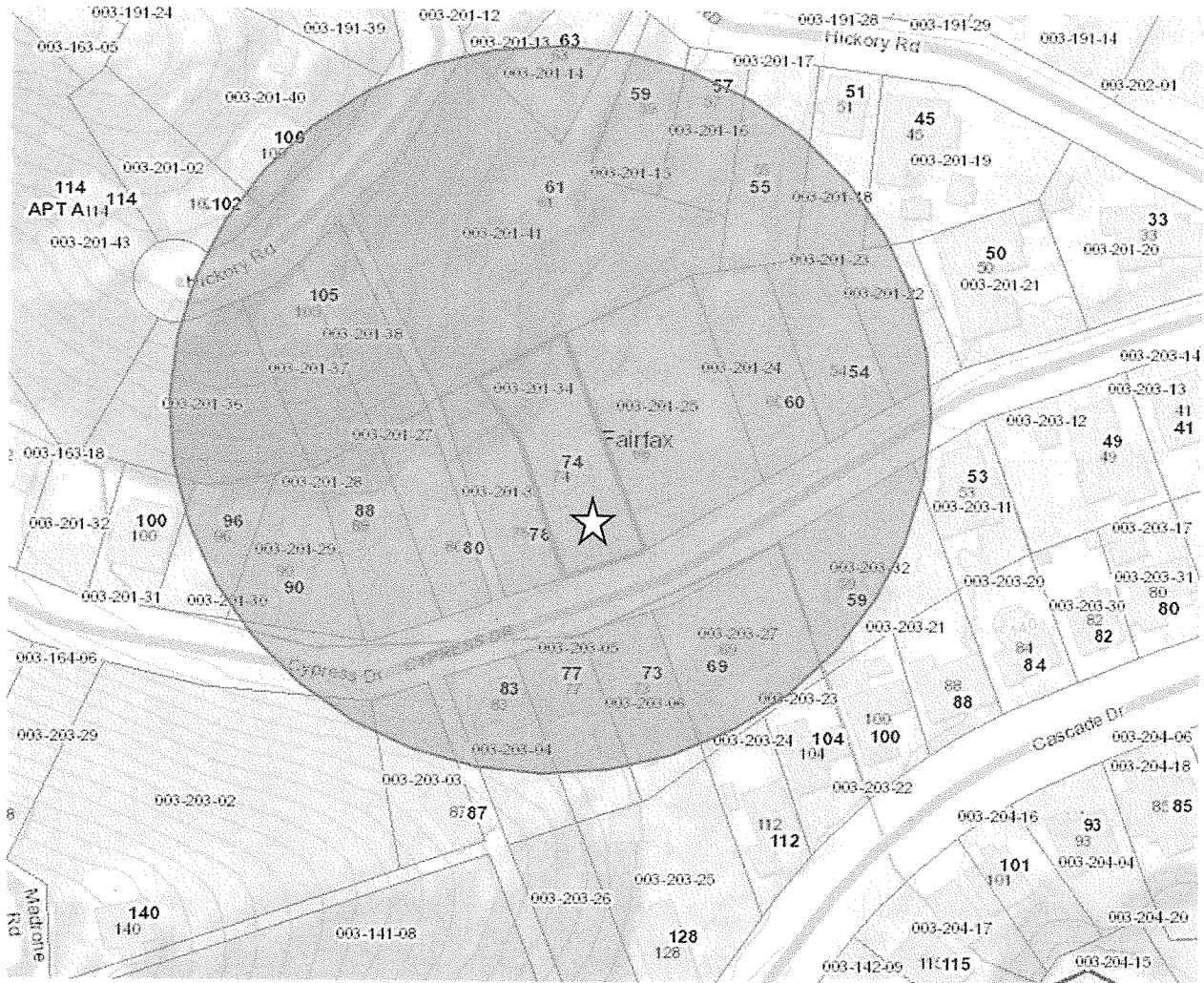


**TOWN OF FAIRFAX  
STAFF REPORT  
Department of Planning and Building Services**

**TO:** Fairfax Planning Commission  
**DATE:** December 14, 2017  
**FROM:** Michelle Levenson, Assistant Planner  
**LOCATION:** 74 Cypress Drive; Assessor's Parcel No. 002-011-44  
**ZONING:** Residential RS 6 Zone  
**PROJECT:** Convert a Garage to Living Space and Construct a Carport  
**ACTION:** Combined Side Setback Variance and Conditional Use Permit;  
Application # 17-36  
**APPLICANT:** Graham Irwin  
**OWNERS:** Gregor and Kristen Stewart  
**CEQA STATUS:** Categorically Exempt, § 15301(a) and 15303(e)



**74 Cypress Drive**

## BACKGROUND

The proposed project would involve legalizing living space in the garage as a 479 square-foot bedroom. (Please refer to Attachment B-the October 19, 2017 Planning Commission Staff Report prepared for the original project for additional site and background information and Attachment C-Minutes from the October 19, 2017 Meeting.) Because the project would involve the addition of a bedroom, the owner is required to provide three (3) on-site parking spaces, one of which must be covered (Town Code Section 17.052.030). To comply with the requirement, the applicant originally proposed to construct a 9.5-foot-tall, 417-square-foot carport in the driveway, 1.5 feet from the eastern side property line, and locate two additional spaces in the driveway.

At the October 19, 2017 Planning Commission meeting, several Commissioners expressed concern over the proximity of the proposed carport to the side property line and neighboring residence at 68 Cypress Drive. In addition, Commissioners stated concerns over the potential precedent the project would set for other sites in Town, and questioned whether an existing room in the residence could be used as a bedroom, thus not requiring construction of a new covered parking structure and variances to the Town Code. The Commissioners directed the applicant to explore moving the carport further west and out of the side setback, potentially reducing the size of the carport and parking space to provide a compact parking space (8 feet by 16 feet) to achieve this.

