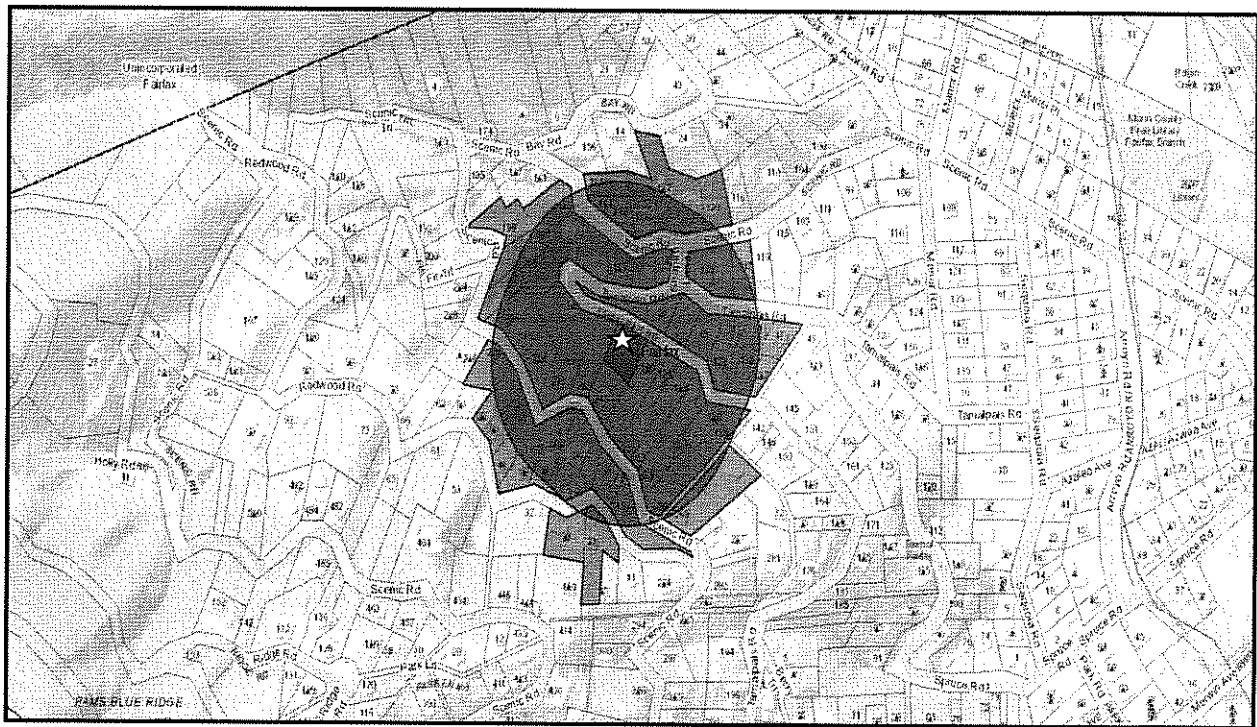


**TOWN OF FAIRFAX  
STAFF REPORT  
Department of Planning and Building Services**

**TO:** Fairfax Planning Commission  
**DATE:** March 30, 2017  
**FROM:** Linda Neal, Principal Planner  
**LOCATION:** 118 Tamalpais Road; Assessor's Parcel No. 001-121-61  
**ZONING:** Residential RS-6 Zone  
**PROJECT:** Construction of front access stairway to residence  
**ACTION:** Side-yard Setback Variance, Retaining Wall Height Variance and Encroachment Permit  
Application # 17-06  
**APPLICANT:** Nick Rasic  
**OWNER:** Federal National Mortgage Association  
**CEQA STATUS:** Categorically Exempt, § 15302 and 15305(a)



## 118 TAMALPAIS ROAD

## **BACKGROUND**

The site is steeply sloped up from Tamalpais Road at an average rate of 63% and is developed with a single-family residence that was constructed in 1958.

