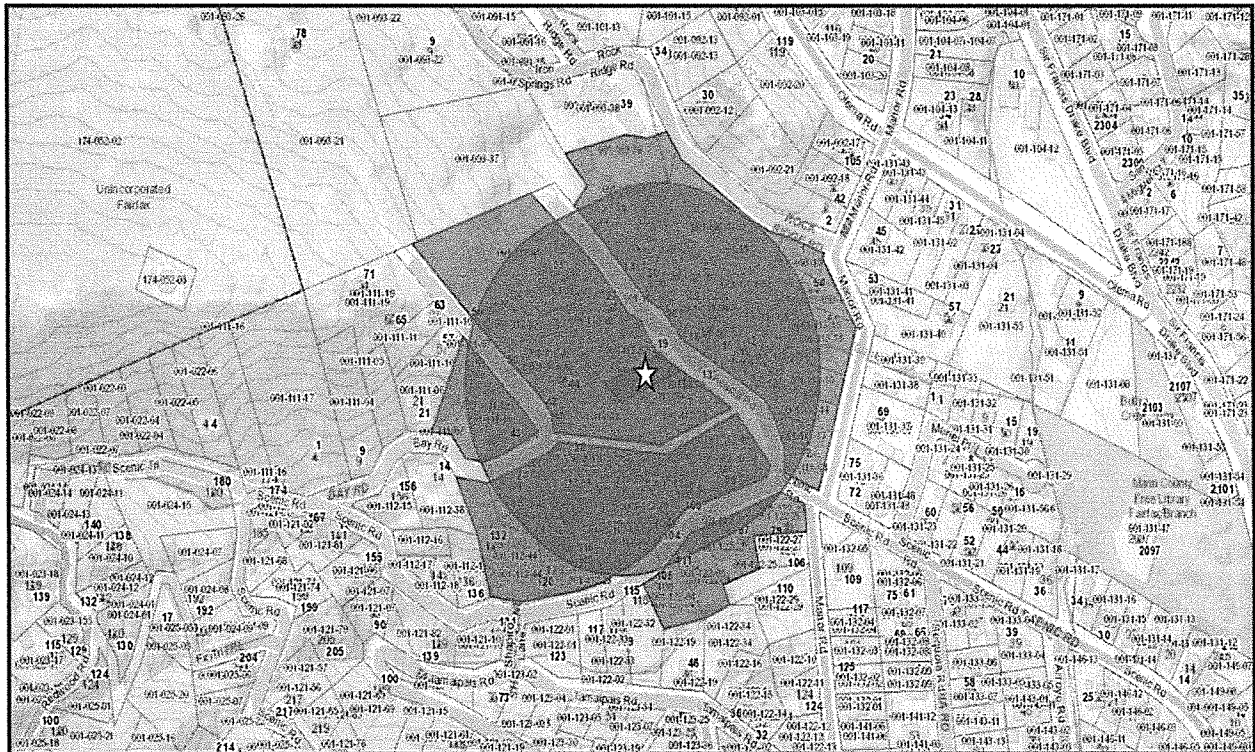


**TOWN OF FAIRFAX  
STAFF REPORT**  
Department of Planning and Building Services

**TO:** Planning Commission  
**DATE:** June 29, 2017  
**FROM:** Linda Neal, Principal Planner  
**PROJECT:** Single-family residence  
**ACTION:** Modification of a previously approved Hill Area Residential Development Permit, Encroachment Permit, Side Setback Variance, and Excavation Permit and new application for a Height Variance to modify a previously approved floor and site plan; Modification of Application #08-46

**APPLICANT:** Ted Pugh  
**OWNER:** Ted Pugh and Ricki Kerner  
**LOCATION:** 15 Acacia Road; Assessor's Parcel No. 001-112-31  
**ZONING:** Residential Single-family RS 6 Zone  
**CEQA STATUS:** Categorically exempt, § 15303(a), 15305(a) and (b)



**15 ACACIA ROAD**

## **Background**

The lower portion of this 6,472-square-foot site and the northern side of the property at 13 Acacia Road suffered a surface slide in December of 2005. The Town placed rip rap within the right-of-way and on the lower portions of the site to keep Acacia Road open.

The applicant originally submitted plans and Hill Area Residential Development, Encroachment, Excavation, Height Variance, Front Setback Variance, Design Review and Driveway Width Exception applications for a residence on this site in 2008. The originally submitted plans proposed the construction of a 2,767-square-foot, four story, single-family residence. The first story included a 583-square-foot, two car garage and 207-square-foot utility area, the 837-square-foot second story included the family room, one bedroom and a full bathroom; and the 883-square-foot, third story included the kitchen, dining room, one bedroom and a full bathroom. The project also proposed a 211-square-foot, fourth story, referred to in the plans as the "mezzanine loft" that could be used as an office, bedroom, study, etc.

The Planning Commission first reviewed the project on November 20, 2008 and was unable to make the legal findings to approve a four-story residence (Attachment B – minutes from the 11/20/08 Planning Commission meeting). The Commission continued the matter for one month after the applicant agreed to redesign the project to eliminate the fourth floor. On December 18, 2008, the Commission unanimously approved the requested discretionary permits and the revised plans (Attachment C – minutes from the 12/18/08 Planning Commission meeting and Attachment D – the originally approved plans). These approvals lapsed in December, 2010.

The applicant reapplied for the discretionary permits necessary for the previously approved 3-story structure in December of 2015. Staff requested updated geotechnical, arborist, landscaping and survey reports since seven years had passed since the original approval. The updated reports were provided in March 2016 and the project was first considered by the Planning Commission on May 19, 2016 (Attachment E – May 19, 2016 staff report) and approved for a second time by the Commission on June 16, 2016 (Attachment F – Resolution No. 16-19 approving Application No. 16-16 for the 3-story, 2,556-square-foot, 2-bedroom, 2-bathroom residence.

## **PROJECT DESCRIPTION**

The applicant has now submitted revised project plans changing the floor plans of the residence, the exterior elevations and the site plan improvements as follows:

1. The first floor would still contain a garage that would provide parking for 2 vehicles and the interior entry/stairway access to the first living level but the area at the rear of the garage that had been proposed for a grey-water system storage tank would be replaced with a location for a future elevator.
2. The second floor that was approved for one bedroom, 1 bathroom and a family

room would be redesigned for development with a kitchen, laundry room, ½ bathroom and a living room.

3. The third floor would be developed with 2 bedrooms and 2 bathrooms while originally approved for a bedroom and bathroom, kitchen and a dining room.
4. A fourth story is proposed that would include a landing, a mechanical room, space for the future elevator and an access door to the roof deck located on the south side of the building on top of the south side of the third story of the residence.
5. The small rear yard area that had been created through the construction of large retaining walls and a stairway providing access to the roof deck on the west side of the structure has been eliminated and is proposed to be replaced with a deck that would be constructed midway between the third and fourth floors of the structure. The deck would be accessed by a door leading off the stairway landing, mid-floor between the third and fourth stories. An exterior stairway stairway would lead from the deck up to the roof deck providing a second access path to the roof deck which could also be accessed from the fourth story of the residence. The square footage of the house is decreasing slightly from the previously approved plans by 17-square-feet, even with the addition of the 4<sup>th</sup> story due to the reorientation of the stairway system.
6. The roofline of the southern portion of the house has been modified and no longer includes a peaked roof. The roof line has been changed to follow the line of the site natural grade up the hillside (see section at living room, B6, page 6, cross section at stair, E7, page 7, and the south elevation, sheet 11).
7. The number of windows has been decreased on the south side of the house and a door has been added providing access from the fourth story to the roof deck (south elevation, sheet 11 of the proposed plans; sheet 4 of the previously approved plans).
8. The number of windows would be decreased on the second floor and increased on the third floor of the east (front) side of the house (east elevation, sheet 11 of the proposed plans; sheet 4 of the previously approved plans).
9. The size and locations of the 2 windows on the north elevation would be changed (North elevation, sheet 12, of the proposed plans; sheet 4 of the previously approved plans).
10. The number and location of the windows would be decreased on the west elevation of the house (west elevation, sheet 12 of the proposed plans; sheet 4 of the previously approved plans).
11. A wooden deck and access doorway is proposed off the stair landing between

the third floor and the fourth floor (cross section at stair, E7, sheet 7, of the proposed plans.

The project complies with the regulations set forth in the Residential Single-family RS 6 Zone as follows:

	Front Setback	Rear Setback	Combined Front/rear Setback	Side Setbacks	Combined Side Setbacks	FAR	Lot Coverage	Height
<b>Required/ Permitted</b>	6ft	12ft	35ft	5ft & 5ft	20ft	.40	.35	28.5 ft., 2 stories
<b>Proposed</b>	0 ft.	97 ft.	97 f.t.	5 ft. & 5 ft.	10 ft.	.27	.14	24 ft. and 4 stories

Note: The only setback being changed is the rear setback which is increasing from 89-feet to 97-feet and is still in conformance with the RS-6 Zoning minimum 12-foot rear setback and combined 35-foot, front/rear setback requirements [Town Code § 17.070.(B)(1)].

The lot coverage is also decreasing from 17% to 14% and also is still in conformance with the requirements. The square footage of the house, even with the addition of the 4<sup>th</sup> floor, is decreasing slightly as a result of the redesign of the interior stairway system. The overall height of the structure would remain at 24-feet.

### **Discretionary Approvals Required for Design Modifications**

The proposed design changes require the approval of a modification of the approved Hill Area Residential Development Permit to change the floor plans and outdoor living space areas, a modification of the approved Design Review Permit for the exterior changes to the structure, and a Height Variance for the fourth story.

#### **Hill Area Residential Development Permit**

Residences in the immediate area range in size from the smallest, 1,180-square-foot, 3-bedroom, 1-bathroom residence (7 Acacia Road) on a 6,600-square-foot parcel to the largest, a 2,575-square-foot, 4-bedroom, 3 ½-bathroom residence (34 Acacia Road).

There are other residences that have Floor Area Ratios (FAR) greater than the FAR proposed for 15 Acacia Road; 34 Acacia Road has an FAR of 55% and 30 Acacia Road has an FAR of 30% while the proposed residence has a FAR of 27% which is well below the permitted FAR of 40%. Therefore, the FAR of the proposed house does not result in a house out of character with the neighborhood.

The excavation amount and proposed drainage improvements required to construct the

house and repair the slide area are not being modified.

No additional trees are proposed for removal due to the proposed design and floor plan modifications.

Staff believes the original Hill Area Residential Development permit findings can be made and still apply to the proposed modifications to the floor plans for the first, second and third living levels of the house. The findings can also be applied for the proposed exterior changes except for the fourth story proposed improvements, including the access stairway and doors proposed off the stairway landing between the third and fourth floors to the proposed western exterior deck and the door proposed off the fourth floor to the roof deck.

