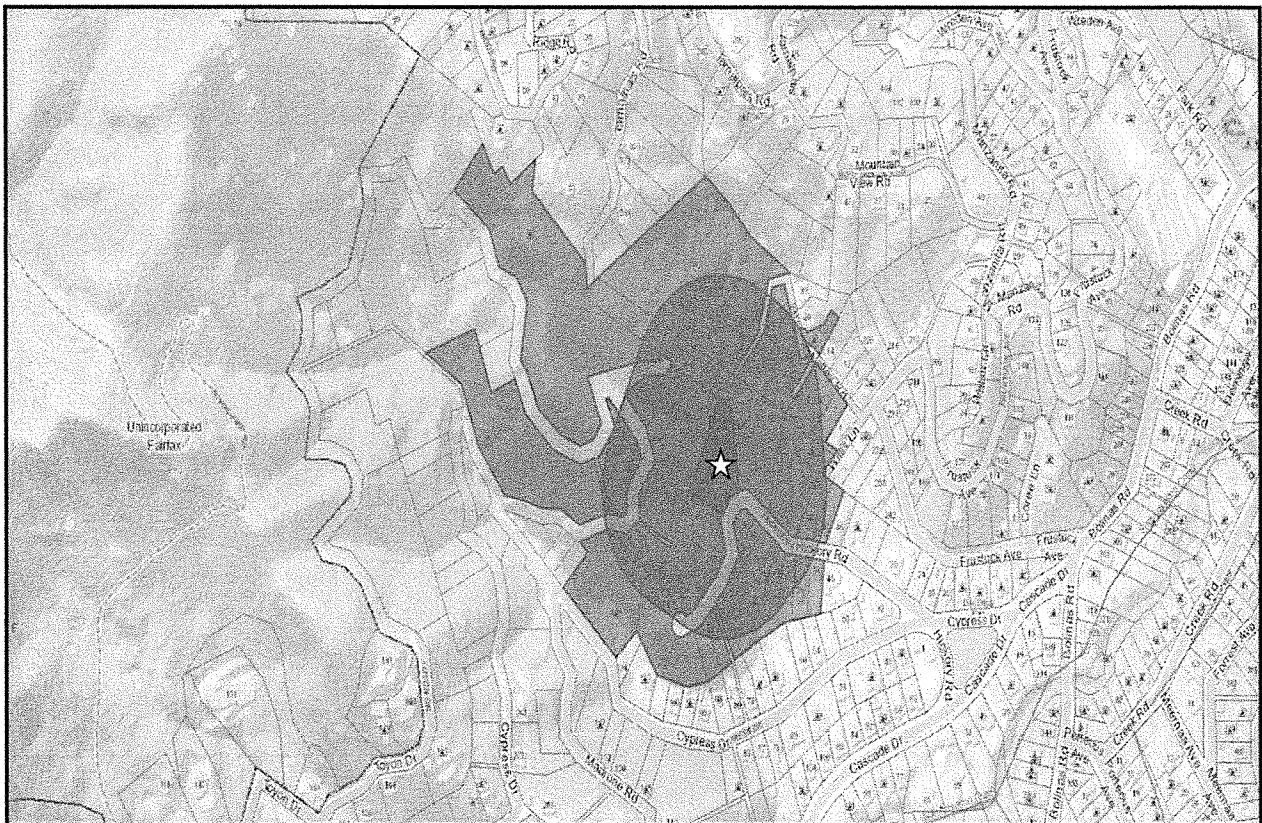


**TOWN OF FAIRFAX  
STAFF REPORT  
Department of Planning and Building Services**

**TO:** Fairfax Planning Commission  
**DATE:** August 18, 2016  
**FROM:** Jim Moore, Director of Planning and Building Services  
Linda Neal, Principal Planner  
**LOCATION:** 80 Hickory Road; Assessor's Parcel No. 003-191-43  
**ZONING:** Residential RS 6 Zone  
**PROJECT:** Addition, deck reconstruction/modification, carport and parking deck  
**ACTION:** **Conditional** Use Permit; Application No. 16-28  
**APPLICANT:** Fred Divine, Architect  
**OWNER:** Karen and Carlos Morales  
**CEQA STATUS:** Categorically exempt, § 15301(e)(1)



**80 HICKORY ROAD**

## **BACKGROUND**

The 28,821-square-foot site slopes up from Hickory Road at an average rate of 39%. The Marin County Tax Assessor's Records indicate that the house was constructed in 1914. A long and steep driveway provide access to the rear of the house and the parking area which is shown as existing in a 1988 survey of the property commissioned by the previous owners (last page of the project plans). The access driveway crosses the rear property line and extends onto a property to the north, also owned by the owners of 80 Hickory Road, and wraps around back onto the site where it provides access to a two car parking deck. The site also contains two, 120-square-foot, storage sheds.

