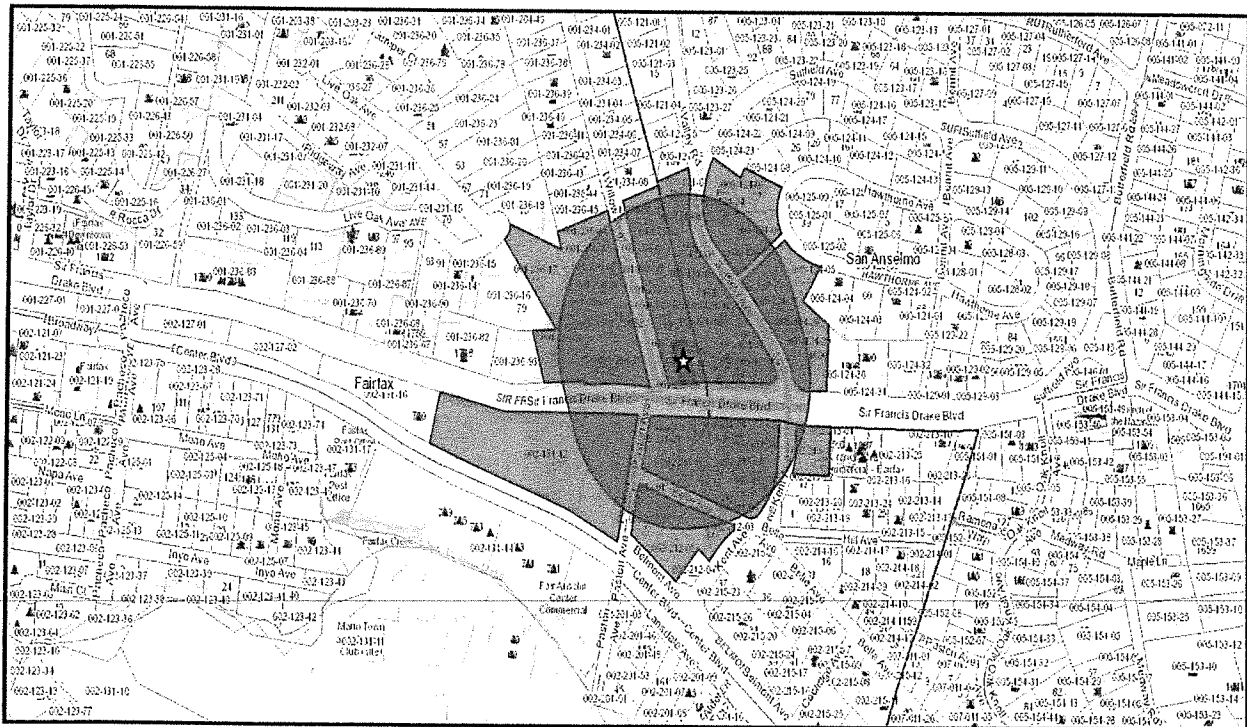


TOWN OF FAIRFAX STAFF REPORT

Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: August 20, 2020
FROM: Ben Berto, Director of Planning and Building Services
Linda Neal, Principal Planner
LOCATION: 1620 Sir Francis Drake Blvd.; APN # 001-235-11
PROJECT: Conversion of commercial space into living units
ACTION: Use Permit, Design Review & Parking Variance; Application # 20-9
APPLICANT: Art Chartock
OWNER: Joyce and Arthur Chartock
CEQA STATUS: Categorically exempt, § 15301



1620 SIR FRANCIS DRAKE BOULEVARD
ASSESSOR'S PARCEL NO. 001-235-11

BACKGROUND

The approximately 3,460 square foot, 37-foot-wide, property is made up of 1½ of 2 small original lots that were recorded as part of the P.H. Jordan Co. Subdivision of Ridgway Park on March 30, 1904. The first record retained at Town Hall for the property was the building permit issued for the existing building on May 20, 1963 for the construction of an office building.

On August 16, 1987, the Fairfax Design Review Board granted a Design Review Permit to allow exterior changes to the building to facilitate its conversion for use by an architectural firm.