## REVISED PROJECT

The applicant has revised the project such that the carport location has been shifted to the west, further away from the property line, to conform to the required 5-foot side setback. The size of the structure has been reduced to 335 feet, a reduction of 82 square feet and would remain 9.5 feet tall. Adequate area is available in the driveway to provide a standard-sized parking space (9 feet by 22 feet) in the carport, and the owners would prefer a standard space in this location to maintain maneuverability for vehicles. The other two required parking spaces would remain in the originally proposed locations in the driveway.

## DISCUSSION

Project compliance with the Residential Single-family RS-6 Zone District where the property is located, is as follows:

	Front Setback	Rear Setback	Combined Front/rear Setback	Side Setbacks	Combined Side Setbacks	FAR	Lot Coverage	Height
Required/ Permitted	6 ft	12 ft	35 ft	5 ft & 5 ft	20 ft	.40	.35	35 ft., 3 stories
Existing	19 ft, 9 inches	6 ft	25 ft, 9 inches	6.6 ft, & 2.5 ft	9.17 ft	.17	.32	18 ft., 1 story
Proposed Bedroom	same	same	same	same	same	.22	.32	same
Proposed Carport	same	same	same	5 ft	same	same	.34	same

The existing site conditions do not comply with the required rear and combined front/rear setbacks due to the shed located at the rear of the property. In addition, the converted garage does not meet the side and combined side setbacks. While the carport has been relocated outside of the side setback, the structure would be constructed in the required combined side setback.

## **REQUIRED DISCRETIONARY APPROVALS**

*Combined Side Setback Variance.* Town Code Section 17.080.070 states that yard setbacks shall be maintained unless a variance is issued by the Planning Commission. While the carport has been relocated to maintain the required 5-foot side setback, the structure would be located within the 20-foot combined side setback therefore the project requires a variance to the combined side setback regulations.

*Conditional Use Permit.* Because the site is moderately sloped at 13-percent, Town Code Section 17.080.050(A) requires a minimum lot area of 6,900 square feet and a minimum lot width of 62 feet. While the 11,410-square-foot site meets the minimum area requirement, the minimum width of the site is 60 feet, therefore a Conditional Use Permit is needed for any new construction on the site.

## **DISCUSSION**

### **COMBINED SIDE SETBACK VARIANCE**

In order to approve a variance, the Planning Commission must find the following (Town Code Section 17.028.070): (A) Because of special circumstances applicable to the property, the strict application of the title would deprive the applicant of privileges enjoyed by other property owners in the vicinity and under identical zoning classification; (B) The variance will not constitute a special privilege, is consistent with the limitations upon other properties in the vicinity and under identical zoning classification; (C) The strict application of the title would cause unreasonable or excessive hardship; and (D) The granting of the variance will not be detrimental to the public welfare or injurious to other property in the vicinity.

As described above, the existing converted garage does not meet the side setback nor the combined side setback requirements. Construction of the currently proposed carport would encroach into the combined side setback.

As directed by the Planning Commission, the applicant has relocated the carport so that the required 5-foot side setback is maintained. The site is narrow and does not meet the minimum width requirement, therefore it is difficult to locate the carport structure without intruding into the required combined side setback. The combined side setback currently is not met on the site due to the location of the converted garage. While the carport would be placed in the required combined side setback, there would be no reduction in the site's current 9-foot, 2-inch combined side setback with construction of the project.

The carport is necessary to meet the parking requirements associated with legalizing

the bedroom that has been constructed in the garage. If the Commission approves the project, the owners intend to pursue approval of a junior second unit permit for the converted garage to house an aging relative, thus the strict application of the combined side setback requirements would cause unreasonable hardship on the owners. In addition, because of the special circumstances on the site (narrow width) strict application of the title would deprive the applicants of privileges enjoyed by other property owners in the vicinity and under identical zoning classifications. The staff therefore recommends that the Planning Commission approve the combined side setback variance for the project.

#### CONDITIONAL USE PERMIT

In order to approve a Conditional Use Permit (CUP) 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.

The proposed project consists of a request for after-the-fact legalization of the conversion of a garage to living space and construction of a carport. Currently the residence is 1,997 square feet in area and contains 3 bedrooms and 2.5 bathrooms. With the project, the residence would increase to a 2,515-square-foot, 4-bedroom, 2.5-bathroom residence. The average lot size in the immediate neighborhood is 7,574 square feet, average residential square footage is 1,737 square feet, and the average numbers of bedrooms and bathrooms is 2.4 and 1.7, respectively. Thus, with implementation of the project the residence at 74 Cypress Drive will be one of the largest in the immediate neighborhood.

The carport has been relocated so that the structure meets the 5-foot side setback requirement, but would still be located in the combined side setback. The proposed carport location is located away from bedrooms and provides adequate maneuverability for vehicles accessing via the driveway. Because the carport has been relocated away from the side property line and reduced in size, the project would not result in excessive or unreasonable detriment to adjoining properties.

If approval of the project is granted, the owners intend to pursue approval of a junior second unit permit for the new bedroom. Such a permit is in keeping with the Town's General Plan and goals for providing affordable housing and would result in better development of the site than would otherwise be the case.

Staff recommends that the Planning Commission approve the CUP for the proposed

project.

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

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

RVFD submitted written requirements (dated July 13, 2017) for the project requiring the provision of a fire sprinkler system, smoke detectors equipped with AC power, and carbon monoxide detectors.

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

MMWD submitted written comments (dated July 10, 2017) for the project requiring compliance with indoor and outdoor District Code Title 13 Water Conservation requirements.

#### **Ross Valley Sanitary District and the Town of Fairfax Building, Public Works and Police Departments**

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

### **RECOMMENDATION**

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to approve Application No. 17-36 by adopting Resolution No. 17-35.

