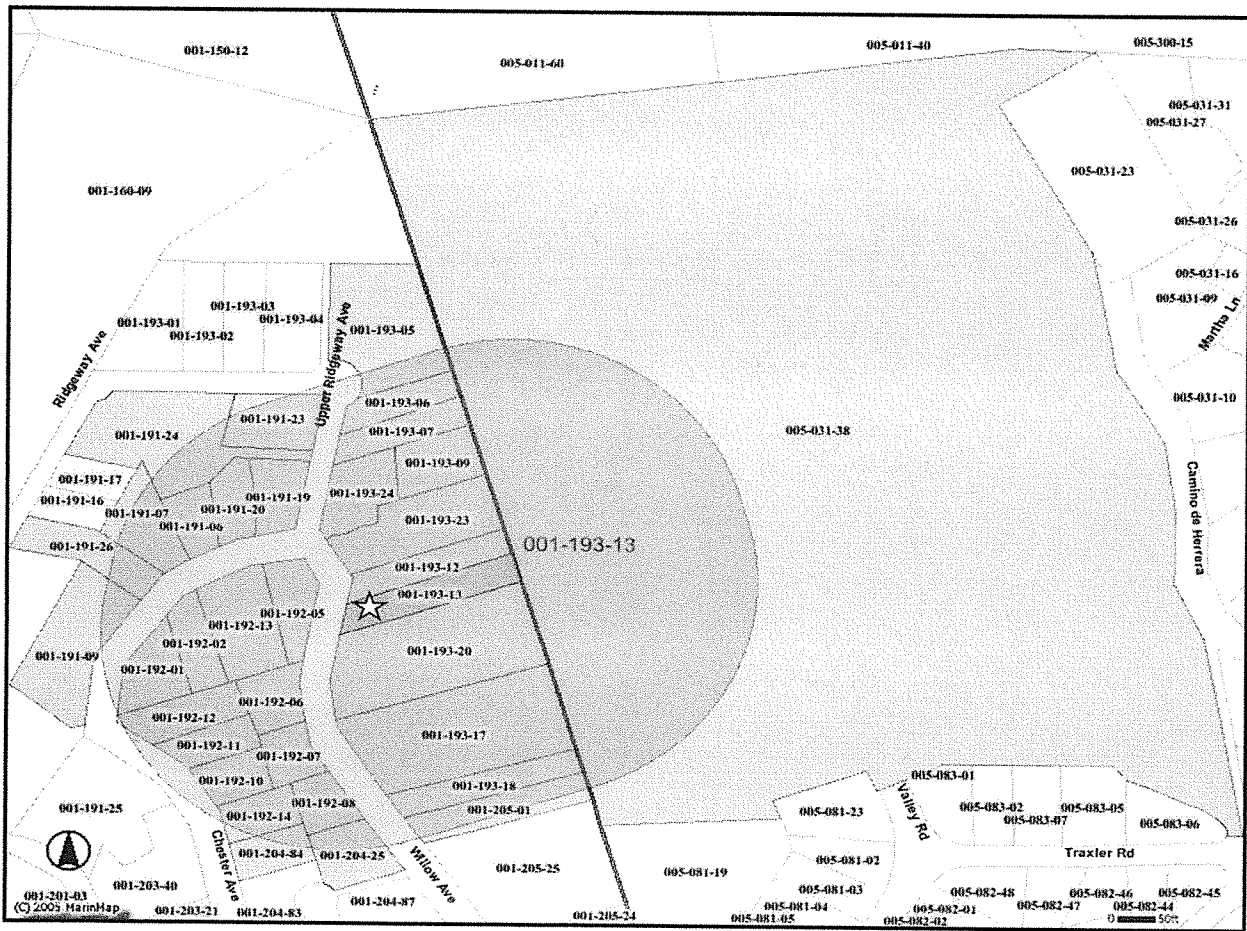


**TOWN OF FAIRFAX
STAFF REPORT**
Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: January 15, 2015
FROM: Jim Moore, Director of Planning and Building Services
 Linda Neal, Principal Planner
LOCATION: 164 Willow Avenue; Assessor's Parcel No. 001-193-13
ZONING: Residential RD 5.5-7 Zone
PROJECT: Single-family residence
ACTION: Hill Area Residential Development Permit, Excavation Permit, Variance, Design Review; Application # 14-47
APPLICANT: David Graham, G-Family Construction Inc.
OWNER: Kahlman Zeiger
CEQA STATUS: Categorically exempt, § 15303(a) and 15305(a) and (b)



164 WILLOW AVENUE

BACKGROUND

Just prior to the December 18th Planning Commission meeting it came to staff's attention that this parcel was included in the Fairfax Open Space Committee's "Parcel Inventory for General Plan Objectives" contained in Appendix OS-A of the 2010 – 2030 General Plan: referenced therein as "Willow Avenue, upper part on right side, adjacent to Hawthorn Canyon. Therefore, per General Plan Policy OS-1.4.1.2, this project was continued from the December 18, 2014 meeting to this meeting in order to allow the Fairfax Open Space Committee time to prepare the required evaluation of the site, General Plan Policy OS-1.4.1.2 reads:

The Fairfax Open Space Committee shall review each application for development of parcels in the inventory, and provide a written evaluation to the planning department. The evaluation shall be delivered before the end of the Planning Department's 30-day response window.

The report is attached as Exhibit H.

ADDITIONAL COMMENTS

A letter was received from the neighbors at 160 Willow Avenue expressing their concerns with the project. Their letter is attached as Exhibit H.

DISCUSSION

For a complete discussion of the merits of the project and requested permits see the attached original staff report dated 12/18/14.

RECOMMENDATION

Move to approve application # 14-47 by adopting Resolution No. 14-16 formalizing the findings and setting forth the conditions of approval for the project.

ATTACHMENTS

December 18, 2014 staff report and attachments (Exhibit A through F)
Exhibit G – Open Space evaluation
Exhibit H - letter from the neighbors at 160 Willow Avenue dated 1/8/15

BACKGROUND

The existing parcel was created by the recordation of the Map of P.H. Jordan Company Subdivision of Ridgeway Park in March of 1907. The 8,620 square foot site slopes up from Willow Avenue at an average rate of 39%.

The property north of the site is developed with a duplex that was constructed in 1964. The recorded Record of Survey for this project revealed that the access stairway and a portion of the rear retaining walls and patio for the duplex at 168-170 Willow Avenue extend across the side property line onto the project site. No easements have been created for these improvements nor has any evidence been found showing that the then owner of the project site granted permission for the then owners of 168-170 Willow Avenue to build on their property.

DISCUSSION

The applicants are requesting discretionary permits to construct a 1,461 square foot, three bedroom, 2 ½ bathroom single-family residence (square footage includes a 415 square foot, 2 car garage).