The only other significant permit on record was a building permit issued in 1987, after Design Review Board approval, to remodel the building interior. After the work was completed, the building became the offices for Rushton Chartock Architects.

The site currently provides on-site parking for 6 vehicles.

DISCUSSION

The project proposes the remodel and conversion of the existing 1,445 square foot commercial structure into a duplex, with the lower floor converted into a 677 square foot, 1-bedroom residential unit and the upper floor converted into a 768 square foot, 1 bedroom residential unit.

The parking lot would be reconfigured, eliminating two of the existing six parking spaces, to relocate the residential garbage and recycling cans while also creating an unobstructed area for vehicles parked in the 3 spaces nearest the building to back into. This would enable vehicles parking in the 3 spaces closest to the building to exit the site without backing onto Sir Francis Drake Boulevard. The parking space closest to the front landscaped wall would still have to affect a three-point turnaround to avoid backing out onto Sir Francis Drake. It is noted that backing onto SFD is the way all the vehicles have exited the site when the lot was full, for the 30 + years it was an architecture office. A fenced and landscaped, roughly 460 square foot patio is proposed at the front of the building.

Discretionary Permits

The project requires the approval of a Use Permit and Design Review Permit and a Fence Height Variance for the gate that would exceed the permitted 6 feet in height. Town Code § 17.096.120(C)(2) allows the parking requirements set forth in the Highway Commercial Zone (Town Code § 17.096.110(B) to be varied by the terms, provisions or conditions of the Conditional Use Permit in accordance with the facts, findings and determinations governing approval of the use permit. Therefore, a separate Parking Variance application is not required.

Use Permit

1620 Sir Francis Drake Boulevard is located within the Highway Commercial (CH) Zone District which does not list residential uses as permitted on the ground floor and lists residential uses on the second floor as a conditional use [Town Code §§17.200.040 and 17.096.050(B)(9)]. Therefore, a Conditional Use Permit must be approved by the Planning Commission to allow the conversion of the upper level to living space. Staff is unable to find any provision in the Zoning Ordinance that allows the conversion of the ground floor of a commercial building in the CH Zone to a residential unit.

However, Town Code § 17.096.050(B)(10) gives the authority to the Planning Commission to determine that other proposed conditional uses not listed, such as the proposed duplex, are equivalent to those listed within the Highway Commercial Zone conditional uses list.

The CH Zone lists other types of residential uses as conditional without specifying that they must be located only on the second floor. Town Code § 17.096.050(15) and (17) allow Convalescent Homes and Drug and Alcohol Treatment facilities. These types of facilities are often one story and provide “live in” facilities, some with rooms that share a kitchen and operate as residences. These two uses would seem to indicate that the CH Zone envisioned some types of residential uses, albeit commercial in nature, on the ground floor.

The number of parking spaces for the building is being reduced from 6 to 4. Town Code §§ 17.052.030(A)(1)(b) and (A)(2) require that 5 parking spaces be provided for a duplex with two one-bedroom units – 2 for each unit, and 1 guest space for the building. Only 4 spaces are provided with the current proposal, so the project requires the approval of an exception to the parking regulations as part of the Conditional Use Permit as is allowed by Town Code § 17.092.110(C)(2).

Highway Commercial (CH) Zone

General Plan

The General Plan envisions commercial areas that would provide affordable housing and varied housing types within walking distance of transit stops.

Goal LU-8: Preserve community diversity through affordable housing opportunities primarily along transit corridors.

Goal H-3: Create transit-oriented housing in the Town Center area that is less dependent on automobile travel and, thereby minimizing traffic impact to the greatest extent possible while providing support for transit.

The proposed duplex is located approximately 123 feet from the bus stop for westbound bus routes that have a stop at the northwest corner of the intersection of Willow Avenue

and Sir Francis Drake Boulevard, and 78 feet from the bus stop for eastbound buses on the southeast corner of Pastori Avenue and Sir Francis Drake Boulevard (Attachment B).

