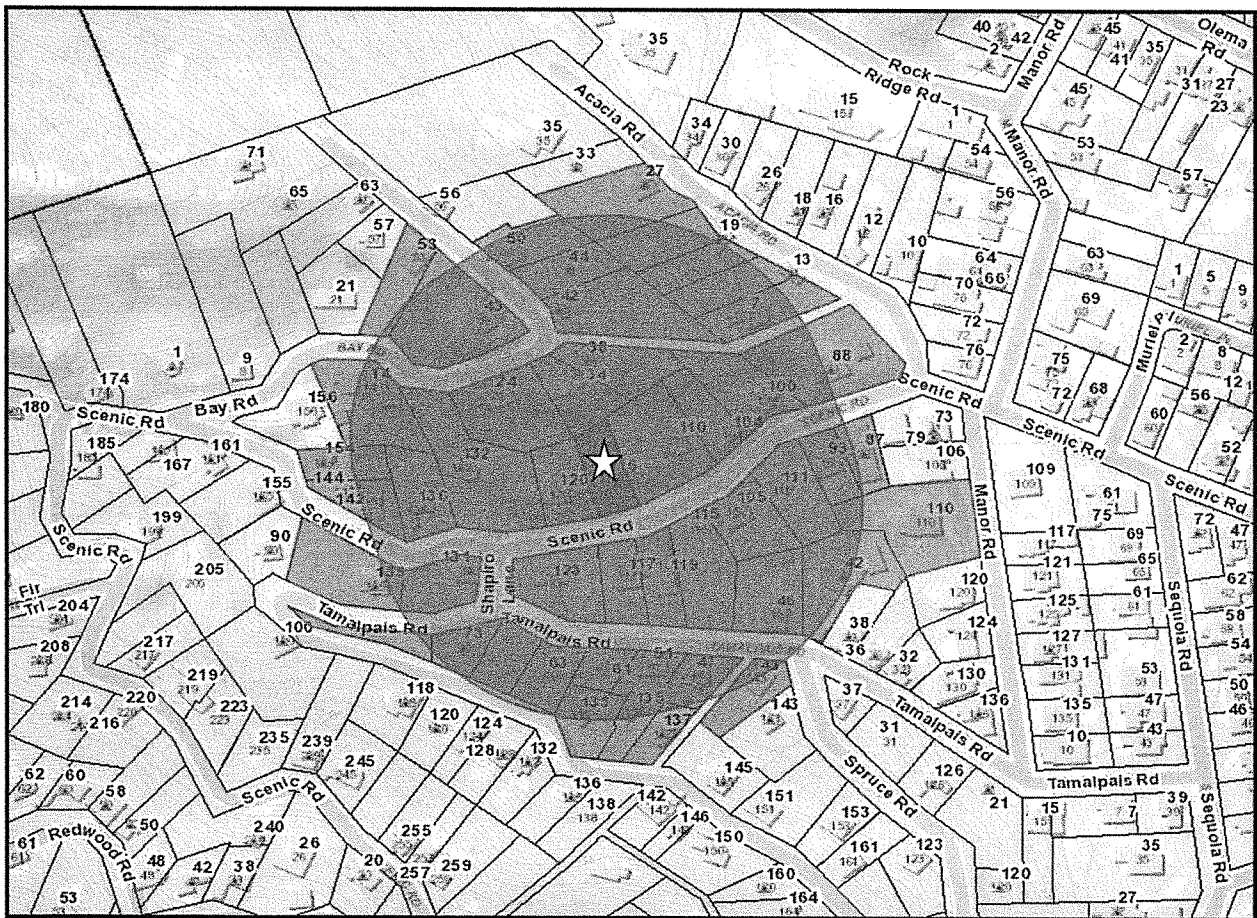


**TOWN OF FAIRFAX
STAFF REPORT**
Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: March 19, 2015
FROM: Jim Moore, Director of Planning and Building Services
Linda Neal, Principal Planner
LOCATION: 116 Scenic Road; Assessor's Parcel No. 001-112-23
PROJECT: Creation of off street parking space
ACTION: Preferential Parking; Application # 15-04
ZONING: Residential Single-family RS 6 Zone District
APPLICANT: Mark Predum
OWNER: Same
CEQA STATUS: Categorically exempt section(s) 15301(4)