The proposed exterior window changes, roofline change and the rear deck proposed on the west side of the structure comply with the design review criteria set forth in Town Code 17.020.040. The new doors proposed off the stairway landing to the fourth floor and off the fourth floor to the roof deck do not comply with the design criteria because they are proposed to access a story that does not comply with the code regulations and findings cannot be made to approve a variance for the fourth floor.

### **Height Variance**

Town Code § 17.080.060(A) limits the height of residential structures in the RS-6 Zone to 28.5 feet above natural grade and to 3-stories. The proposed fourth story of this residence is out of character with the surrounding neighborhood which is comprised of 2 and 3 story structures. A three story structure has already been designed and been approved for this site twice before (see background above) which means it can be developed in compliance with 3 story height limitation [Town Code § 17.080.060(A)].

The following required findings to approve a Variance of the 3-story height limit cannot be made (staff recommended findings for denial of the requested height variance are italicized and in bold font):

- Because of special circumstances applicable to the property, including size, shape, topography, location of surroundings, the strict application of this title will deprive the applicant of privileges enjoyed by other property owners in the vicinity and under identical zone classification.

***The proposed four story house does not comply with the Residential RS-6 Zone District height regulations nor is the 4-story design similar to other residences in the Acacia Road neighborhood. The resulting 4-story residence is not consistent with the following Fairfax General Plan Policies:***

***Policy LU-7.1.5: New and renewed residential development shall preserve and enhance the existing character of the Town's***

***neighborhoods in diversity, architectural character, size and mass.***

***Policy LU-7.2.1: New and renewed residential development shall be compatible with the general character and scale of structures in the vicinity.***

- The variance or adjustment will not constitute a grant of special privilege, is consistent with the limitations upon other properties in the vicinity and under identical zone classification, and is consistent with the objectives of this title.

***The request for a 4-story house will be a grant of special privilege because the other houses in the neighborhood are all 2 and 3 story structures.***

- The strict application of this title would result in excessive or unreasonable hardship.

***Complying with the number of stories limitation of the RS-6 height regulations will not significantly change the square footage of the house. While the elimination of the fourth story will make access to the rear lawn area and the roof deck difficult, the access difficulty has been created by the redesign of the structure. The plans that were approved on June 16, 2016 had a design that provided access to these areas without including a fourth story.***

- The granting of the variance of adjustment will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated.

***There are many parcels in Town with similar topography to the project site. The granting of the first height variance to allow a four story house on this site could create a basis for other property owners to request exceptions to this particular portion of the height regulation. While minor 2-foot to 3-foot height variances have been granted by the Commission on very steep lots, no variances have been granted to allow a 4-story house in over thirty years. The one request for a Variance for a 4-story house that was received in 2013 for 177 Frustuck Avenue was withdrawn by the applicants report.***

**Front Setback Variance, Retaining Wall Height Variance, Encroachment Permit, Excavation Permit and Parking Variance– Not Requiring Modification by the Planning Commission.**

For additional discussion and information on the permits listed above, some of which are also discussed below, see the attached May 19<sup>th</sup>, 2016 staff report (Attachment F).

## **Variances**

A variance is a requested deviation from the set of laws a municipality applies to land use known as a zoning ordinance, building code or municipal code. Generally it is applied when the municipality wants to avoid compensating a landowner for making the landowners make changes to the real property to make it comply with the zoning regulations. Variances are required in the United States in order to prevent a regulatory taking (denying an owner some reasonable use of their property). To avoid a taking, four factors for a variance include (1) unnecessary hardship, (2) the variance is needed to allow a reasonable use, (3) the allowed variance will not alter the essential character of the neighborhood and (4) the variance results in the least intrusive solution.

For example: suppose a low density residential zone requires that a house have a setback of 100 ft. from the front property line but the site is only 100 ft. deep. It would be impossible to build a house on the property, potentially resulting in an unlawful regulatory taking. A variance exempting the property from the setback regulation would allow the house to be built.

The Commission previously granted the front setback, retaining wall and parking variances necessary to allow the construction of the house. A brief discussion of these can be found below. For a complete discussion see the attached staff report from the May 19, 2016 meeting.

The project site is only 42-feet wide and is very steep. Requiring compliance with the 6-foot front setback and 4-foot, retaining-wall, height limit would make it impossible for the owner to construct the wing-walls in front of the garage necessary to construct the required parking and to allow access to the house [17.080.070(B)(1), front setback, 17.044.(B)(1), wall height]. The house does meet the required 6-foot front setback.

Town Code § 17.080.070(B)(2) requires that each building site in the RS 6 Zone having a slope of over 10% have side yards with a minimum width of 5ft and a combined width of 20ft. If the combined 20-foot, side-yard, setback were strictly enforced, the house could only be 20-feet wide which is not enough to allow the construction of the wall thicknesses necessary to repair and retain the slide area, provide the required parking and to allow for an entryway to the upper floors. The house complies with the minimum 5-foot, side-yard, setbacks.

The narrow 40 ft. width of the property is a physical feature of the project site that makes it unreasonably difficult to comply with the required 20 ft. combined side yard setback requirement. Compliance with the 20 ft. setback would result in a residence that is only 22 ft. wide. It would be very difficult to comply with engineering and building code requirements in this case without increasing excavation into the hillside and significantly reducing the size of the residence to a point where it might be fiscally unfeasible to build.

**Parking Variance:** The Commission also granted a parking variance to allow the guest

parking space in the driveway in front of the proposed 2-car garage to be a compact, 8-foot by 16-foot parking space. They found that this variance minimized the amount of excavation required to develop the site while moving the development further away from the roots and canopies of the mature, redwood tree grove located on the hillside to the rear of the house. The Commission determined that granting of the guest space Parking Variance was in keeping with the Hill Area Residential Development Permit findings for approval which require that excavation be kept to a minimum and mature trees on development sites be retained [Town Code §§ 17.072.010(B)(1) and 17.072.010(B)(2), HRD Purpose Section)].

**Encroachment Permit:** The setback of the house from the property line, 11 feet from the edge of the paved roadway, makes it impossible to construct an entry to the required parking area without building retaining walls and the driveway approach in the public right-of-way. However, the walls do maintain a setback from the paved road of at least 3 ft., as do the neighboring wall, so they do not further narrow the right-of-way.

**Driveway Width Variance:** The driveway has been expanded beyond the permitted 20-feet in width to accommodate the fire truck turn out requested by the Ross Valley Fire Department [Town Code § 12.12.030 ]. The Town Council granted the driveway width variance on February 4, 2009 (Town Code § 12.12.090). Driveway Width Variances do not expire so the original Town Council approval is still in effect since no changes are proposed to the driveway.

**Design Review:** Town Code § 17.020.030(a) indicates that all new residences and projects constituting 50% remodels require the review and approval of the Design Review Board (Planning Commission acts as the Design Review Board). Most of the proposed design changes do comply with the design review criteria except the exterior changes and interior changes that are being driven by the construction of the fourth floor of the residence, including the stairway and landing between the third and fourth floor and the doors off that landing and off the fourth floor.

## **RECOMMENDATION**

1. Conduct the public hearing.
2. Deny the proposed modifications to application 16-16 by adopting the attached Resolution No.17-25.

## **ATTACHMENTS**

Attachment A – Draft Resolution No. 17-25 recommending denial of the proposed modifications to application 16-16

Attachment B – Minutes from the 11/20/08 Planning Commission meeting

Attachment C – Minutes from the 12/18/08 Planning Commission meeting

Attachment D – Plans approved on 12/18/08

Attachment E – Planning Commission Staff report dated 5/19/16



Attachment F – Resolution No. 16-19 approving application No. 16-16



**RESOLUTION NO. 17-25**

**A RESOLUTION OF THE FAIRFAX PLANNING COMMISSION DENYING THE PROPOSED MODIFICATIONS TO APPLICATION 16-16, FOR A SINGLE-FAMILY RESIDENCE AT 15 ACACIA ROAD WHICH INCLUDES A FOURTH STORY.**

**WHEREAS**, the Town of Fairfax has received an application for a modification of previously approved plans for a single-family residence at 15 Acacia Road; and

**WHEREAS**, the Planning Commission held a duly noticed Public Hearing on June 29, 2017, at which time all interested parties were given a full opportunity to be heard and to present evidence; and

**WHEREAS** the property is located in the Single-family RS-6 Zone District and the RS-6 Zone regulations limit residences to having only three stories on upsloping properties; and

**WHEREAS**, the plans approved by the Planning Commission on June 16, 2016, granted the owners a substantial use of their property without the need for a height variance;

**WHEREAS**, the applicant has not met the burden of proof required to demonstrate that the site at 15 Acacia Road cannot be developed without a Height Variance granted by the Planning Commission; and

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

1. The proposed development is not consistent with the General Plan, the Zoning Ordinance or other adopted codes and policies of the Town of Fairfax as follows:

A. The proposed four-story house does not comply with the Residential RS-6 Zone District height regulations nor is the 4-story design similar to other residences in the Acacia Road neighborhood.

B. The resulting 4-story residence is not consistent with the following Fairfax General Plan Policies:

Policy LU-7.1.5: New and renewed residential development shall preserve and enhance the existing character of the Town's neighborhoods in diversity, architectural character, size and mass.

Policy LU-7.2.1: New and renewed residential development shall be compatible with the general character and scale of structures in the vicinity.

C. The request for a 4-story house will be a grant of special privilege because the other houses in the neighborhood are all 2 and 3 story structures.

D. Complying with the three-story limitation of the RS-6 height regulations will not significantly change the square footage of the house. Without significant design modifications, elimination of the fourth story will make access to the rear lawn area and the roof deck difficult. The plans that were approved on June 16, 2016 had a design that provided access to these areas without including a fourth story. Therefore, the strict application of the regulations limiting houses in the RS-6 Zone to three stories would not result in excessive or unreasonable hardship for the applicant.

E. There are many parcels in Town with similar topography to the project site. The granting of a height variance to allow a four-story house on this site could create a basis for other property owners to request exceptions to this particular portion of the height regulation. While minor 2-foot to 3-foot height variances have been granted by the Commission on very steep lots, no variances have been granted to allow a 4-story house. The granting of the variance of adjustment would be detrimental to the public welfare and injurious to other property in the vicinity in which the property is situated.

**NOW THEREFORE**, the Planning Commission of the Town of Fairfax does hereby resolve as follows:

**Section 1.** After careful consideration of the site plan, architectural drawings, plans and other exhibits submitted in connection with this matter, the Planning Commission denies the request by Ted Pugh for a modification of the previously approved application # 16-16 for a single-family residence at 15 Acacia Road.

**PASSED AND ADOPTED** by the Town of Fairfax Planning Commission, State of California, this 29<sup>th</sup> day of June, 2017, by the following roll call vote:

AYES:  
NOES:  
ABSTAIN:

\_\_\_\_\_  
Vice Chair, Mimi Newton

**ATTEST:**

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

Fairfax Planning Commission Minutes  
Regular Meeting  
Fairfax Women's Club  
Thursday, November 20, 2008

Call to Order/Roll Call

**COMMISSIONER'S PRESENT:** Pam Meigs (Chair)  
Shelley Hamilton  
Brannon Ketcham  
Peter Lacques (joined the meeting at 7.40pm)  
Peter Ramsay

**STAFF PRESENT:** Anne Welsh, Planning Director  
Neal, Senior Planner  
Joanne O'Hehir, Minutes-Secretary

Chair Meigs called the meeting to order at 7.35pm.

