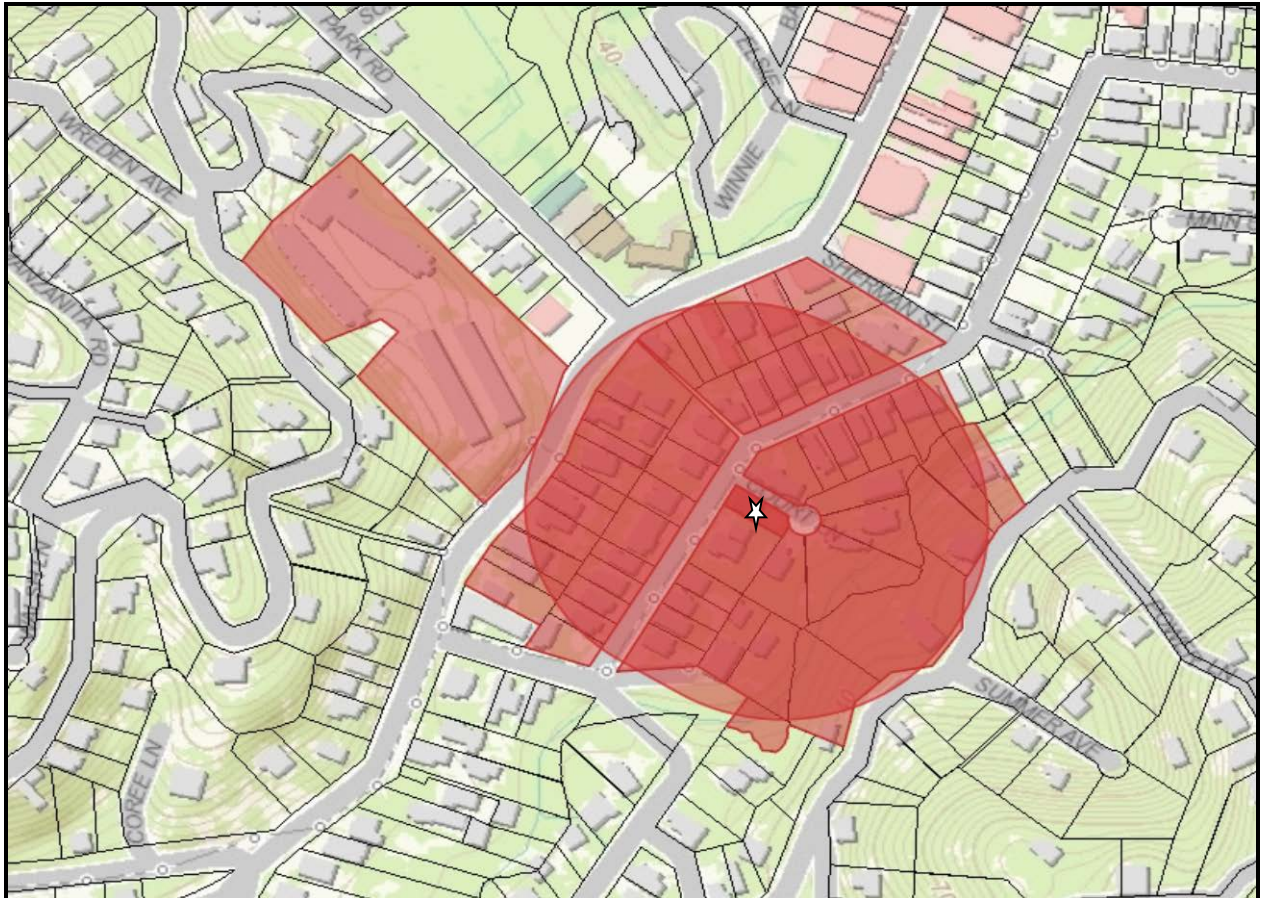


**TOWN OF FAIRFAX
STAFF REPORT
Department of Planning and Building Services**

TO: Fairfax Planning Commission
DATE: March 19, 2015
FROM: Jim Moore, Director of Planning and Building Services
Linda Neal, Principal Planner
LOCATION: 127 Dominga Ave.; Assessor's Parcel No. 002-025-06
ZONING: Residential RD 5.5-7 Zone
PROJECT: Remodel/addition to a single-family residence
ACTION: Modification of Use Permit and Setback Variances; Application # 14-46
APPLICANT: David Grabham, Contractor/Applicant
OWNER: Krishna Tyner
CEQA STATUS: Categorically exempt §§ 15301(a), (3)(1) and 15305(a)



127 DOMINGA AVENUE

BACKGROUND

The 3,700 square foot, 37.5 foot wide site is level and was created when the Pacheco Tract Subdivision, Map 2, was recorded on May 2, 1910. The 1,327 square foot, two bedroom, 1 bath residence was constructed in 1916. A 360 square foot improved basement area is located on the first floor while the remaining 967 square feet of living space is on the second floor.

There is also a detached garage structure on the property that has a bedroom and bathroom above it. This structure appears to have been built some time prior to 1956 and is presumed to have been built with permits.

