Planning Commission.

“Lot Width” is defined as follows in Town Code § 17.008.020, Definitions:

“The distance between the side lot lines measured along the setback line as established by this title, or if no setback line is established, the distance between the side lot lines measured along the street line”.

The lot width measured at the 6 foot front setback line is 35 feet. The required width is 60 feet so the project requires the approval of a Use Permit.

The existing storage barn that the foundation system is proposed beneath is a legal non-conforming structure that does not meet the required combined side yard setback or creek setback. The project will not result in the storage barn being increased in height or moved further into any of the required setbacks. The new foundation will be slightly above and below grade. Therefore, the proposed stabilization work beneath the existing storage barn will not have any significant impact on the site or on the neighboring properties [Town Code § 17.016.020(C)].

Creek Setback Variance

Town Code § 17.040.040(A) requires that no building, accessory building, structure or swimming pool be constructed closer to the top of the San Anselmo Creek bank than 20 feet or two times the average depth of the bank, whichever is greater.

The accessory storage barn is located 4.5 feet from the top of the creek bank at one point. All but the northwest corner of the storage barn is located within the required creek setback. Constructing an underground foundation system beneath the barn that will project an additional 18 inches into the setback requires approval of a creek setback variance.

While there are other locations the storage barn could be sited on the property, all of them are within the creek setback which makes up most of the rear and side yard areas.

The plans show additional proposed improvements to stabilize the creek bank along the rear of the property. Town Code § 17.008.020, Definitions, defines a structure as, “Anything constructed or erected, the use of which required a location on the ground or

attached to something having a location on the ground, including but without limiting the generality of the foregoing, advertising signs, billboards, backstops for tennis courts, fences, pergolas, radio and television towers, masts and aerials". The placement of rocks, grading and planting of the creek bank does not meet the definition of a "structure". Historically in Fairfax, bank stabilization projects of the type currently proposed for this property have not been deemed "structures" for purposes of local review. Therefore, as proposed these improvements do not constitute a "structure" and are not subject to the Town's review and approval of a creek setback variance.

The plans for creek bank stabilization are subject to the approval of the Department of Fish and Wildlife and the Army Corp of Engineers among other agencies. Staff has included the plans and the geomorphologic and hydrologic studies of the site to further the Commission's understanding of why the barn is being undermined, and to show that the plans under our review also require an accompanying project subject to State/ Federal approval in order to achieve a long-term repair of the accessory building.

The applicants have submitted an application for the creek bank stabilization proposal to the required agencies using the Joint Aquatic Resource Permit Application (JARPA) permitting process and they expect the proposal to be acted on in the near future. The JARPA process allows an applicant to concurrently apply for approval from the numerous permitting agencies which include the U.S. Department of Fish and Wildlife, the Army Corps of Engineers and San Francisco Bay Regional Water Quality Control Board.

Staff has reviewed the proposed underground foundation structure proposed to stabilize the barn with our FEMA representative who indicated that when they created the most recent FEMA maps, all existing structures were taken into consideration in determining flood elevations. After reviewing the plans, Michael Hornick, the FEMA representative for Fairfax, indicated that the elevation of the site at the storage barn is above the 100-year flood height, and therefore FEMA has no concerns with regards to foundation work under the existing storage barn.

The proposed foundation will not change the height of the storage barn which is 14.5 feet, .5 feet below the maximum 15 foot height limit for accessory structures [Town Code § 17.084.060(B)].

General Plan

The 2010-2030 Fairfax General Plan, Conservation Element Policy CON-3.1.2, indicates that "the Town of Fairfax shall protect and restore riparian habitat and ensure natural channel process in the San Anselmo Creek and the Fairfax Creek watersheds". While one could argue that allowing retention of structures within the riparian habitat corridor along the San Anselmo creek is in conflict with this policy, staff does not believe the intent (nor practice) has been to require the removal of viable structures to accomplish creek restoration. If this storage barn had been substantially damaged beyond 50% by flooding, staff would not support its re-establishment as that would be

in conflict with this policy. With the exception of the foundation and some of the lower exterior wood siding, the storage barn is in fair condition. The storage barn is currently only being threatened by the continued scouring of this site by the natural creek processes. The creek bank stabilization project that is proposed below the storage barn, and which will be constructed in conjunction with this foundation project, appears to protect and restore riparian habitat, in compliance with the General Plan goals and policies. The final determinations on whether the bank stabilization can occur will be by the outside agencies mentioned. Their approval will be required prior to issuance of building permits for the foundation work.

