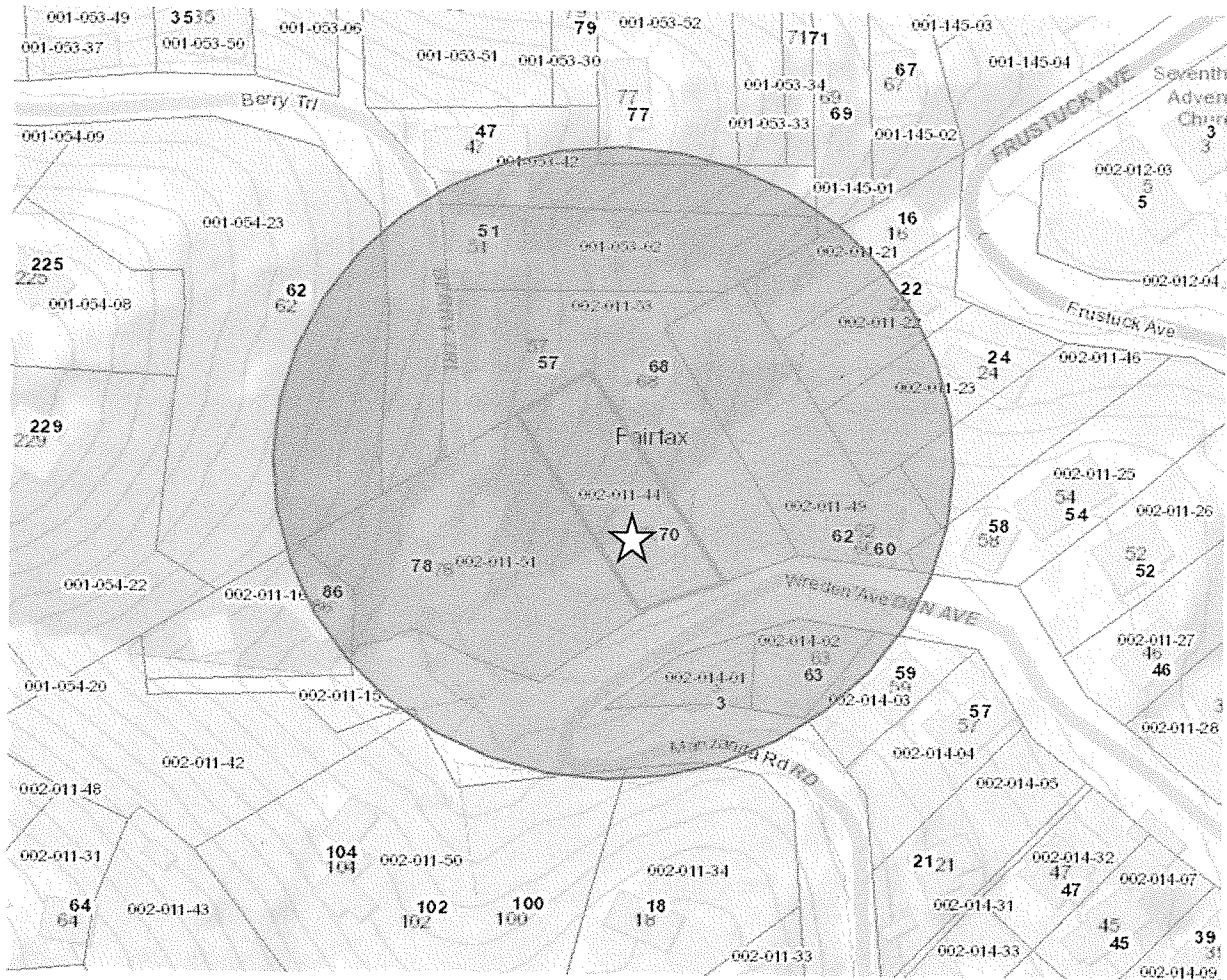


**TOWN OF FAIRFAX
STAFF REPORT
Department of Planning and Building Services**

TO: Fairfax Planning Commission
DATE: December 14, 2017
FROM: Michelle Levenson, Assistant Planner
LOCATION: 70 Wreden Avenue; Assessor's Parcel No
ZONING: Residential RS 6 Zone
PROJECT: Rebuild Entry Stair and Extend Existing Deck
ACTION: Front Yard Setback Variance and Conditional Use Permit;
Application # 17-43
APPLICANT: David Ostiller
OWNERS: David Ostiller
CEQA STATUS: Categorically Exempt, § 15301(a)