A search of the Town's original tax records indicates that the house at 120 Tamalpais Road was constructed prior to the Town's incorporation in 1931 and the house at 118 Tamalpais Road was constructed in 1958 as a guest cottage for 120 Tamalpais Road. In 1982, the house at 120 Tamalpais Road was rendered uninhabitable by a landslide that filled the structure with mud. Since the construction of 118 Tamalpais in 1958, both residences have used the same access stairway which was destroyed by another landslide in 2011. While the Town repaired the landslide to maintain access along Tamalpais Road, the property owners did not repair the shared access stairway.

In 1989 the property owner of 120 Tamalpais Road was informed in a Residential Resale Inspection Report prepared by the Town's Planning and Building Department that the structure on the property was uninhabitable and needed to be demolished. The persons residing at 118 Tamalpais Road purchased the damaged residence at 120 Tamalpais Road in 1991.

Since the 2011 slide the persons residing at 118 Tamalpais Road have been using access stairs to the house at 124 Tamalpais Road and following a path across the uninhabitable property they own at 120 Tamalpais Road to the house they reside in at 118 Tamalpais Road (the project site),. This access route is 190 feet long, traverses a retaining wall for 124 Tamalpais Road, with various steep and treacherous stairways and paths that do not meet code requirements for access, and terminates at stairs leading up to the front door of 118 Tamalpais Road (a video of the access path will be shown at the meeting).

On May 19, 2016 the Planning Commission approved a Side Setback Variance, a Retaining Wall Height Variance and an Encroachment Permit for a new access stairway and an associated retaining wall for 118 Tamalpais Road. The approval was conditioned upon the Town Engineer reviewing and approving the project building plans after reviewing the entire body of evidence pertaining to the construction of the project that had been presented to the Planning Commission. The body of evidence included engineering reports, arborist's reports and survey information provided by both the applicant and the tenant who also owns the condemned house at 120 Tamalpais Road.

The approved design had the entire lower flight of the stairway located ½-foot to 1-foot from the southern side property line and retained the shared use of the sewer and water lines with the condemned house at 120 Tamalpais Road. The retaining wall in the proposal was 10 ½-feet to 11-feet in height. The approved proposal also required the removal of 2 Maple trees that were alleged to straddle the southern property line between the houses at 118 and 120 Tamalpais Road (Attachment B).

## DISCUSSION

The Town Engineer reviewed the body of information and the proposed plans as part of a building permit submittal filed with the Town after the Planning Commission approval.

As part of his project review the Town Engineer also met in the field with staff and the project surveyor to verify that the location of the side property is accurately shown on the site plan and is accurately marked in the field.

After completing his review the Town Engineer prepared a memorandum indicating he was concerned that easterly wing wall of the proposed stairway retaining wall might negatively impact the Town's slide repair at the frontage of 120 Tamalpais Road (Attachment C – Town Engineer's memorandum dated 8/1/16).

Responding to the Town Engineer's comments, the applicants have revised the plans for the wall and the stairway, relocating the improvements so they no longer have the potential to impact the Town's slide repair area and so that the stairway no longer requires the removal of any trees. The project includes providing separate sewer and water service to 118 Tamalpais Road (Attachment D).

### *Required Discretionary Permits*

The relocated stairway still requires the approval of a Side-Yard Setback Variance, a Retaining Wall Height Variance and an Encroachment Permit for the following reasons:

#### **A Side-yard Setback Variance**

Town Code § 17.080.070(B)(2) requires that properties with over a 10% slope have a minimum side-yard setback of 5 feet and a combined side yard setback of 20 feet. The stairs have been redesigned from the plans approved in May of 2016 so that only a small 4-square-foot portion of the lowest flight of the stairs and a small 16-square-foot stair landing will be within the required 5-foot, side yard.

Locating the stairway anywhere else along the very steep property frontage would require additional excavation, a taller retaining wall, and further site disturbance. Therefore, Staff believes that the requested side-yard setback variance for 20-square feet of the stairway/landing to project to within 1-foot of the western side property line is warranted.