116 SCENIC ROAD

BACKGROUND

The 6,000 square foot site slopes up from Scenic Road at an average rate of 51% and the front property line is set back from the edge of the paved road 13 feet. The 1,106 square foot, 2 bedroom, 1 bath, single-family residence was constructed in 1924 and has no formal parking. The wood framed house is located on the upper portion of the property and is accessed by a long series of steps leading up from Scenic Road.

DISCUSSION

The project encompasses creation of a 9 ft x 35 ft parking area and entry stairs. The improvements will be created by constructing a 12 foot tall retaining wall with a shorter 7 foot tall wall above it and the entry stairway between. Both walls will have 3.5 foot safety railings on top of them as required by the California Building Code. Both the parking area, the beginning of the entry stairway, and both retaining walls are proposed entirely within the public right-of-way.

Normally this type of parking development would require the approval of an Encroachment Permit and a Retaining Wall Height Variance from the Planning Commission. However, in 1994, the Fairfax Town Council adopted Ordinance No. 636 establishing preferential parking privileges for persons creating vehicle parking spaces within the Town rights-of-way. The ordinance allows persons spending \$10,000 or more to create the parking to post the parking for their own private use as long as they maintain the parking in a safe and sanitary manner.

The parking retaining walls will be textured and stained a terra cotta color and creeping fig vines will be planted along the top of the lower wall to visually soften it and improve the resulting street scape.

Construction will require the removal of 40 cubic yards of material, 1 oak tree and 1 buckeye from the site.

The provision of parking along this section of Scenic Road where parking is scarce and parked vehicles often narrow the roadway travel path for emergency vehicles will be more beneficial to the general Public than the retention of the existing bank and two trees.

RECOMMENDATION

Move to approve application # 15-04 after finding that creation of the proposed parking space is in the public interest as long as the following conditions of approval are met:

Recommended Conditions of Approval

1. Construction plans must be submitted for the project building permit that are prepared by a licensed Civil Engineer that show existing conditions such as the house

location, trees, utilities, the street and the stairs. Layout dimensions, property lines, drainage, elevations and all construction details must be shown.

2. The top of the retaining wall footing must be shown a minimum of 6 inches lower than the existing street pavement to minimize possible conflicts with future street work. The pavement over the footing in the parking area may be concrete or asphalt concrete. Concrete pavement must be separate from the wall footing so it can be removed if future street work requires removal.

3. The applicant shall comply with the conditions of the Town Engineer including but not limited to the conditions listed in his memorandum dated August 13, 2003.

4. The planting and irrigation plan for the area above the retaining wall shall be submitted with the building permit application. The plan shall be subject to review and approval by the Department of Planning and Building Services prior to issuance of the building permit.

5. This approval is limited to the development illustrated on the plans prepared by Dave Olnes, pages 1 through 6 dated 11/10/14, including the color elevation, tree location map and landscaping plan prepared by the owner, and the property survey prepared by Stephen Flatland, dated June 2014.

6. Prior to issuance of a building permit the applicant or his assigns shall submit a bond, cash deposit or letter of credit to the Town in an amount that will cover the cost of grading, weatherization and repair of possible roadway damage. The applicant shall submit contractor's estimates for any grading, site weatherization and improvement plans for approval by the Public Works Director. Upon approval of the contract costs, the applicant shall submit a cash deposit, letter of credit or bond equaling 100% of the estimated construction costs.

7. Prior to issuance of the building permit the applicant shall provide the Town with a video of the access streets to be used during construction. The Public Works Director shall make a decision prior to the project final, regarding street resurfacing and repair required as a result of damage and wear and tear from project vehicles.