70 Wreden Avenue

BACKGROUND

The project site is 7,793 square feet in area and steeply sloped at 37 percent. The site is located within the Residential RS 6 Zone and is developed with a 1,626 square-foot, two-story, single-family residence constructed in 1966 that contains 3 bedrooms and 1 bathroom, as well as a 380 square-foot carport and 434 square feet of decks. The Planning Commission issued approvals (e.g., front setback variance, height variance, and encroachment permit) for the carport in 2007.

DISCUSSION

The proposed project would involve repairing the existing entry stairs within their current location and configuration, and repairing and expanding the existing entry deck by 219 square feet to cover an open area between the existing entry walkway and carport.

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	0	36 ft	36 ft	5 ft & 3 ft	8 ft	.18	.22	24.5 ft., 2 stories
Proposed	same	same	same	same	same	same	.25	same

Existing development on the site does not comply with the required front, side, and combined side setbacks due to the locations of the driveway and carport in the front setback, and the driveway and existing decks in the side setbacks.

The deck extension would be located within the combined side setback.

REQUIRED DISCRETIONARY APPROVALS

Conditional Use Permit. Because the site is steeply sloped at 37 percent, Town Code Section 17.080.050(C) requires a minimum lot area of 29,900 square feet and a minimum lot width of 131 feet. At 7,793 square feet and with a minimum width of 50 feet, the site does not meet the minimum area or width requirements, therefore a Conditional Use Permit is needed for any new construction on the site.

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. As described above, the deck would be extended into the required combined side setback therefore an approval of a variance to the combined side setback requirement is required by the Planning Commission.

DICUSSION

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 applicant is requesting the deck extension to improve circulation between the entry deck to the residence and the carport. Currently, the entry walkway/deck is narrow at 4 feet. The proposed project would widen it to a maximum of 19 feet, providing better flow and additional usable outdoor area.

Expansion of the deck is in keeping with decks associated with other Fairfax hillside residences where flat, usable outdoor area is unavailable. The area of the deck expansion is over 82 feet from the neighboring residence at 78 Wreden and no new lighting is proposed with the project. Thus, the project would not create a public nuisance, or cause excessive or unreasonable detriment to adjoining properties or premises. By providing enhanced indoor/outdoor circulation and improving the usability of the outdoor area, the project would result in better development of the site than would otherwise be the case. Therefore, staff recommends that the Planning Commission approve the CUP for the project.

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, existing development does not meet the required front, side and combined side setback requirements for the RS 6 Zone. The deck would be expanded into the combined side setback but would remain outside of the required 5-foot side setback. As is typical with many Town residential sites, the lot is narrow making compliance with the combined side setback requirement difficult. Because the deck

extension is intended to improve circulation and would cover an existing open area between the carport and entry deck/walkway, there is no other location for the deck expansion. Several other hillside residences in Town have decks of similar sizes and configurations, thus denial of the variance would deprive the owner of privileges of enjoyed by other properties in the vicinity. Granting of the variance would improve circulation and result in creation of more usable outdoor area, thereby improving the usability of the site without additional grading. Strict application of the title would cause unreasonable hardship to the owner. The deck expansion would be located a sufficient distance from the neighboring residence at 78 Wreden, and would therefore would not be detrimental to the public welfare or injurious to other property in the vicinity. For these reasons, staff recommends that the Planning Commission approve the combined side setback variance for the project.

Other Agency/Department Conditions/Comments

Ross Valley Fire Department (RVFD)

RVFD submitted written requirements (dated October 27, 2017) for the project requiring the maintenance of an effective firebreak around the structure as well as address numbers that are clear visible from the street.