The project will comply with the regulations set forth in the Residential RD 5.5-7 Zone District where the site is located as follows:

	Front Setback	Rear Setback	Combined Front/rear Setback	Side Setbacks	Combined Side Setbacks	FAR	Lot Coverage	Height
Required/ Permitted	6ft	10ft	35ft	5ft & 5ft	20ft	.40	.35	28.5ft, 3 stories
Proposed	14 ft	153 ft	167 ft	10 ft & 8 ft	18 ft	.16	.09	24.5 ft, 3 stories

The development requires the approval of the following discretionary permits:

A Hill Area Residential Development (HRD) Permit:

The project site is substandard in size and width based on its slope, the house will require the excavation of over 100 cubic yards of material and the site is located in a landslide hazard zone [Town Code §§ 17.072.020(A)(4), (B) and (D)]. These are all features of the size that make the development of the property subject to the Hill Area Residential Development Permit process.

The purpose of the Hill Area Residential Development permit is to encourage the retention of natural site features (such as slope and drainage ways), minimize grading, provide for safe ingress and egress, minimize runoff and erosion, prevent loss of life,

reduce injuries and property damage and to ensure that infill development is of a size and scale that is appropriate for the neighborhood

The project size is zoned for single-family and duplex use and is designated for 1 to 6 dwelling units per acre by the General Plan. The applicants are proposing a single-family residence which is consistent with the Zoning and General Plan designation for the site.

The house has been located as close to the improved public road as is possible while also providing the off street parking required by the code with the majority of the site remaining in its natural state with the natural slope and vegetation retained. Therefore, the proposal preserves natural features of the property.

The Town Engineer has reviewed the following plans and reports and has visited the site:

1. 8/13/14 revised development plans by Grabham Family Construction, pages A1.1, A2.1, A2.2, A3.1, A3.2, A4.1, A4.2, A4.3, A5.1, A5.2, E1.1, P.1.1, SP.1.2.
2. Topo Survey, Gregory Cook, Registered Professional Engineer dated 11/6/14, sheets 1 and 2
3. Engineering sheets C-1 through C-4 by LTD Engineering, Inc. dated 6/20/14 except C-4 which was revised to comply with the Town Engineer's requests on 9/4/14 and 10/30/14
4. Recorded survey by Gregory Cook, recorded on 1/16/14 (correction letter recorded per Town Engineer's requirement on 9/5/14).
5. Geotechnical report by Salem Howes Associates Inc. dated March 2, 2014
6. Approval letter for Vegetative Management Plan and the plan from Ross Valley Fire Dated 4/1/14

Based on the above and his site inspection the Town Engineer has determined that the site can be developed without geologic, hydrologic or seismic hazards (Exhibit B - Town Engineer's final e-mail recommending that project processing proceed to the commission dated 12/4/14 and previous incomplete memorandum's dated 7/30/14 and 10/27/14).

The project provides two parking spaces in the garage and a guest parking space in the driveway as required by the Town Code sections 17.052.030(A)(1)(d) and 17.052.030(A)(2). The driveway grade break to the garage floor that was originally deemed too great by the Town Engineer has been redesigned. The finished floor elevation of the garage has been lowered so that it will be accessible by a standard vehicle. Therefore, vehicular access and parking are adequate.

Design Review Approval

Town Code Chapter 17.020 required design review approval for all new single-family residences. The purpose of applying the required design criteria in Town Code §17.020.040 is to foster good design and architecture, to ensure projects minimize impacts on the natural environment through design and location and to encourage projects that fit into the neighborhood and comply with Code requirements.

The residence has been set back from the road to accommodate parking but the location also minimizes the impact of the three story structure on the street façade. The design incorporates a covered porch, upper floor dormer and trellises over the garage and front entry to add articulation to the building and avoid monotony in its external appearance. The alternating use of stucco and board and batten siding also increases the exterior articulation.

No significant view corridors are identified on the General Plan Visual Resources Map that are associated with this project site so the proposal will not result in the deterioration of significant view corridors.

The residence reaches 24.5 feet in height above natural grade at the tallest point which is 4 feet less than the 28.5 foot height limit set forth in Town Code §17.084.060(A)(2).

The color palette proposed for the house include greys with white trim – a dark greyish green for the stucco siding (Benjamin Moore Eagle Rock #1469, a lighter grey/green for the board and batten siding with white for the batten strips (Benjamin Moore Willow Creek # 1468 and Simply White, # 2143-70), and white for the rest of the house trim, doors and trellises (Benjamin Moore Simply White, 2143-70).

There no landscaping plan for the project because the intention is to retain the site in its natural state which consists of woodland with oaks, and a couple of eucalyptus trees. There are two oaks that will need to be removed to allow construction of the residence and another two that might be impacted by the foundation and entry stair construction. Included in the conditions of approval is the requirement that tree # 6, the only oak that will be affected by the construction, have a tree protection zone (TPZ) established and that the conditions recommended by the arborist on page 6 of the Arborist Report be complied with (Exhibit F - 164 Willow Avenue Vegetative Fuels Management Plan).

The proposed development is similar to that of the other new residence in the neighborhood at 176 Willow Avenue on a property with a similar slope. Homes in the area on similar sized parcels range in size from a 945 square foot 2 bedroom 1 bath home on a 9,102 square foot parcel (144 Willow Avenue) to the 2,000 square foot, 4 bedroom, 2 bath, home on a 8,938 square foot site (176 Willow). Therefore, the proposal is of a quality and character appropriate to, and serving to protect the value of, private and public investments in the immediate area and its size is in proportion to the building site and similar in size to other homes in the neighborhood.

The driveway retaining walls will reach up to 11 feet in height where they meet the house. These tall walls will have a visual impact on the street scape of Willow Avenue. Some type of treatment should be used to minimize the visual impacts such as coloring the concrete, planting above the wall, application of a stone veneer facing, etc. Staff has included a condition in the attached Resolution No. 14-16 that some type of visual mitigation measures shall be incorporated into the wall construction and those measures shall be subject to review and approval by the Director of Planning and Building Services prior to issuance of the building permit.

Based on the above analysis, the project has been deemed to comply with the design review criteria contained in Town Code § 17.020.040.

An Excavation Permit:

Town Code § 17.20.080 requires that any projects requiring the excavation/fill of over 100 cubic yards of material requires the approval of an Excavation Permit by the Planning Commission.

The steep slope and narrow 40 foot width results in the applicant having to excavate a certain amount of material to comply with parking and setback regulations. The house has been located as close to the street as is possible while still providing the required number of parking spaces per the Town Code. No extra level patio or outdoor areas have been proposed nor does the project include any terraced rear yard areas. Therefore, the amount of excavation while still allowing development of the site has been minimized.