Archaeologic Survey

Due to the proximity of the site to the creek, where Native American artifacts have been found, the staff required the applicants to provide an Archaeologic Survey of the site (Exhibit G). The firm of Archaeological Resource Service (ARS) performed the site investigation which included the following:

1. A review of the records of the ARS and at the Regional Office of the California Historical Resources Information System.
2. A check of historic references to determine the potential of the site having historic archaeologic deposits.
3. Contacting the Native American Heritage Commission to determine listed sacred lands within the project area.
4. Contacting the Native American organizations/individuals designated by the Heritage Commission as interested parties for the project area.
5. A surface reconnaissance of all accessible parts of the project site to locate visible evidence of historic or prehistoric cultural deposits.

The report findings indicate that there have been 2 sites reported along the San Anselmo Creek in the general area of the project site – one at 46 Creek Road, and the second unrecorded site at 370/372 Bolinas Road. The majority of nearby cultural resource evaluations in the immediate area have been negative with no cultural resources or the potential of cultural resources being discovered.

The investigation of 10 Court Lane revealed no evidence that the project site was ever used as a settlement by prehistoric populations. The report also determined that the site contains no exploitable materials such as stone that may have been used by prehistoric populations to fashion tools. Therefore, while the site is likely to have been used as a hunting territory and may have contained plant materials used by Native American tribes traveling through the area, the report has determined that the potential for discovery of artifact concentrations on the site is very low. Staff has included conditions of approval in the proposed approval resolution that set forth the actions that

must be taken should any historic or prehistoric artifacts or human remains be discovered during construction.

Other Agency/Department Comments/Conditions

Ross Valley Fire Department (RVFD)

The Ross Valley Fire Department commented that the storage barn will not require sprinklers unless the building is utilized as living space, the property is located within the Wildland Urban Interface Area for Fairfax, and the new construction must comply with Chapter 7A of the California Building Code or equivalent, address numbers at least 4 inches tall must be in place adjacent to the front door, and alternative materials or methods may be proposed for any of the above conditions in accordance with Section 104.9 of the Fire Code.

Marin Municipal Water District (MMWD)

MMWD commented that the plans must comply with all the indoor and outdoor requirements of District Code Title 13, Water Conservation, the District's backflow prevention requirements must be met and if installation of a backflow device is required, the device shall be tested/inspected and be approved by a District Inspector prior to the project final inspection and issuance of the occupancy permit and the project is not subject to complying with Ordinance No. 429, requiring the installation of gray water recycling systems.

No Comments or conditions were received from the Ross Valley Sanitary District, the Fairfax Police Department, the Fairfax Building Department or the Fairfax Public Works Department.

RECOMMENDATION

1. Conduct the public hearing.
2. Move to approve application # 18-02 by adopting Resolution No. 2018-03 setting forth the findings and conditions for the project approval.

ATTCHMENTS

Attachment A – Resolution No. 2018-03

Attachment B – Applicant's supplemental information dated 1/5/17

Attachment C – Geomorphic Assessment by RDG, dated 12/6/17

Attachment D – JARPA application

Attachment E – Geologic/Geotechnical report by Miller Pacific Engineering dated 10/17/17

Attachment F – letter from staff dated 11/28/17

Attachment G - Cultural Resources Evaluation by ARS dated 3/9/18

Attachment H – letter of support from owners of 308 Forrest Ave., dated 1/13/18

RESOLUTION NO. 2018-03

A Resolution of The Fairfax Planning Commission Approving Application No. 18-02 for a Conditional Use Permit and a Creek Setback Variance for the Stabilization of an Existing Accessory Storage “Barn” Structure Adjacent to the Single-family Residence at 10 Court Lane

WHEREAS, the Town of Fairfax has received an application from Alec Shuldiner and Talia Friedman to stabilize the storage “barn” structure (“project”) at 10 Court Lane in Fairfax with a new pier foundation; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on April 19, 2018, at which time the Planning Commission determined that the proposed project complies with the 2010-2030 Fairfax General Plan and Town Code Title 17, 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 requested Use Permit and Creek Setback Variance for the project; and

WHEREAS, the project constitutes maintenance of an existing structure and is categorically exempt from CEQA per Article 19, section 15301 of the California Code of Regulations, Chapter 3; and

WHEREAS, the Commission has made the following findings:

General Plan Compliance

1. The stabilization of the existing storage barn has been reviewed by the Fairfax Federal Emergency Management Agency representative for Fairfax who has indicated that the proposed building stabilization project will not negatively impact flood waters within or adjacent to San Anselmo Creek. Therefore, the project complies with the General Plan Land Use Element Policy LU-4.1.2: New and renewed development shall comply with all federal, state and local regulations pertaining to development in flood zones.
2. The underpinning of the storage barn has been analyzed by Miller Pacific Engineering Group in their 10/17/17 report, in the geomorphic assessment of the creek by Restoration Design Group in their 12/6/17 report and by review of the plans by FEMA. The reviews indicate that the proposed underpinning of the existing storage barn, in conjunction with the proposed bank stabilization project will maintain the property without negatively impacting the creek or neighboring properties. Therefore, the project conforms to the 2010-2030 Fairfax General Plan Safety Element, Policy S-2.2.2: Development and land use decisions will be made using the best available hydrological and flood hazard information.

