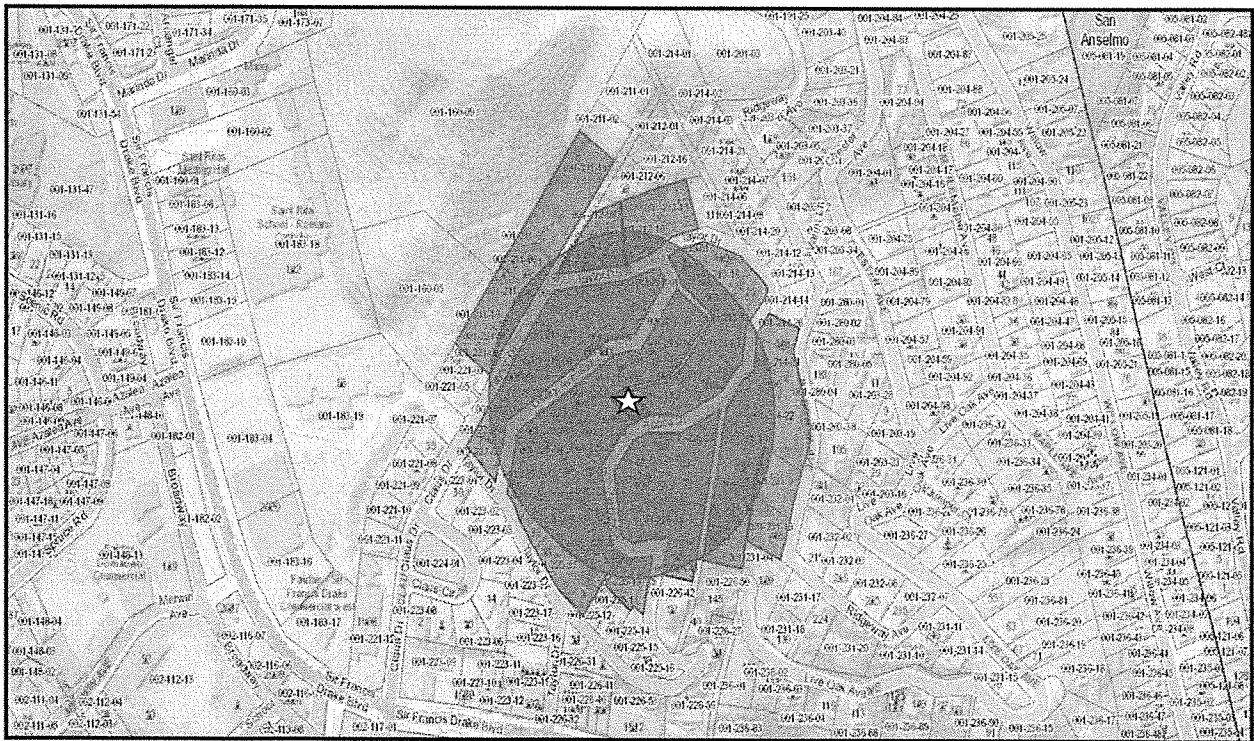


**TOWN OF FAIRFAX
STAFF REPORT**
Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: May 19, 2016
FROM: Jim Moore, Director of Planning and Building Services
Linda Neal, Principal Planner
LOCATION: 93 Rocca Drive; Assessor's Parcel No. 002-121-61
ZONING: Residential RS-6 Zone
PROJECT: Bedroom, bath and staircase addition
ACTION: Conditional Use Permit; Application # 16-19
APPLICANT: Rich Dowd, Architect
OWNER: Bernell and Tony Loeb
CEQA STATUS: Categorically Exempt, § 15301(e)(1) and 15305(a)



93 ROCCA DRIVE

BACKGROUND

The property was created in its current dimensions by the recording of the "Map of Fairfax Heights Subdivision" by the Rocca Brothers in 1912.