### **ATTACHMENT**

Attachment A – Resolution No. 17-35  
Attachment B – Staff Report dated October 17, 2017  
Attachment C – October 17, 2017 Meeting Minutes

## RESOLUTION NO. 17-31

### **A Resolution of the Fairfax Planning Commission Approving a Combined Side Setback Variance and Conditional Use Permit to Legalize Living Space (a 479-square-foot Bedroom) and Construct a Carport**

**WHEREAS**, the Town of Fairfax has received an application to legalize living space in a converted garage to provide a 479-square-foot bedroom, construct a 335-square-foot carport and provide a total of three parking spaces (one if which is tandem) at 74 Cypress Drive. The project will result in a 2,515-square-foot, 4-bedroom, 2.5-bathroom single-family residence;

**WHEREAS**, the Planning Commission held a duly noticed meeting on October 19, 2017, at which time the Planning Commission continued the application to the December 14, 2017 Planning Commission meeting. At its December 14, 2017, the Planning Commission determined that the proposed project, as conditioned below, 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 project involves the legalization of living space (a bedroom) in a converted garage, requiring the restoration and provision of on-site parking, including one (1) covered parking space. With project implementation, the residence conforms to the regulations set forth in the Residential Single-family RS 6 Zone District.
2. Variance Findings: The project complies with the provisions for variance approval as follows: (i) at a minimum width of 60 feet, the narrow width of the site is the special circumstance that makes strict application of the title difficult. By granting a variance to the combined side setback requirement, the owners will not be deprived of privileges enjoyed by other property owners in the vicinity; (ii) by providing an additional bedroom that will be converted to a junior second unit, the owners will be able to provide housing for an aging relative and an opportunity for affordable housing. If the variance was not granted, it would result in an unreasonable and excessive hardship for the owners; and (iii) the carport has been relocated and reduced in size from the original proposal. These modifications result in a structure that meets the side setback requirement. While a variance to the combined side setback is required, the modified structure has been designed to be open thereby reducing the bulk of the structure for the neighboring property. Due to the siting and design of the structure, the project will not be detrimental to the public welfare or injurious to other property in the vicinity.

3. Conditional Use Permit Findings: The project complies with the provisions for approval of a Conditional Use Permit (CUP) as follows: (i) by approving the CUP, a garage conversion will be legalized resulting in the addition of a bedroom and the site parking will be brought into compliance with the Town Code. As conditioned herein, the owners are required to convert the bedroom to a junior second unit to provide opportunities for affordable housing on site. Such a conversion is a “privilege” available to Town property owners and will not contravene the doctrines of equity and equal treatment; (ii) because the location and size of the carport has been revised from the original proposal and the bedroom is located within an existing structure, the project will not create a public nuisance, cause excessive or unreasonable detriment to adjoining properties or cause adverse physical or economic effects in the use or enjoyment of the property; (iii) because the project will result in an opportunity for affordable housing and has been designed result in minimum site intrusion, the project is in keeping with the objectives, goals, and standards set for in the Town of Fairfax 2010-2030 General Plan, the Zoning Ordinance, accepted engineering techniques and the Uniform Building Code; and (iv) the project will bring the site into compliance with the Town’s parking requirements and due to revised design and configuration will result in better development of the site that would otherwise be the case and is in the public interest and for the protection and enhancement of 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 shown on the plans prepared by Essential Habitat Architecture, entitled, “Stewart Residence-74 Cypress Drive, Fairfax, CA 94930”, Sheets A1.0 through A1.1, dated 12.04.17.
2. Secure written approval from the Ross Valley Fire Department, Marin Municipal Water District and the Ross Valley Sanitary District noting that the development conforms with all of their recommendations and conditions.
3. A Building Permit shall be obtained for construction of the carport as well as after-the-fact construction of the garage conversion. No work associated with construction of the carport shall commence until the Building Official provides “final approval” of the project.
4. Prior to the issuance of the Building Permit for the project, the owners shall apply for and receive staff approval of conversion of the new bedroom to a junior second unit.
5. 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.

6. 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.

7. 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.

8. Any changes, modifications, additions or alterations made to the approved set of plans will require a modification of Application No. 17-36. Any construction based on job plans that have been altered without prior modification approval of Application No. 17-36 will result in the job being immediately stopped and red tagged.

9. Any damages to Cypress Drive or other public roadways 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 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 following: Noise Control, 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. The applicants must comply with all conditions imposed by an outside agency unless that agency waives its conditions in a written letter to the Department of Planning and Building Services Department prior to issuance of the building permit.

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

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

1. The project is located within a designated wildland urban interface zone and all construction shall comply with the 2016 CRC Section R337 and 2016 CBC Chapter 7A requirements.
2. A fire sprinkler system shall be installed throughout the entire building which complies with the requirements of the National Fire Protection Association and local standards.
3. A vegetation management plan designed in accord with Ross Valley Fire Standard #220 is required.
4. 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.
5. 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.
6. 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.

**Marin Municipal Water District (MMWD)**

1. The project must comply with all the indoor and outdoor requirements of District Code Title 13, Water Conservation, meet the District's backflow prevention requirements, comply with the District Ordinance 429 requiring the installation of gray water recycling systems and complete a High-Pressure Water Service Application prior to issuance of the occupancy permit.

**Ross Valley Sanitary District and the Fairfax Police, Public Works and Building Departments**

The Ross Valley Sanitary District, 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 and Variance are in conformance with the 2010 – 2030 Fairfax General Plan and the Fairfax Zoning Ordinance and Conditional Use Permit provisions, 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 14<sup>th</sup> day of December, 2017, by the following vote:

AYES:

NOES:

ABSTAIN:

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

Attest:

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

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

**TO:** Fairfax Planning Commission  
**DATE:** October 19, 2017  
**FROM:** Michelle Levenson, Assistant Planner  
**LOCATION:** 74 Cypress Drive; Assessor's Parcel No. 003-201-25  
**ZONING:** Residential RS 6 Zone  
**PROJECT:** Convert a Garage to Living Space and Construct a Carport  
**ACTION:** Side Setback Variance and Conditional Use Permit;  
Application # 17-36  
**APPLICANT:** Graham Irwin  
**OWNER:** Gregor and Kristen Stewart  
**CEQA STATUS:** Categorically Exempt, § 15301(a) and 15303(e)



**74 Cypress Drive**

## BACKGROUND

The project site is 11,410 square feet in area and moderately sloped at 13 percent. The site is located within the Residential RS 6 Zone and is developed with a 1,997 square-foot, one-story, single-family residence constructed in 1944 that contains 3 bedrooms and 2.5 bathrooms, as well as a 479 square-foot attached garage.

