

**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 19th, day of October, 2017, by the following vote:

AYES:

NOES:

ABSTAIN:

Chair, Norma Fragoso

Attest:

Ben Berto, Director of Planning and Building Services