The Town Engineer has reviewed the project grading and drainage plan (described above) and has determined that the project has been designed so that; a) the health safety and welfare of the public will not be adversely affected; b) adjacent properties are adequately protected by project design from drainage and erosion problems as a result of the work; c) The amount of the excavation or fill proposed is not more than is required to allow the property owner substantial use of his or her property; d) The visual and scenic enjoyment of the area by others will not be adversely affected by the project more than is necessary;

Only two trees will be removed and they are located within the footprint of the proposed house. Therefore, the natural landscaping will not be removed by the project more than is necessary;

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

Variances:

A Wall Height Variance:

Town Code §§17.044.080(B)(1) and (2) limit retaining walls within the required 6 foot front setback area to 4 feet in height and walls beyond the setback to 6 feet in height . Fences exceeding 6 feet in height require the approval of a Wall Height Variance by the Planning Commission per Town Code §17.044.080(A). The driveway retaining walls reach to 11 feet in height and that is the minimum height necessary to construct a driveway with a grade and grade breaks that can be negotiated by a standard vehicle without bottoming out. The walls are also the minimum height necessary to provide access to the house and required parking. The excess wall height is necessitated by the steep 39% slope of the site.

A Combined Side Setback Variance:

Town Code § 17.084.070(B)(2) requires that sloped properties in the Residential RD 5.5-7 Zone where the site is located maintain a combined side setback of 20 feet. While the proposed house maintains the required minimum 5 foot side setbacks it is 2 feet short of the required 20 foot combined side setback, maintaining a combined side setback of 18 feet. The narrow 40 foot width of the site and its steep slope are the special circumstances that warrant a minor 2 foot variance from the required combined 18 foot side setback.

Combined side setback variances have been granted to other narrow sloped properties in the Ridgeway Park neighborhood (120 Willow, 176 Willow). The proposed house will still maintain greater setbacks from the neighboring homes than many other houses found in the Willow Avenue neighborhood. The home immediately to the

The strict application of the combined side setback would result in a house that is 20 feet wide which is very narrow by today's accepted construction standards and which would result in greater excavation and disruption of the site with additional square footage being added further up the hillside.

Neighboring Home Encroachment

The property survey revealed that the access stairway, two retaining wall and small area of rear patio for the neighboring duplex are located on the project site.

The owner contacted the owner of that property in writing indicating their willingness to relocate the front access stairway and to allow the rear improvements to remain until they need to be replaced (Exhibit C – letters dated 9/17/14 and 10/18/14 from G-family construction to owner of 168/170 Willow Avenue). The neighbor's attorney responded

indicating her willingness to cooperate and work with the owner towards resolution (Exhibit D – letter from Attorney Napolie dated 9/18/14). Staff has included a condition in the resolution that a legal agreement, whether it be an easement for the improvements or an agreement document between the 2 parties to relocate the improvement(s) prior to, during construction, or when they become dilapidated in the approval resolution.

Maintenance Easement

Note: Due to the close proximity of the property line to the east side of the improved Willow Avenue roadway, the Town Engineer has recommended that a condition be included for this project that the owner grant a maintenance easement to the Town over the front part of the property so the Town will be able to repair Willow Avenue more easily if the portion that runs in front of the site ever fails or needs other maintenance that can be done more easily if the Town can enter the project site along its frontage.

The applicants have agreed to provide that easement prior to issuance of the building permit.

Other Agency/Department Comments/Conditions

Ross Valley Sanitary District

The project will require a connection permit from the District. The size of the lateral will depend on the fixture count calculated during the permitting process. A hold will be placed on the property and the Building Department will not be able to perform a final inspection or issue a certificate of occupancy until the Sanitary District conditions are met.

Marin Municipal Water District

1. The project will require a Standard Water Service Application and compliance with District Code Title 13.
2. Backflow prevention requirements must also be complied with if not currently in place and in compliance with current regulations.

Ross Valley Fire Department

1. A fire suppression system is required in compliance with the National Fire Protection Association (NFPA)13-D and local standards.
2. The site is in the Wildland Urban Interface area of the Town so the building materials shall be in compliance with California Building Code Chapter 7A.

3. The smoke detectors in the residence shall be provided with AC power and be interconnected for simultaneous alarm. They shall be located in each sleeping room, outside of sleeping rooms centrally located in the corridor and over the center of all stairways with a minimum of 1 detector per story of the occupied portions of the residence.
4. Carbon monoxide alarms shall be provided outside each sleeping area in the vicinity of the bedrooms and one every level of the dwelling.
5. Address numbers at least 4 inches tall must be in place adjacent to the front door and must be internally illuminated and controlled by a photocell and be switched off only by a breaker so it remains illuminated all night.

Note: Neither the Fairfax Police Department, Building Department or Public Works Department had any comments, concerns or conditions for the project.

RECOMMENDATION

Move to approve application # 14-47 by adopting Resolution No. 14-16 formalizing the findings and setting forth the conditions of approval for the project.

ATTACHMENTS

- Exhibit A - Resolution No. 14-16
- Exhibit B - Town Engineer's memorandums and e-mail
- Exhibit C - Letters from the project proponent to the neighbor
- Exhibit D - Response letter from neighbor's attorney
- Exhibit E – soils report by Salem Howes Associates Inc.
- Exhibit F – Vegetative Management plan and Ross Valley Fire Department approval memorandum

RESOLUTION NO. 14-16

A Resolution of the Fairfax Planning Commission Approving a Hill Area Residential Development permit, Excavation Permit, Design Review and Variances for a New Residence at 164 WILLOW AVENUE

WHEREAS, the Town of Fairfax has received an application to construct a 1,461 square foot single-family residence including a 415 square foot garage on lot 38 of the P.H. Jordan Subdivision of Ridgeway Park; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on December 18th, 2014 at which time all interested parties were given a full opportunity to be heard and to present evidence, and at which time the Planning Commission determined that the proposed residence complies with the Hill Area Residential Development Overlay Ordinance, Excavation Ordinance and Design Review Ordinance; and

WHEREAS, based on the plans and other documentary evidence in the record, as well as testimony at the public hearing, the Planning Commission has determined that the applicant has met the burden of proof required to support the findings necessary to approve the project.

WHEREAS, the Commission has made the following findings:

1. The proposed residence conforms to the regulations set forth in the Hill Area Residential Development Ordinance, Town Code Chapter 17.072 and the Excavation Ordinance, Chapter 12.20 and the Design Review Ordinance, Chapter 17.020; and
2. 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.
3. The proposed development is of a quality and character appropriate to, and serving to protect the value of, private and public investments in the area.
4. The exterior appearance of the residence will maintain a low roofline in compliance with the 28.5 foot height limit set forth in Town Code §17.084.060(A)(2).
5. The residence has been designed utilizing exterior colors and materials that are similar to the surrounding hillsides and/or compatible with the color palettes of the neighboring homes; and
6. 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.
7. The site planning preserves identified natural features.