The Planning Commission approved a Use Permit and Setback Variances to allow the house to be lifted to bring the existing basement area living space into compliance with the building code ceiling heights and to add a full bathroom on March 20, 2014.

On October 29th, 2014 the building official stopped the construction in the basement. During an inspection he discovered that the project was not being built per the approved plans. The laundry room had been relocated into a portion of the basement that was to remain unfinished, windows had been framed into the walls of the unfinished area, which had not yet been sheet rocked or insulated, and the hallway to the bathroom had been widened. The Building Official advised the contractor, Mr. Grabham, that the unpermitted construction in the basement must stop until an application was made to modify the approved plans and the modified plans are approved by the Planning Commission.

The applicants applied on November 13th, 2014 to relocate the laundry area contained in the first floor living area into the previously unimproved basement area and convert 299 square feet of the remaining 598 square foot unfinished basement into a finished conditioned space that has 6 foot 8 inch ceiling heights and windows. The other half of the unimproved area will remain a basement. Although considered substandard for living space by Building Code standards, the improved 6 foot 8 inch ceiling height and finished conditioned nature of the new area will lend itself to use as living space, being only 4 inches short of the 7 foot ceiling height now required by code for areas used as living space.

The Commission originally discussed the project and took testimony from the applicant at the December 18th, 2014 meeting (the December 18th, 2014 minutes, pages 2 through 5, can be found at the end of the meeting packet and the previous staff report is attached as Exhibit A). The Commission was having difficulty making findings to approve the modification as proposed and continued the project to give the applicant's contractor time to discuss the matter with his client to see if she wanted to modify the project in the hopes that the Commission would be able to make the required legal findings to approve a modified design. The original staff report and minutes from that meeting are attached to this staff report as Exhibit A. The applicant has not modified

the original submittal and her neighbors have provided e-mails supporting the revision which are contained in Exhibit B. The contractor has also submitted a letter dated 3/3/15 addressing the proposed modification which is attached as Exhibit C.

In order to approve a modification of Use Permit 14-46 the Commission must be able to determine that the proposed modification to the approved plans meets the following required Use Permit findings:

1. The approval of the use permit shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.
2. The development and use of property as approved under the use permit shall not cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects thereto, or create undue or excessive burdens in the use and enjoyment thereof, or any or all of which effects are substantially beyond that which might occur without approval or issuance of the use permit.
3. Approval of the use permit is not contrary to those objectives, goals or standards pertinent to the particular case and contained or set forth in any Master Plan, or other plan or policy, officially adopted by the City.
4. Approval of the use permit will result in equal or better development of the premises than would otherwise be the case, and that said approval is in the public interest and for the protection or enhancement of the general health, safety or welfare of the community.

The proposal includes expansion of this residence which already has; a) a Floor Area Ratio of .40; b) a bedroom and bathroom over the detached garage; c) a lot coverage of 38%; c) 2 bedrooms and now 2 baths in the main house. The site is also significantly substandard in size at only 3,700 square feet when the minimum required lot size is 5,500 square feet. The site also has substandard parking with only 1 space provided while the Town Code requires 2 spaces for a single-family residence. The proposed further improvement of the basement with windows to allow in air and light, insulation, electrical wiring and plumbing for the relocated laundry room will increase the capability of the property to more comfortably house additional residents which will impact the neighborhood parking and increase congestion in an already densely populated area and on an overdeveloped site. Staff believes the findings to approve the proposed modification cannot be made.

Recommendation

1. Open the public hearing and take testimony.
2. Close the public hearing.

3. Move to deny application 14-46 by adopting attached Resolution No. 14-17 and direct the applicant to restore the 598 square feet of existing basement area to unconditioned basement area with no windows, no partition walls except the one between the approved living space and unfinished basement and minimal electrical improvements.
4. Prior to the project final inspection and issuance of the occupancy permits, the owner shall sign, notarize and record a deed restriction clarifying the permitted use of the 598 unconditioned basement for non-residential storage purposes only.

Alternative Recommendation

If the Commission is able to make the required findings to approve the requested modifications, staff recommends that they direct staff to draft a Resolution of approval for their April 16, 2015 meeting that includes the following conditions of approval be applied to the project. The conditions must be met prior to the final inspection and issuance of the certificate of occupancy:

- The ceiling heights in the basement storage area must be lowered to a maximum of 6 feet in height and the owner shall record a deed restriction limiting this portion of the basement area for use as storage only to ensure the area is not easily converted into living space and to improve the Town's ability to enforce this limitation if necessary.
- The applicant shall schedule an inspection with staff of the bedroom and bath over the garage to ensure that the area does not meet any of the qualifications to be considered an unpermitted second living unit.
- The applicant shall submit "as built" plans for review and approval by the Department of Planning and Building Services.

ATTACHMENTS

- Exhibit A – Resolution No. 15-07
- Exhibit B – December 18th, 2014 minutes and staff report
- Exhibit C – E-mails from neighbors
- Exhibit D - 3/3/15 letter from project contractor