To the west of the site is another duplex, east of the site is a mixed-use commercial/residential development. Both sides of the block of Sir Francis Drake Boulevard east of the project site are developed with an assortment of uses – some strictly commercial sites, some sites developed with other single-family, duplex and triplex residences, and other mixed-use sites providing both commercial and residential units. Conversion to another duplex use would not be out of character with the development found throughout the immediate area. Conversion of a currently completely commercial building to exclusively residential raises questions about setting a precedent for future requests of this nature, and the cumulative effect widespread conversion of commercial uses to residential in the CH zone.

Staff believes that findings can be made for the second story residential use, as this is clearly envisioned in the Highway Commercial Zone regulations.

Parking Modification by Use Permit

General Plan Policy H-4.1.2 indicates, "Parking. Sites within 300 meters of a transit stop may be permitted a reduction in parking required by current code, and tandem parking or off-site parking alternatives will also be considered".

The site is very narrow at only 34 feet wide, so there is not much room to allow for significant changes to the existing parking lot layout, and none to provide additional parking. The applicant proposes reducing the number of spaces from the 6 currently existing for the commercial use of the building to the 4 required for a duplex with one-bedroom units, and are requesting relief from the requirements of the 5th required guest parking space. The General Plan envisions allowing a parking reduction for properties located close to bus stops within the Town Center area, so the request is reasonable and in compliance with General Plan Policies (Attachment B – transit stops near project site).

If the Commission finds that it is unable to make the findings to convert both the lower and upper floors to residential units, they could consider requiring the parking lot to remain as is. The parking regulations in the CH Zone can be found in Town Code § 17.096.120(B)(2) and requires 1 parking space be provided for each 200 square feet of area, or fraction thereof, of commercial space. Therefore, 4 parking spaces are required for the 677 square foot, ground floor level if it remains a commercial space. Three spaces are required per Town Code §§ 17.052.030(A)(1) and (2) for the 1 bedroom second floor residential unit, for a total of 7 on-site parking spaces for the mixed-use building option. It should be noted that the requirement for a fourth space for the ground floor commercial is triggered by 77 square feet of additional building area (above 600 square feet), so a variance for the space triggered by the fractional building area would appear reasonable. Also, due to the proximity of the site to 2 bus stops,

elimination of the required for a 3rd guest parking space for the residential unit also would be reasonable.

Fiscal Impacts to the Town

There would be an inconsequential fiscal impact to the Town from allowing the commercial building to be converted into a duplex and even less of an impact if the lower level is retained as a commercial space and only the upper unit is converted to a residential use. Only the owners of triplexes or residential developments of more than 3 units are required to get an annual business license from the Town while commercial businesses must always obtain a business license. Typical business license annual fees for an office building of this size range from \$300-\$800 and are based on the number of professionals and other employees working from the building. The current office building does not generate any other direct Town revenues.

Property taxes for the similar duplex to the south are approximately \$8,300, while the commercial building taxes are currently \$6,200. These will increase considerably when the building is sold and reappraised/taxed at current market (sale) value.

Conversion Back to Commercial in the Future

The owner has indicated that they are having trouble finding a buyer for the property and that all interested parties have asked about having all or some of the building converted to residential. The Commission should consider that the 2010- 2020 Fairfax General Plan envisions providing a mixture of uses along the Sir Francis Drake transit corridor and there already are a significant number of houses, apartments and duplexes along with commercial uses in the stretch of Sir Francis Drake Boulevard between the Willow/Pastor/Sir Francis Drake intersection and the city limit line east of the site, so a conversion will not be out of character with the surrounding area.

There are currently no adopted Zoning Laws in place in Fairfax that prohibit the conversion of housing units back into commercial units within the commercial district.

Due to the uncertainty facing commercial businesses during the pandemic, it might be prudent to approve one or both additional housing units.

