

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

**TO:** Fairfax Planning Commission  
**DATE:** July 20, 2017  
**FROM:** Michelle Levenson, Zoning Technician  
**LOCATION:** 63 Hickory Road; Assessor's Parcel No. 003-201-14  
**ZONING:** Residential RS 6 Zone  
**PROJECT:** Legalize Living Space, Retaining Wall and Fifty-Percent Remodel of Interior of a Single-Family Residence  
**ACTION:** Conditional Use Permit, Excavation Permit and Combined Side-Setback Variance; Application # 17-28  
**APPLICANT:** Greg Shaw  
**OWNER:** Cliff and Patty Koch, Owners  
**CEQA STATUS:** Categorically exempt, §15305(a).



**63 Hickory Road**

## BACKGROUND

The project site is 6,612 square feet in area and moderately sloped at 14-percent. The site is located within the Residential RS 6 Zone and is developed with a 1,550-square-foot, two-story, single-family residence constructed in 1947 that contains 3 bedrooms and 2 bathrooms and a 390-square-foot attached garage.

## PROJECT PROPOSAL

The proposed project would involve the following: (1) *first floor*-legalizing and renovating the first floor bedroom and bathroom to include closets and a sliding exterior door and patio area, relocating an existing stairway connecting the first level to the second level and relocating the laundry and storage area to the garage; (2) *second floor*-renovating the kitchen including reconfiguring the location of three windows, installing a half-bathroom in the previous location of the relocated stairway, removing an existing bathroom to accommodate the new location of the stairway, repairing existing exterior decks and replacing the existing lean-to roof with a gabled-roof to match the existing roof line and style; and (3) *retaining wall*- replacing an existing failing retaining wall adjacent to the parking area with a 3- to 6-foot tall retaining wall and removing impermeable concrete and installing permeable pavers in a parking area and adjacent patio area that would accommodate two vehicles. A total of three parking spaces would be provided, one covered space in the garage and two spaces at the rear of the property. Construction of the project would result in a 1,749-square-foot, 3-bedroom, 2.5-bath, single-family residence.

## REQUIRED DISCRETIONARY APPROVALS

The following discretionary approvals from the Planning Commission are required:

*Conditional Use Permit.* Town Code Section 17.080.050 requires that a Conditional Use Permit (CUP) be obtained prior to any expansion/modification of a property or residence on a parcel that does not meet the minimum size and width requirements based on the slope of the site. The project site has a slope of 14-percent, therefore the Town Code requires a minimum area of 7,200 square feet and a minimum width of 62 feet. The site area is 5,938 square feet and the minimum width is 40 feet, therefore the project requires the approval of a CUP by the Planning Commission.

*Excavation Permit.* Town Code Section 12.20.080 states that a permit from the Planning Commission is required when the amount of excavation or fill movement exceeds 100 cubic yards. The project would require the excavation of 98 cubic yards of earth material to construct the retaining wall and exterior patio. The Marin County handwritten tax record for the property indicates that a 195-square-foot portion of the first-level of the residence (e.g., existing laundry area) was considered "unfinished living space" at the time the handwritten tax record was prepared. Therefore the excavation estimate for the project must account for the excavation needed to convert this

“unfinished living space” to “finished living space”. The applicant estimates that to achieve the 8-foot ceiling height, 58 cubic yards of material was excavated. Therefore of total of 156 cubic yards of material would be excavated with the project, requiring the approval of an Excavation Permit from the Planning Commission.

*Combined Side-Setback Variance.* The project site is located in the RS-6 Residential Zone and as discussed below structures in the RS-6 Zone, on properties with more than a 10% slope, must maintain a combined site setback of 20 feet (the site has a 14-percent slope). Currently, the residence does not meet the side setback requirement of 5 feet along the northern side of the site (a deck intrudes into the side setback by 1 foot) and does not meet the combined site setback requirement as well. The project proposes to install a wall along the southern side of the residence that would create space for a small outdoor patio that would lead to doors to access the lower level bedroom. This wall would be located 5 feet from the southern side property line, further decreasing the combined side setback to 12 feet.