8. Retaining elements shall be designed by a structural engineer certified as such in the state of California. Plans and calculations of the retaining elements shall be stamped and signed by the structural engineer and submitted to the satisfaction of the Town Engineer.

9. The retaining wall shall be textured, colored and landscaped as indicated on the project plans. This condition is intended to mitigate the visual impact of the proposed walls and shall be approved prior to issuance of the building permit.

10. Submit 3 copies of the survey subject to review by the Town Engineer and the Public Works Director prior to issuance of the building permit.

11. During the construction process the following shall be required:

- a. The project engineer shall be on-site during the grading process and shall submit written certification to the Town staff that the grading has been completed as designed and recommended prior to installation of retaining forms.
- b. Prior to the concrete form inspection by the building official, the project engineer 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 the approved building plans and recommendations. 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 waived by the building official on a case by case basis with prior notification from the contractor.
- 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.

12. Prior to the project final inspection the following shall be completed:

- a. The project engineer shall field check the completed project and submit written certification to the Town Staff that the retaining, grading and drainage elements have been installed in conformance with the approved building plans.
- b. The Building Official shall field check the completed project to verify that the work has been installed as per approved plan.
- c. The applicant shall submit a bond, letter of credit or a cash deposit to the Town in an amount that will cover the cost of landscaping and irrigation materials and installation. This amount will be kept for 18 months once the landscaping is installed to ensure the plant material has become established.
- d. The Planning Department shall field check the completed project to verify that all planning commission conditions have been complied with including installation of landscaping and irrigation prior to the final inspection.

13. Excavation shall not occur between October 1st and April 1st. The Town Engineer has the authority to waive this condition depending upon the weather.

14. During construction developer and all employees, contractors and subcontractors must comply with all requirements set forth in Ordinance # 673 (Chapter 8.26 of the Town Code) "Storm Water Management and Discharge."
15. The applicant shall comply with Ordinance 656, An Ordinance of the Town of Fairfax Amending Section # 12.24.050 of the Fairfax Town Code relating to the "Issuance of Permit For Excavations In streets And Public Thoroughfares".
16. The applicant shall comply with the Town Noise Ordinance Chapter 8.16 of the Fairfax Town Code.
17. 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 this preferential parking permit by the Fairfax Planning Commission. Any construction based on job plans that have been altered without the benefit of an approved modification will result in the job being immediately stopped and red tagged.
18. A detailed grading and erosion control plan must be submitted to the Town Engineer for review and be approval prior to issuance of the building permit.
19. Pavement restoration may include local repairs and overlay (rather than slurry sealing) depending on damage incurred due to construction and water and sewer line relocation. The final decision regarding street resurfacing shall be rendered by the Department of Public Works based on pavement conditions near the completion of construction.
20. Any modification of these conditions approval must be approved by the Fairfax Planning Commission.
21. 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.

22. The applicant must sign, have his signature notarized and record a Revocable Encroachment Permit Document and then record it at the Marin County Recorder's Office prior to issuance of the building permit for the project.

Tree Removal

23. The applicant must obtain a tree removal permit from the Fairfax Tree Committee and a building permit for the project prior to removing any trees from the site.

OTHER AGENCY/DEPARTMENT

Marin Municipal Water District and Ross Valley Sanitary District –

24. The District owns and maintain water and sewer facilities located within the Scenic Road right-of-way. No construction shall encroach upon or encumber access to District facilities. These facilities must be located and marked on the project construction plans to determine conflicts and may need to be relocated.

Ross Valley Fire Department –

25. The proposed parking area must not encroach into the existing roadway bed. The requires 9 feet of width for a parking space must be clear of the existing street area and parked vehicles may not extend beyond the approved parking area at any time.

Miscellaneous Conditions

26. The applicant must comply with all outside agency conditions unless a specific agency waives their conditions in a written letter to the Department of Planning and Building Services.