The 3,397-square-foot site slopes down from Rocca Drive at an average rate of 50%. The property is developed with a 1,111-square-foot, 2-bedroom, 1-bathroom, single-family residence constructed in 1963. A front setback variance was approved by the Planning Commission on October 24, 1963, to allow the roof of the garage to extend to the front property line, within the required 6-foot front setback.

An illegal second unit was discovered on the property during a 1993 Residential Resale Inspection of the property. At that time the owner was directed to either abate the illegal unit by removing the kitchen and constructing an internal stairway connecting the living levels, or apply for a Residential Second Unit Use Permit and a Parking Variance to legalize the second living unit use and associated improvements.

That owner took no action to eliminate the zoning violation and the property subsequently changed hands. The current owners took possession of the property in 2014. They were advised of the illegality of the lower level improvements at the time of the purchase of the property.

DISCUSSION

The applicants are proposing to legalize the bedroom and full bathroom that used to make up the illegal second unit by installing an internal spiral staircase and connecting the second level to the upper living levels, and removing the kitchen. Legalization of the 1st story living space will increase the residence from a 1,111-square-foot, 2-bedroom, 1-bathroom, residence to a 1,472-square-foot, 2-bedroom, 2-bathroom residence. The project would not result in the addition of a bedroom since the bedroom on the second floor would be eliminated by the addition of the spiral staircase; the removed second-story bedroom would be replaced with the bedroom on the first floor. Therefore the project would not constitute a 50-percent remodel (Town Code § 17.008.020, Definition of Fifty Percent Remodel) . Because the project would not constitute a 50% remodel, additional on-site parking or the granting of a parking variance [Town Code § 17.016.040(B)(1) and (2)] is not required. The project also would not require the approval of a Hill Area Residential Development Permit or Design Review because it would not constitute a 50% remodel [Town Code §§ 17.072.050(A) and 17.020.030(A)].

The new living space would comply with the regulations for the Residential 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
Required/ Permitted	6 ft.	12 ft.	35 ft.	5 ft. & 5 ft.	20 ft.	.40	.35	28.5 ft., 2 stories
Existing	0 feet (parking deck)	10 ft. 6 in. (rear deck and enclosed patio)	10 ft. 6 in.	0 ft. (west entry deck) & 3 ft. (east entry deck)	3 ft.	.32	.17	35 ft., 3 stories
Proposed	same	same	same	same	same	.40	.17	same

The project requires the approval of a Conditional Use Permit

A Use Permit

Town Code § 17.080.040 requires that a Conditional Use Permit or Hill Area Residential Development Permit be obtained prior to any modification or addition to a residence on a property failing to meet the minimum size and width requirements based on its slope.

This site has a 50% slope and would have to be 42,000 square feet in size and 170 feet wide to comply with the minimum size and width requirements of the RS-6 Zone District [Town Code § 17.080.050(C)]. The site is only 3,397 square feet in size and 30 feet wide so the project requires a Use Permit.

Note: A Hill Area Residential Development permit is not required because projects that are not 50% remodels are exempt from the Hill Area Residential Development process per Town Code § 17.072.050(A).

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.

Legalizing the living space on the first story of the structure would not require the approval of setback variance(s). No new living space would be constructed in a required setback. The proposed legalized living space is within the footprint of the house which complies with the required minimum and combined front, rear and side

setbacks. The only structures that encroach into the required setbacks are existing decks that would not be changed with the project.

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.

Other Agency/Department Comments/Conditions

Ross Valley Fire Department

1. A fire sprinkler system shall be installed throughout the entire building which complies with the requirements of the National Fire Protection Association (NFPA) 13-D and local standards. A separate permit is required from the Fire Department. Plans and specifications for system shall be submitted by an individual or firm licensed to design and/or design/build sprinkler system and be noted on the plans.
2. A dedicated fire truck pull out shall be included in the project plans that are submitted for a Building Permit.
3. 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 to assist the applicant in meeting the minimum defensible space requirements.
4. 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).
5. 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.
6. 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.

7. Applicant may propose alternate materials or method in accordance with Section 103.3. All approved alternate requests and supporting documentation shall be included in the plans sets submitted for final approval.