8. Based on the soils report finding, the site can be developed without geologic, hydrologic or seismic hazards.

9. Vehicular access and parking are adequate.

10. The Town Engineer, after reviewing the body of submitted information, including geotechnical and hydrology report, survey and topographic information and the development plans has determined that, a) the health safety and welfare of the public will not be adversely affected; b) adjacent properties are adequately protected by project investigation and design from geologic hazards as a result of the work; c) adjacent properties are adequately protected by project design from drainage and erosion problems as a result of the work; and d) the amount of the excavation or fill proposed is not more than is required to allow the property owner substantial use of his or her property; and

11. The visual and scenic enjoyment of the area by others will not be adversely affected by the project more than is necessary;

12. Natural landscaping will not be removed by the project more than is necessary;

13. The time of year during which construction will take place is such that work will not result in excessive siltation from storm runoff nor prolonged exposure of unstable excavated slopes.

14. The requested 2 foot variance from the required 20 foot combined side setback is similar to variances previously granted to other property owners in the vicinity, will not have a significant impact on immediate neighbors, will not impact the general public and is the minimum necessary to allow reasonable development of the site.

15. The Variance allowing the driveway retaining walls to exceed the permitted 4 and 6 foot height limits necessary to provide the required parking and access to the house and they will have minimal visual impact on the neighbors because they are below grade.

WHEREAS, the Commission has approved the project subject to the applicant's compliance with the following conditions:

1. Prior to issuance of the any building permit to start construction the following shall be provided to the Town and shall be reviewed and approved by the Town Attorney and/or Town Engineer:
 - A document which shall be recorded after Town approval setting forth a maintenance easement for the Town along the property frontage.
 - An agreement between the owner(s) of 168/170 Willow Avenue and the

project proponent indicating how the duplex improvements that are located on the project site will be treated.

2. The applicant shall comply with all the recommendations for maintaining the health of the oak tree labeled tree # 6 on page 6 of the Vegetation Fuels Management Plan prepared by Arborist Dan McKenna dated February 6, 2014.

4. Mitigation measures to minimize the visual impacts of the driveway retaining walls on the street façade will be included in the construction drawings and will be subject to the review and approval of the Director of Planning and Building Services prior to issuance of the building permit.

3. The property boundaries shall be staked by the surveyor prior to the start of construction and the foundation location shall be certified and the field and in a signed stamped letter to the Town as being per the approved plans presented to the commission prior to the foundation concrete pour.

4. This approval is limited to the development illustrated on the plans prepared by David Grabham, G-Family Construction, dated 7/3/14 pages A.1.1, A.2.1 (revised 10/31/14), A.2.2, A.3.1, A.3.2, A.4.1, A.4.2, A.4.3 and A.5.1 (revised 10/31/14, topographic survey by Greg Cook, Surveyor, pages 1 and 2, dated 11/6/14, engineering drawings by LTD Engineering, Inc, including the preliminary grading and drainage plans, pages C-1 through C-4 dated 6/30/14 except page C-2 which was revised 10/30/14, and Vegetative Management Plan prepared by Dan McKenna, certified arborist, dated 2/6/14.

5. Prior to issuance of any of the residence building permits the applicant or his assigns shall:

a. Submit a construction plan to the Public Works Department which may include but is not limited to the following:

- Construction delivery routes approved by the Department of Public Works.
- Construction schedule (deliveries, worker hours, etc.)
- Notification to area residents
- Emergency access routes
- Parking plan to minimize the impacts of contractor/employee vehicles and construction equipment on neighborhood parking

b. The applicant shall prepare, and file with the Public Works Director, a video tape of the roadway conditions on the public construction delivery routes (routes must be approved by Public Works Director).

c. Submit a cash deposit, bond or letter of credit to the Town in an amount that will cover the cost of grading, weatherization and repair of possible damage to public roadways. 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, bond or letter of credit equaling 100% of the estimated construction costs.

d. The 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 Plan Checker.

e. 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.

f. Prior to submittal of the building permit plans the applicant shall secure written approval from the Ross Valley Fire Authority noting the development conformance with their recommendations. The residence shall be provided with sprinkler system that complies with the requirements of the Ross Valley Fire Authority.

g. Submit the record of survey with the building permit plans.

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

a. The geotechnical engineer shall be on-site during the grading process (if there is any grading remaining to be done) and shall submit written certification to the Town Staff that the grading has been completed as recommended prior to installation of foundation and/or 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, supply 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 project sponsor.

d. 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.

8. 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 Planning Department shall field check the completed project to verify that all planning commission conditions have been complied with prior to issuance of the certificate of occupancy.

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

10. a) The roadways shall be kept free of dust, gravel and other construction materials by sweeping them, daily, if necessary.

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

11. During construction the developer and all employees, contractor's and subcontractor's must comply with all requirements set forth in Ordinance # 637 (Chapter 8.26 of the Town Code), "Storm Water Management and Discharge Control Program."

12. 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 Application # 14-47. Any construction based on job plans that have been altered without the benefit of an approved modification of Application 14-47 will result in the job being immediately stopped and red tagged.

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

14. 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.

15. The applicant shall comply with all applicable local, county, state and federal laws and regulations. Local ordinances which must be complied with include, but are not limited to: the Noise Ordinance, Chapter 8.20, Polystyrene Foam, Degradable and Recyclable Food Packaging, Chapter 8.16, Garbage and Rubbish Disposal, Chapter 8.08, Urban Runoff Pollution Prevention, Chapter 8.32 and the Americans with Disabilities Act.

16. The applicant shall comply with any and all the conditions of the Marin Municipal Water District, Ross Valley Sanitary District, Ross Valley Fire Department, Fairfax Public Works Department and Fairfax Building Department.

17. 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.

NOW, THEREFORE BE IT RESOLVED, the Planning Commission of the Town of Fairfax hereby finds and determines as follows:

The approval of the Hill Area Residential Development permit, Excavation Permit, Variances and Design Review permit for the proposed residence in in conformance with the 2010 – 2030 Fairfax General Plan and the Fairfax Zoning Ordinance, Town Code Title 17; and

Construction of the residence can occur without causing significant impacts on neighboring residences and the environment.

