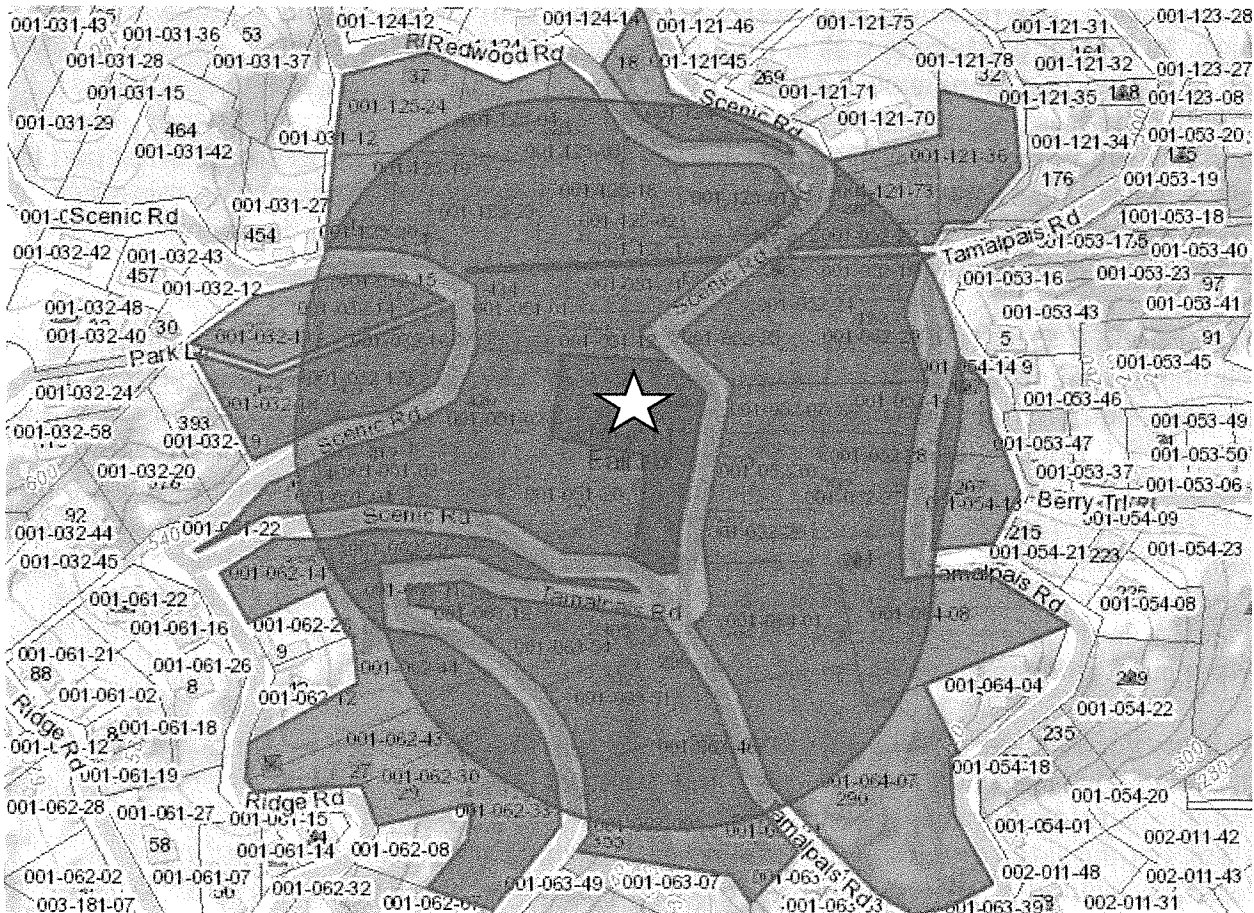


**TOWN OF FAIRFAX
STAFF REPORT
Department of Planning and Building Services**

TO: Fairfax Planning Commission
DATE: May 16, 2019
FROM: Kara Spencer, Assistant Planner
LOCATION: 306 Scenic Road; Assessor's Parcel No. 001-051-19
ZONING: Residential Single-family RS 6 Zone District
PROJECT: Extend Retaining Wall
ACTION: Conditional Use Permit and Retaining Wall Height Variance;
Application No. 19-08
APPLICANT: Ernie Selander
OWNER: Krystin Rubin and Karen Heisler
CEQA STATUS: Categorically Exempt, § 15301(e)(1) and §



306 Scenic Road

AGENDA ITEM # **L**

BACKGROUND

The 24,368 square-foot site has a steep average slope of approximately 41 percent, with steeper slopes in the vicinity of the retaining wall. It is developed with a 1,387 square-foot, 1-bedroom, 2-bath residence that was constructed in 1923. A permitted 481 square foot, 1-bedroom accessory dwelling unit is under construction along the southwestern portion of the property.