ATTACHMENTS

Applicant's drawings
Exhibit A – Revocable Encroachment Permit

RECORDING REQUESTED BY AND
AFTER RECORDING RETURN TO:

Town of Fairfax
Department of Public Works
142 Bolinas Road
Fairfax, CA 94930

_____ /

LICENSE AGREEMENT TO PERMIT

REVOCABLE ENCROACHMENT ON TOWN PROPERTY

This License Agreement is entered into on _____, between the Town of Fairfax, a municipal corporation, hereinafter referred to as "Licensor" and _____, of _____, Fairfax, CA, hereinafter referred to as "Licensee", and is made with reference to the following facts:

RECITALS

A. Licensee is the owner of the real property located at _____, Fairfax, California.

B. Adjacent to the _____ property line of said real property owned by Licensee, there exists a right-of-way owned by Licensor, which is owned by Licensor for roadway purposes.

C. Licensee desires to construct a certain development project on the real property and as part of that construction desires to include certain improvements, which will encroach upon, and be located in the above-referenced right-of-way owned by Licensor.

D. Licensor is agreeable to permitting said encroachment upon the terms and conditions expressed herein below.

AGREEMENT

In consideration of the foregoing, and subject to the terms and conditions set forth herein below, the parties agree as follows:

1. Grant Licensor hereby grants to Licensee, subject to the terms and conditions contained herein, the right to construct, maintain and install the following described improvements on the following described right-of-way owned by Licensor and shown on the diagram attached hereto as **Exhibit "A"**.

a. The improvements permitted to be constructed, maintained and installed by this License are described as follows: _____, as shown in **Exhibit "B"**.

b. The right-of-way and/or property owned by the Licensor permitted to be burdened by said improvements is described as follows: _____

_____, as shown in **Exhibit "A"**.

2. License Fee In consideration for the license herein granted, Licensee agrees to pay Licensor a one-time lump sum payment of \$ -0-, payable upon execution of this license.

3. Construction and Maintenance Expenses Licensee shall bear the cost and expense of constructing, reconstructing and maintaining the improvements described above. Licensee further agrees that all work upon or in connection with said improvements shall be done at such times and in such manner as is approved by Licensor and shall be done in accordance with plans and specifications approved by Licensor.

a. Licensee shall not modify or in any fashion change the improvements, once constructed, without the written permission of Licensor.

b. Licensee agrees to construct said improvements in a workmanlike fashion and to religiously maintain said improvements in a good and sound condition and in a condition that remains aesthetically and visually pleasing and acceptable to the Licensor. If Licensee fails to maintain said improvements in said condition, Licensee hereby grants to Licensor the right to either remove said improvements or to maintain them. If Licensor is required to remove and/or maintain said improvements, Licensee agrees to reimburse the Town for the cost thereof within 30 days after receipt of an invoice and, if such invoice is not so paid, the remaining balance shall accrue interest at the rate of 10% per year until paid. Furthermore, if said invoice is not paid, Licensee agrees to permit Licensor to impose a lien upon the real property described in **Exhibit "B"** without notice to Licensee.

4. Removal of Improvements Licensee expressly acknowledges that the improvements covered by this agreement are being allowed to be constructed in a public right-of-way and that, from time to time, said right-of-way will require improvement, relocation, destruction and/or removal. In the event of said events occurring, Licensee expressly consents to the Licensor removing and/or replacing said improvements, at the unfettered and complete discretion of Licensor, and Licensee further agrees to effect the removal and replacements at its cost within 60 days of receipt of written notice to do so from Licensor or, in the event that Licensee declines to effect said removal and/or replacement, Licensee grants to Licensor the right to remove and/or replace said improvements and the cost thereof shall be paid in accordance with the immediately preceding subparagraph.

a. Licensee hereby waives any/or all claims against Licensor for any and all damage or injury done to the real property described in **Exhibit "B"** and/or the structures located thereon caused as a result of the removal and/or replacement described in the immediately preceding paragraph and Licensee indemnifies and holds Licensor

harmless for any and all such damages or injuries, irrespective of the passive or active negligence of Licensor.