**DISCUSSION**

The following requirements apply to the RS 6 Zone:

	Front Setback (ft)	Rear Setback (ft)	Combined Front/rear Setback (ft)	Side Setbacks (ft)	Combined Side Setbacks (ft)	FAR	Lot Coverage	Height
<b>Required/ Permitted</b>	6	12	35	5/5	20	.40	.35	28 ft, 3 stories
<b>Existing</b>	41	22	63	13/4	17	.23	.35	22 ft, 9 inches, 2 stories
<b>Proposed</b>	No change	No change	No change	8/4	12	.26	.26	No change

**CONDITIONAL USE PERMIT**

In order to approve a Use Permit for the project, the Commission must make the following findings (Town Code Section 17.032.060): (1) granting of the approval would not constitute a “special privilege” nor contravene the doctrines of equity and equal treatment; (2) the project would not create a public nuisance, cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects or create undue or excessive burdens in the use or enjoyment of the property; (3) approval of the project is in keeping with the objectives, goals or standards set forth in the Town of Fairfax General Plan; and (4) approval of the project would result in equal or better development of the premises than would otherwise be the case and the approval is in the public interest and for the protection and enhancement of the community.

Construction of the project and conversion of non-living space to living-space would result in a 1,748-square-foot residence containing 3-bedrooms and 2.5-baths. The resulting square footage of the residence is in keeping with other properties in the immediate vicinity including 69 Hickory that is developed with a 2 bedroom, 3 bathroom, 2,544-square-foot residence on a 4,028-square-foot lot, 57 Hickory containing a 3 bedroom, 2.5 bathroom, 1,827-square-foot residence on a 5,220-square-foot lot and 55 Hickory containing a 2 bedroom, 2 bathroom, 1,600-square-foot residence on a 7,450-square-foot lot. Construction of the project would improve circulation in the interior of the residence by combining living spaces and relocating a stairway. The project would provide the required three on-site parking spaces as discussed below, decreasing the on-street parking burden on the neighborhood. In addition, the footprint of the existing structure would not change with the project and would involve the replacement of non-permeable concrete with permeable pavers in the rear parking area and patio. Because the project would be comparable to other development in the neighborhood, would maintain parking and would increase permeable surfaces on the site, the project would not create a public nuisance or cause unreasonable detriment to adjoining properties, would be consistent with the Town's General Plan and would result in better development of the site. Therefore, the project would be consistent with the Use Permit findings required by Town Code Section 17.032.060, above.

## **EXCAVATION PERMIT**

In order to approve an Excavation Permit, Town Code Section 12.020.80 states that the Planning Commission must make the following findings when approving an application for an Excavation Permit: (1) the health, welfare and safety of the public will not be adversely affected; (2) adjacent properties are adequately protected by project investigation and design from geologic hazards as a result of the work; (3) adjacent properties are adequately protected by project design from drainage and erosion problems as a result of the work; (4) the amount of excavation or fill proposed is not more than is required to allow the property owner substantial use of his or her property; (5) the visual and scenic enjoyment of the area by others will not be adversely affected by the project more than is necessary; (6) natural landscaping will not be removed by the project more than is necessary; and (7) the time of year during which construction will take place is such that work will not result in excessive siltation from storm runoff nor prolonged exposure of unstable slopes.

As indicated on Sheet A6 of the project plans entitled, "Proposed Landscape , Hardscape and Drainage Plan-62 Hickory Road", prepared by Greg Shaw Construction and dated December 19, 2016, the applicant would implement Marin County Storm Water Pollution Prevention Program Erosion/Sedimentation Control Measures for Small Construction Projects, including the use of straw wattles and crushed rock. In addition the Building Permit issued for the project would require that adequate drainage for the retaining wall(s), and parking and patio area(s) be provided. In addition, the Resolution for the project contains a Condition of Approval that limits excavation activities to certain times of the year to prevent increased sedimentation and erosion to local waterways. Provisions would also be used to ensure that existing trees would be protected during

construction. The amount of excavation that would be conducted is the minimum necessary to provide stability and usability of the patio area and retaining wall(s). Therefore, the excavation associated with the project is consistent with the findings required Town Code Section 12.020.080.