#### **Retaining Wall Height Variance and an Encroachment Permit**

The public roads in Fairfax are rarely built to the entire width of the right-of-way easements due to the steep and varied topography of the hillsides. As a result, front property lines are typically located varied distances away from the edge of the paved roadbeds. At 118 Tamalpais Road, the project surveyor has determined that the front property line starts 7 to 8 feet up the hillside from the edge of the paved roadbed.

The Town Code allows private property owners to obtain an Encroachment Permit from the Planning Commission to use the area between the roadbed and private property lines if the area is not being used by the general public for public improvements and as long as there is no suitable location on their own property for the improvement [Town Code § 12.32.010(A) and (B)].

The Town Code limits the heights of retaining walls and fences along the property frontage to 4 feet. In order to support the excavated hillside and an access stairway to the house at 118 Tamalpais Road, a retaining wall ranging from 11-feet to 12-feet in height is required, with the first flight of stairs and landing located within the Tamalpais Road right-of-way. The structures would encroach 6-feet into the right-of-way and maintain a 3-foot-setback from the edge of the paved street.

The applicant has submitted a geotechnical report prepared by Geoengineering, Inc., that indicates that a retaining wall engineered and designed to support the cut hillside and accommodate the new stairway requires piers drilled to a depth of 9 feet. (Attachment E). The retaining wall has been designed with piers that would be 12 ½ feet deep exceeding the depth recommended by the geotechnical engineer (Page 5 of the Plans, Section A).

There is no other way to access this site without building a wall and access stairway with the first flight and support wall within the public right-of-way. Moving the improvements out of the required 5-foot side setback would increase the amount of excavation and the retaining wall height.

### **Letter from the Tenant's Attorney**

Lawrence Bragman, Attorney for the tenant of 118 Tamalpais Road, has addressed his client's project concerns in the attached letter dated 1/20/17 (Attachment E). These concerns include; 1) continued shared stair access to 120 Tamalpais Road; 2) the continued integrity of the water and sewer lines to 120 Tamalpais Road; and, 3) additional engineering design features they would like included in the project design as well as the implications of a restored stairway on the tenant's civil case against the property owner.

The Town Engineer has reviewed the recommendations for the project made by Craig Herzog, the tenant's engineer, and contained in the letter from the tenant's attorney dated 1/20/17. The Town Engineer has responded to the letter in the attached memorandum dated 1/26/17 (Attachment F). The Town Engineer has indicated that he has reviewed and approved the project engineer's stairway/wall design as proposed and does not feel that any additional conditions or design changes are warranted.

The property owner's attorney, Claudia Williams, has also addressed the 1/20/17 letter from the tenant's Attorney in her letter dated 2/7/17 which can be found as Attachment G to this report.

## **Civil Matter**

Through his attorney the tenant of 118 Tamalpais Road has expressed concern that the Town is not doing enough to ensure he has the right to also access his condemned property at 120 Tamalpais via the proposed stairway once it is built. He is also concerned that the shared sewer and water line, once abandoned by the owner of 118 Tamalpais, will not be restored to the condemned house at 120 Tamalpais Road and that the Commission's approval of the project will impact the tenant's pending civil case against the owner (Attachment E – letter dated 1/20/17 from Attorney Larry Bragman).

### *Stairway Access*

Shared use of the new access stairway by both 118 and 120 Tamalpais Road is a civil matter and the Town has no authority to require the owner of 118 Tamalpais to guarantee the owner of 120 Tamalpais an easement to use a stairway now entirely on and in front of the 118 Tamalpais Road residence.

### *Water and Sewer Lines*

The issue of restoring the water and sewer lines to 120 Tamalpais Road is under the jurisdiction of the Marin Municipal Water District and the Ross Valley Sanitary District. These improvements are not inspected or regulated by the Town. If and when the owner of 120 Tamalpais Road restores 120 Tamalpais Road for residency the Town's involvement will only include verifying with the water district and sanitary district that the parcel is being served and granting an encroachment (street opening) permit if restoring the lines requires digging in the street right-of-way.