In 1996 the Town discovered that an extensive area underneath the existing house had been excavated to create an indoor marijuana cultivation area and that the excavation had seriously jeopardized the structural stability of the southwestern-portion of the residence. In addition, other portions of the property had been excavated and leveled for unspecified purposes.

The existing owners took ownership of the property some-time in early 1997 and they have been working steadily to restore the damaged structure by obtaining the following permits: 1) complete electrical upgrade; 2) stabilization of the undermined structure; 3) rebuild and extension of the front deck; 4) build a bedroom and bathroom in the basement including an internal stairway; 5) replacement of the water heater; and 6) reroof the residence.

## **DISCUSSION**

On April 14, 2016, the owners' architect submitted an application to expand the 2,097-square-foot residence by adding a bedroom, wet-bar and storage area on the lower floor resulting in a 2,759-square-foot, 4 bedroom, 2 bathroom residence. The proposal also included construction of a 342 square-foot, carport over the existing two-car parking deck located at the rear, north side, of the house, a new 187-square-foot deck off of the living room on the east side of the structure and a 1-car, parking deck south of the house off of the lower portion of the driveway.

During the site inspection of the property on May 4, 2016, staff determined that all of the proposed improvements described in the April 2016 application, except the carport cover, had already been constructed without the required discretionary approvals. Therefore, the application submittal has been revised to include legalization of an existing bedroom, storage room, wet-bar, reconstruction and modification of a 187, square-foot, deck on the east side of the residence and a one car parking deck below the residence.

The project complies with the requirements set forth in the Residential Single-family RS 6 Zone District where the property is located as follows:

|                            | Front Setback | Rear Setback | Combined Front/rear Setback | Side Setbacks   | Combined Side Setbacks | FAR | Lot Coverage | Height              |
|----------------------------|---------------|--------------|-----------------------------|-----------------|------------------------|-----|--------------|---------------------|
| <b>Required/ Permitted</b> | 6 ft.         | 12 ft.       | 35 ft.                      | 5 ft. & 5 ft.   | 20 ft.                 | .40 | .35          | 28.5 ft., 2 stories |
| <b>Existing</b>            | 48 ft.        | 41 ft.       | 89 ft.                      | 45 ft. & 53 ft. | 101 ft.                | .08 | .25          | 21 ft., 2 stories   |
| <b>Proposed</b>            | same          | same         | same                        | Same            | same                   | .10 | .35          | same                |

### **Conditional Use Permit (CUP)**

Town Code § 17.080.050(c) requires that a Conditional Use Permit or a Hill Area Residential Development Permit be obtained prior to the physical improvement of any residence on a substandard property in the Residential Single-family RS 6 Zone District. This project site has an average slope of 39% and would have to be 33,000 square feet in size and 143 feet wide to comply with the minimum size requirements for the RS 6 Zone [Town Code § 17.080.050(c)].

The project is not a 50% remodel, therefore approval of a Conditional Use Permit, rather than a Hill Area Residential Development Permit is required [per Town Code § 17.072.050(A) projects not constituting 50% remodels are exempt from the HRD permit process].

The purpose of the Conditional Use Permit (CUP) process is to allow the proper integration of uses which may only be suitable in certain locations or only if the uses are designed in a particular way [Town Code § 17.032.010(A)]. In consideration of a CUP application, the Commission shall give due regard to the nature and condition of all adjacent uses and structures, to the physical environment of the proposed use and to all pertinent aspects of the public health, safety and welfare.

None of the improvements that have been made to the residence or the site require the approval of setback variance(s), height variances or exceptions to the Floor Area Ratio or Lot Coverage Limitations.