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 18th day of December, 2014, by the following vote:

AYES:

NOES:

Chair, Brannon Ketcham

Attest:

Jim Moore, Director of Planning and Building Services

Linda Neal

From: Ray Wrysinski <r.wrysinski@verizon.net>
Sent: Thursday, December 04, 2014 1:51 PM
To: Linda Neal
Subject: RE: Willow Avenue house

Linda:

Looked at the certificate of correction and that is the document that we needed. I did not know if a new recorded map would need to be done or if a certificate of correction would be the right legal document to take care of the error on the map. The County approved the certificate of correction and they process those things so they would know which process must be used for a record of survey map correction so I am satisfied that the map correction is taken care of. I attached a copy of that recorded certificate of correction to the map copies I have in my file and put another copy in the correspondence file. You should do the same thing with your file so we have a good record of that correction.

I checked the new plans against the 10/27/14 Town Engineer review memorandum and found that all the corrections and information additions were done. The survey is signed, has the easement note and it shows the adjoining building locations. The civil drawing C-2 does not show the adjoining building locations but we can let that go. The sheet A.2.1 shows the adjoining building locations. Sheet A2.2 shows an unlabeled existing building location that is wrong but we can let that go. You will be aware of that when you review things. The existing pipe sizes are shown on sheet C-2. We got a copy of the topo survey at 1"=5' to match the civil drawings. We have discussed the whole issue of the encroachments onto this site and you have said it does not have to be resolved before the Town can process this so that will be left to the owners. We know from letters, that each owner is aware of the problem. The garage elevation on sheet A.5.1 has been revised to match the civil plan garage floor elevation.

I think you can go ahead with the processing of this project. Let me know if you need anything else from me on this project.

Ray

From: Linda Neal [mailto:lneal@townoffairfax.org]
Sent: Wednesday, December 03, 2014 1:53 PM
To: Ray Wrysinski
Subject: FW: Willow Avenue house

Hi Ray,

Attached is the recorded letter of correction for the survey for the house on Willow.

Can we schedule this one for the December meeting? Let me know.

Linda Neal
Principal Planner

From: Ryan Connelly [mailto:ryan@gdesignpro.com]
Sent: Wednesday, December 03, 2014 1:16 PM
To: Linda Neal
Subject: Re: Willow Avenue house



TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
PHONE (415) 453-1584 / FAX (415) 453-1618

MEMORANDUM

To: Linda Neal – Principal Planner

Date: October 27, 2014

From: Ray Wrysinski
Town Engineer

Page 1 of 3

Subject: New Single Family Residence
164 Willow Avenue
Fairfax, CA

A.P. 001-193-13

I have reviewed the documents enclosed with your 9/30/14 transmittal. The items reviewed included an 18 sheet plan set with drawings by G Family Construction (13 shts., dated 8/31/14), a topographic survey drawing by Gregory J. Cook – Engineer (1 sht., dated 9/24/13), drawings by LTD Engineering, Inc. (4 shts., dated 9/4/14), a Tree Report by Dan McKenna (dated 2/6/14), a G Family Construction letter to Brian & Eileen Sibbald (dated 9/17/14), a G Family Construction letter to the Town of Fairfax (dated 8/31/14), a letter from Law Offices of Louis Napoli to the Town of Fairfax (dated 9/18/14), a letter to 164 Willow Avenue by Ross Valley Fire Department (dated 4/1/14), a grant deed signed 5/8/13 and a 4/16/13 title report.

The above information was checked to determine if it satisfied requirements in the 7/30/14 Town Engineer Memorandum on this application.

A copy of a topographic and boundary survey signed by the Surveyor or Civil Engineer licensed to do land surveying was required to be submitted. The survey copy submitted, still, does not have the signature and seal of the person responsible for it and that must be provided. This survey was required to show easements both existing and proposed or if none exist a notation of this must be made on the survey. The 8/31/14 G Family Construction letter states that the easement note has been added to the survey but that note is not on the submitted copy and must be added. It was noted that the survey normally must show existing and new sanitary sewer, water and storm drain lines with their sizes. There seems to be an effort to show this information on other sheets. The water and sanitary sewer lines are indicated on sheet C-2 of the LTD plans but no sizes are shown. The 7/3/14 G Family letter stated that the pipe line sizes are shown on A2.1. Some new pipe sizes are shown but existing pipe sizes are not shown on that sheet and no pipes are shown on the sheet. Since the existing and new pipes are shown on sheet C-2, the pipe information requirement will be satisfied if all the sizes are shown on sheet C-2. The water and sewer pipe line sizes can be shown on the topographic survey map or on the C-2 drawing but that information is not shown and must be shown on at least one of those drawings. It appears that there is no existing storm drain so that can't be shown.

A copy of a recent title report, and a copy of the current fee title deed were required to be submitted and those items were received. A copy of a recorded record of survey was required to be submitted. The submitted recorded Record of Survey had an error on it. The 8/31/14 G Family Construction letter states

that information to correct the survey map error has been submitted to the County and that a copy of the letter to the County was in the submittal to the Town. That letter to the County, on the correction, was not received. The corrected map is still required to be submitted to the Town.

The project site plans are required to be done on a base map of the topographic survey with the boundary shown on it. The copy, submitted, of that survey is at a scale of 1"=10'. The submitted survey is without new design information so existing conditions are easily read which is the form we needed the survey in. Copies of that survey at the same scale as the project site plans were required to be submitted so we can check existing conditions by overlaying the base topographic survey on the design site plans. We previously received a site plan from G Family, sht. A2.2, that stated it is drawn at 1/16"=1' but it appeared to be about 1"=8'. That scale designation was corrected to 1"= 10' which matches the above survey. The previous and newly submitted sheet A2.2 shows the existing dwelling at 170 Willow Avenue to be partly on the 164 Willow Avenue property. That building location appears to be wrong. Accurate locations of the adjoining existing residences on each side of the project property were required to be provided and still must be provided so that information must be added to the topographic survey done by the Civil Engineer, Gregory Cook. The sheet C-2 and Sheet C-3 had scale problems and that has been corrected so they have a stated scale of 1"=5'. A copy of the topographic and boundary survey at the same scale as the project site plans was required to be submitted, as noted above, and the copy to match the 1"=5' plans still must be submitted. The 8/31/14 G Family Construction letter states that the Civil plans have been updated to match the survey drawings but that is not the case. It is my guess that it would be easier to provide a 1"=5' scale copy of the survey to match the plan area of the civil drawings than it would be to revise the civil drawings to match the scale of the submitted 1"=10' scale topographic and boundary survey drawing.

I restate here that the topographic survey shows most of the street curb to be on the 164 Willow Avenue property. This creates a problem for street maintenance. A requirement should be placed so that prior to the building permit final, an easement five feet wide is obtained for use as a public street and a public utilities easement adjoining, easterly of and contiguous with the easterly right of way line of Willow Avenue along the 164 Willow Avenue street frontage.