In a Residential Inspection Report dated May 21, 2008, Planning and Building staff noted that the garage had been converted to living space and a laundry room and bathroom was constructed without the required approvals, and advised that either the improvements be removed or legalized through the approval of a Conditional Use Permit issued by the Planning Commission. In September of 2008, the previous property owners received an after-the-fact Building Permit to construct a breezeway connecting the residence to the garage, and install a half-bathroom and laundry room in the garage. Plans submitted with that Building Permit Application stated that the unauthorized living space in the garage had been removed. In March of 2016, the current property owners applied for a building permit to construct a swimming pool on the property. At that time, staff was alerted to the outstanding violations on the property and upon a site inspection discovered that the living space conversion in the garage had not been removed. Since the site inspection, staff has been working with the property owners to bring the site into compliance with the Town's regulations.

## DISCUSSION

The proposed project would involve legalizing the living space in the garage as a 479 square-foot bedroom. Because the project would involve the addition of a bedroom, the owner is required to provide three (3) on-site parking spaces, one of which must be covered (Town Code Section 17.052.030). To comply with the requirement, the applicant proposes to construct a 9.5-foot-tall, 417 square-foot carport in the driveway, 1.5 feet from the eastern side property line, and locate two additional spaces in the driveway.

Project compliance with the Residential Single-family RS-6 Zone District where the property is located, is as follows:

	Front Setback	Rear Setback	Combined Front/rear Setback	Side Setbacks	Combined Side Setbacks	FAR	Lot Coverage	Height
Required/ Permitted	6 ft	12 ft	35 ft	5 ft & 5 ft	20 ft	.40	.35	35 ft., 3 stories
Existing	19 ft, 9 inches	6 ft	25 ft, 9 inches	6 ft, 8 inches & 2 ft, 6 inches	9 ft, 2 inches	.17	.32	18 ft., 1 story
Proposed	same	same	same	same & 1 ft, 4 inches	8 ft	.22	.33	same

The existing site conditions do not comply with the required rear and combined front/rear setbacks due to the shed located at the rear of the property. In addition to the converted garage on the site currently not meeting the side and combined side setbacks; construction of the proposed carport would result in further encroachments into the required side setback.

## REQUIRED DISCRETIONARY APPROVALS

*Side Setback Variance.* Town Code Section 17.080.070 states that yard setbacks shall be maintained unless a variance is issued by the Planning Commission. As described above, the carport is proposed 1 foot, 4 inches from the side property line, where a 5-foot setback is required. Approval of construction of the carport would therefore require Commission approval of a variance to the side and combined side setback requirements.

*Conditional Use Permit.* Because the site is moderately sloped at 13-percent, Town Code Section 17.080.050(A) requires a minimum lot area of 6,900 square feet and a minimum lot width of 62 feet. While the 11,410-square-foot site meets the minimum area requirement, the minimum width of the site is 58 feet, therefore a Conditional Use Permit is needed for any new construction on the site.

## DISCUSSION

### SIDE SETBACK VARIANCE

In order to approve a variance, the Planning Commission must find the following (Town Code Section 17.028.070): (A) Because of special circumstances applicable to the property the strict application of the title would deprive the applicant of privileges enjoyed by other property owners in the vicinity and under identical zoning classification; (B) The variance will not constitute a special privilege, is consistent with the limitations upon other properties in the vicinity and under identical zoning classification; (C) The strict application of the title would cause unreasonable or excessive hardship; and (D) The granting of the variance will not be detrimental to the public welfare or injurious to other property in the vicinity.

As described above, the existing (converted) garage does not meet the side setback nor the combined side setback requirements. Construction of the carport would result in further intrusions into the side and combined side setbacks and would be located approximately 8 feet from the neighboring residence at 68 Cypress.

Staff believes that options exist for other carport locations that would not require the issuance of a variance to the side setback requirement. Planning staff has requested that the owners explore other carport locations, for example, at the currently proposed westernmost parking space. While this location would still encroach in the combined side setback, it would be outside of the required side setback, and further away from the residence at 68 Cypress (a total of 18 feet). The owners have stated that locating

the carport in this area would not be feasible.

Compliance with setbacks would not result in an unreasonable or excessive hardship. Furthermore, the proposed carport location 1.4 feet from the property and 8 feet from the neighboring residence would have an adverse effect on that property.

Staff cannot make the findings necessary to approve the variance. Therefore, staff recommends that the Planning Commission deny the request for a side setback variance to construct the carport in the currently proposed location.

## CONDITIONAL USE PERMIT

In order to approve a Conditional Use Permit (CUP) 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.

The proposed project consists of a request for after-the-fact legalization of the conversion of a garage to living space and construction of a carport. Currently the residence is 1,997 square feet in area containing 3 bedrooms and 2.5 bathrooms, With the project, the residence would increase to a 2,515-square-foot, 4-bedroom, 2.5-bathroom residence. The average lot size in the immediate neighborhood is 7,574 square feet, average residential square footage is 1,737 square feet, and the average numbers of bedrooms and bathrooms is 2.4 and 1.7, respectively. Thus, with implementation of the project the residence at 74 Cypress Drive would be one of the largest in the immediate neighborhood. The applicant has stated that if the Commission issues approval of conversion of the garage to a bedroom, the owners would apply to convert the bedroom to a junior second unit in the future.

Staff does not believe that the CUP finding can be made that excessive or unreasonable detriment to adjoining properties would not be created with the project. Because the carport is proposed 1.4 feet away from the side property line and 8 feet away from the neighboring residence at 68 Cypress, the structure would result in excessive detriment to that residence . In addition, because alternate locations exist for the carport, better development of the site is possible that would be in the public interest and result in better protection and enhancement of the community. It is not possible to separate the CUP request for conversion of the garage to a bedroom from the request to construct a new carport since conversion of the garage gives rise to the on-site parking requirement. Therefore, staff recommends that the Commission deny

the Conditional Use Permit application for both conversion of the garage to a bedroom and construction of a new carport.

