

RESOLUTION NO. 16-10

A Resolution of the Fairfax Planning Commission Approving a Use Permit and Parking Variance to Construct a 699-Square-Foot Residential Second Unit and Allow a Compact Parking Space at 303 Bolinas Road

WHEREAS, the Town of Fairfax has received applications for a Use Permit and Variance to construct a 699-square-foot residential second unit with 1-bedroom, 2-bathrooms, a 296-square-foot porch and a 250-square-foot deck, and allow an on-site compact (8-foot-wide and 16-foot-long) parking space at 303 Bolinas Road; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on May 19, 2016, at which time all interested parties were given a full opportunity to be heard and to present evidence; and

WHEREAS, based on the plans and supplemental information provided by the applicant, the Planning Commission has determined that the applicant has met the burden of proof required to support the findings necessary for the project's requested discretionary Use Permit and Variance as long as certain conditions, listed below, are met; and

WHEREAS, the Commission has made the following findings:

Conditional Use Permit-

1. The 699-square-foot residential second living unit with associated porch and deck is similar in size, mass, design and location on the site to other residential structures in the "Pacheco Tract" subdivision. Therefore, 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. With implementation of the project, the existing residence and residential second unit will maintain the required minimum setbacks and the Floor Area Ratio and Lot Coverage limitation(s) for the Residential RD 5.5-7 Zone, and will comply with the square-foot limitations for residential second units. The second unit will be 699-square-feet in area and will reach a maximum height of 15 feet, in compliance with the Town Code requirements on residential second units and accessory structures (Town Code Sections 17.048.040 and 17.084.060(B)). Therefore, the development and use of the 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 the 2010 to 2030 Fairfax General Plan and Zoning Ordinance, Title 17 of the Fairfax Town Code.

4. Approval of the use permit will result in equal or better development of the premises than would otherwise be the case and the provision of three, on-site parking spaces (one (1) guest parking space will be along Bolinas Road) will bring the property into compliance with the required number of on-site parking spaces. Therefore, the project is in the public interest and will enhance the general health, safety and welfare of the community.

Parking Variance-

1. The narrow, 45-foot width of the site is the special circumstance applicable to the property that makes it infeasible to provide three (3), standard-sized parking spaces on the site. Thus, one (1) of the parking spaces located closest to the residential second unit will be compact in size, and therefore requires a variance to Town Code Section 17.052.040. Granting a Variance to the standard-size space parking requirement will prevent a parking space from encroaching into the side setback and will allow the owners to construct a residential second living unit, a privilege enjoyed by other property owners in the vicinity and under the RD 5.5-7 Residential Zone.
2. By granting a variance to the standard-size parking space requirement for one, on-site parking space, all parking associated with the project will be located outside of the side-yard setback. Because of the narrow widths of the building lots in the neighboring RD 5.5-7 area, parking variances have been granted for similar projects in the vicinity. Therefore, the granting of a variance for this project will not constitute a grant of special privilege, is consistent with the limitations of other properties in the vicinity and under an identical zone classification, and is consistent with the objectives of Town Code Chapter 17.028-Variations.
3. If strict application of Town Code Chapter 17.052.040(B), Standards for Parking, is applied for this project, the owners could not comply with the parking requirements for the project and would be unable to construct a residential second unit on their property. Such strict application would cause excessive and unreasonable hardship for the owners. By granting a variance for the project, the owners are able to utilize their property economically and efficiently, while locating required parking outside of the side yard setback.
4. The granting of the variances of adjustment will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated because the parking will be located on-site and outside of required setbacks.
5. Because three parking spaces will be located off of public streets, the parking associated with the project will not interfere with the free flow of traffic, create a

safety hazard or other condition inconsistent with Town Code Chapter 17.028-Variances.

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

1. This approval is limited to the development illustrated on the plans prepared by Fredric. C. Divine Associates, stamped "received" on May 31, 2016, Pages A1 and A2.0.
2. During the construction process, all construction related vehicles including fixture/supply or 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 project sponsor.
3. 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.
5. The Building Official shall field check the completed project to verify compliance with the approved plans and building code requirements.
6. The Planning Department shall field check the completed project to verify that the construction reflects the plans approved by the Planning Commission and to verify that all planning commission conditions have been complied with.
7. The roadways shall be kept clean and the site free of dust by watering down the site if necessary. The roadways shall be kept free of dust, gravel and other construction materials by sweeping the roadway, daily, if necessary.
8. During construction developer and all employees, including contractors and subcontractors must comply with all requirements set forth in Chapter 8.32 of the Town Code entitled, "Urban Runoff and Pollution Prevention".
10. Any changes, modifications, additions or alterations made to the approved set of plans will require a modification of Application No. 16-16. **Any** construction based on job plans that have been altered without the benefit of an approved modification of Application No. 16-16 will result in the job being immediately stopped and red tagged.
11. 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 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.

