

TOWN OF FAIRFAX
STAFF REPORT
Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: July 18, 2013
FROM: Jim Moore, Director of Planning and Building Services

LOCATION: Arijit Sen, Intern
99 Dominga Avenue; Assessor's Parcel No. 002-105-09.
PROJECT: Replacing backyard deck with a smaller sized deck and replacing front steps with a larger porch.
ACTION: **Creek Setback Variance and Use Permit; Application # 13-20**
ZONING: Residential RD – 5.5-7.
APPLICANT: Gary V. Scozzafava (Arrowdeck & Construction) - Applicant/ architect.
OWNER: Edward & Linn Walsh.
CEQA STATUS: Categorically exempt per § 15303(a).

BACKGROUND

The 5,050 square foot site slopes down from Dominga Avenue at an average of 3.86%. The residence is 1,338 sq.ft with three bedrooms and two baths, and was constructed in 1920. Presently, there is a deck in the backyard covering an area of 690 and a flight of steps leading up to the entrance covering 30sq.ft.

DISCUSSION

The applicant is proposing to reconstruct/reduce their existing backyard deck from 23' X 30' to a smaller deck of size 13' X 30' to match its creekside edge with an existing independent deck on the property.

The outer edge of the shortened deck will be supported seamlessly with existing supporting columns and as no new load will be added; it does not leave any cause for concern. On inspecting the site, it was confirmed that the deck will be setback 15 feet from the existing top of the creek bank which results in the creek setback increasing by 11 feet. However, it still falls short of the required 20 feet setback from the top of the creek bank and hence, a creek setback variance is required.

Further inspection and photographs from the applicant reveal many other decks in the neighborhood that do not comply with the required creek setback limit as most of these buildings were constructed many years before the Town Code was even written.

The applicant is also proposing to replace the flight of steps of size 6' X 5' covering an area of

30sq.ft in the front of the building with a larger porch of size 17' X 6' covering an area of 102sq.ft. The porch will be covered with a matching pitch of the existing roof and thereby not affecting aesthetics of the building and neighborhood.

The project complies with the regulations set forth in the Residential Single RD 5.5-7 Zoning 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	25 ft	5 ft & 5 ft	15 ft	.40	.35	28.5 ft, 2 stories
Existing	17 ft	8 ft	25 ft	8 ft & 0 ft	8 ft	.29	.34	17 ft 8.5in, 1 story
Proposed	11 ft	22 ft 2in	33 ft 2in	8 ft & 0 ft	8 ft	.29	.34	17 ft 8.5in, 1story

Creek Setback :

Required : 20 ft from top of creek or twice its depth, whichever is greater (Town Code §17.040.040).

Existing: 4 ft.

Proposed: 15 ft.

The project requires approval of the following discretionary permits:

Creek Setback Variance:

The proposed new backyard deck will increase the distance from the creek from its existing 4 feet to 15 feet. However, this is still less than the minimum required setback as per Town Code §17.040.040 of 20 feet from top of stream bank or two times the average depth of the bank, whichever is greater.

Therefore, the project requires a creek setback variance.

Use Permit

The total area of the parcel is 5050 sq.ft which falls short of the minimum parcel area required according to the Residential Single RD 5.5-7 zoning regulations. However, despite being too small, the proposed deck will not change the residential character of the site or the neighborhood. The proposed front covered porch will comply with the setback and height restrictions. The roof will have the same pitch as the existing structure. The rear deck will be of same material as existing and will in fact be shorter than the existing.

It is due to these changes and additions the project requires a use permit.

Other Agency Or Department Comments

Staff received comments on the project only from the Ross Valley Fire Department and Ross Valley Sanitary District and their comments have been included as conditions below. No comments were received from the Building Department, Public Works Department, the Police Department or Marin Municipal Water District.

RECOMMENDATION

Move to approve application # 13-20 based on the following findings and subject to the following conditions of approval:

1. The approval of the use permit shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.
2. The development and use of property as approved under the use permit shall not cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects thereto, or create undue or excessive burdens in the use and enjoyment thereof, or any or all of which effects are substantially beyond that which might occur without approval or issuance of the use permit.
3. Approval of the use permit is not contrary to those objectives, goals or standards pertinent to the particular case and contained or set forth in any Master Plan, or other plan or policy, officially adopted by the City.
4. Approval of the use permit will result in equal or better development of the premises than would otherwise be the case, and that said approval is in the public interest and for the protection or enhancement of the general health, safety or welfare of the community.
5. Because of special circumstances applicable to the property, including size, shape, location of surroundings, the strict application of this title will deprive the applicant of privileges enjoyed by other property owners in the vicinity and under identical zone classification. The backyard deck and covered entry porch will not change the single-family character of the site or the neighborhood.
6. Considering the fact that many other structures belonging to houses in the neighborhood are presently encroaching into the creek's setback limits, the applicant in this case is making an effort to decrease the encroachment and hence allowing the Creek setback variance will decrease the disturbance of the riparian corridor and improve the natural area at the rear of the site.
7. The covered entrance porch addition complies with required setbacks and height limitations. The setback in the front will reduce from 17 feet to 11 feet. However, it is still more than the minimum setback requirement for the site – 6ft. Therefore, the

development and use of property as approved under the use permit shall not cause excessive or unreasonable detriment to adjoining properties or premises.