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 # 16-19 by adopting Resolution No. 16-13 setting forth the findings and conditions of approval for the project.

ATTACHMENTS

Attachment A – Resolution No. 16-13

Attachment B – Applicant's project description

RESOLUTION NO. 16-13

A Resolution of the Fairfax Planning Commission Approving a Conditional Use Permit for the Remodel and Expansion of the Residence at 93 Rocca Drive

WHEREAS, the Town of Fairfax has received an application to legalize the first story and install a spiral staircase connecting the first story with the rest of the residence thereby increasing the living space of 93 Rocca Drive from 1,111 square feet to 1,472 square feet; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on May 19, 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 does not require an upgrade of the existing, legal non-conforming parking; 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 and does not increase the number of bedrooms in the structure.
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 does not extend beyond the footprint of the existing residence and preserves the remainder of the property in its natural state.
5. The project results in a remodeled structure that maintains the same setbacks, and Lot Coverage as the existing development. 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.
6. 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.

7. 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.
8. 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 Rich Dowd, pages A1.1, A2.1, A2.2, A2.3 and A2.4.

2. 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 construction delivery routes (routes must be approved by Public Works Director).

c. 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. If required, a fire truck pull-out shall be provided or shall be identified and marked in the field.

3. During construction, the following shall be required:

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. Prior to issuance of an occupancy permit 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.

5. 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.

6. Any changes, modifications, additions or alterations made to the approved set of plans will require a modification of Application # 16-19. Any construction based on job plans that have been altered without the benefit of an approved modification of Application 16-19 will result in the job being immediately stopped and red tagged.

7. Any damages to Rocca Drive or other public roadways used to access the site resulting from construction activities shall be the responsibility of the property owner.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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 application for such an improvement is submitted and is approved by the Director of Planning and Building Services at a later date.

Ross Valley Fire Department

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2. A dedicated fire truck pull out shall be included in the project plans that are submitted for building permit.

3. 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@Rossvallyfire.org to assist the applicant in meeting the minimum defensible space requirements.

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located outside the sleeping areas in the main house and anywhere in the accessory bedroom main room.

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1. The proposed remodel will not impair the District's ability to continue service to this property.
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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 for the proposed remodel and expansion of the residence at 93 Rocca Drive 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 19th day of May, 2016, by the following vote:

AYES:

NOES:

ABSTAIN:

Chair, Laura Kehrlein

Attest:

Jim Moore, Director of Planning and Building Services

PROJECT DESCRIPTION:

INSTALL INTERIOR STAIR TO CONNECT UPPER
LEVEL FLOORS AND LEGALIZE THE ~~AD~~ LOWER
LEVEL STUDIO AND BATHROOM
INCLUDES DEMO OF EXIST KITCHETTE

GENERAL INFORMATION (if applicable):

Item	Existing	Proposed
Lot size	3,397 sf	3,397 sf
Size of structure(s) or commercial space (square feet)	-	-
Height and No. of stories	3	3
Lot coverage	1,160 SF * 34%	1,160 SF APPROX
No. of dwellings units	1	1
Parking ¹ No. of spaces	2	2
Size of spaces	17'-6" x 10'-0"	17'-6" x 10'-0"

* INCLUDES CARPET & WALKWAYS - STAIRS

Amount of proposed excavation and fill	Excavation = NA	Fill = NA
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Estimated cost of construction \$ 10,000.⁰⁰

Lot Coverage is defined as the land area covered by all buildings and improvements with a finished height above grade and all impervious surfaces except driveways.

¹Minimum parking dimensions are 9' wide by 19' long by 7' high. Do not count parking spaces that do not meet the minimum standards.

Restrictions: Are there any deed restrictions, easements, etc. that affect the property, and, if so, what are they? NONE KNOWN

Signature of Property Owner

Signature of Applicant

Date

Date

Planning Department staff is available by appointment between 8:30 a.m. and 12:00 noon and 1:00 p.m. and 5:00 p.m. Monday through Thursday at 142 Bolinas Road, Fairfax, CA. (415) 453-1584