**Other Agency/Department Conditions/Comments**

**Ross Valley Fire Department (RVFD)**

RVFD submitted written requirements (dated July 13, 2017) for the project requiring the provision of a fire sprinkler system, smoke detectors equipped with AC power, and carbon monoxide detectors..

**Marin Municipal Water District (MMWD)**

MMWD submitted written comments (dated July 10, 2017) for the project requiring compliance with indoor and outdoor District Code Title 13 Water Conservation requirements.

**Ross Valley Sanitary District and the Town of Fairfax Building, Public Works and Police Departments**

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

**RECOMMENDATION**

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to deny Application No. 17-36 by adopting Resolution No. 17-35.

**ATTACHMENT**

Attachment A – Resolution No. 17-35

**RESOLUTION NO. 17-35**

**A Resolution of the Fairfax Planning Commission Denying the Conditional Use Permit and Variance to Convert a Garage to Living Space (Bedroom) and Construct a Carport at 74 Cypress Drive**

**WHEREAS**, the Town of Fairfax has received an application for an after-the-fact Conditional Use Permit and Side Setback Variance to convert a 479-square-foot garage to a bedroom and construct a 417-square-foot, 9.5-foot-tall carport of the residence at 74 Cypress Drive; and

**WHEREAS**, the Side Setback Variances are for a proposed 1-foot, 4-inch setback to the side property line where 5 feet is required, and for a proposed 8-foot combined side-yard setback where 20 feet is required, and

**WHEREAS**, the Conditional Use Permit is for development on a lot with a width of 58 feet where 62 feet is required, and

**WHEREAS**, the Planning Commission held a duly noticed Public Hearing on October 19, 2017, at which time all interested parties were given a full opportunity to be heard and to present evidence; and

**WHEREAS**, the Planning Commission has determined that the project does NOT meet the required Variance findings contained in Town Code Section 17.028.070 because:

1. Options exist for other carport locations on the site that would not require the issuance of a Variance to the side setback requirement, therefore compliance with the side yard setback would not result in an unreasonable or excessive hardship.
2. The Variance will constitute a special privilege and is inconsistent with the limitations placed upon other properties in the vicinity and under identical zoning classification because other options are available for carport locations on the site.
3. The options available for other carport locations eliminate the possibility that special site circumstances exist such that strict application of the setback requirement is not warranted.
4. Granting of the Variance would be injurious to the adjacent and neighboring property at 68 Cypress, creating a structure 1 foot, 4 inches from the side property line directly in front of that residence's windows.

**WHEREAS**, based on the plans and supplemental information provided by the applicant, the Planning Commission has determined that the project does NOT meet the required



Conditional Use Permit findings contained in Town Code Section 17.032.060 because:

1. Granting the Conditional Use Permit would constitute a “special privilege” and contravene the doctrines of equity and equal treatment because other carport locations exist on the site for which the applicant has not taken advantage.
2. Granting the Conditional Use Permit would be injurious to the adjacent to the neighboring property at 68 Cypress, creating a structure close to the property line that is directly in front of two that residence’s side windows.
3. Granting of the Conditional Use Permit would be contrary to those objectives, goals or standards pertinent to the particular case and contained or set forth in the 2010 to 2030 Fairfax General Plan and Zoning Ordinance, Title 17 of the Fairfax Town Code specifically: Town Code Sections 17.032.060 (findings for Conditional Use Permit) and 17.028.070 (findings for Variance) and General Plan Goal LU-7 which directs development to, “Preserve community and neighborhood character...”

**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 and Variances cannot occur without causing significant impacts on neighboring residences, is not in keeping with development in the immediate vicinity, would not result in better development of the premises than would otherwise be the case, and would not preserve the community and neighborhood character of the Town.

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 19<sup>th</sup>, day of October, 2017, by the following vote:

AYES:

NOES:

ABSTAIN:

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

Attest:

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

DRAFT FAIRFAX PLANNING COMMISSION MEETING MINUTES  
FAIRFAX WOMENS CLUB  
THURSDAY, OCTOBER 19, 2017

Call to Order/Roll Call:

Chair Fragoso called the meeting to order at 7:00 p.m.

Commissioners Present:                   Bruce Ackerman  
  Norma Fragoso (Chair)  
  Esther Gonzalez-Parber (arrived at 7:15 p.m.)  
  Philip Green  
  Laura Kehrlein  
  Mimi Newton  
  Cindy Swift

Staff Present:                               Ben Berto, Planning Director  
  Linda Neal, Principal Planner  
  Michelle Levenson, Assistant Planner

**APPROVAL OF AGENDA**

M/s, Newton/Ackerman, motion to approve the agenda.  
AYES: Ackerman, Green, Kehrlein, Newton, Swift, Chair Fragoso  
ABSENT: Gonzalez-Parber

**PUBLIC COMMENTS ON NON-AGENDA ITEMS**

There were no comments.

**CONSENT CALENDAR**

There were no Consent Calendar items.

**PRESENTATION**

**1. Historical Significance presentation and discussion of buildings and structures in the downtown corridor led by Cassidy DeBaker**

Ms. Cassidy DeBaker discussed the historical significance of the downtown in terms of its built environment, the need to develop an inventory and a local program, and perhaps develop a set of historic preservation design guidelines. She distributed a hand-out to the Commission.

Commissioner Ackerman pointed out this idea comes out of a number of programs that are in the General Plan. He supports moving forward with the implementation of this idea.

Commissioner Green stated he is very supportive of this idea. These buildings need to be registered on the California Register of Historical Resources inventory list. Ms. DeBaker stated this was a rigorous process. She suggested they start by looking at the fabric of the downtown and working with property owners- keeping it local for now. The goal of any historic preservation list is to

be included in the California Register of Historic Resources list and the National Register of Historic Places list. Chair Fragoso noted creating the inventory and getting the designations take a bit of time. Ms. DeBaker agreed and stated she would take the lead in the inventory.