DISCUSSION

The project would extend an existing retaining wall located adjacent to the permitted 1-bedroom accessory dwelling unit currently under construction on the front (southern) portion of the property. The proposed retaining wall would be approximately 7-9 feet tall and approximately 28.5 feet in length and would run along the western portion of the property. The retaining wall would be constructed of steel I-beam and poured concrete. The wall would be located entirely on the project site and would maintain a 9-foot setback from the western property line. The purpose of the wall is to support and stabilize the uphill cut bank to the west. Proposed excavation and fill would be less than 100 cubic yards, so the project does not require an excavation permit from the Planning Commission. The retaining wall would be stepped, with a lower, approximately 3 foot high, 19 foot long retaining wall in front of the approximately 7-9 foot tall, approximately 28.5 foot long retaining wall. This lower wall would replace a wood wall that was less than four feet high and had previously been in approximately the same location. The purpose of the stepped wall in front of the taller rear wall would be to create a flat pad to place water tanks that would capture rainwater for landscape irrigation. The rainwater tanks are approximately 4 feet in diameter and 4 1/2 feet tall and had previously been in this approximate location.

Town Code § 17.080.050 requires that a Conditional Use Permit be obtained from the Planning Commission prior to making any improvement of or on a building site that fails to meet the minimum requirements of either size or width in the Residential Single-family RS 6 Zone. Town code section 17.080.050(C) requires properties in the RS-6 zone with a 41% slope to be a minimum of 33,000 square feet with a minimum width of 143 feet. The project site does not meet the minimum area and width requirements and therefore, the proposed retaining wall requires a Conditional Use Permit from the Planning Commission. The following provides an analysis of the project's compliance with the findings required by § 17.032.060 of the Town Code that are necessary for the Planning Commission to issue a Conditional Use Permit.

Fairfax has considerable hillside development with the potential to be unstable due to the relatively steep nature and underlying geologic conditions present. There are numerous retaining walls constructed throughout the Town with the purpose of stabilizing hillsides and preventing damage to life and property. Thus, for these reasons, issuing a Conditional Use Permit to extend the retaining wall to stabilize the slope is supportable and would not constitute a grant of special privilege.

One of the benefits of the retaining wall extension will be to assist in stabilizing the neighbor's driveway located upslope to the west at 340 Scenic Road. Therefore, the project would have a beneficial effect and would not create a public nuisance, nor be a detriment to adjoining properties. The project should in fact have the opposite effect.

The project is consistent with applicable goals and policies of the Safety Element of the Fairfax General Plan. Specifically, Goal S-1, which states "Minimize risks due to geologic hazards" and objective S-1.1 which states "Protect life and property from risks associated with seismic activity and geologic conditions." The purpose of the project is to support the cut bank to the west. It will stabilize the slope on the applicant's property, and should reduce potential sloughing damage to the driveway located upslope to the west at 340 Scenic Road, which is consistent with this goal and objective.

Finally, extending the retaining wall would result in more stable, better development of the premises, which in turn would protect and enhance the community. Therefore, staff recommends that a Conditional Use Permit be approved for the project (see attached Resolution No. 2019-09).

Town Code § 17.044.080 limits retaining walls to 6 feet in height. Therefore, the project requires the approval of a retaining wall height variance. Unique factors favoring granting a variance include the steep slope of the hillside, an existing scarp, and the narrow nature of the site. It would be difficult, more expensive, and impactful to design additional stepped walls that would keep the individual retaining walls to at or below the permitted 6 feet in height. Additionally, the creation of more walls would take up more space on the site and reduce the area for the rain catchment water tanks.

The wall, which will vary in height from 7 to 9 feet, will not be visible from any neighboring property or from the adjacent public right-of-way. The residence and driveway at 340 Scenic Road are at an elevation above the wall and the wall will be screened from view of passers-by on Scenic Road, which wraps around the eastern and southern sides of the site, by the Accessory Dwelling Unit. The wall will only be visible to the residents of 306 Scenic Road and will have no impact on neighbors or the public.

Therefore, for the reasons outlined above, staff supports the Conditional Use Permit and Variance findings and recommends that the project be approved as proposed (see attached Resolution No. 2019-09).

OTHER AGENCY/DEPARTMENT COMMENTS/CONDITIONS

Ross Valley Fire Department

1. Provide defensible space around the work site and maintain construction materials in a fire safe manner.

2. 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 to a light or be reflective numbers. If your project is a new house or substantial remodel, they may only be internally illuminated or illuminated an adjacent light controlled by a photocell and switched only by a breaker so it will remain illuminated all night. If not currently as described, they must be installed as part of this project.

Fairfax Public Works Department

The Public Works Department supports the proposed project.

Other Agencies/Departments

Marin Municipal Water District, Ross Valley Sanitary District, Fairfax Police Department and Fairfax Building Departments did not comment on the project.

RECOMMENDATION

1. Conduct public hearing.
2. Adopt Resolution No. 2019-09 setting forth the findings and conditions for the project approval.