## **COMBINED SIDE SETBACK VARIANCE**

In order to approve a variance, Section 17.028.070 requires the Planning Commission to make the following findings: (1) because of special circumstances applicable to the property (e.g., size, shape, topography, location of surroundings) strict application of the title would deprive the applicant privileges enjoyed by other property owners in the vicinity and under identical zone classifications; (2) the variance will not constitute a grant of special privilege, is consistent with the limitations placed upon other properties in the RS 6 Zone; (3) the strict application of the title would result in excessive or unreasonable hardship; and (4) the granting of the variance would not be detrimental to the public welfare or injurious to other property in the vicinity.

As described above, the existing residence does not meet the required side and combined side setback requirements. Construction of the retaining wall to create the first level patio area, while meeting the required minimum side setback on the southern side of the site, would further reduce the combined side setback. While the combined side setback would be further reduced on site, due to the driveway easement that separates the site on the south from the adjacent property and averages 15 feet in width, the wall would be sited 40 feet from the adjacent residence. The site is a unique shape that narrows in the area where the wall would be constructed. If the wall were to be located so that the combined side setback would not be further reduced, the outdoor patio would decrease in size to five feet in width, reducing the usability of the patio. Because the site is bordered by roadway easements on two sides and due to the configuration of the site, usable, private and level outdoor area is limited. Providing the outdoor patio would allow for enhanced outdoor use of the site, a "privilege" enjoyed by other residents in the vicinity. Due to the configuration of and current conditions on the site and the location of access easements along two sides of the property, the granting of a variance to the combined side setback variance would be consistent with findings required above.

## **PARKING**

The proposed project is considered a "Fifty-Percent Remodel" under Town Code Section 17.016.040, therefore the project must comply with the "Off-Street Parking Requirements" of Town Code Section 17.052.030 which states that dwellings containing three (3) bedrooms or more must contain two (2) on-site parking spaces and one (1) guest parking space. The project would provide the required parking spaces by locating two vehicle parking spaces in the rear of the property and one space in the garage. Therefore, the project is consistent with the Town Code requirements referenced above.

## Other Agency/Department Conditions/Comments

### Ross Valley Fire Department (RVFD)

1. The property is located in the wild-land urban interface of Fairfax. All exterior improvements shall comply with CFC Chapter 49, CBC Chapter 7A or CRC Section R327.
2. Scope of work for this project was found to fall within the definition of a substantial remodel.
3. A fire sprinkler system shall be installed throughout the entire building that complies with the requirements of the National Fire Protection Association and local standards. Plans and specifications for the system shall be submitted by a licensed design and/or design sprinkler system entity.
4. A Vegetation Management Plan (VMO) designed in accordance with Ross Valley Fire Standard #220 is required for the project. A separate deferred permit shall be required for this plan.
5. 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.
6. Carbon monoxide alarms shall be provided in existing dwelling when a permit is required for alterations, repairs, etc., that exceed \$1,000. CO alarms shall be located outside of all sleeping areas and on every level of the dwelling including the basement.
7. Address numbers at least 4" 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 (backlit), placed next to a light or be reflective numbers. If the project is a new house or a substantial remodel, they may only be internally illuminated or illuminated by an adjacent light controlled by a photocell and switched on only by a breaker so it will remain illuminated all night. If not currently as described, the numbers must be installed as described as part of this project.
8. The driveway serving the property is a dedicated fire land. Fire lanes shall be marked in accordance with RVFD Standard #204.
9. Roofing materials shall meet minimum class "A" assembly requirements.
10. Applicant may propose alternate materials or methods in accordance with

Section 103.3.