Commissioner Swift stated she would like more information on the pros and cons of being included in each of the registers.

Commissioner Gonzalez-Parber arrived at the meeting.

Commissioner Newton asked if the General Plan was specific or vague about how to move forward. Ms. DeBaker stated it was vague. She was thinking of creating an Advisory Committee to the Commission to do the inventory. Commissioner Newton discussed the need to maintain not only the external but also the internal historic resources of structures.

Planning Director Berto stated they need to come up with a program that is a "fit for Fairfax". Commissioner Ackerman agreed- it should be "locally grown". Developing an inventory is the first step.

Chair Fragoso asked Ms. DeBaker if the Fairfax Historical Society had a database that she could use. Ms. DeBaker stated "yes". They have an incredible amount of archival information and photographs.

Chair Fragoso asked staff to find out about the steps that need to be taken to form an Advisory Committee.

## **PUBLIC HEARING ITEMS**

### **2. 74 Cypress Drive.; Applicant #17-36**

**Request for a Conditional Use Permit and a Side Setback Variance to legalize the conversion of a 479 square-foot garage to living space, and construct a 417 square-foot carport within the side setback on a site containing a 1,997 square-foot, 3-bedroom, 2.5 bathroom single family residence. Assessor's Parcel No. 003-201-25; Residential RS 6 Zone; Graham Irwin, Applicant; Gregor and Kristen Stewart, Owners; CEQA categorically exempt per Section 15301(a) and 15303(e)**

Assistant Planner Levenson presented a staff report.

Commissioner Newton asked Assistant Planner Levenson to respond to the late correspondence that the Commission received. Assistant Planner Levenson discussed the findings that need to be made and noted there was an alternative location for the carport.

Commissioner Green stated the staff report notes another possible location for the carport- on the western most parking space. Principal Planner Neal stated another option would be to convert the garage to its original use. Commissioner Swift asked how that could be accomplished. Assistant Planner Levenson stated a garage door would need to be installed, the wood flooring, baseboards and trim would need to be removed, and the lighting would need to be changed.

Chair Fragoso asked about the staff's proposed location for the carport. Assistant Planner Levenson referred to Sheet A1.0, and stated it was the first parking space that is shaded (next to the residence). It would be out of the side setback (but still in the combined setback).

Commissioner Ackerman asked about the rationale for the covered parking requirement. Principal Planner Neal stated she has heard different reasons over the years, including protection for vehicles.

Commissioner Kehrlein had questions about the Conditional Use Permit requirements and the required lot width. Assistant Planner Levenson stated the width requirement was 62 feet- the lot is 58 feet.

Chair Fragoso opened the Public Hearing.

Mr. Graham Irwin, architect, made the following comments:

- Staff's proposed location for the carport would not work- it would be adjacent to bedrooms and would shade the windows. Cars would be pulling in next to the bedrooms. This is a long, narrow driveway and the pillars supporting the east side of the carport would pose a problem when backing out. It would be very tall, near the front of the house, and have a "tacked-on look". It would be a nuisance to the owners and the neighbors.
- He did not want the zoning regulations to result in "awkward looking architecture".
- The proposed carport would have a trellis and achieve some screening for the neighbors.
- The applicants want to legalize the converted garage as a bedroom and then convert it to a Junior Second Unit.
- They would be willing to forgo the carport completely if the bedroom could be legalized.
- There is a lot of work proposed- this is not a modest proposal.

Commissioner Swift asked if the Commission could waive the covered parking requirement. Assistant Planner Levenson stated the Commission could grant a variance to the covered parking if the findings could be made. The applicant did not request a variance to the covered parking requirement so this would need to be re-noticed.

Commissioner Kehrlein stated it looks like the chimney would impede moving the carport over too far towards the house but she would like to find a way to increase the setback to the east side.

Chair Fragoso asked about the width of the area between the edge of the house and the new fence. Mr. Irwin stated it was less than 9 feet.

Commissioner Gonzalez-Parber had questions about the parking requirements for a Junior Second Unit. Chair Fragoso questioned whether or not this was a Junior Second Unit or an accessory dwelling unit. The Junior Second Unit must be an integral part of the house. Principal Planner Neal stated the garage is now part of the single-family house.

Assistant Planner Levenson stated the current location of the carport could be moved to maintain the required minimum five foot setback but they would have to request a variance for a compact space (8' X 16'). They would then meet the minimum side setback.

Mr. John Fitzpatrick, Hickory Avenue, made the following comment:

- He supported the project.

Ms. Anne Lamott, the neighbor, made the following comments:

- The project looks great.
- It is doable, plain, and makes sense.
- She would be pleased to have the applicant's mother as her neighbor.
- She would gladly give them 2 feet of her property if she could.
- There must be some wiggle-room.

Commissioner Gonzalez-Parber asked Ms. Lamott about the room in the back (next to her property). Ms. Lamott stated it was a kitchen nook with space for a small table off of the kitchen.

Chair Fragoso closed the Public Hearing.

Commissioner Green provided the following comments:

- One of the photographs submitted by the applicant depicts a car parked along the fence in the “white” parking space. The parking space next to it would be more feasible- it would keep it off of the road and out of the setback.
- He is concerned about setting a precedent.
- Properties change hands, other neighbors move in, etc. and new neighbors may not be so accepting of a carport so close to their house.
- He could support the creation of a compact space for the proposed covered carport.
- Maintaining the minimum setback and the combined setback was extremely important.
- He would hate to see them have to remove the bedroom conversion.

Commissioner Ackerman provided the following comments:

- He finds it hard to justify requiring a garage that has been turned into a living space to be turned back into a garage.
- The roof of a carport could be an issue for the neighboring house. He suggested that the roof be made narrower so the carport poles come out from the roof rather than being directly under it.
- The carport could be made a compact size.
- There are options.