As noted on the 7/30/14 Memorandum, the topographic survey shows retaining walls, stairs and stair landings, that are part of the 170 Willow Avenue improvements, to be on the 164 Willow Avenue property. We have discussed that these encroaching improvements should be removed, as much as possible, so that these two properties can function as independent ownerships and so that liability for activity of 170 Willow Avenue occupants being on the 164 Willow Avenue property will be removed. The 8/31/14 G Family Construction letter notes a letter (9/17/14) sent to the 170 Willow Avenue owner(s) on these encroachment issues. The 9/18/14 letter from the Law Offices of Louis Napoli discusses the encroachment issues and states that the owner understands she legally has a prescriptive easement to this property, and she wishes to maintain the easement in order to maintain the value of her property. No evidence of a prescriptive easement with legal standing was provided. An easement effect on property can range from almost nothing to almost complete fee title ownership of the land in the easement so the effect of the encroachments on the 164 Willow Avenue property is really unknown. You indicated that the Town's interest in this encroachment issue is being studied.

The 7/30/14 Memorandum indicated problems for the proposed construction related to an 18" and a 38" Oak tree. The 2/6/14 Tree Report calls for those trees to be removed. Those tree removals will resolve the noted tree problems.

The sheet C-1 Grading Plan stated that there will be 350 cubic yards of excavation removed from the site. The garage floor level has been lowered on the new submittal and the excavation quantity has been revised to 376 cubic yards. As previously noted, this amount of material movement must receive Planning Commission approval as required in Code Section 12.20.080.

The 7/30/14 memorandum noted that the elevation difference from the street gutter flowline and the entrance elevation of the garage related to the horizontal distance between those points results in an excessively steep driveway slope. The entire driveway surface for 164 Willow Avenue must satisfy the requirements provided in the Uniform Standards All Cities and County of Marin Drawing No. 140 "Steep Driveway Design". The above memorandum suggested that lowering the proposed garage floor elevation by near two feet was needed to develop the required slopes. The proposed garage floor elevation has been lowered by 1.24 feet on the C-2 drawing. This will greatly improve the ability of most cars to traverse the grade breaks from the street into the garage. The C-2 drawing shows the driveway slope as $S=0.154$ this is the slope from the previous plans with a higher garage floor and should be corrected. The sheet A.5.1 has a garage floor level of $103'-1\frac{3}{8}"$. This should be revised to match the sheet C-2 elevation.

Sheet C-1, General Notes 1. has been revised to identify the site base map as being by Gregory Cook.

I recommend that the processing of this project be delayed until the above, noted, information is provided.



Ray Wrysincki, P. E.
Town Engineer



TOWN OF FAIRFAX
142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
PHONE (415) 453-1584 / FAX (415) 453-1618

MEMORANDUM

To: Linda Neal – Principal Planner

Date: July 30, 2014

Page 1 of 4

From: Ray Wrysinski
Town Engineer

Subject: New Single Family Residence
164 Willow Avenue
Fairfax, CA

A.P. 001-193-13

I have reviewed the documents enclosed with your 7/8/14 and 7/10/14 transmittals. The items reviewed include a 7/3/14 letter from G Family Construction, an 18 sheet plan set which included drawings by G Family Construction (13 shts.), dated 7/3/14, a topographic survey drawing by Gregory J. Cook – Engineer (1 sht.), dated 9/24/13, drawings by LTD Engineering, Inc. (4 shts.), dated 6/30/14, a copy of an amended purchase agreement by Fidelity National Title Company, dated 5/8/13 was provided, a recorded Record of Survey by Gregory J. Cook, recorded January 24, 2014 was provided and a Geotechnical Investigation by SalemHowes Associates, Inc., dated March 2, 2014 was provided.

A site review was done 7/28/14.

Town Code Section 17.072.080 provides a list of submittal requirements for Hill Area Residential Development. A topographic and boundary survey signed by the Surveyor or Civil Engineer licensed to do land surveying is required. Copies of that survey, with the signature and seal of the person responsible for it, must be provided. This survey must show easements both existing and proposed or if none exist a notation of this must be made on the survey. The survey normally must show existing and new sanitary sewer, water and storm drain lines with their sizes. There seems to be an effort to show this information on other sheets. The water and sanitary sewer lines are indicated on sheet C-2 of the LTD plans but no sizes are shown. The 7/3/14 G Family letter states that the pipe line sizes are shown on A2.1. Some new pipe sizes are shown but existing pipe sizes are not shown on that sheet and no pipes are shown on the sheet. Since the existing and new pipes are shown on sheet C-2, the pipe information requirement will be satisfied if all the sizes are shown on sheet C-2. It appears that there is no existing storm drain so that can't be shown.

To check the survey boundary information, a copy of a recent title report, a copy of the current fee title deed and a copy of a recorded record of survey must be submitted. All three of these documents must be submitted. The above noted purchase agreement does not satisfy the requirement for submittal of a recent title report. The submitted recorded Record of Survey states that it is a survey of lot 38 as shown on the "Map of P. H. Jordan Co. Subdivision of Ridgeway Park, Marin Co. Cal.", Filed in Book 2002 of Maps at Page 80, Marin County Records. The Assessor indicates that this property is lot 38 of Book 2 of Record Maps at Page 80. There is an Exhibit "A" description of the property in the above purchase agreement that also identifies the property as Lot 38 in Map Book 2, Page 80, Marin County Records. It

appears that this record of survey identifies the subject of the survey as lot 38 of Book 2002 of Maps at Page 80 which is not the property we are dealing with. We must receive a signed sealed letter from the Civil Engineer, who prepared this recorded survey, that clearly explains how the submitted survey can be considered as giving the boundary for the property we are dealing with or explains how a correction, of what appears to be a mistake on the survey, will be completed so the Town will have a correct survey for the property boundary for this site.

The project site plans must be done on a base map of the topographic survey with the boundary shown on it. The copy, submitted, of that survey is at a scale of 1"=10'. The submitted survey is without new design information so existing conditions are easily read which is the form we need the survey in. Copies of that survey at the same scale as the project site plans (1"=8' and 1"=5') must be submitted so we can check existing conditions by overlaying the base topographic survey on the design site plans. We have a site plan from G Family, sht. A2.2, that states it is drawn at 1/16"=1' but it appears to be about 1"=8'. That scale designation must be corrected. The sheet A2.2 shows the existing dwelling at 170 Willow Avenue to be partly on the 164 Willow Avenue property. That building location appears to be wrong. Accurate locations of the adjoining existing residences must be provided so that information must be added to the topographic survey done by the Civil Engineer, Gregory Cook. The sheet C-2 appears to be drawn at a scale of about 1"=5.1' but has a stated scale of 1"=5'. The scale of that must be corrected. Sheet C-3 scale has the same problem as C-2 and that must be corrected. Both sheet C-2 and C-3 scale the property to be 39' wide and it should scale 40' wide.