Approval of Agenda

In response to Commissioner Ketcham, Senior Planner Neal confirmed the Assessor's Parcel Number for 56 Manor Road.

M/S, Ketcham/Ramsey, motion to approve the agenda.

AYES: All

**56 Manor Road; Applicant # 08-45**

Request for a Variance of the combined front/rear setback requirement to construct at 319sf kitchen expansion, bedroom and bath addition/remodel to an existing 1,276sf, two bedroom one bath single-family residence for a total living space square footage of 1,595sf; Assessor's Parcel Numbers 001-113-11 & 12; Residential RD 5.5-7 Zone; Shelby LaMotte and Gary Roth, applicants/owners; CEQA categorically exempt § 15301(e).

Senior Planner Neal introduced the staff report, when she noted that staff had recalculated the lot's size, which would not affect the floor area ratio. She provided background information on the project, and discussed the front and rear setbacks. Ms. Neal said that the addition would not infringe upon the neighbors' privacy, and that the design was in keeping with the size and style of other residences in the neighborhood. For these reasons, in addition to those contained in the Staff Report, staff recommended approval of the project.

Chair Meigs introduced the new attorney, Ms. ....

In response to Commissioner Hamilton, Ms. Neal clarified the front and combined setbacks. She noted that they were 15 feet, where normally 25 feet would be required.

Commissioners Lacques and Ketcham discussed setbacks in relation to the plans with Ms. Neal.

The Chair opened the hearing to the public.

Gary Roth, applicant, said they needed an extra bedroom, and that they had worked hard to minimize the space required and keep the profile of the addition low in order to minimize the project's impact on the neighborhood.

Max Crome, project architect, discussed the options to increase square footage, and said that it would be less typical of the neighborhood to add another story. He discussed the design in more detail

The Chair closed the hearing to the public.

In response to Commissioner Ketcham, Mr. Crome confirmed they were removing the wood-burning fireplace. He discussed the materials being used for the garage, and noted that the roof of the addition would match the garage.

Commissioner Hamilton said that this was a modest addition that fitted in well with the character of the neighborhood, with which Commissioner Lacques was in agreement. He noted that the variance was minor.

Commissioner Ketcham also concurred, and he said that this was a modest improvement to the neighborhood. Commissioner Ramsey was in agreement, and Chair Meigs noted that the increase in square footage was limited and that she also supported the project.

M/S, Hamilton/Ramsey, Motion to approve Application # 08-45 for a Variance of the combined front/rear setback requirement to construct at 319sf kitchen expansion, bedroom and bath addition/remodel to an existing 1,276sf, two bedroom one bath single-family residence for a total living space square footage of 1,595sf; Assessor's Parcel Numbers 001-113-11 & 12; Residential RD 5.5-7 Zone;

AYES: All

The Chair read the appeal rights.

**15 Acacia Road; Applicant # 08-46**

**Request for a Hill Area Residential Development Permit, Front Setback Variance, Combined Side Yard Setback Variance, Height Variance for a 4-story building, Encroachment Permit and an Excavation Permit to construct a 2,184sf single-family residence with an attached 583sf two car garage for a total square footage of 2,767sf; Assessors Parcel No. 001-112-30**

Senior Planner Neal presented the staff report, when she discussed excavation, and noted that the minimum amount of earth would be removed in order to allow construction. Ms. Neal discussed the removal of trees, for which replacements will be planted in other areas of the property.

However, she noted that the proposed residence was not in character with the neighborhood based on the floor area ratio (FAR), which she explained. Ms. Neal discussed changes staff believed should be made in order that the project complied with FAR guidelines. She said that infill developments on hillside lots needed to conform to similar styles in the area to ensure harmony, and that the design should meet the requirements of the General Plan Zoning Ordinances.

Ms. Neal said that the Town Engineer believed the site could be developed and she discussed the variances and the conditions under which they could be granted. She noted that the lot was narrow, steep, and the front property line was close to the road. She discussed the height variance, and noted that staff did not believe a reason existed to grant a four-story residence. Ms. Neal stated that there are other undeveloped lots, which were similar, so future height variances could be requested if this variance were approved. She discussed the options staff suggested, including denial of the project with the findings in the staff report.

Chair Meigs and Ms. Neal discussed a previous project, when Ms. Neal noted that the majority of the space consisted of two stories, with a few feet constituting a third story. In this instance, a new third story addition was being proposed.

In response to Commissioner Ketcham, the Town Attorney explained that the time limits of the Permit Streamlining Act could not be surpassed by time limits set by the Town's Ordinances. Thus, the shortest time limit would apply.

Ms. Neal confirmed the completion date of the submission of plans and materials for the project in response to the Chair.

Commissioner Hamilton and Ms. Neal discussed the driveway width, which Ms. Neal stated would be brought before the Town Council.

Ms. Neal and the Chair discussed the tiebacks in relation to a neighboring property. They also discussed an easement in relation to the neighboring property, which Ms. Neal said would be necessary.

Commissioner Ketcham and Ms. Neal discussed height and how it was measured.

Chair Meigs expressed concern over privacy issues caused by the third story windows to the neighboring property owner, and Ms. Neal confirmed that the neighbor had not contacted the Town with concerns.

The Chair and Ms. Neal discussed drainage in relation to the driveway wall.

Commissioner Lacques and Ms. Neal discussed a grey-water system, which Ms. Neal confirmed had been withdrawn by the applicant. They discussed the stability of the hillside.

Commissioner Ketcham and Ms. Neal discussed drainage, and Ms. Neal confirmed that the Town Engineer was comfortable that the lot could be developed.

The Chair opened the hearing to the public.

Ted Hugh, applicant, discussed the engineering issues, and the reasons they were requesting the variances. He noted that the request for a wider driveway was in response to the Fire Department. He addressed the design, and noted that they wished to collect grey water and install a ventilation system, which would require the height variance. Mr. Hugh also discussed the window design of the upper floors and the building materials.

In response to the Chair, Mr. Hugh said he had been in contact with Mr. Hoffmann.

Jeff Kroot, project architect, said that the site was extremely challenging, and discussed the reasons for the variances. He addressed the size of the house, and noted that the retaining walls constituted part of the calculations and, thus, the living space requested was fairly modest. He discussed the mezzanine loft and the windows, which served to ventilate the house.

Mr. Kroot also explained why he believed the house did not constitute four stories, partly because the garage should be considered a basement. He discussed the utility room in relation to a grey water system that is desired, and suggested that the height of the utility room could be lowered.

Mr. Kroot noted that parking was needed, and that he believed the house to be in scale with others in the neighborhood. He discussed the FAR, and noted that the variances requested are site specific, and were needed to build on a steep lot, whilst retaining redwood trees. The retaining walls were necessary to make the site safer and he discussed other reasons why the variances should be granted.

He discussed the setback in relation to the neighbors, the Hustons, when he noted that their house was close to the property line.

Chair Meigs and Mr. Kroot discussed the windows on the mezzanine floor, and Mr. Kroot noted that these were landing windows, and thus should not cause privacy issues, but that the sill heights could be raised.

In response to the Chair, Ms. Neal confirmed that ventilation is not required in the Code.

In response to the Chair, Mr. Kroot said he suggested lowering the ceiling height of the utility room so that it could not be used as living space and, thus, would not constitute a story.



Commissioner Ketcham noted the whole of the garage and utility were considered a story, and Ms. Neal explained that the Town Council had issued directions whereby a garage constituted a story, which made the project a four-story development.

Commissioner Ketcham and Mr. Kroot discussed the mezzanine and Commissioner Ketcham suggested design changes that would render the development a three-story structure, and discussion followed between staff and the architect.

Commissioner Lacques discussed ceiling heights with the architect, and solar paneling.

In response to Commissioner Hamilton, Ms. Neal said that variances could only be granted based upon physical features and not on green issues. However, conditions could be added to an approval to ensure that green features that are promised would be incorporated into the structure.

Commissioner Hamilton and Ms. Neal discussed how size was calculated.

Mr. Hugh discussed the foundation, which was designed to ensure a slide would not occur.

Ketcham suggested that changes could be made to the design to reduce the space and negate the necessity of a variance for a fourth level, and Mr. Kroot explained that the physical constraints of the lot have necessitated the variances.

Commissioner Ketcham reiterated his belief that space could be removed and the design changed so that a fourth story could be omitted.

Commissioner Hamilton and Neal discussed the retaining wall and the distance between the wall and the back of the house and the redwood trees.

Chair Meigs and Ms. Neal discussed lot coverage in relation to the patio area.

Commissioner Lacques and Mr. Kroot discussed the north elevation in relation to the Huston's property.

Commissioner Lacques and Mr. Pugh discussed the green features, and Mr. Pugh said he would abandon the green features if he were not able to obtain the fourth story variance.

In response to Commissioner Ketchm, Mr. Kroot discussed the necessity of the stairwell to the mezzanine floor, and Mr. Pugh discussed the reasons he believed his project should be approved.

The Chair announced a 5-minute break at 9.30pm.

Neil Krause, Acacia Road, said that a project in this location could impact him, but that the applicant has done all that was necessary to be considerate to his neighbors. He supported the project.

Kretchen Coles, Acacia Road, said that she appreciated the effort the applicant had made to stabilize the property and had done a good job.

A resident of Acacia Road said she was happy that the hillside would be stabilized and that an attractive house that fits the neighborhood will be built on the lot.

Babs Walker, Acacia Road, said that she had submitted a letter of support. She said that it would be a nice house and the hillside would be stabilized.

Jeff Bickner, Acacia Road, said that the lot was in need of attention and was suitable for a project such as this. He supported the project.

The Chair closed the hearing to the public.

Commissioner Lacques expressed concern that the outcome might not be positive unless the applicant waived his rights to ... under the Streamlining Act.

Commissioner Ramsey said that he appreciated the amount of care that had gone into the design; it was a difficult site; the public would benefit with a stabilized hillside, and the neighbors supported the project. He said that the argument was persuasive that the existence of the fourth floor would not be detected from the street, and he noted that variances were not inherently prescient. The Commissioner supported the project.

Commissioner Ketcham said that the proposal was well thought out, and that exceptions to the rules existed relating to the wall and driveway that would allow variances. However, they had an obligation to uphold the Town Code, and there appeared to be other areas of the property that could be used for construction. Commissioner Ketcham suggested that a variance for developing the front of the property could be more palatable than a variance for a fourth story. He was concerned that on small lots such as this, four-story additions could become the requested exception to the rules. The Town Council drafted an ordinance that allowed third stories, which was not well received, and he did not believe that findings could be made to allow the fourth story. He would, therefore, deny the request for the fourth-story variance for the reasons contained in the staff report.