Commissioner Newton provided the following comments:

- She was not sure how many options the applicants have if the findings cannot be made.
- She empathized with the bedroom being next to a covered carport.
- The applicant could agree to an extension of time and come back with a proposal for the economy sized carport variance at whatever location they thought was appropriate.

Commissioner Swift provided the following comments:

- She agreed with Commissioner Newton.
- She could support an uncovered, compact sized carport (where the current carport is proposed).

Principle Planner Neal noted there was more chance that the findings could be made if the structure is at least out of the minimum side-yard setback (5 feet). She reiterated there are a number of alternatives- the site is not that small.

Chair Fragoso provided the following comments:

- There are many options available and they have picked the least legal option.
- She would like to see the applicant agree to an extension and go back and take a look at other design options.

Commissioner Gonzalez-Parber provided the following comments:

- She had concerns about future property owners and setting a precedent.
- They are talking about legalizing an existing unit but it is different to introduce a new structure.
- She would hate to have to back out of that long driveway.
- Kudos to the applicants for trying to legalize this new living space.
- She could not approve the setback variance because it would set a precedent.
- They should explore options.

Commissioner Ackerman provided the following comments:

- Commissioner Newton's comments were reasonable.
- He could support a continuation.
- He could support the carport in more or less the proposed location with a compact parking space thereby meeting the minimum setbacks.

Mr. Irwin stated they would like to request a continuance and bring back another design.

M/s, Newton/Green, motion to continue application #17-36, 74 Cypress Drive, for 60 days upon the agreement of the applicant.

AYES: Ackerman, Gonzalez-Parber, Green, Kehrlein, Newton, Swift, Chair Fragoso

### **3. 61 Bolinas Road; Application #17-37**

**Request for a Sign Permit to erect a new 41 square-foot business identification sign on an existing commercial building; Assessor's Parcel No. 002-122-31; Central Commercial CC Zone; Nicole DeLecce, Applicant/Owner; CEQA categorically exempt per Section 15301(g)**

Principal Planner Neal presented a staff report. She noted Commissioner Kehrlein was not the architect for this project as stated in the staff report.

Chair Fragoso asked Principal Planner Neal if additional signs would be allowed on the property. Principal Planner Neal stated they are over the minimum square footage and any additional signs would need to come to the Commission.

Commissioner Swift asked if the Commission could address building colors only when there was a structural change. Principal Planner Neal stated "yes".

Chair Fragoso opened the Public Hearing.

Ms. Nicole Delecce, owner, made the following comments:

- She has designed everything for the store.
- The new location will be better for business.
- They will not be using the hanging sign.

Commissioner Green asked Ms. Delecce if they had another business in another location. Ms. Delecce stated they have another store in San Francisco. Commissioner Green asked if it was the same color. Ms. Delecce stated "yes, it is exactly the same".

Commissioner Gonzalez-Parber asked if the color of the side of the building was going to be white. Ms. Delecce stated "yes".

Commissioner Kehrlein stated she was concerned that the white color on the side of the building would be bright and she asked Ms. Delecce if she would consider wrapping the blue around the side. Ms. Delecce stated she was hoping to give the side a nice clean look.

Mr. John Fitzpatrick made the following comments:

- It is exciting seeing that building being taken over by somebody who lives in Fairfax.
- The sign looks great.

Commissioner Newton asked Ms. Cassidy DeBaker to comment on the sign.

Ms. DeBaker made the following comments:

- It is painted and not lit up.
- It is oriented in a place where one would typically find historic signage (on the front of the building).
- It enhances the architecture of the building.

Commissioner Kehrlein asked how the sign would be lit. Principal Planner Neal stated the sign would not be illuminated.

Chair Fragoso closed the Public Hearing.

Commissioner Green provided the following comments:

- The light blue of the building almost matches the sky.
- He liked the sign.
- This does not appear to be a formula business.

Commissioner Ackerman provided the following comment:

- He is fine with the application.

Commissioner Newton provided the following comments:

- She was initially concerned about the sign- it did not give off a "western downtown" feel of the General Store.
- She could approve the sign.

Commissioner Kehrlein provided the following comments:

- She initially had concerns about the size of the sign.
- She supports the application as long as the sign is not any larger than the previous sign.

Commissioner Gonzalez-Parber provided the following comments:

- She liked the sign.
- The previous sign was longer.
- She could support the application.

Chair Fragoso provided the following comments:

- She is delighted that the business is expanding and staying in town.
- She likes the sign and the colors.

M/s, Green/Swift, motion to approve Sign Permit Application #17-37, 61 Bolinas Road.  
AYES: Ackerman, Gonzalez-Parber, Green, Kehrlein, Newton, Swift, Chair Fragoso

Chair Fragoso stated there was a 10-day appeal period.

#### **4. 22 Sequoia Road; Application #17-28**

**Request for a Use Permit and a Parking Variance to construct a 300 square-foot, second story, studio/office addition over the garage of an existing 1,368 square-foot, 2 bedroom, 2 bathroom, single-family residence; Assessor's Parcel No. 001-144-10; Residential Single-family RS 6 Zone; Eric and Rolanda Ebert, Applicants/Owners; CEQA Categorically exempt per Section 15301(e)(1)**

Principal Planner Neal presented a staff report. She pointed out a correction to the resolution- it should say "Chair Fragoso" and not "Chair Kehrlein".

Commissioner Swift asked about the Condition of Approval regarding the sidewalk. Principle Planner Neal stated sidewalk improvement was a standard requirement and the County standards would apply.

Chair Fragoso opened the Public Hearing.

Ms. Rolanda Ebert, applicant, made the following comments:

- They planted a Coast Live Oak over 30 years ago and have been very respectful of the tree.
- The roots of the tree are close to the surface.
- The tree is drought-stressed.
- She was concerned that tree roots would be cut when they put in the sidewalk.

Principal Planner Neal stated the condition could include review by an ISA Certified Arborist. If it is found that the work would negatively impact the tree then the condition could be waived by the Public Works Department.