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

The MMWD, 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. 17-43 by adopting Resolution No. 17-41.

ATTACHMENT

Attachment A – Resolution No. 17-41

RESOLUTION NO. 17-41

A Resolution of the Fairfax Planning Commission Approving a Conditional Use Permit and a Combined Side Setback Variance to Extend a Deck and Repair an Entry Stairway

WHEREAS, the Town of Fairfax has received an application to expand a deck by 219 square feet for a total deck area of 379 square feet and replace, in-kind, 208 square feet of entry stairs and an entry deck, at 70 Wreden Avenue;

WHEREAS, the Planning Commission held a duly noticed Public Hearing on December 14, 2017, at which time the Planning Commission determined that the project complies with the Fairfax Town Code provisions on Conditional Use Permits (Section 17.032) and Variances (Section 17.028); 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 project involves the repair of existing entry stairs and an entry deck, and expansion of a deck adjacent to a carport. With implementation of the project, 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) due to the narrow width of the site and the location of the entryway, it is difficult to expand the deck, improve indoor/outdoor circulation and provide adequate outdoor space without intruding into a required setback. Thus, the narrow width of the site and the siting of the residence on the site is the special circumstance that makes strict application of the title difficult; (ii) the site currently does not comply with the side, front and combined side setback requirements for the RS 6 Zone. While the deck would expand into the combined side setback, it would not intrude into the required side setback. Several Town hillside sites contain decks of similar size than the proposed deck expansion, thus approval of the variance would provide the owner with a "privilege" enjoyed by other owners in the vicinity and under similar zoning classification; (iii) approving the variance will provide the owner with enhanced access to the outdoors and improved circulation into and out of the residence. Not approving the variance would cause unreasonable or excessive hardship to the owner by preventing enhanced use of the property; and (iv) because the deck extension will be located a substantial distance from potentially affected neighboring residences and will not result in further intrusions into required setbacks than those that already exist on the site, the granting of the variance 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, the owner will repair deteriorated stairs and expand a deck, improving access to the residence and enhancing the usability of the outdoor area. The expanded deck and resultant enhanced outdoor space is a "privilege" available to Town property owners and will not contravene the doctrines of equity and equal treatment; (ii) because the expanded deck will be located a considerable distance from the neighboring property and will not intrude further into required setbacks than structural intrusions that currently exist on the site, 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 has been designed to 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 enhance on-site circulation and improve opportunities for outdoor access resulting in better development of the site than 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 illustrated on the plans prepared by Kautz Architecture Architecture, entitled, "Owner-David Ostiller, Entry Deck Replacement, 70 Wreden Avenue Fairfax, CA 94930", Sheets A-1 and A1-P, dated November 6, 2017, and received on November 7, 2017.
2. A Building Permit is required for construction of the deck expansion and replacement of the entry stairs and deck.
3. Prior to issuance of a Building Permit, secure written approval from the Ross Valley Fire Department noting that the development conforms with all of their recommendations and conditions. Other agency conditions can be waived by those agencies in writing to the Town Building Department.
4. 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.
5. 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.

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

7. Any changes, modifications, additions or alterations made to the approved set of plans will require a modification of Application No. 17-41. Any construction based on job plans that have been altered without the benefit of an approved modification of Application No. 17-41 will result in the job being immediately stopped and red tagged.

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

9. 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.

10. The applicant shall comply with all applicable local, county, state and federal laws and regulations. Local ordinances which must be complied with include, but are not limited to the 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.

11. 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. Maintain an effective firebreak around the structure in accord with Ross Valley Fire Department Fire Protection Standard 220 Vegetation/Fuels Management Plan.
2. 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), Ross Valley Sanitary District and the Fairfax Police, Public Works and Building Departments

The MMWD, 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 14th day of December, 2017, by the following vote:

AYES:

NOES:

ABSTAIN:

Chair, Norma Fragoso

Attest:

Ben Berto, Director of Planning and Building Services