The topographic survey shows most of the street curb to be on the 164 Willow Avenue property. This creates a problem for street maintenance. A requirement should be placed so that prior to the building permit final, an easement five feet wide is obtained for use as a public street and a public utilities easement adjoining, easterly of and contiguous with the easterly right of way line of Willow Avenue along the 164 Willow Avenue street frontage.

The topographic survey shows retaining walls, stairs and stair landings, that are part of the 170 Willow Avenue improvements, to be on the 164 Willow Avenue property. We discussed that these encroaching improvements should be removed, as much as possible, so that these two properties can function as independent ownerships and so that liability for activity of 170 Willow Avenue occupants being on the 164 Willow Avenue property will be removed. There are about 35 lineal feet of encroaching retaining walls and about 47 lineal feet of encroaching stairs and landings. The stairs and landings and the retaining wall near the street do not look very difficult to remove. Removal of these items would inconvenience the occupants of 170 Willow but leaving these encroachments, now that they are known, might result in a taking of the property. The encroaching retaining walls uphill of the stairs support a soil cut made to provide for the 170 Willow Avenue house upper patio. Removal of those walls without a supporting retaining wall being built on the 170 Willow Avenue property would leave a potential, approximately 10' high bank failure or landslide problem. Encroaching improvements that are not removed might be contained in an easement granted by the 164 Willow Avenue property owners to the 170 Willow Avenue property owners along with needed access, maintenance and liability protection elements. It may be possible to do an exchange of property areas so that encroaching improvements were put onto land, taken from 164 Willow Avenue, that would be transferred to and owned by 170 Willow Avenue property owners and with an equal area of land on the 170 Willow Avenue property transferred to 164 Willow Avenue so the lot areas remained equal to what they are now. The costs of

improvement removals, easement creation or fee title land exchange would have to be considered by both property owners. The correction of the encroachment of improvements for 170 Willow Avenue onto the 164 Willow Avenue property should be a requirement to be resolved before the project building permit is finalized.

There are two trees shown to be removed in the upper area of the proposed building so a Fairfax Tree Committee report and permit must be obtained. Additionally there is an 18" Oak tree shown next to the upper stair landing on the north side of the proposed house. The landing placement will require significant excavation next to the tree. I doubt that the tree would survive so it appears to me it will have to be removed. There is a 38" Oak about 13' uphill of the upper northeasterly corner of the proposed house. This is a big tree. It has had large limbs removed and there are dead limbs. There is a large limb that would be over the proposed house and that limb would do considerable damage if it fell on the house. Information from an Arborist might show how these trees could remain on the site with the proposed construction. I suspect that these trees will have to be removed.

A report by a registered civil engineer specializing in soils and foundation design is required. We received the March 2, 2014 Geotechnical Investigation by SalemHowes Associates, Inc. That investigation satisfies the above report requirement. The report states "we did not observe any local geologic hazards that would adversely affect the site". The report states "all excavations will be in a rock cut and all foundations will be footing type construction". The most apparent problem, in my view, is the deep excavation needed for the proposed building garage area. That cut will be more than 20' deep. The geotechnical investigation provides detailed recommendations on how that excavation can be safely completed. The excavation and foundation construction should be done under the close observation of the Geotechnical Engineer so that the necessary procedures are followed.

Information on site drainage, grading and erosion control is required. The plan sheets C-1 to C-4 provide that required information. There is a bio-retention basin on the plans. This is a relatively new type of improvement. This item will tend to mitigate stormwater flows from the new hard surfaces from this project. This basin may cause storm water to infiltrate the ground under the street. That will be something for street maintenance personnel to observe. If wet pavement ends in street damage, features like a bio-retention basin in this type of location may need a different type of design.

The sheet C-1 Grading Plan states that there will be 350 cubic yards of excavation removed from the site. This amount of material movement must receive Planning Commission approval as required in Code Section 12.20.080. This excavation quantity will probably increase when the driveway slope is resolved.

The elevation difference from the street gutter flowline and the entrance elevation of the garage related to the horizontal distance between those points results in an excessively steep driveway slope. The 170 Willow Avenue driveway, as a bad example, has the curb and gutter paved over to try and solve the problems created by an excessively steep driveway and that condition must be avoided for this project. The entire driveway surface for 164 Willow Avenue must satisfy the requirements provided in the Uniform Standards All Cities and County of Marin Drawing No. 140 "Steep Driveway Design". That drawing states that a modified driveway profile shall be used if the street pavement cross slope exceeds

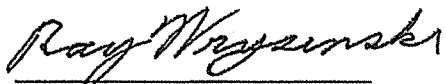
4%. I found the street cross slope to be about 8% so a modified design is required. The engineer will have to determine the street pavement cross slope where it will be applied to the driveway profile. I think the garage floor elevation will have to be lower by near two feet to develop the required slopes. The existing curb will have to be reconstructed to a standard driveway entry configuration.

All utility connection to the new residence shall be underground. An encroachment permit must be obtained from the Director of Public Works for all trenching work and other work in the street right of way.

The road pavement fronting 164 Willow Avenue is very narrow and the construction activity will probably block the road unless the work is done in manner designed to prevent blocking the road. Code Section 12.28 prohibits obstructing any road. The applicant must submit a written construction management plan that describes how the prohibition of blocking the road and obstructing the flow of traffic will be satisfied. This plan must be implemented during the project construction.

Sheet C-1, General Notes 1. identifies the site base map by Lawrence Doyle. This is wrong and should be corrected.

I recommend that the processing of this project be delayed until the above, noted, information is provided.



Ray Wrynski, P. E.
Town Engineer



September 17, 2014

Brian & Eileen Sibbald
168/170 Willow Avenue
Fairfax, CA 94930

Dear Brian & Eileen Sibbald,

I am contacting with regards to your property and the neighboring lot at 164 Willow Avenue or APN # 001-193-13. Recently a client of ours, Mr Kalman Zeiger, purchased this piece of property. Mr Zeiger is looking to build a single-family residence on his lot and has started the application process for design review. With the surrounding neighborhood expanding and continuing to grow the start of this project is beneficial to surrounding residences and helps to add value to the neighborhood. Mr Zeiger is looking to take advantage of this piece of property and its close proximity to other areas of Fairfax. Allowing him to be closer with friends and family around the surrounding area.