12. Prior to the issuance of a building permit for the project, the property owners shall sign and submit to the Department of Planning and Building Services a completed "Affidavit of Owner Occupancy", verifying that the property owners live in either the primary residence or the residential second unit. An "Affidavit" form will be provided to the owners by the Department of Planning and Building Services, and shall be renewed every three (3) years or upon the sale of the property, whichever occurs first. Renewal of the "Affidavit" shall require re-inspection of the second unit by Town staff to verify compliance with development standards. A nominal fee shall be imposed for the renewal and re-inspection in accord with Town Code Section 17.048.040(A).
13. Prior to the issuance of a building permit for the residential second unit, a deed restriction shall be recorded with the County Recorder's office. The deed restriction shall include the restrictions and limitations of residential second units, as identified under Chapter 17.048, Article I of the Town of Fairfax Municipal Code. The deed restriction shall run with the land, and shall be binding upon any future owners, heirs or assigns. A copy of the recorded deed restriction shall be filed with the Department of Planning and Building Services.

Ross Valley Fire Department

1. A "13.D" fire protection system shall be installed throughout the entire residential second unit with additional sprinkler coverage at the covered roof area that complies with the requirements of the National Fire Protection Association (NFPA) 13-D and local standards. A separate deferred permit shall be required

for this system. Plans and specifications for the system shall be submitted by an individual or firm licensed to design and/or design-build sprinkler systems.

2. All smoke detectors in the residential second unit shall be provided with AC power and be interconnected for simultaneous alarm. Detectors shall be located in the sleeping room, outside of the sleeping room centrally located in the corridor and over the center of all stairways (if applicable) with a minimum of one detector per story of the occupied portion of the residential second unit.
3. A Vegetative Management Plan (VMP) is required for the project. A separate fire permit is required for the VMP and shall be submitted directly to the Ross Valley Fire Department for review and approval.
4. Carbon monoxide alarms shall be provided in the residential second unit.
5. Lighted address numbers indicating that a residential second unit is located at the rear of the property must be installed at the street. The numbers must be 4 inches tall and if not clearly visible from the street, additional numbers are required. The address numbers must be internally illuminated or illuminated by an adjacent light controlled by a photocell and switch off only by a breaker so the numbers will remain illuminated at night.
6. The roof of the residential second unit must be constructed of materials that are a "minimum Class A rated assembly."

Marin Municipal Water District (MMWD)

1. A water pipeline extension will be required to service the residential second unit. The applicant is required to enter into a "pipeline extension agreement" with MMWD, subject to approval by MMWD's Board of Directors
2. The applicant must comply with the District Code Title 13, Water Conservation, as a condition of water service.
3. Should backflow protection be required it shall be installed and inspected prior to the project final inspection.
4. On November 3, 2015, MMWD's Board of Directors adopted Ordinance No. 429 requiring the installation of gray water recycling systems for all projects requiring new water service. The applicant shall contact MMWD for further requirements regarding gray water recycling requirements for the project.

Sanitary District

1. A sewer connection permit is required; the applicant must file an application for a sewer connection with the District prior to issuance of the project building permit.

Miscellaneous Conditions

1. The applicant must comply with any all conditions listed above unless a specific agency waives their conditions in a written letter to the Department of Planning and Building Services.
2. Planning Conditions acted upon by the Planning Commission may only be waived by the Commission at a future public hearing. ‘
3. The applicant shall comply with any and all conditions placed upon the project by the Building Official/Public Works Manager.
4. The applicant shall submit with the building permit application a certified arborist report documenting the existing health of the trees in the rear yard and setting forth mitigation measures to be implemented during and after construction to ensure all the trees continued good health. The mitigation measures are included as conditions of approval by the adoption of this Resolution No. 16-10.
5. A construction management plan shall be submitted to the Building Official with the building permit application and shall become a condition of building permit issuance.
6. All parking spaces shall maintain the required side yard setback of 5 feet.
7. All exterior lighting, including landscape lighting, shall be LED and shall direct light downward.

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

The approval of the Conditional Use Permit and Variance can occur without causing significant impacts on neighboring residences; and

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 16th day of June, 2016, by the following vote:

AYES:

NOES:

ABSTAIN:

Vice Chair, Norma Fragoso

Attest:

Jim Moore, Director of Planning and Building Services