Commissioner Lacques stated that he appreciated the work that had been put into the design on a difficult lot, and that all the variances requested, with the exception of the fourth-story addition, were necessary in order to construct a residence on the lot. He could not support a fourth-floor variance because a hardship was not being caused and would not be a limitation on building a home. Furthermore, the ceiling of the top floor could be opened in order to provide light, which would not necessitate a fourth floor. The variance request for a fourth story was too large and he would not wish to set a precedent. He supported the project, other than the variance for the fourth-story addition.

Commissioner Hamilton complemented the applicant on his design that has gained his neighbors' support, but they needed to consider the town as a whole. She would like to make the finding for the variance for the fourth story, but the green aspects that are planned for the project

could be incorporated into a three-story residence. She suggested that a front setback variance could be granted but that the fourth story was not a necessary feature that would warrant a variance.

Chair Meigs stated that everyone had worked hard on the project, but that the political will or an Ordinance did not exist to allow a four-story residence. She had not seen so many variance requests or so much excavation in one package. She could not support the project with a fourth story and Commissioner Ketcham and staff had made alternative suggestions.

General discussion followed, and staff confirmed that a different design without a fourth story had not been presented for consideration, and Commissioner Lacques noted that the Commissioner had been generous with the other variances.

Chair Meigs stated that the Town Code protected the town and its character and that it forbade a fourth story.

Discussion on the way forward followed. The Attorney explained the options available to the applicant.

The applicant waived his rights under the Permit Streamlining Act.

M/S, Lacques/Ketcham, Motion to continue application # 08-46 for a Hill Area Residential Development Permit, Front Setback Variance, Combined Side Yard Setback Variance, Height Variance for a 4-story building, Encroachment Permit and an Excavation Permit to construct a 2,184sf single-family residence with an attached 583sf two car garage for a total square footage of 2,767sf upon the consent of the applicant to submit new plans to the Planning Commission with the understanding that the applicant has waived his rights under the Permit Streamlining Act.

AYES: All

Consideration/adoption of a Resolution 08-04, A Resolution of the Planning Commission that Recommends that the Town Council Adopt the Mixed-Use Overlay Zone Expanded Design Guidelines.

Chair Meigs stated that there were items included in the Resolution that the Subcommittee did not discuss. She further believed that the word 'Regulations' should be substituted for 'Guidelines', which would be more suitable.

Commissioner Hamilton agreed with the substitution and suggested other changes.

Commissioner Lacques stated that language should be added that the guidelines apply to properties in the Mixed Use Overlay Zone and did not apply to the whole town. Discussion followed.

M/S, Hamilton/Ramsey, Motion to adopt Resolution 08-04, A Resolution of the Planning Commission that Recommends that the Town Council Adopt the Mixed-Use Overlay Zone Expanded Design Guidelines with amendments.

AYES: All

Approval of Minutes of October 16, 2008

Concern was expressed that the minutes submitted to the Town Council were in draft form. Ms. Neal noted that the minutes were needed for a project that was appealed and heard by the Council before the Planning Commission could vote on the final minutes.

M/S, Ketcham/Lacques, Motion to approve the minutes of the meeting of October 16<sup>th</sup>, 2008, with the addition of an announcement that a recording of the minutes was available at Town Hall.

Commission Comments and Requests

In response to Chair Meigs, Ms. Neal stated that discussion of fifty per cent remodels required a public hearing, and that the Circulation Element would be discussed at the next workshop.

The Chair reported that a subcommittee had formed to discuss the Tree Ordinance.

Commissioner Hamilton and Town Attorney ... discussed changes that were made to plans for projects that had been denied by the Planning Commission and which are then appealed to the Town Council. Ms. .... Explained that it is not unusual for applicants to amend the plans, which might then be approved by the Town Council. She said that different standards were applied by districts to determine if the changes were minor or major.

Chair Meigs and Ms..... discussed Planning Commissioners who speak during open time at Town Council meetings when projects have been appealed.

General discussion followed on denied projects that are presented as new projects, whose design had not changed and time limitation factors.

Chair Meigs adjourned the meeting at 11.15pm.

Respectfully submitted by Joanne O'Hehir, Minutes Clerk

A recording of the minutes is available at Town Hall upon request.

Town of Fairfax Planning Commission minutes  
Fairfax Women's Club  
Thursday, December 18, 2008

Call to Order/Roll Call:

**COMMISSIONERS PRESENT:** Pam Meigs (Chair)  
Terry Goyon  
Shelley Hamilton  
Brannon Ketcham  
Peter Lacques  
Shelby LaMotte  
Peter Ramsey

**STAFF PRESENT:** Larry Kennings, Interim Planning Director  
Linda Neal, Senior Planner  
Joanne O'Hehir, Minutes-Secretary

Approval of the Agenda

M/S, Hamilton/LaMotte to approve the Agenda.

Ayes: All

Public Comments on Non-Agenda Items None.

**PUBLIC HEARING ITEMS**

15 Acacia Road; Application #08-46

Continued consideration of a request for a Hill Area Residential Development Permit, Front Setback Variance, Combined Side Yard Setback Variance, Encroachment Permit and an Excavation permit to construct a 2,184sf single-family residence with an attached 583sf two car garage for a total square footage of 2,767sf; Assessors Parcel No. 001-112-31; Residential Single-family RS 6 Zone; Ted Pugh and Ricki Kerner, applicants/owners; CEQA categorically exempt, § 15303(a), 15305(a) and (b). ***The project has been modified so that a previous request for a height variance for a four story structure has been eliminated.***

Commissioner LaMotte recused herself because she lives within 300 feet of 15 Acacia Road, and Senior Planner Neal introduced the staff report. Ms. Neal noted that the fourth floor had been eliminated since the last hearing, and the Town Engineer has determined that the project could move forward. She also noted that height limitations have been made and she explained the reasons that staff could recommend approval of the project.

In response to Chair Meigs, Ms. Neal confirmed that a Resolution was necessary because the project consisted of a new house construction and retaining walls with height restrictions. She said that complaints have not been received by neighbors.

In response to Commissioner Goyon, Ms. Neal stated that the Town Code dictates that Council approval is necessary to widen the driveway.

In further response to the Chair, Ms. Neal said that a variance would be necessary if an application was received in future requesting a mezzanine floor.

The applicant, Ted Pugh, said that they had taken into consideration the comments made by the Commissioners at the last meeting and changed their plans accordingly.

Commissioner Ramsey joined the meeting at 7.37pm.

In response to Commissioner Goyon, Mr. Pugh explained the plans for a native grass area on the property.

In response to Commissioner Lacques, Mr. Pugh said that no exterior changes have taken place with the exception of the removal of a window.

The Chair opened the meeting to the public and Shelby LaMotte, Manor Road, said she supported the project and discussed the planting of native grass.

Commissioner Hamilton said she appreciated the effort that was made to revise the plans and that she supported the project. Commissioner Lacques was in agreement.

Commissioner Goyon stated that the project would benefit the neighbors, although he had concerns.

Chair Meigs said that the conclusion was good for the community and that she supported the project.

M/S, Ketcham/Hamilton, to approve Application # 08-46 for a Hill Area Residential Development Permit, Front Setback Variance, Combined Side Yard Setback Variance, Encroachment Permit and an Excavation permit to construct a 2,184sf single-family residence with an attached 583sf two car garage for a total square footage of 2,767sf at 15 Acacia Road.

Ayes: All

The Chair read the appeal rights.

34 Spruce Road; Application #08-47

Request for a Use Permit to construct a 714sf addition, including a second story, to an existing 1,110sf single family residence; Assessor's Parcel No. 001-147-13; Residential Single-family RS6 Zone; Tim and Elizabeth Horn, owners; Max Crome, Crome Architects, applicant; CEQA categorically exempt § 15301(e).

Commissioner LaMotte rejoined the Commissioners, and Senior Planner Neal introduced the staff report, when she noted that the addition included a second story. She explained the reasons that a Use Permit was necessary and the purpose of the Use Permit.

Ms. Neal stated that the addition would not encroach further into the setbacks, which she discussed, and she noted that the first floor and the second floor additions complied with the Code. Ms. Neal said that the existing setbacks were non-conforming because the garage was on the property line.

Ms. Neal explained that other two-story residences of a similar size existed in the neighborhood; that the design was in keeping with homes in the area and that staff could support the project based, additionally, on the findings and conditions set out in the staff report.

In response to Commissioner Hamilton, Ms. Neal confirmed that the garage would need to conform to setback requirements if the project constituted a 50% remodel, which it does not based on the current definition in the Code.

In response to Chair Meigs, Ms. Neal stated that the Commissioners could require design review, although it was not necessarily required, and they discussed setbacks.

Tim Horn, applicant, said they need extra room for their growing family so that they can remain in their home, and that the design suited their needs.

Chair Meigs and Mr. Crome discussed windows, particularly the window on the new façade, and the porch. Mr. Crome discussed the design and noted that it would not be possible to enlarge the first floor because the lot is too small.

In response to Commissioner Lacques, Mr. Crome said that a certain amount of green materials would be included in construction materials. They discussed the window on the west side, and Mr. Crome said that the neighbor had seen the plans and had not raised concerns.

Mr. Horn said he would speak with the neighbor who would be affected by the window.

In response to Commissioner Ketcham, Mr. Crome said that the roof pitch was shallow and the ceilings relatively low to minimize the building's height.

Mr. Crome and the Chair discussed the roof design, and the applicant said he would change the window on the façade to match the windows of the new addition.

Gail Kavanar, Spruce Avenue, supported the project. She did not believe the windows on the addition will affect her privacy because windows already exist on that side of the house.

Commissioner Ramsey said that the design was considerate to the neighbors and that it fitted in well with the neighborhood. He supported the project.

Commissioner Hamilton said that this was a straight forward Use Permit request; that the house size fits the lot and the neighborhood, so she supported the project.

Commissioner Goyon supported the project, but would request that the front windows should be matching. Commissioner Ketcham was in agreement.

Commissioner LaMotte said that the addition was appropriate; that the neighborhood supported it and that it had been well designed. She supported the project.

Discussion followed amongst the Commissioners with the applicant regarding the window that would look out-of-place with the new windows of the addition, which he said he would change.

M/S, Lamotte/Goyon, to approve Application Number # 08-47 for a Use Permit to construct a 714sf addition, including a second story, to an existing 1,110sf single family residence; Assessor's Parcel No. 001-147-13; Residential Single-family RS6 Zone at 34 Spruce Road with the added condition that the existing window on the west side would be changed to match those of the new addition.

Ayes: All

The Chair read the appeal rights.

Consideration/discussion of a draft Ordinance amending the 50% remodel definition of the Town Code. CEQA exempt, § Public Resources Code 21080(b)(1)

Senior Planner Neil introduced the staff report, when she noted that the purpose of the draft Ordinance was to provide off-street parking when remodels occurred.