Part of the process for design review is for a Record of Survey to be performed, per the Title and Deed that Mr Zeiger was given at the time he purchased said property. Greg Cook, a licensed civil engineer and land-surveyor, performed this Record of Survey. We have included a copy of this documentation within this letter in an 11x17 format that should be legible, as well as copy of the topographic survey performed. While reviewing the topographic survey with the Town of Fairfax we noticed that existing elements of your property fall onto elements of Mr Zeiger's property. This creates issues with liability and who is responsible for the maintenance of these features. The features that fall onto Mr Zeiger's property are about 35 lineal feet of retaining walls and about 47 lineal feet of encroaching stairs and landings. At this time the town of Fairfax is requesting that this issue be resolved prior to completion of the planning application, and that these elements be removed and reconstructed. The lower retaining wall and concrete walkway, which access your property from Willow Avenue, would not prove difficult to reconstruct when our project is taking place. This reconstruction would have a cost associated, but would bring existing elements within your property. It appears that the upper-stairs and retaining wall do not need to be replaced and are in healthy condition. At this time we would request that we receive a letter of writing that when these elements are to be reconstructed at a later date, when deterioration has occurred, that they are to be reconstructed within your property setbacks. We are also requesting that the letter state Kalman is to be released of any liability for these elements until they are reconstructed.

Kalman would like to work with you and not require a full reconstruction of everything on his property at this time. He is willing to allow the features uphill to remain until they have deteriorated to the point that would require the reconstruction. Due to the unique shape of lots within Fairfax our client is already limited to space that is only 40' at its largest point. This only allows for a building area of less than 30' with setbacks concerned. The client has taken many steps to ensure he has taken your property and other surrounding homes on Willow Avenue into consideration with our design. The house is very modest and meets all requirements set forth by the Town of Fairfax.

Thank you again for taking the time to meet the week of August 30th to discuss the plans and the next steps heading forward to address these concerns. Attached please find a copy of the template letter which address' the town engineers concerns and releases our client from liability. If you have any questions or concerns with signing this letter we ask that you reach out to us.

David Grabham

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G-Design, LLC. (Design Firm)
CEO/Designer
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415-444-0573(Office) · 415-492-2128(Fax) · 1215 Lincoln Ave, Suite A, San Rafael, CA 94901

EXHIBIT #

C



August 25, 2014

Eileen Sibbald
168/170 Willow Avenue
Fairfax, CA 94930

Dear Eileen Sibbald,

I am contacting with regards to your property and the neighboring lot at 164 Willow Avenue or APN # 001-193-13. Recently a client of ours, Mr Kalman Zeiger, purchased this piece of property. Mr Zeiger is looking to build a single-family residence on his lot and has started the application process for design review. With the surrounding neighborhood expanding and continuing to grow the start of this project is beneficial to surrounding residences and helps to add value to the neighborhood. Mr Zeiger is looking to take advantage of this piece of property and its close proximity to other areas of Fairfax. Allowing him to be closer with friends and family around the surrounding area.

Part of the process for design review is for a Record of Survey to be performed, per the Title and Deed that Mr Zeiger was given at the time he purchased said property. Greg Cook, a licensed civil engineer and land-surveyor, performed this Record of Survey. We have included a copy of this documentation within this letter in an 11x17 format that should be legible, as well as copy of the topographic survey performed. While reviewing the topographic survey with the Town of Fairfax we noticed that existing elements of your property fall onto elements of Mr Zeiger's property. This creates issues with liability and who is responsible for the maintenance of these features. The features that fall onto Mr Zeiger's property are about 35 lineal feet of retaining walls and about 47 lineal feet of encroaching stairs and landings. At this time the town of Fairfax is requesting that this issue be resolved prior to completion of the planning application, and that these elements be removed and reconstructed. The lower retaining wall and concrete walkway, which access your property from Willow Avenue, would not prove difficult to reconstruct when our project is taking place. This reconstruction would have a cost associated, but would bring existing elements within your property. It appears that the upper-stairs and retaining wall do not need to be replaced and are in healthy condition. At this time we would request that we receive a letter of writing that when these elements are to be reconstructed at a later date, when deterioration has occurred, that they are to be reconstructed within your property setbacks. We are also requesting that the letter state Kalman is to be released of any liability for these elements until they are reconstructed.

Kalman would like to work with you and not require a full reconstruction of everything on his property at this time. He is willing to allow the features uphill to remain until they have deteriorated to the point that would require the reconstruction. Due to the unique shape of lots within Fairfax our client is already limited to space that is only 40' at its largest point. This only allows for a building area of less than 30' with setbacks concerned. The client has taken many steps to ensure he has taken your property and other surrounding homes on Willow Avenue into consideration with our design. The house is very modest and meets all requirements set forth by the Town of Fairfax.

We are hoping to come to a resolution of this issue that benefits both properties. If you have any questions or would like to discuss any of the above please feel free to contact us at the number mentioned below. We look forward to working with you and coming to the best resolution.

David Grabham
G Family, Inc. (General Construction)
G-Design, LLC. (Design Firm)
CEO/Designer
Gfamilyconstruction.com (Website)
David@gfamilyconstruction.com (Email)
415-261-7643 (Cell)

Design & Build Firm · Gfamilyconstruction.com(Website) · License #893848
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TOWN OF FAIRFAX

SEP 19 2014

RECEIVED

Law Offices of Louis Napoli
810 E Street
San Rafael, Ca. 94901
415-453-5000; f: 415-457-0278
louisnapoli@sbcglobal.net

September 18, 2014

Town of Fairfax
Planning Department
142 Bolinas Road
Fairfax, CA 94930

Dear Town of Fairfax Planning Department:

My name is Louis Napoli and I represent the owner of 168/170 Willow Avenue, Eileen Sibbald.

This letter is being written in regard to the proposed project at APN # 001-193-13.

My client understands that a recent record of survey and topographic boundary survey performed on the above lot revealed that my client's existing stairs and retaining walls, which were built prior to my client's purchase of the property at 168/170 Willow Avenue, actually fall partially outside her property line. She understands that she legally has a prescriptive easement to this property, and she wishes to maintain the easement in order to maintain the value of her property.

While these elements encroach upon Mr. Zeiger's property, my client does not intend to hold Mr. Zeiger responsible for the up keep of the improvement elements that fall outside her property line. And my client will certainly maintain full insurance coverage for said elements.

My client has examined the lower wood retaining wall that Mr. Zeiger desires to reconstruct during the first stages of his project, and she agrees that the wall may be reconstructed on the property line between the two properties. Additionally, she releases Mr. Zeiger from any responsibility regarding maintaining the stairs and upper retaining walls. Please note that at this time the stairs and upper retaining walls do not require reconstruction.

My client appreciates the constraints within which Mr. Zeiger has to operate, and she wishes to show flexibility in order for him to be able to complete his project. The proposed project is something she feels she can support and she looks forward to watching the project move forward.


EXHIBIT #

D

Town of Fairfax
September 18, 2014
Page 2

Thank you for your attention to this, and if you have any questions please feel free to contact me.

Sincerely,



Louis Napoli