Residential structures in the neighborhood range from an 843-square-foot, 2-bedroom, 2-bathroom residence on a 2,982-square-foot, parcel to a 2,643-square-foot, 4-bedroom, 3-bathroom, residence on a 4,242-square-foot, parcel. Therefore, the proposed 1,472-square-foot, 2-bedroom, 2-bathroom residence, with no proposed exterior changes, would not be out of scale with the site or out of character with the surrounding neighborhood development.

Houses in the immediate neighborhood on similarly sized, sloped lots range in size from a 1,399-square-foot, 2 bedroom, 1 bathroom house on a 17,209-square-foot

parcel (86 Hickory Road) to a 4,857-square-foot, 6 bedroom, 4 bathroom house on a 15,125-square-foot parcel (42 Hickory Road). Therefore, the proposed 2,759-square-foot, 4 bedroom, 2 bathroom residence on this 28,821-square-foot site is not out of scale with the property or with other residential structures in the neighborhood.

The plan includes the provision of a third parking area and a carport over existing parking which would bring the property into compliance with the parking requirements for a single-family residence – three parking spaces, with at least one of the spaces covered [Town Code §§ 17.052.010(D), 17.052.030(A)(1)(d) and (A)(2)].

The owners have indicated that they may decide to apply to convert the proposed bedroom/wet-bar to a junior second unit in the future. The area meets the requirements to qualify for such a conversion. Permits for junior second units are processed by staff and acted on by the Planning Director (Town Code § 17.048.230).

### **Other Agency/Department Comments/Conditions**

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

1. An effective fire break shall be maintained around the building by removing and clearing all flammable vegetation and/or other combustible growth within the defensible space zone of 30 to 100 feet. Ross Valley Fire protection Standard 220 Vegetation/Fuels Management plan is available [on-line@Rossvalleyfire.org](mailto:on-line@Rossvalleyfire.org) to assist the applicant in meeting the minimum defensible space requirements.
2. All smoke detectors in the house and accessory bedroom/bath shall be provided with AC power and be interconnected for simultaneous alarm. Detectors 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 one detector per story of the occupied portion of the residence. The alarm in the accessory structure can be located anywhere in the main room (not in the bathroom).
3. Carbon monoxide alarms shall be provided in residential buildings and shall be located outside all sleeping areas.
4. Address numbers at least 4" tall must be in place adjacent to the front door. If not clearly visible from the street, additional numbers are required. Residential numbers must be internally illuminated (backlit), placed next to a light or be reflective numbers. If the project is a new house or a substantial remodel, they may only be internally illuminated or illuminated by an adjacent light controlled by a photocell and switched on only by a breaker so it will remain illuminated all night. If not currently as described, the numbers must be installed as described as part of this project.

### **Marin Municipal Water District**

1. The proposed remodel will not impair the District's ability to continue service to this property.
2. The project must comply with all indoor and outdoor requirements of District Code Title 13, Water Conservation. Indoor plumbing fixtures must meet specific efficiency requirements. Landscape Plans shall be submitted and reviewed to confirm compliance. The Code requires a landscape plan, an irrigation plan and a grading plan.
3. Should backflow protection be required, it shall be installed prior to the final inspection for the retroactive building permit for the conversion of the structure to living space.

### **Ross Valley Sanitary District**

1. The project would require a connection permit from the District. The size of the sewer lateral will depend on the fixture count calculated during the permitting process. If the existing lateral meets the size requirement of the fixture count, the applicant has the option of installing a new lateral or, the old sewer lateral needs to be tested in the presence of a District Inspector and be found to meet all current District requirements.
2. Sanitary District No. 1 will place a hold on said property if a building permit is issued for the project. This hold prevents the new building from being released for occupancy until the District's permit and sewer requirements are fulfilled. It is the owner's responsibility to obtain a sewer connection permit from the District and meet all the District's requirements pertaining to the private side sewer lateral.

### **Fairfax Police/Public Works/Building Departments**

The Police, Public Works and Building Departments had no comments or conditions for the project.

### **RECOMMENDATION**

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to approve Application No. 16-28 by adopting Resolution No. 16-22 setting forth the findings and conditions of approval for the project.