Design Review and Fence Height Variance

Town Code § 17.020.030 requires a Design Review Permit for new construction in the Highway Commercial Zone and Town Code § 17.044.080(B)(2) limits fences, which include gates, to not exceed 6 feet in height at any point. Therefore, the proposed gate designed with an "arbor" feature that reaches 9 feet 6 inches in height, requires a Variance from the Planning Commission. The gate is a design feature. Staff is unable to determine its necessity as a design feature - greater visual separation from the street? Visually withdrawing from the streetscape is counter to the purposes of the Highway Commercial zone, therefore staff is unable to support the request.

The only new exterior construction proposed for the project is the 4-foot picket fence and entry gateway arbor enclosing the proposed 360 square foot patio at the front of the building.

The existing site landscaping which includes a bamboo hedge along the east side of the parking lot and 5 redwood trees along the west side would be retained (note that the project is not located within a Wildland Urban Interface area so while bamboo is discouraged and is a fire hazard, it can remain but has to be cut down to the permitted 6 feet in height, irrigated, and maintained on a regular basis to remove dead vegetation. Staff would support future conversion of the bamboo to less pyrophytic plants.

Landscaping would be watered with a timed irrigation system and the chosen plant material is all native to California except the one existing ornamental Japanese Maple. Pathway lighting would be provided by 18-inch mushroom fixtures that direct the light downward and would not result in light spillage beyond the patio area. The only other proposed light fixture is the back lit address number that would be placed on the entry gate/arbor.

The picket fence and entry gate/arbor structure appear to be intended to add a "residential" appearance to the building and property. Staff is not convinced that the proposed picket fence and wood framed design of the barrier proposed between the front-of-building landscaped area and the parking lot will complement the architectural style of the existing building. We recommend that a design alternative be required. Options include a 4-foot framed wooden wall with horizontal siding without an entrance gate arbor and only a gate matching the solid wall at the front of the property might be more appropriate and compliment the building architecture more than the open picket fence design (Attachment C – photos of existing front fence). Staff has included a condition in the Resolution approving the project that that the final design of the fence/gateway/arbor be similar to that of the existing front wall and be subject to review and approval by the Planning Director.

Other Agency/Department Comments/Conditions

Ross Valley Fire Department (RVFD)

RVFD submitted written requirements which have been incorporated into conditions of approval in the attached resolution and are summarized as follows:

A fire sprinkler system shall be installed throughout the entire building which complies with the requirements of the National Fire Protection Association (NFPA) 13 and local standards and a separate deferred permit shall be required for this system, a fire alarm system shall be required and a separate deferred permit is required for this work, all plans should be submitted directly to the Fire Department for these permits and the existing fire alarm system shall meet minimum fire code requirements, shall have a current certification, the inspection report shall be available to the field inspector upon

request and address numbers at least 6" tall must be in place adjacent to the front door. If not clearly visible from the street, additional numbers are required.

Ross Valley Sanitary District (RVSD)

RVSD submitted written requirements which have been incorporated into conditions of approval in the attached resolution and are summarized as follows:

The project will require testing and lateral certification requirements, the sewer line must be tested and be determined to be adequate for the proposed new bathroom and kitchen plumbing and waste fixtures or a new sewer lateral will need to be installed that is in conformance with the RVSD's Design and Construction Standards. support the proposed new residential unit and new lateral may be required, if a new lateral is required drawings shall be submitted for the new lateral and shall include the district's standard notes of the Standard Specifications and drawings and should identify the materials of construction as complying with the District's approved materials list and all RVSD Standard details for the sewer lateral should be referenced or included on the drawing set for the new lateral (including trenching/backfill, clean- outs).

Marin Municipal Water District (MMWD)

MMWD submitted written requirements which have been incorporated into conditions of approval in the attached resolution and are summarized as follows:

A High Pressure Water Service Application must be submitted along with a copy of the building permit, required fees must be paid and the District's rules and regulations in effect at the time the service is requested must be complied with, the development must comply with District Code Title 13 – Water Conservation, backflow prevention requirements must be met if the District's review indicates it is warranted, and Ordinance 429, requiring installation of gray water recycling systems when practicable for existing structures undergoing "substantial remodel" that necessitates an enlarged water service shall be complied with.

RECOMMENDATION

Conduct the public hearing.