Chair Fragoso closed the Public Hearing.

Commissioner Newton provided the following comment:

- She does not have any concerns.

Commissioner Green provided the following comments:

- He would like to see an arborist report.
- He supported the idea of giving the Public Works Department some flexibility with respect to the sidewalk.

Commissioner Ackerman provided the following comments:

- He liked the proposal.
- He supported the condition suggested by Principle Planner Neal.

M/s, Newton/Swift, motion to adopt Resolution No. 17-36, 22 Sequoia Road, with the addition of Condition #10: If the applicants wish to request a waiver of the requirement to install a sidewalk that they obtain the report of an ISA Certified Arborist and provide that to the Public Works Department. AYES: Ackerman, Gonzalez-Parber, Green, Kehrlein, Newton, Swift, Chair Fragoso

Chair Fragoso stated there was a 10-day appeal period.

**5. 208 Ridgeway Avenue; Application #17-29**

**Request for a Use Permit for a 148 square-foot remodel/expansion of a 1,598 square-foot, 3-bedroom, 1-bathroom, single-family residence, resulting in a 1,746 square-foot, 3-bedroom, 2-bathroom residence; Residential RD 5.5-7 Zone; Assessor's Parcel No. 001-231-19; Laura Kehrlein, Architect; Mary Wells, Owner; CEQA categorically exempt per Section 15301(e)(1)**

Commissioner Kehrlein recused herself from this item.

Principal Planner Neal presented a staff report.

Commissioner Green asked Principle Planner Neal to point out the location of Sadie Lane.

Chair Fragoso opened the Public Hearing.



Ms. Mary Wells, owner, made the following comments:

- This is her family home.
- Sadie Lane is a foot path.

Mr. Fred Divine, architect, made the following comments:

- The staff report was excellent.
- This is a straight-forward project.
- The foundation is being repaired, ceiling heights improved, and kitchen expanded.

Chair Fragoso closed the Public Hearing.

Commissioner Green provided the following comments:

- The project is terrific.
- This is a simple addition.
- Repairing the foundation is a very good idea.
- He has no issues.

M/s, Gonzalez-Parber/Ackerman, motion to adopt Resolution No. 17-37, 208 Ridgeway Avenue.

AYES: Ackerman, Gonzalez-Parber, Green, Newton, Swift, Chair Fragoso

RECUSED: Kehrlein

Chair Fragoso stated there was a 10-day appeal period.

The Commission took a 10-minute break at 9:45 p.m.

## **GENERAL PLAN MATRIX REVIEW/UPDATE**

### **6. Director report on the status of the General Plan Matrix and its relationship to the Planning Commission's Zoning Ordinance update list**

Planning Director Berto presented the staff report. He recommended the Commission schedule a workshop to discuss these issues.

Commissioner Swift had a question about an abbreviation in the "Comments" section of the matrix. Principle Planner Neal stated she was not sure what the "n" stood for. Commissioner Swift asked if the comments in the matrix came from staff or the General Plan Implementation Committee (GPIC). Commissioner Ackerman state the comments came from the GPIC.

Chair Fragoso stated some of the items listed have been discussed to some extent.

Commissioner Green stated he would like to get more specific with respect to fire safety. Commissioner Swift stated neighborhoods could do this on their own now with CERT training, "Get Ready" classes, etc. Commissioner Green stated he would like the Commission to help foster this.

Commissioner Swift stated she would like each Commissioner to start prioritizing the list and meet in a workshop setting.

Planning Director Berto stated that was a good idea and suggested appointing a sub-committee of two members.

Commissioner Ackerman stated he would like to categorize the items on the list- put all the fire safety items in one "bucket", all the "historical inventory/designations" items in another "bucket", etc.

Commissioner Green volunteered to be on the sub-committee.

Planning Director Berto asked the Commission to submit his or her list of priorities to staff in the next couple of weeks.

Planning Director Berto discussed the holiday schedule and asked the Commission to check his or her calendars about the following date: December 14th. He would also like to schedule a Commissioner's workshop/retreat on a Saturday in mid January

Planning Director Berto reported the Town Council waived the first reading and introduced the Accessory Dwelling Units Ordinance and the Electric Vehicle Charging Station Ordinance. The Council will be considering some Proposition 64 related regulations.

Commissioner Swift asked if streets could be identified in the Zoning Maps. Planning Director Berto stated "yes- but one of the challenges has to do with scale".

## **COMMISSIONER COMMENTS AND REQUESTS**

### **7. Comments and requests from the Planning Commission**

Commissioner Swift asked if the General Plan Maps were updated. Planning Director Berto stated staff was looking into what updating them with require. Commissioner Swift stated the maps in the Safety Element should be current. Commissioner Newton stated they should at least have a list of the maps that need to be updated periodically. Commissioner Ackerman noted these maps come from different sources and vary in quality, scale, etc.

Commissioner Swift asked if the Town has ever done a count or assessment of unapproved second units. Principle Planner Neal stated "yes" but she is not sure about its accuracy.

Commissioner Swift asked why the "audio only" recording of meetings is not posted on the Website. Principle Planner Neal stated she would find out.

Commissioner Newton asked staff to reach out to Diane Causey about partnering with some of the colleges in the area for planning interns that could help staff with its workload.

Commissioner Green asked about the status of the Java Hut and the restroom issue. Principle Planner Neal stated the owner provided staff with letters from several businesses that would be willing to provide access to their bathrooms. The business owners are still dealing with the Health Department.

## **MINUTES**

### **8. Minutes from the September 21, 2017 Planning Commission meeting**

M/s, Ackerman/Swift, motion to approve the September 21, 2017 Planning Commission minutes as corrected.

AYES: Ackerman, Newton, Swift, Chair Fragoso

ABSTAIN: Green, Gonzalez-Parber

ABSENT: Kehrlein

## **ADJOURNMENT**

A motion was made, seconded and unanimously approved to adjourn the meeting at 10:45 p.m.  
Respectfully submitted,

Toni DeFrancis,  
Recording Secretary