ATTACHMENT

Attachment A – Resolution No. 2019-09
Attachment B – Proposed site plan

RESOLUTION NO. 2019-09

A Resolution of the Fairfax Planning Commission Approving a Conditional Use Permit and Retaining Wall Height Variance for an Approximately Seven to Nine Foot Tall, Approximately 28.5 Foot Long Retaining Wall at 306 Scenic Road

WHEREAS, the Town of Fairfax has received an application to construct a retaining wall to support the cut bank at the southwestern portion of 306 Scenic Road to prevent the potential of undermining and damaging the driveway located upslope to the west at 340 Scenic Road; 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 with certain conditions of approval as listed below; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on May 16, 2019 at which time all interested parties were given a full opportunity to be heard and to present evidence; and

WHEREAS, the Commission has made the following findings:

Conditional Use Permit Findings

1. There are numerous retaining walls constructed throughout the Town of Fairfax with the purpose of stabilizing hillsides and preventing damage to life and property. Therefore, the approval of the Conditional Use Permit shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.
2. The purpose of extending the retaining wall is to stabilize the uphill slope on the property with potential additional stability benefits to the driveway located upslope to the west of 306 Scenic Road at 340 Scenic Road. Therefore, the development and use of the property as approved under the Conditional 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 Conditional 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 by stabilizing the uphill slope, potentially also including the driveway located upslope to the west of 306 Scenic Road at 340 Scenic Road. Therefore, the project is in the public interest and will enhance the general health, safety, and welfare of the community.

ATTACHMENT B

Wall Height Variance Findings

1. The southwestern portion of the property is very narrow and slopes up at an approximately 45 percent slope. These factors constitute the special circumstance applicable to the property that result in the approximately 9 foot tall retaining wall needed to retain the bank. If the 6 foot, maximum retaining wall height is strictly enforced, it would result in the steep cut of the property slope depriving the applicant of the ability to potentially stabilize the uphill slope, a privilege enjoyed by other property owners of hillside lots in the Residential Single-family RS-6 Zone District.
2. The strict application of the 6 foot retaining wall maximum would require the applicant to create a stepped 2 retaining wall system to stabilize the bank, further disturbing the site and resulting in additional excavation. The wall, which will be approximately 9 feet tall, will not be visible from any neighboring property or from the adjacent public right-of-way. The residence and driveway at 340 Scenic Road are at an elevation above the wall. The Accessory Dwelling Unit under construction on the site would screen views of passers-by on Scenic Road, which wraps around the eastern and southern sides of the site. Thus, the wall will only be visible to the residents of 306 Scenic Road and will have no impact on neighbors or the public.
3. The granting of the variance will be beneficial to the public welfare by stabilizing the site including potential stability benefits to the driveway located upslope to the west at 340 Scenic Road.
4. The variance will not constitute a grant of special privilege, is consistent with the limitations upon other properties in the vicinity and under identical zone classification, and is consistent with the objectives of this title.

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

Conditions of Approval

1. The approval is limited to the development illustrated on the plan prepared by Selander Architects, entitled, "Alterations to 306 Scenic Road," received May 17, 2019 by the Town of Fairfax.
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.

4. 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.
5. During construction, the property owner 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."
6. Prior to the project final inspection the following shall be completed:
 - a. The project engineer shall field check the completed project and submit written certification to Town Staff stating that the retaining, grading and drainage elements have been installed in conformance with the approved building plans.
 - b. The Building Official shall field check the completed project to verify that the work has been installed as per the approved plan.
 - c. 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. Excavation shall not occur between October 1st and April 1st of any year. The Town Engineer has the authority to waive this condition depending upon the weather.
8. The applicant shall comply with the Town Noise Ordinance Chapter 8.16 of the Fairfax Town Code.
9. Any changes, modifications, additions or alterations made to the approved plan will require a modification of Application No. 19-08 or the approval of the Planning Director if the changes are minor and do not conflict with the intent of this Conditional Use Permit approval. Any construction based on job plans that have been altered without the benefit of an approved modification of Application No. 19-08, or without the approval of the Planning Director, will result in the job being immediately stopped and red tagged.
10. Any modification of these Conditions of Approval must be approved by the Fairfax Planning Commission.
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. 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 Permit 19-08. Any construction based on job plans that have been altered without the benefit of an approved modification of Permit 19-08 will result in the job being immediately stopped and red tagged.

OTHER AGENCY CONDITIONS

Ross Valley Fire Department

1. Provide defensible space around the work site and maintain construction materials in a fire safe manner.
2. 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 to a light or be reflective numbers. If your project is a new house or substantial remodel, they may only be internally illuminated or illuminated an adjacent light controlled by a photocell and switched only by a breaker so it will remain illuminated all night. If not currently as described, they must be installed as part of this project.

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 Retaining Wall Height Variance for construction of the retaining wall at 306 Scenic Road can be made without causing significant impacts on neighboring residences and the environment and is in compliance with the Fairfax General Plan Town Code and Fairfax Zoning Ordinance.

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on May 16, 2019 by the following vote:

AYES: Fragoso, Gonzalez-Parber, Green, Kehrlein, Rodriguez, Newton, Chair Swift
NOES:
ABSTAIN:

Chair, Cindy Swift

Attest:

Ben Berto, Planning Director