**The Marin Municipal Water District (MMWD) Ross Valley Sanitary District and the Fairfax Police, Public Works and Building Departments**

The MMWD, Ross Valley Sanitary District, Ross Valley Fire Department, and the Fairfax Police, Public Works and Building Department(s) did not provide conditions of approval or comments on the project.

**RECOMMENDATION**

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to approve Application No. 17-28 by adopting Resolution No. 17-26, setting forth the findings and conditions for project approval.

**ATTACHMENT**

Attachment A – Resolution No. 17-26

## RESOLUTION NO. 17-26

### **A Resolution of the Fairfax Planning Commission Approving a Conditional Use Permit, Excavation Permit and a Combined Side Setback Variance for the Fifty-Percent Remodel of a Single-Family Residence at 63 Hickory Road**

**WHEREAS**, the Town of Fairfax has received an application to legalize living space (195 square feet), renovate the interior, install a retaining wall and replace impermeable concrete with permeable pavers associated with a 1,550-square-foot, 3-bedroom, 2-bathroom single-family residence resulting in a 1,749-square-foot, 3-bedroom, 2.5-bathroom residence; and

**WHEREAS**, the Planning Commission held a duly noticed meeting on July 20, 2017, at which time the Planning Commission determined that the proposed project, as long as the conditions of approval contained within this resolution are met, conforms with the Fairfax General Plan and Zoning Ordinance regulations; 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.

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

1. The proposed residence conforms to most of the regulations set forth in the Residential Single-family RS 6 Zone District and findings can be made for the requested excavation permit and combined side-yard setback variance.
2. The proposed development does not change the single-family residential character of the neighborhood. Houses in the immediate neighborhood on similarly sized, sloped lots range in size from a 1,600-square-foot, 2-bedroom, 2-bathroom residence on a 7,450-square-foot parcel (55 Hickory Road) to a 2,544-square-foot, 2-bedroom, 3-bathroom house on a 4,028-square-foot parcel (69 Hickory Road). Therefore, the proposed 1,749--square-foot, 3-bedroom, 2.5-bathroom residence on this 6,612--square-foot site is not out of scale with the property or with other residential structures in the neighborhood.
3. The development and use of property as approved herein will 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.
4. The project as conditioned herein, will not be contrary to those objectives, goals or standards pertinent to the particular case and contained in the 2010 – 2030 Fairfax General Plan or set forth in the Town Code.



5. Approval of the project will result in equal or better development of the premises than would otherwise be the case and will result in the reconstruction of an unpermitted retaining wall so that it is in compliance with the Fairfax General Plan, Zoning Ordinance, accepted engineering techniques and the Uniform Building Code.
6. The excavation that will result with the project will not adversely affect public health, welfare or safety or adjacent properties as project conditions included herein require the implementation of Storm Water Pollution and Prevention Program Erosion and Sedimentation Measures including but not limited to the use of straw wattles and crushed rock. In addition, the Building Permit issued for the project will require that adequate drainage be provided in and around the retaining wall, driveway and patio.
7. The amount of excavation that will result with the project is the minimum necessary to provide a useable outdoor patio.
8. No trees or native vegetation will be removed with the project. The Conditions of Approval described below contain provisions to ensure that existing trees are not harmed during construction activities. As conditioned herein, excavation associated with the project will be limited to dry months of the year, to reduce the potential for erosion and sedimentation.
9. The project site is irregularly-shaped and is bounded on two sides by access/roadway easements. A portion of the residence currently extends into the northern side setback by 1 foot and does not meet the required combined side setback. Construction of the project while meeting the side setback requirement, will further reduce the combined side setback. The wall will be located 40 feet from the adjacent residence. Reducing the wall extension would reduce the usability of the outdoor patio at the first level of the residence on a site where opportunities for usable outdoor space are limited. Due to the shape and size of the site and the siting of existing structures on the site, granting of a variance to the combined side setback requirement will not constitute a grant of special privilege and will not be detrimental to the public welfare or injurious other property.