Use Permit Findings

3. The proposed underpinning of the storage barn is similar to other stabilization improvements made to threatened structures along the San Anselmo Creek and has been determined not to have a negative impact on the creek or surrounding properties. Therefore, 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.
4. 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. Repair of the storage barn foundation will require prior approval of stream bank stabilization and therefore will avoid adverse physical effects.
5. 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 the 2010-2030 Fairfax General Plan or Town Code Title 17, Zoning.
6. Approval of the use permit will result in equal or better development of the premises than would otherwise be the case, and said approval is in the public interest and for the protection or enhancement of the general health, safety or welfare of the community.

Creek Setback Variance Findings

7. Because of special circumstances applicable to the property, mainly its close proximity to the San Anselmo Creek, the strict application of the creek setback regulation will deprive the applicant of the ability to maintain their property, a privilege enjoyed by other property owners in the vicinity and under identical zone classification.
8. 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.
9. The strict application of this title would result in excessive or unreasonable hardship.

10. 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.

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

1. The project is limited to the underpinning of the accessory barn depicted in the drawings by Gary Roth dated 12/6/17, pages L0.0, L0.1 and L0.3 and reviewed in the reports by Miller Pacific Engineering Group, dated 10/17/17 and Restoration Design Group dated 12/6/17.

2. Prior to issuance of any of the building permits for the project the applicant or his assigns shall:

- a. Provide the Town with an approved copy of the JARPA and any required outside agency permits for the creek bank stabilization in the area below the barn. Any conditions of approval for the JARPA permit that also apply to the underpinning of the storage barn are herein incorporated by reference as conditions of approval for the storage barn foundation stabilization project.

- b. Submit a construction plan to the Public Works Department which may include but is not limited to the following:

- Construction delivery routes approved by the Department of Public Works.
- Construction schedule (deliveries, worker hours, etc.)
- Notification to area residents
- Emergency access routes

- c. The applicant shall prepare, and file with the Public Works Director, a video tape of the roadway conditions on the public construction delivery routes (routes must be approved by Public Works Director).

- d. Submit a cash deposit, bond or letter of credit to the Town in an amount that will cover the cost of grading, weatherization and repair of possible damage to public roadways. The applicant shall submit contractor's estimates for any grading, site weatherization and improvement plans for approval by the Town Engineer. Upon approval of the contract costs, the applicant shall submit a cash deposit, bond or letter of credit equaling 100% of the estimated construction costs.

- e. The foundation shall be designed by a structural engineer certified as such in the state of California. Plans and calculations of the foundation and retaining elements shall be stamped and signed by the structural engineer and submitted to the satisfaction of the Town Structural Engineer.

f. The grading, foundation, retaining, and drainage elements shall also be stamped and signed by the site geotechnical engineer as conforming to the recommendations made by the project Geotechnical Engineer.

g. Prior to submittal of the building permit plans, the applicant shall secure written approval from the Ross Valley Fire Authority, Marin Municipal Water District and the Ross Valley Sanitary District noting the development conformance with their recommendations.

3. During the construction process the following shall be required:

a. The geotechnical engineer shall be on-site during the grading process (if there is any grading to be done), and shall submit written certification to the Town staff that the grading has been completed as recommended prior to installation of foundation piers.

b. Prior to the concrete form inspection by the building official, the geotechnical and structural engineers shall field check the forms of the foundations and provide written certification to the Town staff that the work to this point has been completed in conformance with their recommendations and the approved building plans. The Building Official shall field check the concrete forms prior to the pour.

c. All construction-related vehicles including 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.

d. Any proposed temporary closures 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.

4. Prior to issuance of the final permit approval, the following shall be completed:

a. The geotechnical engineer shall field check the completed project and submit written certification to the Town Staff that the foundation, grading and drainage elements have been installed in conformance with the approved building plans and the recommendations of the soils report.

b. The Planning Department and Building Official shall field check the completed project to verify that all and planning commission conditions and required engineering improvements have been completed in compliance with the approved plans.