## **ATTACHMENTS**

Attachment A – Resolution No. 16-22

Attachment B – Architect's project description

Attachment C – Owners property history and photograph of other split-level bedrooms

## **RESOLUTION NO. 16-22**

### **A Resolution of the Fairfax Planning Commission Approving a Conditional Use Permit for the Expansion of the Residence and for Parking Improvements at 80 Hickory Road**

**WHEREAS**, the Town of Fairfax has received an application to legalize a bedroom and wet-bar, construct a carport over existing parking, a deck reconstruction and modification and a new 1-car parking deck increasing the living space of 80 Hickory Road from 2,097 square feet to 2,759 square feet; and

**WHEREAS**, the Planning Commission held a duly noticed meeting on July 21, 2016, at which time the Planning Commission determined that the proposed project conforms with the Fairfax Zoning Ordinance regulations, is not considered a 50% remodel and therefore, is exempt from the Hill Area Residential Development requirements and the design review process, and will result in the property meeting the minimum parking requirements for a single-family residence; and

**WHEREAS**, based on the plans and other documentary evidence in the record, 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 Residential Single-family RS 6 Zone District.
2. The proposed development does not change the single-family residential character of the neighborhood.
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 project results in a remodeled structure that maintains the required setbacks, height, floor area ratio and lot coverage percentages. 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.
5. The development and use of property as approved under the use permit will 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.

6. Approval of the use permit is not contrary to those objectives, goals or standards pertinent to the particular case and contained in the 2010 – 2030 Fairfax General Plan or set forth in the Town Code.
7. Approval of the use permit will result in equal or better development of the premises than would otherwise be the case.

**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 Fred Divine Architects, dated 4/14/16 pages A1 through A3.
2. Prior to issuance of the residence "as built" building permit and the permit for the car-deck cover, the applicant or his assigns shall:
  - a. Secure written approval from the Ross Valley Fire Authority, Marin Municipal Water District and the Ross Valley Sanitary District noting that the development conformance with all of their recommendations and conditions.
  - b. Submit 5 copies of the proposed and "as built" plans with a completed building permit application to the Fairfax Building Department for review, approval and issuance of a building permit(s).
  - c. Sign and notarize a deed restriction prepared by staff stating that there shall only be one kitchen in the structure and that the lowest level, with the wet-bar, may not be used as a separate dwelling unit unless a an application for such an improvement is submitted and is approved by the Director of Planning and Building Services at a later date.
  - d. Pay the \$406.50 penalty for work without valid entitlements or permits (1.5 timed the cost of the \$813.00 Use Permit fee (Required by Resolution No. 14-20 adopted by the Fairfax Town Council on May 7, 2014).
3. During construction of the car-deck cover, and/or completion of any improvements necessary to bring the unpermitted work into compliance with the building code, the following shall occur:
  - a. 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.
  - b. Any proposed temporary closure of a public right-of-way shall require prior



approval by the Fairfax Police Department and any necessary traffic control, signage or public notification shall be the responsibility of the applicant or his/her assigns. Any violation of this provision will result in a stop work order being placed on the property and issuance of a citation.

4. The following Best Management Practices shall be employed:
  - 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.
5. Any changes, modifications, additions or alterations made to the approved set of plans will require a modification of Application # 16-28. Any construction based on job plans that have been altered without the benefit of an approved modification of Application 16-28 will result in the job being immediately stopped and red tagged.
6. Any damages to Hickory Road or other public roadways used to access the site resulting from construction activities shall be the responsibility of the property owner.
7. 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.
8. 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.

9. 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. Other agency conditions can be waived by those agencies in writing to the Town Building Department.

10. Prior to issuance of the building permit the applicant shall sign, notarize and record a deed restriction prepared by staff stating that there shall only be one kitchen in the structure and that the lowest level may not be used as a separate dwelling unit unless a an application for such an improvement is submitted and is approved by the Director of Planning and Building Services at a later date.

11. Other agency/department conditions can be waived by that agency/department in writing to the Fairfax Planning and Building Services Department.

### **Ross Valley Fire Department**

1. An effective fire break shall be maintained around the building by removing and clearing all flammable vegetation and/or other combustible growth within the defensible space zone of 30 to 100 feet. Ross Valley Fire protection Standard 220 Vegetation/Fuels Management plan is available [on-line@Rossvalleyfire.org](mailto:on-line@Rossvalleyfire.org) to assist the applicant in meeting the minimum defensible space requirements.