Ms. Neal noted that the Council will still have to approve the Draft Ordinance and that she recommended that the Commission adopt the Resolution.

Ms. Neal and Commissioner Ketcham discussed the definition of floor area.

Commissioner Hamilton suggested changes that would better define sections of the Draft Ordinance, and Ms. Neal clarified certain aspects of the Draft Ordinance. Commissioner Hamilton remained concerned that homeowners would be required to meet the new parking regulations if they wished to change the floor covering of their home, for example.

Discussion followed on aspects of the Draft Ordinance which should be excluded, and the Commissioners suggested alternative wording.



Chair Meigs was concerned that sprinklers would need to be installed for a re-roofing permit, which the Commissioners and staff discussed.

In response to Commissioner Ketcham, Ms. Neal explained that hillside developments were excluded from the Draft Ordinance because the rules of the Hillside Design Review Ordinance were more stringent.

Ms. Neal discussed the reasons why ridgeline developments and developments in the flood zone are also excluded from the Draft Ordinance, and she noted that hillside development applications would be subject to design review that would include parking requirements.

After further discussion between staff and Commissioners, certain exceptions were eliminated from the Draft Ordinance.

Discussion followed on changes and additions to the Draft Resolution. It was generally agreed that tonight's discussion was sufficient for the Resolution to be refined and presented to the Town Council, and Ms. Neal read out the changes agreed by the Commission.

M/S, Hamilton/Ketcham to adopt Resolution Number 086-06, with changes and additions, to recommend adoption of the Draft Ordinance amending the 50% remodel definition of the Town Code.

Ayes: All

#### Discussion/consideration of Town Center Element Revisions

Acting Planning Director Larry Kennings introduced the staff report, when he provided background information on the subject. He discussed some of changes and the reasons new language was crafted. Mr. Kennings confirmed that the Circulation Element had been distributed to the Fire and Police Departments for their comments on the closure of Bolinas road, and that costs had been requested from Town Staff.

Mr. Kennings said that the Town Attorney had reviewed the changes, and that the Mayor requested the Planning Commission to review the changes.

The Commissioners thanked Mr. Kennings and made brief general comments on the changes.

The hearing was opened to the public and a resident said he was comfortable with the changes.

The Commissioners were in favor of the new revisions that will be reviewed by the Town Council for approval.

Election of the Chair and Vice Chair

Mayor Meigs spoke briefly on the role of the Mayor, and Commissioner Lacques discussed his concerns in taking over as Chair.

M/S, Goyon/ Ketcham to elect Commissioner Lacques as Chair.

Goyon	Aye
Hamilton	Aye
Meigs	Aye
Ketcham	Aye
LaMotte	Aye

Commissioner LaMotte presented Commissioner Meigs with a bouquet of flowers.

M/S, LaMotte/ Hamilton to elect Commissioner Ketcham as Vice Chair.

Ayes: All

Review of the Minutes from the Meeting of November 20, 2008

M/S, Lacques/Goyon, motion to approve the Minutes.

Ayes: All

Commission Comments and Requests

In response to Commissioner Goyon, Interim Planning Director Kennings said that the buyer of a property should be told in the disclosures whether or not it can be developed.

It was agreed that Commissioner Goyon would attend the Tree Committee Meeting in place of Commissioner Lacques.

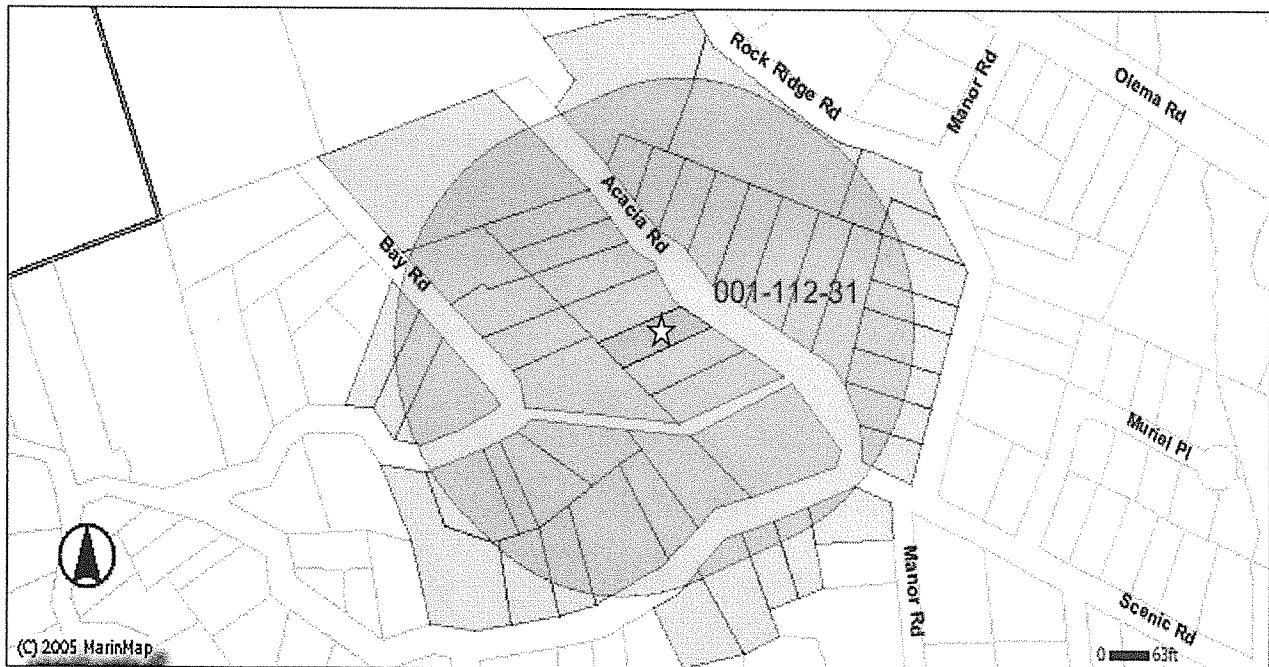
Adjournment

A motion was made, seconded and unanimously approved to adjourn the meeting at 10.30pm.

Respectfully submitted by Joanne O’Hehir.

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

**TO:** Planning Commission  
**DATE:** May 19, 2016  
**FROM:** Jim Moore, Director of Planning and Building Services  
Linda Neal, Principal Planner  
**PROJECT:** Single-family residence  
**ACTION:** Hill Area Residential Development Permit, Encroachment Permit  
Side Setback and Parking Variances and Excavation Permit;  
Application # 16-16  
**APPLICANT:** Ted Pugh and Ricki Kerner  
**OWNER:** Same  
**LOCATION:** 15 Acacia Road; Assessor's Parcel No. 001-112-31  
**ZONING:** Residential Single-family RS 6 Zone  
**CEQA STATUS:** Categorically exempt, § 15303(a), 15305(a) and (b)



**15 ACACIA ROAD**

**ATTACHMENT E**

**BACKGROUND**

The lower portion of this site and the northern side of the property at 13 Acacia Road suffered a surface slide in December of 2005. The Town placed rip rap within the right-of-way and on the lower portions of the site to keep Acacia Road open.

This 6,400 square foot property was created by the filling of the “Amended Map of Fairfax Manor” on April 7, 1919. The site slopes up from Acacia Road at an average rate of 53%

This project was previously approved by the Planning Commission on December 18, 2008 after being redesigned to minimize a back patio area and eliminate a 4<sup>th</sup> story mezzanine. The plans being reviewed at this meeting have not been changed from the ones that were previously approved in 2008. The Town granted a 1 time extension allowed by the Town Code on the discretionary approvals in 2009 but the approvals expired in 2010 (Town Code §§ 17.072.050 and 17.072.090).

**PROJECT DESCRIPTION**

The applicant is seeking re-approval of the discretionary permits with no proposed changes to the project plans. The project encompasses the construction of a 1,643 square foot, 3-story, single-family residence. A 583 sf., 2-car garage and 207 square foot utility area are located on the first story, the family room, one of the bedrooms and a full bathroom are located on the 837sf. second story, and the kitchen, dining room, a second bedroom and a second full bathroom are located on the 883 sf., third story.

The project also includes 421sf of deck area divided between a deck off the second story family room and second story bedroom and a roof deck on top of the second story accessed by an outdoor stairway off the rear of the kitchen.

The project complies with the regulations set forth in the Residential Single-family RS 6 Zone as follows:

	Required front setback	Required rear setback	Combined front/rear setback	Minimum side setbacks	Combined side setbacks	FAR	Lot Coverage	Height/stories
Required/ permitted	6 ft.	12 ft.	35 ft.	5 ft. & 5 ft.	20 ft.	.40	.35	28.5 ft. & 3 stories
Proposed	0 ft.	89 ft.	89 ft.	5 ft. & 5 ft.	10 ft.	.27	.17	28 ft. & 3 stories

The project requires the approval of the following discretionary permits: A Hill Area Residential Development (HRD) Permit, an Excavation Permit, a Front Yard Setback Variance, an Encroachment Permit and a Parking Variance.

### **Hill Area Residential Development Permit**

Town Code § 17.072.020 sets forth the criteria used by staff to determine whether or not a project requires a Hill Area Residential Development. The criteria include, but are not limited to, the slope of the site combined with the amount of project excavation, whether the site is in landslide hazard zone and whether the site is non-conforming in size based on its slope. The site slope is 53% and the project will result in the excavation of 840 cubic yards of material, the property is in a landslide hazard zone and is substandard in size and width, being only 6,400 square feet an 52 feet wide [Town Code sections 17.072.020(4), (B) and (D)]. Therefore, the project requires the approval of a Hill Area Residential Development (HRD) Permit.

It is the purpose of the hill area residential development overlay zone to provide review of and standards for development proposed for undeveloped land in hillside areas. The intent of this chapter to accomplish the following:

1. Encourage maximum retention of natural topographic features such as drainage ways, streams, slopes, ridgelines, rock outcroppings, vistas, natural plant formation and trees;
2. Minimize grading of hillside areas;
3. Provide a safe means of ingress and egress for vehicular and pedestrian traffic to and within hillside areas;
4. Minimize water runoff and soil erosion problems during and after construction;
5. Prevent loss of life, reduce injuries and property damage and minimize economic dislocations from geologic hazards; and
6. Ensure that infill development on hillside lots is of a size and scale appropriate to the property and is consistent with other properties in the vicinity under the same zone classification.

In order to approve a hill area residential development permit the Commission must be able to make the following required legal findings:

1. The proposed development is consistent with the General Plan, other adopted codes and policies of the Town of Fairfax, and is consistent with the purpose and intent of this ordinance.
2. The site planning preserves identified natural features.
3. Based on the soils report finding, the site can be developed without geologic, hydrologic or seismic hazards.

4. Vehicular access and parking are adequate.
5. The proposed development harmonizes with the surrounding residential development, meets the design review criteria and does not result in the deterioration of significant view corridors.