5. Indemnification and Hold Harmless

a. Licensee shall assume all risks of damage to the improvements and any appurtenances thereto and to any other property of Licensee or any property under the control of Licensee while upon or near Licensor's right-of-way described at paragraph 1(b).

b. Licensee further agrees to indemnify and save harmless Licensor, its officers, employees, agents, successors, and assigns, from any and all claims, liabilities, damages, failure to comply with any current or prospective laws, attorney's fees, for loss or damage to property and for injury to or death of any person arising out of the construction, maintenance, removal, replacement, rehabilitation, repair, or the location of the improvements or out of Licensee's activities on Licensor's right-of-way described hereinabove.

6. Insurance Licensee, at its sole cost, shall maintain property damage insurance in the amount of \$1 million combined single limit for bodily injury and property damage with insurers which are acceptable to Licensor, insuring against all liability of Licensee and its authorized representatives arising out of and in connection with Licensee's use or occupancy of the property.

All general liability insurance and property damage insurance shall insure performance by Licensee of the indemnity provisions of paragraph 6.

Each policy, or a certificate of the policy, shall be deposited with Licensor at the commencement of the term of this agreement, and on renewal of the policy not less than twenty (20) days before expiration of the term of the policy. Licensee shall provide evidence of said insurance, the certificate and endorsements in the forms attached hereto as **Exhibit "C"**.

Licensee shall make arrangements with the insurers that the insurers shall provide Licensor with notice of cancellation or termination of the insurance at least thirty (30) days in advance of cancellation or termination.

7. Term This agreement and the rights granted hereunder may be terminable by Licensor upon giving written notice to Licensee at least six (6) months prior to the termination.

a. Should Licensee, its successors and assigns, at any time abandon the use of the property described in **Exhibit "B"** or any part thereof, or fail at any time to use the same for the purpose for which development of said property was approved for a continuous period of six months, the rights and obligations hereby created shall cease to the extent of the use so abandoned and/or discontinued, and Licensor shall have the right to declare this license terminated to the extent of the use so abandoned or discontinued.

b. Upon termination of the rights and privileges hereby granted, Licensee, at its own cost and expense, agrees to remove said improvements for which this license is granted and to return the right-of-way to the condition it was in prior to the execution of this License. Should Licensee in such event fail, neglect, or refuse to remove said improvement or return the right-of-way to such condition, such removal and restoration may be performed by Licensor at the expense of Licensee, which expense, including any attorney's fees, Licensee agrees to pay upon demand and, if not so paid, said expenses shall be paid in accordance with paragraph 3(b), above.

8. Notices Any and all notices and demands required or permitted to be given hereunder, shall be in writing and shall be served either personally or by certified mail, return receipt requested, to the following addresses:

If to Licensor, to: Town of Fairfax
Attention: Public Works Director
142 Bolinas Road
Fairfax, CA 94930

If to Licensee, to: _____

Fairfax, CA 94930

9. Waiver The waiver by Licensor of any breach or any term, covenant, or condition herein shall not be deemed to be a waiver of such term, covenant, condition or any subsequent breach of the same, or any other term, covenant or condition herein contained.

10. Authority of Parties Each individual executing this agreement in behalf of a corporation or other private entity shall represent and warrant and that he/she is duly authorized to execute this agreement on behalf of the corporation and/or entity, in accordance with the duly adopted resolution of the Board of Directors of such corporation, and/or entity, a copy of said resolution shall be provided to Licensor, along with the executed original of this agreement.

11. Attorney's Fees In the event that either party is required to bring an action to enforce or interpret terms and conditions of this agreement, the prevailing party shall be entitled to payment of its attorney's fees, as well as expert witness fees.

12. Assigns and Successors This agreement shall inure to the benefit and be binding upon each party's assigns and successors, and it is the intent of the parties that this license and its terms and conditions shall run with the land and be binding upon all successors in interest to the real property described in **Exhibit "B"** attached hereto.

IN WITNESS WHEREOF, the undersigned have executed this agreement the day and year first written above.

TOWN OF FAIRFAX

Date: _____

By _____
Public Works Director

Date: _____

By _____

Date: _____

By _____