Move to approve application no. 20-9 based on the findings and subject to the conditions contained in the attached Resolution No. 2020-09 (Attachment A1) which include the following:

- A conditional use permit is being granted to allow residential use only on the second floor of the structure, with the ground floor remaining commercial and with the currently existing floor plan shown on page A4.1 of the plans.
- The parking lot shall remain as shown on page A4.1 of the plans.

- The first-floor plan showing a residential unit, reconfigured parking lot and including the expanded patio landscaped area, fence and gate/arbor shown on page A4.2 and A6.1 are denied.

ALTERNATIVE RECOMMENDATION

If the Commission finds that they are able to find that a duplex use is equivalent to the other listed residential conditional uses in the Highway Commercial (CH) Zone District that are not specified to be allowed only on the second floor, they can take action approving the proposed duplex use by adopting Resolution 2020-09 (Attachment A2) setting forth the findings and conditions for the approval of the duplex use, reconfigured parking lot, front patio/landscaped area and modified fence design to eliminate the gate/arbor feature and replace the picket fence design with a framed fence with horizontal wooden slats to match the existing front fence.

ATTACHMENTS

- Attachment A(1) – Resolution No. 2020-09 approving a residential unit on the second floor of the building but retaining the commercial use on the ground floor
- Attachment A(2) – Resolution No. 2020-09 approving the conversion of the structure to a duplex
- Attachment B - Transit stops map
- Attachment C - Photos of existing front fence

RESOLUTION NO. 2020-09

A Resolution of the Fairfax Planning Commission Approving a Conditional Use Permit to Retain the Parking Lot in its Current Configuration to Allow the Conversion of the Second Floor of the Commercial Building at 1620 Sir Francis Drake Boulevard to a Residential Unit While Retaining the Lower Floor as a Commercial Space, and Denial of a Requested Fence Height Variance

WHEREAS, the Town of Fairfax has received an application for a Conditional Use Permit, which includes a request for an exception to the parking regulations, and a Design Review Permit from Art and Joyce Chartock on June 17, 2020 to renovate the commercial building to convert it into a duplex.

WHEREAS, the application was deemed complete on August 5, 2020; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on August 20, 2020 at which time all interested parties were given a full opportunity to be heard and to present evidence, and at which time the Planning Commission approved the Conditional Use Permit with amendments that eliminated the need for a Design Review Permit but still required a parking modification to eliminate the requirement for a guest parking space in conjunction with the residential unit; and

WHEREAS, based on the plans and supplemental information provided by the applicant, the Planning Commission has determined that the project, modified to allow one residential unit above an existing commercial unit and retaining the parking lot in its current configuration, complies with the relevant Town of Fairfax General Plan Policies and Programs and Zoning Ordinance, and no longer requires the approval of a Design Review Permit or a Fence Height Variance; and

WHEREAS, allowing only the second floor of the structure to be converted to a residential unit and requiring the parking lot to retain its current configuration to meet the parking requirements for a mixed commercial/residential development has eliminated the need to make exterior changes requiring a Design Review Permit and a Fence Height Variance; and

WHEREAS, the Commission has made the following findings:

1. The project complies with the Fairfax General Plan goals and policies as follows:
 - a) Policy LU-7.1.3: A combination of commercial and residential land uses that are consistent with established building height limits should be encouraged on the same parcel in the Town Center Area.
 - b) Goal LU-8: Preserve community diversity through affordable housing opportunities primarily along transit corridors.