The Town Engineer has reviewed the following reports, letters and plans regarding the site hydrology and geology with respect to the proposed development (found in the folder labeled Exhibit XX of the information submitted by the applicants):

From the Geotechnical Engineer, Herzog Geotechnical –

- 7/25/07 original geotechnical investigation
- 9/5/07 geotechnical review of design concept
- 12/18/07 response to Town Engineer's 9/2/07 memorandum
- 2/26/08 response to Town Engineer's 5/1/08 memorandum
- 5/7/08 clarification of stability issues
- 2/4/16 Update addendum certifying the validity of the original 2007/2008 geotechnical

From the Hydrology and Drainage Engineer, ILS Associates, INC. –

- 2/25/08 original hydrology report
- 3/27/08 comments on sheet C1 of the project plans
- 2/22/06 addendum validating original 2007/2008 reports

From the consulting Structural Engineer, BHW Engineer LLC –

- 8/22/07 preliminary technical comments and design recommendations
- 1/10/08 response to Town Engineer's 11/1/07 memorandum
- 3/31/08 additional information regarding necessity for rear retaining walls and patio
- 5/6/08 response to Town Engineer's 5/1/08 memorandum
- 3/3/16 addendum certifying the continued validity of the original 2007/2008 reports

From the Civil Engineer/surveyor, J.L. Engineering -

- 7/24/07 excavation/fill calculations
- 3/31/08 excavation/fill calculation for the rear patio
- 9/10/08 revised excavation/fill calculations after redesign of rear patio
- 3/4/16 addendum certifying the validity of the original calculation amounts

Marin Tree Services letters dated 9/25/07, 1/9/08 and 5/7/08 and addendum letter dated 3/4/16.

Addendum letters from the project architect and landscape architect verifying suitability of the 2007/2008 plans for the current application submittal.

The Town Engineer has re-reviewing the original submittal reports, the new submittals updating the originally submitted information, and has performed a recent site inspection in early January of 2016. After his review and inspection, the Town Engineer has determined that the Planning Commission has adequate information to determine to re-issue the original discretionary permits for this previous slide site without negatively impacting the public right-of-way or adjacent residential properties.

### **Excavation**

The total excavation and fill for the project is 840 cubic yards. This amount is the minimum necessary to allow construction of a residence, including the required parking, on the site with a small amount of level and usable outdoor area (Exhibit C).

As indicated above, an earlier submittal included an expanded rear patio area that was determined by the Town Engineer to be potentially detrimental to the roots of the redwood trees on the site (see page 3, paragraph 2 of the May 1, 2008 Town Engineer's memorandum).

The project was subsequently redesigned with the small level landing and upper level yard area currently proposed. This had the effect of reducing the amount of excavation and keeping the retaining walls further from the roots of the redwood trees.

The amount of excavation now proposed is the minimum necessary to develop the site with the required parking and a small level outdoor yard area.

### **Tree Removal and Landscaping**

Construction will require the removal of 10 bay trees and one oak within the footprint of the structure. Excavation for the rear retaining wall will maintain a 9ft setback from the closest redwood tree located west of the construction area and will not encroach into the tree canopy.

The applicants are proposing to replace the removed trees in alternative locations with 3 Western redbud trees and 1 Marina Strawberry tree. Also proposed for planting on the site are 6 Toyon shrubs, various native shrubs and perennials and Boston Ivy along the retaining walls at the property frontage.

### **Acacia Road Elevations**

*Staff notes that the locations depicted on the streetscape elevations on sheet No 1 of the plans is not an accurate representation of the side setbacks from neighboring homes. The Houston residence deck and house are actually over on the Pugh property line not 6ft from the property line as the streetscape suggests. Also, the Dowd residence northern exterior stairs are approximately 1ft from the Pugh property line and not 9ft as depicted in the streetscape elevation.*

### **Neighboring Residence Sizes**

A review of the Marin County Tax Assessors records of other home sizes in the Acacia Road neighborhood revealed residences range from an 810 square foot, 2-bedroom, 2-bath residence on a 8,200 square foot site to a 2,575 square foot, 4-bedroom, 3 1/2-bath, residence on a 4,600 square foot site.

The proposed 1,643 square foot, 2-bedroom, 2-bathroom residence is similar in size and character to other residence found throughout Fairfax on up-sloping properties. The development maintains a Floor Area Ratio (FAR) of .30 and a lot coverage of .17 which are well below the maximum allowed .40 FAR and .35 lot coverage (Town Code §§ 17.136.030 and 17.040.010).

### **Variances**

Essentially, a variance is a requested deviation from the set of laws a municipality applies to land use known as a zoning ordinance, building code or municipal code. Variances are required in the United States in order to prevent a regulatory taking (denying an owner some reasonable use of their property). To avoid a taking, four factors for a variance include (1) unnecessary hardship, (2) the variance is needed to allow a reasonable use, (3) the allowed variance will not alter the essential character of the neighborhood and (4) the variance results in the least intrusive solution.

### **Combined Side Yard Setback Variance**

Town Code § 17.080.070(B)(2) requires that each building site in the RS 6 Zone having a slope of over 10% have a side yards with a minimum width of 5 ft. and a combined width of 20 ft.

The narrow 40 ft. width of the property is a physical feature of the project site that makes it unreasonably difficult to comply with the required 20 ft. combined side yard setback requirement. Compliance with the 20 ft. combined, side-yard, setback would



result in a residence that is only 22ft wide. It would be very difficult to comply with engineering and building code requirements in this case without increasing excavation into the hillside and significantly reducing the size of the residence to a point where it might be fiscally unfeasible to build.

### **Front Setback and Retaining Wall Height Variances**

Town Code § 17.080.070(B)(1) requires that each building site in the RS 6 Zone having a slope of over 10% have a minimum front setback of 6 ft.

The steep 53% slope of the site and the proximity of the front property line, 11 ft. from the edge of the paved roadway, are physical features of the site that make it impossible to comply with the 4 ft. retaining wall height limit and 6 ft. front yard setback. In order to retain the bank and construct the required driveway apron approach, fire truck pull out, and parking, the retaining wall on the south side of the driveway reaches 6ft in height at the property line, thus exceeding the 4ft wall height limit by 2ft.

### **Parking Variance for a Compact Guest Parking Stall**

Town Code § 17.052.040(B) sets the minimum dimensions for a standard parking space at 9 ft. by 19 ft. Town Code § 17.052.030(D) prohibits tandem parking.

Two standard parking spaces are proposed in the garage and the applicants have proposed the third, guest, parking space in the driveway angled in such a way that the northern end pinches access to the northern garage parking space making access to that garage space awkward.

Relocating the house further back on the site to accommodate head in parking will increase the excavation needed to building the house and will threaten the mature redwood trees west of the house.

Staff is recommending that the Commission grant a parking variance allowing the guest parking space to be a compact, 8 foot by 16 foot space, in tandem with the southern garage parking space allowing clear access to the northern garage space while also maintaining the required fire truck pull out in the expanded driveway apron.

This variance will be similar to the variance granted for the new house at 164 Willow Avenue in March of 2015. The Willow site has a similar, steep, upslope with mature oak trees at the rear of the proposed house site. A parking variance was granted to allow the guest space to be in tandem with both garage spaces to decrease the front setback, decreasing the needed excavation and pulling the house foundation further away from the mature oak trees at the rear of the house foundation walls.

The variance to decrease the size of the guest parking space to that of a compact space, 8 ft. by 16 ft., will not have a significant impact on the neighborhood parking.

## Encroachment Permit

The setback of the property line, 11ft. from the edge of the roadway, makes it impossible to construct an entry to the required parking area without building retaining walls and the driveway approach in the public right-of-way. However, the walls do maintain a setback from the paved road of at least 3ft, the same setback maintained by the neighbor's wall at 13 Acacia Rd., so they do not narrow the right-of-way any further than it already is.

## Design Review

All new residences in Fairfax and projects that constitute 50% remodels, as well as new construction in the Commercial Districts, Multiple Family and Planned Development District Zones are subject to the Design Review Permit process [Town Code § 17.020.030(A) and (B)]. This project is for development of a new house and is subject to obtaining Design Review approval from the Planning Commission.

In order to issue a design review permit for a project the Commission must find that the project, as designed, complies with the Design Review Criteria set forth in Town Code § 17.020.040(A) through (N).

The visual mass of the residence is minimized by staggering the front façade in three sections back from the front property line with the midsection of the home setback 6ft from the south side of the house and the north side setback an additional 5ft from the middle section. The front façade has also been broken up through the inclusion of a triangular deck off the second floor, the use of different sized windows and by sloping the roof to follow the slope of the adjacent hillside. Therefore, the development creates a well composed design, harmoniously related to other facilities in the area.

- The driveway retaining walls at the base of the house will be covered with stucco in a reddish/tan color (Harvest Wheat) to compliment the house.
- The number of windows on the north and south sides of the residence are minimized to maintain privacy for residents of the proposed house and the residents at 13 and 19 Acacia Road.
- The exterior façade materials include grey fiberglass, horizontal siding Olympic Stain # 712, natural concrete and stucco siding colored Omega, True Grey # 69. The fascia will also be cedar and will be stained Olympic Stain # 706 while the trim will be cedar stained Olympic stain #712 to match the cedar siding. The garage doors will also be cedar with Olympic stain # 712. Therefore, the exterior materials will also help articulate the exterior of the structure to minimize the apparent visual mass.

- The roof is dark green asphalt composition shingles to reflect the color of the adjacent tree canopy.

Therefore, the design of the development serves to protect the value of private and public investments in the immediate area.

**D. The proposed development shall conform with all requirements for landscaping, screening, usable open space and the design of parking and off-street loading areas set forth in this title.**

Disturbed areas of the site shall be planted with a mix of shrubs and perennials that are shade tolerant, fire resistant and drought tolerant. Most of the 6,400sf foot site will remain in its natural state retaining the existing trees and other vegetation.

The development provides parking for the three vehicles as required in Town Code Chapter 17.28.

**E. Where the proposed development is located in an area where a neighborhood plan or precise plan has been adopted by the town, the design of the development shall conform in all significant respects with such plans.**

The Town has not adopted a neighborhood plan for this neighborhood.

**F. There shall exist sufficient variety in the design of the structures and grounds to avoid monotony in external appearance.**

See A and C above.

**G. The size and design of the structure shall be considered for the purpose of determining that the structure is in proportion to its building site and that it has a balance and unity among its external features so as to present a harmonious appearance.**

With a lot coverage of .17 and a Floor Area Ratio (FAR) of .30 the 2,556sf residence/garage is in proportion to the 6,400sf building site.

**H. The extent to which the structure conforms to the general character of other structures in vicinity insofar as the character can be ascertained and is found to be architecturally desirable.**

The building site is located adjacent to numerous residence that vary in construction date from 1918 through 1991. Therefore, all of the architectural styles differ from each other and there is no general identifiable character in the neighborhood.

**I. The extent to which ornamentation is to be used and the extent to which temporary and second-hand materials, or materials which are imitative of other materials, are to be**

used.