8. The Residential RD 5.5-7 Zone District and the General Plan Designation of the project site allows single-family dwellings. Therefore, approval of the variance is not contrary to those objectives, goals or standards pertinent to the particular case and contained or set forth in any Master Plan, or other plan or policy, officially adopted by the Town.
9. The building was constructed in 1920 which is 11 years before the Town of Fairfax was incorporated and hence, it is considered Legal Non-Conforming. Also, as the new construction is less than 50% of total area, it is not required to be brought into conformance.
10. The granting of the variance or adjustment will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated.
11. The deck to be built will neither intrude into the creek beyond the point of the deck it replaces, nor beyond the creekbed's previous bank.
12. Neither present nor anticipated future traffic volumes generated by the use of the site or uses of sites in the vicinity reasonable require strict or literal interpretation and enforcement of the specified regulation.
13. Granting of the variance will not result in the parking or loading of vehicles on public streets in a manner as to interfere with the free flow of traffic on the streets.
14. Granting of the variance will not create a safety hazard or any other condition inconsistent with the objectives of this title.
15. The addition will not obstruct the visibility of pedestrians or vehicles using Dominga Avenue. Therefore, the granting of the variance of adjustment will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated.
16. The expansion does not include additional bedrooms which might increase the number of persons residing in the residence. Therefore, neither present nor anticipated future traffic volumes generated by the use of the site require strict or literal interpretation and enforcement of the 9 foot by 19 foot parking size regulation.

Recommended Conditions:

Standard Planning Department/Commission Conditions

1. This approval is limited to the development illustrated on the plans prepared by Gary Scozzafava, designer, pages A.0 through A.4.

2. Submit a bond or letter of credit to the Town in an amount that will cover the cost of possible creek or creek bank damage/disruption. .

3. During the construction process the following shall be required:
 - a. The structural engineer shall be on-site during the grading process (if there is any grading to be done) and shall submit written certification to Town staff that the grading has been completed as recommended prior to installation of foundation and retaining forms and piers.

 - b. The structural engineer 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 prior to the concrete form inspection by the building official. The building official shall field check the concrete forms prior to the pour.

 - c. All construction related vehicles including 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.

 - 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.

4. Prior to issuance of an occupancy permit the following shall be completed:
 - a. The structural 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.

5. The roadways shall be kept clean and the site free of dust by watering down the site or sweeping the roadway daily, if necessary.

6. During construction the developer and all employees, contractors and subcontractors must comply with all requirements set forth in Ordinance # 637 (Chapter 8.32 of the Town Code), "Urban Runoff Pollution Prevention".

7. Notwithstanding section #17.072.050 of the Fairfax Zoning Ordinance, any changes, modifications, additions or alterations made to the approved set of plans will require a modification of Application # 13-20. Any construction based on job plans that have been altered without the benefit of an approved modification of Application # 13-20 will result in the job being immediately stopped and red tagged.

8. Any damages to the roadways accessing the site resulting from construction activities shall be the responsibility of the property owner.

9. The applicant shall comply with any and all requirements of the Ross Valley Fire Department, the Ross Valley Sanitary District, the Marin Municipal Water District and the Fairfax Building Official.

10. The applicant or owner shall defend, indemnify, and hold harmless the Town of Fairfax or its agents, officers, and employees from any claim, action, or proceeding against the Town of Fairfax or its agents, officers, or employees to attach, set aside, void, or annul an approval of the Planning Commission, Town Council, Planning Director, Design Review Board or any other department or agency of the Town concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or owner's duty to so defend, indemnify, and hold harmless shall be subject to the Town's promptly notifying the applicant or owner of any said claim, action, or proceeding and the Town's full cooperation in the applicant's or owner's defense of said claims, actions, or proceedings.

11. The applicant/ owner shall agree to hold the town harmless from the claims of any and all persons who may assert any damage by reason of the placement of the structure.

12. An affidavit in writing by the project engineer stating that, in the opinion of the engineer, the structure will not significantly change the course of the creek in a manner which creates a hydraulic impact on the other property according to accepted engineering standards.

All conditions of agencies with jurisdiction over the project must be complied with unless that agency waives one or more of them in writing to the Town.

Ross Valley Fire Department Conditions

1. The applicant must comply with all the standard fire department requirements as described in Exhibit B, September 23, 2009 memorandum from the Ross Valley Fire Department. Compliance must be verified by the Ross Valley Fire Department prior to the project final inspection.

Ross Valley Sanitary District Conditions

1. If not already installed, the District requires that the side sewer be equipped with an appropriate backwater prevention device (eg., Contra Costa valve as warranted by the individual site conditions).
2. After the project is approved, the owner or contractor should contact the District to arrange for a District inspector to approve the existing installation (or approve the plans for the proposed installation) of the backwater prevention device and any work done on the side sewer lateral in order to make a record for the District's files.

ATTACHMENTS

Exhibit A – applicant's supplemental information

Exhibit B – Other Agency or Department comments