## **Other Agency/Department Comments/Conditions**

The Marin Municipal Water District has required that a reduced pressure backflow device be installed at the new water meter for 118 Tamalpais Road (Attachment G – Marin Municipal Water District e-mail of 12/8/16).

The Ross Valley Sanitary District and the Fairfax Police, Public Works and Building Departments had no comments on or conditions for the proposed project.

## **RECOMMENDATION**

1. Conduct the public hearing.
2. Move to approve Application # 17-05 by adopting Resolution No. 17-06 setting forth the findings and conditions for approval of the project.

## **ATTACHMENTS**

Attachment A – Resolution No. 17-06

Attachment B – Previously approved project plans

Attachment C – Revised project plans

Attachment D- Town Engineer's memorandum dated 8/1/16, approving the building permit plans

Attachment E - Geoengineering Inc., report dated 4/21/16

Attachment F - Arborist report dated 9/3/16 by Urban Forestry Associates, Inc.

Attachment G – letter from neighbor/tenant's attorney, Larry Bragman, dated 1/20/17  
(includes comments from Craig Herzog, the tenant's engineer on page 2)

Attachment H – Town Engineer's 1/26/17 response to Attorney Bragman's letter

Attachment I - Claudia Williams, Law Offices of Glenn H. Wechsler, attorney for the owner's response to Attorney Bragman's letter

Attachment J - MMWD e-mail dated 12/8/16 regarding reduced pressure backflow preventer

**RESOLUTION NO. 17-06**

**A Resolution of the Fairfax Planning Commission Approving Variances and an Encroachment Permit for a Retaining Wall and Entry Stairway Providing Access to the Property at 118 Tamalpais Road**

**WHEREAS**, the Town of Fairfax has received an application to construct a retaining wall and front stairway to a house at 118 Tamalpais Road that has been without an access stairway since the original access stairway was destroyed in a 2011 landslide event; 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 project with certain conditions of approval as listed below; and

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

1. The site slopes up at over a 90° angle from Tamalpais Road along most of the property frontage. It is the steep slope of the site that is the special circumstance applicable to the property where the strict application of the 5 foot, minimum side-yard setback – if enforced – would deprive the applicants of the ability to construct an access stairway while also minimizing the disturbance to the site: a privilege enjoyed by other property owners of hillside lots in the Residential Single-family RS-6 Zone District. Therefore, the location chosen for the stairway, at the southeastern corner of the property where the slope is slightly more gradual will protect the existing trees while minimizing of excavation necessary to restore access to the structure.
2. Many residences in the hillside areas have access stairs and/or entry landings/decks within either the minimum 5 foot side-yard setback or the combined 20-foot side yard setback. Originally the stairway destroyed by a 2011 slide was a shared stairway for both 118 Tamalpais Road and 120 Tamalpais Road and it was located within the minimum side setback for 120 Tamalpais Road. The strict application of the minimum, 5-foot, side-yard setback regulations could negatively impact a mature maple tree on the site that could otherwise be saved which will result in excessive or unreasonable hardship for the owner.
3. The granting of the variance will be beneficial to the public welfare by providing a safe means of direct access to the house at 118 Tamalpais Road for emergency response personnel and anyone else having to access the structure including the residents.
4. The variance 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.
5. The plans show that the stairway and wall improvements will be located within a portion of the Tamalpais Road right-of-way not being used by the general public in accordance with Town Code § 12.32.020.

6. Upon compliance with the conditions listed below the improvements can be constructed without having negative impacts on the neighboring properties, general public or on vehicles or pedestrians using Tamalpais Road.

7. The proposed retaining wall and stairway will not change the single-family residential character of the neighborhood.

8. The stairway is similar to other stairways found throughout the neighborhood and it will maintain a similar setback from the property lines. 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.