Some of the materials proposed for use in construction of the residence are green building materials and the applicant proposed locating solar panels on the roof.

**J. The extent to which natural features, including trees, shrubs, creeks and rocks, and the natural grade of the site are to be retained.**

Most of the natural grade of the site will be retained in its natural state and the mature redwood trees on the site have been retained.

**K. The accessibility of off-street parking areas and the relation of parking areas with respect to traffic on adjacent streets.**

The accessibility of the off street parking areas and driveway from the improved portion of Acacia Road have been reviewed and approved by the Public Works Director and Town Engineer.

**L. The reservation of landscaping areas for the purpose of separating or screening service and storage areas from the street and adjoining building sites, breaking up large expanses of paved areas, separating or screening parking lots from the street and adjoining building sites, and separating building areas from paved areas to provide access from buildings to open space areas;**

Most of the existing natural vegetation is being retained. The applicants propose planting six Toyon shrubs, three on each side of the house, to provide screening between the structure and the neighboring homes.

**M. In the case of any commercial or industrial structure, the board shall consider its proximity to any residential district and shall consider the effect of the proposed structure upon the character and value of the adjacent residential district area.**

Not applicable.

**N. The design review board may recommend design guidelines to the planning commission and town council for adoption in order to further the objectives of this section and to illustrate design criteria.**

The Town of Fairfax has not adopted design guidelines.

## **Parking**

The two spaces required for the residents are provided within the existing garage while a third space is provided within the driveway apron [Town Code §'s 17.052.030(A)(1)(c) and 17.052.040(E)]. Therefore, the parking complies with the Town Code which requires two

parking spaces, one of them covered, for the residence and an additional third guest parking space.

## **Other Agency Review**

### **Ross Valley Fire Department**

#### **Ross Valley Fire Department**

1. A purposed fire truck turn-out shall be installed and made serviceable prior to the delivery of combustible materials to the site. No Parking-Fire Lane signs shall be installed on both sides of the street.
2. The project has been deemed a substantial remodel and as such requires installation of a fire sprinkler system that complies with the National Fire Protection Association regulation 13-D and local standards. The system would require a permit from the Fire Department and the submittal of plans and specifications for system submitted by an individual or firm licensed to design and/or design-build sprinkler systems.
3. The property is located within the Wildland Urban Interface Area for Fairfax and the new construction must comply with Chapter 7A of the California Building Code or equivalent.
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 each sleeping room in a central location in the corridor and over the center of all stairways with a minimum of 1 detector on each story of the occupied portion of the residence.
5. Carbon monoxide alarms shall be provided in existing dwellings when a permit is required for alterations, repairs, or addition and the cost of the permit exceeds \$1,000.00. Carbon monoxide alarms shall be located outside of each sleeping area in the immediate vicinity of the bedrooms and on every level of the dwelling, including basements.
6. Address numbers at least 4 inches tall must be in place adjacent to the front door. If not clearly visible from the street, additional numbers must be placed in location that is visible from the street. The numbers must be internally illuminated or illuminated by and adjacent light controlled by a photocell that can be switched off only by a breaker so it will remain illuminated all night.
7. Alternative materials or methods may be proposed for any of the above conditions in accordance with Section 104.9 of the Fire Code.
8. All approved alternatives requests, and their supporting documentation, shall be

- included in the plan sets submitted for final approval by the Fire Department.
9. A Vegetation Management plan designed in accordance with Ross Valley Fire Standard #220 is required. A separate deferred permit shall be required for this plan. Please note that permission from your neighbors may be required if the required clearance extends beyond the property lines. If permission cannot be obtained the structure may require exterior hardening to be in compliance with the intent of the code.

### **Marin Municipal Water District**

1. A high pressure water service permit is required for this project.
2. The plans must comply with all the indoor and outdoor requirements of District Code Title 13, Water Conservation. Plans must be submitted to the District and be approved.
3. The District's backflow prevention requirements must be met and if installation of a backflow device is required, the device shall be tested/inspected and be approved by a District Inspector prior to the project final inspection and issuance of the occupancy permit.
4. Comply with ordinance No. 429, requiring the installation of gray water recycling systems when practicable for all projects required to install new water service and existing structures undergoing "substantial remodel" that necessitates an enlarged water service.

### **Ross Valley Sanitary District**

A Sanitary District sewer connection permit is required prior to the project final inspection and issuance of an occupancy permit for the residence.

### **Fairfax Police, Public Works and Building Departments**

The police, public works and the building department did not provide conditions of approval or comments on the project.

### **Other Required Discretionary Permits**

Driveway Width Exception: The driveway has been expanded beyond the permitted 20ft in width to accommodate the fire truck turn out requested by the Ross Valley Fire Department [Town Code § 12.12.030]. Therefore, in addition to design review the project will require the approval of an exception to the Code from the Town Council [Town Code § 12.12.090].

## **RECOMMENDATION**

Move to approve application # 16-16 by adopting Resolution No. 16-10, setting k  
Attachment A – Resolution No. 16-10  
Attachment B - Project application folder compiled by applicant  
Attachment C - Town Engineers memorandums  
Attachment D – Geotechnical reports  
Attachment E – Hydrology reports  
Attachment F – Structural reports  
Attachment G – Excavation/fill calculations  
Attachment H – Arborist's reports  
Attachment I - Addendum letter from the project Architect and Landscape Architect  
Attachment J – Revised site plan showing compact parking space orientation





RESOLUTION NO. 16-19

TOWN OF FAIRFAX PLANNING COMMISSION

15 Acacia Road, Assessor's Parcel No. 001-112-30

WHEREAS, the Town of Fairfax has received an application to re-approve discretionary permits originally granted in 2008 to construct a 2,556-square-foot, 2-bedroom, 2-bathroom residence (includes 790 square feet of garage and utility room) at 15 Acacia Road; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on June 16, 2016, at which time all interested parties were given a full opportunity to be heard and to present evidence; and

Whereas the project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant Section 15303(a), One single-family residence in a residential zone, Class 3, of the Public Resources Code (CEQA). This exemption allows for the construction of new small structures in an urbanized area; and

WHEREAS, the applicant has met the burden of proof required to support said application for Planning Commission approval, and the following findings have been determined:

1. The proposed development is consistent with the General Plan, other adopted codes and policies of the Town of Fairfax, and is consistent with the purpose and intent of the Hill Area Residential Development Ordinance as follows:

**Goal 4.1.2: All new development shall be required to preserve some of the natural landscape.**

The project preserves the redwood trees and several bay trees on the site and maintains most of the site's natural topography.

**Goal 4.1.5: Areas of redwood associated vegetation are unique natural and visual resource and shall be conserved.**

The project has been redesigned to eliminate the expanded rear patio, locating the rear retaining wall further from the existing redwood grove.

**Goal 4.5.0: Energy and water conservation should be promoted through appropriate building, land use and transportation policies.**

The project incorporates green building techniques, solar energy and native/water efficient landscaping.

**Goal 5.1.0: The basic goal of the Town of Fairfax in adopting the Environmental Safety Element is to prevent loss of life, to reduce injuries and property damage and to minimize economic and social dislocations which may result from earthquakes, other geologic hazards, fires and floods.**

The Town Engineer, based on a significant body of engineering information and architectural plans as described above, has determined that the project can be built in a manner that will prevent loss of life, reduce injuries and minimize property damage and dislocations from earthquakes or other geologic hazards, fires and floods.

**Goal 5.7.0: It is the goal of the Town of Fairfax to reduce height levels of risk in fire prone areas.**

The project site is located within the Wildland-Urban Interface zone which is prone to wildfires. The project incorporates the development of a fire truck turn-out and will include eave protection, roof vent protection and exterior wall construction to comply with the Wildland-Urban Interface Code requirements.

**Goal 5.9.0: It is the goal of the Town of Fairfax to minimize flooding in areas prone to inundation.**

The project includes the construction of a storm water run-off retention basin to ensure that excessive run-off onto Acacia Road or the neighboring properties does not occur.

2. The Town Engineer has reviewed the project plans, topographic and boundary survey information, the hydrology and geologic reports and other miscellaneous engineering information listed and has determined the following:

- The health safety and welfare of the public will not be adversely affected by the development;
- Adjacent properties are adequately protected by project investigation and design from geologic hazards as a result of the work;
- Adjacent properties are adequately protected by project design from drainage, seismic and erosion problems as a result of the work;
- The 840 cubic yards of excavation and fill necessary to construct the residence and the required on-site parking on this up-slope lot is the minimum necessary to allow the owners use of their property.

3. The residence will project 28ft above natural grade and will maintain the minimum required 5ft side yard setbacks from both neighboring properties at 13 and 19 Acacia

Road. The residence is not located in a significant view corridor as defined by Town Code §17.060.020. Therefore, the visual and scenic enjoyment of the area by others will not be adversely affected by the project more than is necessary;

4. Construction of the residence will require the removal of 10 Bay trees and one oak tree. These trees will be replaced by 5 native trees and other landscaping typically found in the area. Therefore, the natural landscaping will not be removed by the project more than is necessary;

5. Town Code § 17.072.090(C)(4) prohibits grading during the rainy season from October 1<sup>st</sup> through April 1<sup>st</sup>. Therefore, the time of year during which construction will take place is such that work will not result in excessive siltation from storm water runoff nor prolonged exposure of unstable excavated slopes.

6. The project provides two on-site parking spaces and a guest parking space in the driveway as required by Town Code §§ 17.052.030(A)(1) and (2). The project also includes a fire-truck turn out to improve emergency vehicle access to the site and the surrounding Acacia Road neighborhood. Therefore, vehicular access and parking are adequate.

7. The site is 42ft wide and has a 50% slope. Due to the narrow width and steep slope, the strict application of the 20ft combined side yard setback requirement and the 6ft front setback requirement will deprive the applicants of the ability to develop their property which is a privilege enjoyed by other property owners in the vicinity and under identical zone classification.

8. Other narrow sloped properties in the neighborhood have been granted side and front yard setback variances. The development maintains the required minimum 5ft side setbacks and only the driveway wing-walls are located within the required 6ft front setbacks. Therefore, the variance will not constitute a grant of special privilege, is consistent with the limitations upon other properties in the vicinity and under identical zone classification, and is consistent with the objectives of this title.

9. The strict application of the Zoning Ordinance setback requirements would preclude the property owners from developing their lot which would be an excessive or unreasonable hardship.

10. The granting of the variance of adjustment will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated because the proposed residence will not change the single-family character or the development density of the neighborhood.

11. The proposed development is consistent with the General Plan and Zoning Ordinance which have designated the property for development with a single-family residence.

12. The proposed 1,766-square-foot, three-story, residence and 790-square-foot garage is of a similar square footage to other development in the area, harmonizes with the surrounding residential development, and does not result in the deterioration of significant view corridors.