**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 prepared by Greg Shaw Construction, entitled, "63 Hickory Road, Fairfax, CA 94930, 003-201-14", Sheets A1 through A3, Sheet A6 and Sheet SRV, all received on May 11, 2017.
2. Secure written approval from the Ross Valley Fire Authority, Marin Municipal Water District and the Ross Valley Sanitary District noting that the development conformance

with all of their recommendations and conditions.

3. All construction-related vehicles including equipment delivery, supply delivery and cement trucks, as well as all construction material 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. 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 following Best Management Practices shall be employed:

a. The roadways shall be kept free of dust, gravel and other construction materials by sweeping these areas, daily, if necessary.

b. Every effort shall be made to minimize the disturbance of dust, sand or other particulate matter during construction.

6. Any changes, modifications, additions or alterations made to the approved set of plans will require a modification of Application #17-28. Any construction based on job plans that have been altered without the benefit of an approved modification of Application 17-28 will result in the job being immediately stopped and red tagged.

7. Any damages to Hickory Avenue or other public roadways used to access the site resulting from construction activities shall be the responsibility of the property owner.

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

9. Trees adjacent to construction areas shall be protected during construction by installing temporary barricades around tree trunks. No construction equipment or materials shall be stored in near and within the dripline of existing trees.

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, 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. The applicant shall comply with any and all the conditions of the Marin Municipal Water District, Ross Valley Sanitary District, Ross Valley Fire Department, Fairfax Public Works Department and Fairfax Building Department. Other agency conditions can be waived by those agencies in writing to the Town Building Department.

13. Other agency/department conditions can be waived by that agency/department in writing to the Fairfax Planning and Building Services Department.

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

1. The property is located in the wild-land urban interface of Fairfax. All exterior improvements shall comply with CFC Chapter 49, CBC Chapter 7A or CRC Section R327.
2. Scope of work for this project was found to fall within the definition of a substantial remodel.
3. A fire sprinkler system shall be installed throughout the entire building that complies with the requirements of the National Fire Protection Association and local standards. Plans and specifications for the system shall be submitted by a licensed design and/or design sprinkler system entity.
4. A Vegetation Management Plan (VMO) designed in accordance with Ross Valley Fire Standard #220 is required for the project. A separate deferred permit shall be required for this plan.
5. 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.

6. Carbon monoxide alarms shall be provided in existing dwelling when a permit is required for alterations, repairs, etc., that exceed \$1,000. CO alarms shall be located outside of all sleeping areas and on every level of the dwelling including the basement.
7. Address numbers at least 4" 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 (backlit), placed next to a light or be reflective numbers. If the project is a new house or a substantial remodel, they may only be internally illuminated or illuminated by an adjacent light controlled by a photocell and switched on only by a breaker so it will remain illuminated all night. If not currently as described, the numbers must be installed as described as part of this project.
8. The driveway serving the property is a dedicated fire land. Fire lanes shall be marked in accordance with RVFD Standard #204.
9. Roofing materials shall meet minimum class "A" assembly requirements.
10. Applicant may propose alternate materials or methods in accordance with Section 103.3.

**The Marin Municipal Water District (MMWD) Ross Valley Sanitary District and the Fairfax Police, Public Works and Building Departments**

The MMWD, Ross Valley Sanitary District, Ross Valley Fire Department, and the Fairfax Police, Public Works and Building Department(s) did not provide conditions of approval or comments on the project.

**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, Excavation Permit and Combined Side Setback Variance are in conformance with the 2010 – 2030 Fairfax General Plan and the Fairfax Zoning Ordinance, Town Code Title 17; and
- Construction of the residence 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 20<sup>th</sup> day of July, by the following vote:

AYES:  
NOES:  
ABSTAIN:

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

Attest:

\_\_\_\_\_  
Michelle Levenson, Assistant Planner