2. All smoke detectors in the house and accessory bedroom/bath shall be provided with AC power and be interconnected for simultaneous alarm. Detectors 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 one detector per story of the occupied portion of the residence. The alarm in the accessory structure can be located anywhere in the main room (not in the bathroom).

3. Carbon monoxide alarms shall be provided in both residential buildings and shall be located outside the sleeping areas in the main house and anywhere in the accessory bedroom main room.

4. Address numbers at least 4" tall must be in place adjacent to the front door. If not clearly visible from the street, additional numbers are required. Residential numbers must be internally illuminated (backlit), placed next to a light or be reflective numbers. If the project is a new house or a substantial remodel, they may only be internally illuminated or illuminated by an adjacent light controlled by a photocell and switched on only be a breaker so it will remain illuminated all night. If not currently as described, the numbers must be installed as described as part of this project.

### **Marin Municipal Water District**

1. The proposed remodel will not impair the District's ability to continue service to this property.
2. The project must comply with all indoor and outdoor requirements of District Code Title 13, Water Conservation. Indoor plumbing fixtures must meet specific efficiency requirements. Landscape Plans shall be submitted and reviewed to confirm compliance. The Code requires a landscape plan, an irrigation plan and a grading plan.
3. Should backflow protection be required, it shall be installed prior to the final inspection for the retroactive building permit for the conversion of the structure to living space.

### **Ross Valley Sanitary District**

1. The project will require a connection permit from the District. The size of the sewer lateral will depend on the fixture count calculated during the permitting process. If the existing lateral meets the size requirement of the fixture count, the applicant has the option of installing a new lateral or, the old sewer lateral needs to be tested in the presence of a District Inspector and be found to meet all current District requirements.
2. Sanitary District No. 1 will place a hold on said property once the building permit is issued. This hold prevents the new building from being released for occupancy until the District's permit and sewer requirements are fulfilled. It is the owner's responsibility to obtain a sewer connection permit from the District and meet all the District's requirements pertaining to the private side sewer lateral.

**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 is 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 18<sup>th</sup> day of August, 2016, by the following vote:

AYES:

NOES:

ABSTAIN:

\_\_\_\_\_  
Acting Chair, Norma Fragoso

Attest:

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

**Project Description**  
**80 Hickory Road**

The proposed scope of work is to obtain planning entitlements and building permits for expansion of an improved crawl space area constructed without permits in an existing home. Prior building permits were issued in 2001 to improve another area of the lower floor that included a stairway, bedroom and bathroom. The owners are requesting to allow a new bedroom with a wet bar in the existing improved space. All proposed window and door locations are in prior existing openings. A new two car carport is proposed over the existing parking deck at the rear of the residence in order to meet covered parking requirements. Additionally, a parking area has been built adjacent to the existing driveway, with a wood retaining wall along the hillside.

The site is 28,281 SF in area where 26,000 SF is required for a property with a 34% slope. The required site width is not met, with the parcel having a width of 88 feet at the front, and 249 feet at the rear, where a width of 122 feet is required. A use permit is required due to the substandard width at the front of the property, even though the average width of the property meets the requirement. The proposed improvements meet all other zoning regulations such as setbacks, floor area, lot coverage and height requirements. No changes are proposed to the existing footprint of the residence, as all proposed space is within the building envelope.

**USE PERMIT QUESTIONNAIRE**  
**80 Hickory Road**

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.

The subject parcel is 88 feet wide at the front of the property and 249 feet wide at the rear with a slope of 34%. For a parcel having a slope of 34%, a width of 122 feet is required. The minimum building site area is met. A site area of 26,000 SF is required and the parcel is 28,281 SF. It is because of the shape of the property, with the front of the property narrower than the rear that the lot does not meet the zoning requirements. The average width of the property exceeds the minimum width requirement. It is common for many parcels in Fairfax to need a Use Permit for building remodeling due to substandard building site requirements.

2. The development and use of property, as approved under the use permit, shall not create a public nuisance, 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, any or all of which effects are substantially beyond that which might occur without approval or issuance of the use permit.

A use permit is required due to the width of the property. The property is currently developed as a single family residence, and the proposed improvements to expand the home are consistent with that use.

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, development plan or other plan or policy, officially adopted by the town.

The proposed improvements meet all other zoning requirements, including setbacks, height requirements, and lot coverage.