**NOW, THEREFORE,** the Planning Commission of the Town of Fairfax does hereby resolve as follows:

**Section 1.** After careful consideration of the site plan, architectural drawings, plans and other exhibits submitted in connection with this matter, approval of the application by Ted Pugh and Ricki Kerner for a single-family residence, is hereby granted subject to the following conditions:

### **Community Development**

1. This approval is limited to the development illustrated on the plans prepared by Jeff Kroot Architect and Associates, pages 1 through 4 dated received December 3, 2008; site improvements, grading and drainage plans by J.L. Hallberg, registered professional engineer, pages C1 through C3, dated January 2008; record of survey by J.L. Engineering recorded October 31, 2006; Hydrology maps by I.L.S Associates Inc., pages 1 of 1 and 1 of 2 dated January 25, 2008; landscaping plans by Shades of Green Landscape Architecture, pages L1.1 and L1.2 dated February 2008; and discussed in the following project engineering reports:

From the Geotechnical Engineer, Herzog Geotechnical –

- 7/25/07 original geotechnical investigation
- 9/5/07 geotechnical review of design concept
- 12/18/07 response to Town Engineer's 9/2/07 memorandum
- 5/7/08 response to Town Engineer's 5/1/08 memorandum
- 8/18/08 clarification of stability issues

From the Hydrology and Drainage Engineer, ILS Associates, INC. –

- 12/17/07 original hydrology report
- 3/27/08 comments on sheet C1 of the project plans

From the consulting Structural Engineer, BHW Engineer LLC –

- 8/22/07 preliminary technical comments and design recommendations
- 1/10/08 response to Town Engineer's 11/1/07 memorandum
- 3/31/08 additional information regarding necessity for rear retaining walls and patio
- 5/6/08 response to Town Engineer's 5/1/08 memorandum

J.L. Engineering's letters regarding excavation amounts for different aspects of the project including the final amounts contained in his 9/10/08 letter

2. Prior to issuance of a building permit the applicant or his assigns shall:
  - a) Submit a construction plan to the Public Works Department which may include but is not limited to: a) Construction delivery routes approved by the Department of Public Works; b) Construction schedule (deliveries, worker hours, etc.); c) Notification to area residents; and c) Emergency access routes.
  - b) Submit a letter of credit or bond to the Town in an amount that will cover the cost of grading, weatherization and repair of roadway damage associated with project construction. The applicant shall submit contractor's estimates for any grading, site weatherization and improvement plans for approval by the Town Engineer. Upon approval of the contract costs, the applicant shall submit a cash deposit or letter of credit equaling 100% of the estimated construction costs.
  - c) The project foundation and retaining elements shall be designed by a structural engineer certified as such in the state of California. Plans and calculations of the foundation and retaining elements shall be stamped and signed by the structural engineer and submitted to the satisfaction of the Town Engineer.
  - d) The grading, foundation, retaining, and drainage elements shall also be stamped and signed by the site geotechnical engineer as conforming to the recommendations made by the project engineer.
  - e) All retaining walls that are visible from the adjacent street and are constructed of concrete, shall be heavily textured in a manner approved by the Design Review Board prior to the issuance of the building permit. This condition is intended to mitigate the visual impact of the proposed walls and shall be approved prior to issuance of the building permit.
  - f) Prior to submittal of the building permit plans, the applicant shall secure written approval from the Ross Valley Fire Authority noting the developments conformance with their recommendations.
  - g) The applicant shall secure a tree cutting permit, if required, from the Town prior to removal of any on-site trees subject to a permit under Town Code Chapter 9.36. To further minimize impacts on trees and significant vegetation, the applicant shall submit plans for any utility installation (including sewer, water and drainage) which incorporates the services of an International Society of Arborists (ISA) certified arborist to prune and treat trees having roots 2 inches or more in diameter that are disturbed during the construction, excavation or trenching operations. In particular, cross country utility extensions shall minimize impacts on existing trees. Tree root protection measures may include meandering the line, check dams, rip rap, hand trenching, soil evaluation and diversion dams.

Any pruning shall take place during the winter when trees are dormant for deciduous species and during July to August for evergreen species.

- h) Submit two copies of a record of survey subject to review by the Town Engineer and the Public Works Director prior to issuance of the building permit.
3. During the construction process the following shall be required:
- a) The geotechnical engineer shall be on-site each day during the grading process and shall submit written certification to the Town staff that the grading has been completed as recommended prior to installation of foundation and retaining forms and piers.
  - b) Prior to the concrete form inspection by the building official, the geotechnical and structural engineers shall field check the forms of the foundations and retaining elements and provide written certification to the Town staff that the work to this point has been completed in conformance with their recommendations and the approved building plans. The building official shall field check the concrete forms prior to the pour.
  - c) All construction related vehicles including equipment delivery, cement trucks and construction materials shall be situated off the travel lane of the adjacent public right(s)-of-way at all times. This condition may be waved by the building official on a case by case basis with prior notification from the project sponsor.
  - d) Additionally, any proposed temporary closure of a public right-of-way shall require prior approval by the Fairfax Police Department and any necessary traffic control, signage or public notification shall be the responsibility of the applicant or his/her assigns. Any violation of this provision will result in a stop work order being placed on the property and issuance of a citation.
4. Prior to issuance of an occupancy permit the following shall be completed:
- a) The geotechnical engineer shall field check the completed project and submit written certification to the Town Staff that the foundation, retaining, grading and drainage elements have been installed in conformance with the approved building plans and the recommendations of the soils report.
  - b) The Town Engineer shall field check the completed project to verify that the work has been installed as per his recommendations to the Planning Commission.
  - c) The Planning Department shall field check the completed project to verify that all design review and planning commission conditions have been complied with including installation of landscaping and irrigation.
5. Excavation shall not occur between October 1st and April 1st. The Town Engineer

has the authority to waive this condition depending upon the weather.

6. The roadways shall be kept clean and the site free of dust by watering down the site if necessary. The roadways shall be kept free of dust, gravel and other construction materials by sweeping the roadway, daily, if necessary.
7. During construction, developer and all employees, contractor's and subcontractor's must comply with all requirements set forth in Ordinance 637 (Chapter 8.32 of the Town Code), "Urban Run-off Pollution Prevention."
8. Notwithstanding section # 17.38.050(A) of the Fairfax Zoning Ordinance, any changes, modifications, additions or alterations made to the approved set of plans will require a modification of Resolution 16-19 by the Planning Commission. Any construction based on job plans that have been altered without the benefit of an approved modification of Application # 16-16 will result in the job being immediately stopped and red tagged.
9. Any damages to the roadway resulting from construction activities shall be the responsibility of the property owner. The owner or contractor shall videotape or otherwise document as approved by the Public Works Director, the existing condition of the roads in the vicinity of the site prior to starting construction of the residence. Road closures, if necessary, shall be coordinated with the Fairfax Police Department and the Ross Valley Fire Department.
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, Design Review Board or any other department or agency of the Town. This indemnification shall include, but not be limited to, suits, damages, judgments, costs, expenses, liens, levies, attorney fees or expert witness fees that may be asserted or incurred by any person or entity, including the applicant, third parties and the Indemnitees, arising out of or in connection with the approval of this project, whether or not there is concurrent, passive, or active negligence on the part of the Indemnitees. Nothing herein shall prohibit the Town from participating in the defense of any claim, action, or proceeding. The parties shall use best efforts, acting in good faith, to select mutually agreeable defense counsel. 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 applicants shall obtain Design Review Board approval prior to submitting an application for a building permit. (Question-isn't the Planning Commission giving this approval with the action?)
12. The applicant shall obtain a driveway width variance from the Town Council prior to submitting an application for a building permit.
13. The applicants shall submit a \$5,000 payment for the Town Engineer's services to review the building permit plans and to perform required site inspections when submitting the project building permit application. Any unused monies will be refunded.
14. The parking is approved per the Attachment J to the June 16, 2016, staff report which shows the guest space as an 8 foot by 18 foot compact stall.

#### **ROSS VALLEY FIRE DEPARTMENT**

1. A sprinkler system shall be installed that complies with the requirements of the National Fire Protection Association 13-D.
2. Smoke detectors are required and all detectors shall be interconnected and provided with AC power. Detectors shall be located in compliance with the requirements of the Ross Valley Fire Department.
3. All roof coverings shall be Class A rated assemblies as defined in the Uniform Building code.
4. The property address shall be posted with illuminated numerals at least 4" high in a location visible from the street.
5. During Construction, combustible debris shall not be accumulated within the building or around the exterior of the building.
6. The photovoltaic system shall have all system components and shut-offs accessible from the exterior of the building with all shut-offs clearly marked and a shut off will be placed at the solar panels on the roof de-energizing all wiring from the panels to the conversion equipment. A fire department inspection shall be made prior to the project final inspection.

#### **TOWN ENGINEER**

1. The building plans shall be reviewed by the Town Engineer for compliance with his requirements, prior to issuance of the building permit. The applicant shall pay for the Town Engineer's time to review the plans and perform inspections at a rate of



\$96.00 per hour.

2. The applicants shall comply with any and all requirements of the Town Engineer prior to issuance of the building permit, during construction and prior to the project final.
3. The applicants shall comply with the Geotechnical Engineer's guidelines for excavation as described in his memorandums dated July 25, 2007, when grading the site.
4. The applicant shall comply with any and all other requirements placed upon the project by the Town Engineer prior to issuance of the building permit and during construction.

#### **MARIN MUNICIPAL WATER DISTRICT**

1. Complete a High Pressure Water service Application.
1. Submit a copy of the building permit.
2. Pay the required fees.
3. Complete the structure's foundation within 120 days of the date of application.
4. Comply with the District's rules and regulations in effect at the time service is requested.
5. Comply with the backflow prevention requirements if warranted.
6. All landscaping and irrigation plans must comply with Water District Ordinance # 385.

#### **ROSS VALLEY SANITARY DISTRICT**

1. A sewer permit is required and may be issued by the District after the building permit is obtained and all appropriate fees have been paid.
2. Installation of the private sewer lateral must meet District specifications and be inspected by a District inspector before it is covered.

#### **PUBLIC WORKS DEPARTMENT**

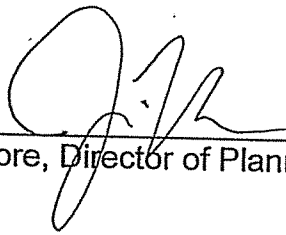
A recorded copy of the "License Agreement to Permit Revocable Encroachment on Town Property" for the improvements in the public right-of-way shall be provided to the Town Prior to issuance of the building permit.

**PASSED AND ADOPTED** by the Town of Fairfax Planning Commission, State of California,  
this 16<sup>th</sup> day of June, 2016, by the following roll call vote:

**AYES:** Ackerman, Fragoso, Gonzalez-Parber, Green, Newton, Chair Kehrlein  
**NOES:**  
**ABSTAIN:**

  
\_\_\_\_\_  
Chair, Laura Kehrlein

**ATTEST:**

  
\_\_\_\_\_  
Jim Moore, Director of Planning and Building Services