5. Excavation shall not occur between October 1st and April 1st of any year. The Town Engineer has the authority to waive this condition depending upon the weather.
6. No construction materials or spoils of any kind shall be deposited within the banks of San Anselmo Creek.
7. The roadways shall be kept free of dust, gravel and other construction materials by sweeping them, daily, if necessary.
8. Any changes, modifications, additions or alterations made to the approved set of plans will require a modification of Application # 18-02. Any construction based on job plans that have been altered without the benefit of an approved modification of Application 18-02 will result in the job being immediately stopped and red tagged.
9. Any damages to the public portions of Dominga Avenue, Court Lane or other public roadway used to access the site resulting from construction activities shall be the responsibility of the property owner.
10. 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.
11. 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.

12. Conditions placed upon the project by outside agencies or by the Town Engineer may be eliminated or amended with that agency's or the Town Engineer's written notification to the Planning Department prior to issuance of the building permit.

13. The building permit plans shall be reviewed and approved by the Town Engineer, at the expense of the applicant, prior to issuance of the building permit. The project shall be inspected by the Town Engineer prior to the final inspection of the stabilization permit for compliance with the engineering plans.

14. The storage barn is only approved for use as a storage building. Use of the structure for any kind of living space and/or remodeling of the structure that includes the installation of electrical or plumbing will require the approval of a building permit and possibly a use permit from the Planning Commission. If the electrical improvements and/or plumbing improvements are beyond that typically found in a storage shed, the use will require the approval of a Use Permit and a building permit to convert the space to living space.

15. Prior to initiating ground disturbing activities within the project area, construction personnel should be alerted to the possibility of encountering prehistoric or historic period cultural materials. If any prehistoric or historic subsurface cultural resources are discovered during ground-disturbing activities, all work within 50 feet of the resources shall be halted and a qualified archaeologist shall be consulted to assess the significance of the find according to CEQA Guidelines Section 15064.5. Personnel should be advised that, upon discovery of buried archaeological deposits, work in the immediate vicinity of the find should cease and a qualified archaeologist should be contacted immediately. Once the find has been identified, plans for the treatment, evaluation, and mitigation of impacts to the find will need to be developed if it is found to be National Register of Historic Places and/or California Register of Historical Resources (CRHR) eligible. Potential cultural materials include prehistoric and historic period artifacts that may consist of, but are not limited to: historic period artifacts, such as glass bottles and fragments, tin cans, nails, ceramic; and, pottery shards and other metal objects; flaked stone artifacts and debitage consisting of obsidian, basalt, and/or chert; groundstone artifacts such as mortars, pestles and grinding slabs; dark, almost black soil with a "greasy" texture that may be associated with charcoal; ash, bone, shell, flaked stone, groundstone and fire-affected rock; or human remains.

If human remains are encountered during construction, work in that area must cease and the Marin County Coroner's Office must be notified immediately. If the remains are determined to be Native American, the Native American Heritage Commission (NAHC) must be notified within forty-eight (48) hours as required by Public Resources Code 5097. The NAHC will notify the designated Most Likely Descendant, who will in turn provide recommendations for the treatment of the remains within 24 hours.

Ross Valley Fire Department

16. Project has been deemed a “substantial remodel” and as such requires installation of a fire sprinkler system that complies with the National Fire Protection Association regulation 13-D and local standards. The system will require a permit from the Fire Department and the submittal of plans and specifications for a system submitted by an individual or firm licensed to design and/or design-build sprinkler systems.

17. The property is located within the Wildland Urban Interface Area for Fairfax and the new construction must comply with Chapter 7A of the California Building Code or equivalent.

18. 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 must be placed in location that is visible from the street. The numbers must be internally illuminated or illuminated by and adjacent light controlled by a photocell that can be switched off only by a breaker so it will remain illuminated all night.

19. Alternative materials or methods may be proposed for any of the above conditions in accordance with Section 104.9 of the Fire Code.

20. All approved alternatives requests, and their supporting documentation, shall be included in the plan sets submitted for final approval by the Fire Department.

Marin Municipal Water District

21. The plans must comply with all the indoor and outdoor requirements of District Code Title 13, Water Conservation. Plans must be submitted to the District and be approved.

22. The District’s backflow prevention requirements must be met and if installation of a backflow device is required, the device shall be tested/inspected and be approved by a District Inspector prior to the project final inspection and issuance of the occupancy permit.

23. The project is not subject to complying with Ordinance No. 429, requiring the installation of gray water recycling systems.

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 and the Creek Setback Variance is in conformance with the 2010 – 2030 Fairfax General Plan 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 19th, day of April, 2018 by the following vote:

AYES:

NOES:

ABSTAIN:

Chair Newton

Attest:

Ben Berto, Director of Planning and Building Services