9. The engineered stairway and retaining wall drawings are based on the findings contained in the arborist report by Urban Forestry, Inc. and the site geotechnical evaluation by Geoengineering, Inc. The design of the project, based on these reports by technical experts in their fields, ensure development of the property 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.

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

Conditions of Approval

1. The surveyor shall mark the side property line in the presence of the Building Official prior to the start of construction.

2. The owner shall complete the Revocable Encroachment Permit and submit it to the Town for review and approval. Once approved, the owners shall sign and notarize the document and return it to the Town for recording.

3. The applicant shall comply with any conditions of the Fairfax Building Official, Public Works Director/Manager, Town Engineer, Ross Valley Fire Department, Marin Municipal Water District and Ross Valley Sanitary District.

4. This approval is limited to the development illustrated on the following plan pages: Sheets 1 through 6, dated 9/15/16, by Robert Setttgast, project geotechnical engineering, of American Land Surveying, Inc.

5. Prior to issuance of a building permit, the applicant or his assigns shall submit a bond, cash deposit or letter of credit to the Town in an amount that will cover the cost of grading, weatherization and repair of possible roadway damage. The applicant shall submit contractor's estimates for any grading, site weatherization and improvement plans for approval by the Public Works Director. Upon approval of the contract costs, the applicant shall submit a cash deposit,



letter of credit or bond equaling 100% of the estimated construction costs.

5. Prior to issuance of the building permit, the applicant shall provide the Town with a video of the access streets to be used during construction. The Public Works Director shall make a decision prior to the project final, regarding street resurfacing and repair that may be required as a result of damage and wear and tear from project vehicles.

9. Prior to issuance of the building permit, the applicant shall submit a Construction Management Plan subject to review and approval by the Building Official/Public Works Manager. The plan shall include:

- Construction delivery routes approved by the Department of Public Works;
- Construction schedule (deliveries, worker hours, etc.);
- Notification to area residents;
- Emergency access routes; and
- Parking plan to minimize the impacts of contractor/employee vehicles and construction equipment on neighborhood parking

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

a. The project engineer shall be on-site during the grading/drilling process and shall submit written certification to the Town staff that the grading has been completed as designed and recommended prior to installation of retaining forms.

b. 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 contractor.

c. 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.

11. Prior to the project final inspection the following shall be completed:

a. The project engineer shall field check the completed project and submit written certification to Town Staff stating that the retaining, grading and drainage elements have been installed in conformance with the approved building plans.

b. The Building Official shall field check the completed project to verify that the work has been installed as per the approved plan.

c. The Planning Department shall field check the completed project to verify that all conditions of the Planning Commission have been complied with.

12. Excavation shall not occur between October 1<sup>st</sup> and April 1<sup>st</sup> of any year. The Town Engineer has the authority to waive this condition depending upon the weather.

13. The applicant shall comply with the Town Noise Ordinance Chapter 8.16 of the Fairfax Town Code.

14. Any changes, modifications, additions or alterations made to the approved set of plans will require approval by the Town Engineer and the Director of Planning and Building Services. Any construction based on project plans that have been altered without the benefit of an approved modification will result in the job being immediately stopped and red tagged.

15. Any modification of these Conditions of Approval must be approved by the Fairfax Planning Commission.

16. 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.

## **OTHER AGENCY CONDITIONS**

### **Marin Municipal Water District**

A reduced pressure backflow device be installed at the new water meter for 118 Tamalpais Road.

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

The approval of the Side-Setback Variance, Retaining Wall Height Variance and Encroachment Permit for construction of the entry stairway and associated retaining wall at 118 Tamalpais Road can be made without causing significant impacts on neighboring residences and the environment and is in compliance with the 2010 to 2013 Fairfax General Plan and Fairfax Zoning Ordinance.

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on March 30, 2017 by the following vote:

AYES:  
NOES:  
ABSTAIN:

\_\_\_\_\_  
Chair, Norma Fragoso

Attest:

\_\_\_\_\_  
Linda Neal, Principal Planner