- c) Goal H-3: Create transit-oriented housing in the Town Center area that is less dependent on automobile travel and, thereby minimizing traffic impact to the greatest extent possible while providing support for transit.
2. Granting a use permit to allow residential use of the second floor of the structure would result in a development similar to other existing combined commercial and residential development found within the surrounding neighborhood, while avoiding removing all commercial use from a property in the CH zoning district.
 3. 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.
 4. 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.
 5. Approval of the use permit is not contrary to those objectives, goals, or standards pertinent to the case and contained or set forth in the 2020-2030 Fairfax General Plan or the Zoning Ordinance Town Code Title 17 adopted by the Town.
 6. 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.
 7. Retention of the parking lot in its current configuration with 6 parking spaces meets the minimum parking requirements for a 677 square foot commercial space and 1-bedroom apartment.
 8. Allowing an exception to not provide the required 3 guest parking space for the one bedroom residential unit is reasonable due to the size and configuration of the unit, the close proximity of the site to 2 bus stops and the fact that most commercial business uses will be operating in the daytime so the commercial spaces should open up for use by visitors of the residential use in the evenings.
 9. The denial of the request to convert the building to a duplex and redesign the parking lot has eliminated the need to make exterior modifications to the building to accommodate an outdoor fence patio area. Therefore, the Commission is denying the requested Design Review Permit and Fence Height Variance.

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

1. The project shall be built in conformance with the plans for 1620 Sir Francis Drake Boulevard, by Art Chartock, dated 5/7/20, pages A4.1, A4.2 and A6.1, modified to retain the lower floor commercial space in its existing configuration with a ½ bathroom, and 3 office space rooms, retention of the parking lot with 6 parking spaces and the existing 33 square foot landscaped area at the front of the building, prior to issuance of the building permit to convert the upper floor to living space, except as modified by these conditions.
2. Any changes, modifications, additions or alterations made to the approved set of plans will require a modification of Application # 20-9. Any construction based on job plans that have been altered without the benefit of an approved modification of Application # 20-9 will result in the job being immediately stopped and red tagged.
3. The applicants shall maintain the premises in a neat and attractive manner at all times. Such maintenance shall include, but not be limited to, exterior building materials, windows, the planters, the ground and the pavement surfaces.
4. 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.
5. Any changes made to the exterior of the building, including but not limited to new lighting, new signs, planters, etc., shall comply with the design review regulations of the Town Code, Chapter 17.020, and be approved by the Fairfax Design Review Board or staff as required.
6. 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.

7. There shall be no outside storage of any materials or supplies for the commercial space or the second floor 1-bedroom residential unit.
8. Any equipment installed on the either the roof or exterior of the building must be screened from public view.
9. The applicants must comply with all conditions imposed by an outside agency unless that agency waives its conditions in a written letter to the Department of Planning and Building Services Department prior to issuance of the building permit.
10. If security lighting is installed, it shall be the minimum necessary for illumination and shall not be overhead. All exterior lights shall be shrouded and directed downward to avoid off-site light spillage.
11. The bamboo hedge on the east side of the site shall either be removed, or be placed on an irrigated timer, trimmed to the permitted 6 feet in height and regularly maintained to remove dead material to minimize its fire hazard potential. This condition shall be complied with prior to issuance of the project building permit. Future plant substitutions shall be subject to the approval of the Planning Director.

Ross Valley Fire District

12. A fire sprinkler system shall be installed throughout the entire building which complies with the requirements of the National Fire Protection Association (NFPA) 13 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.
13. A fire alarm system shall be required. A separate deferred permit is required for this work. Plan should be submitted directly to the Fire Department for this work. The existing fire alarm system shall meet minimum fire code requirements and shall have a current certification. Inspection report shall be available to the field inspector upon request.
14. Address numbers at least 6" tall must be in place adjacent to the front door. If not clearly visible from the street, additional numbers are required.

Ross Valley Sanitary District

15. The project will require testing and lateral certification requirements. The sewer line must be tested and be determined to be adequate for the proposed new bathroom and kitchen plumbing and waste fixtures or a new sewer lateral will need to be installed that is in conformance with the RVSD's Design and Construction Standards. support the proposed new residential unit and new lateral may be required.
16. Drawings submitted for the new lateral, if one is necessary shall include the district's standard notes of the Standard Specifications and drawings and should identify the materials of construction as complying with the District's approved materials list.
17. All RVSD Standard details for the sewer lateral should be referenced or included on the drawing set for the new lateral (including trenching/backfill, clean- outs, backwater prevention devices, utility boxes, connection to main, etc.).

Marin Municipal Water District

18. A High-Pressure Water Service Application must be submitted along with a copy of the building permit, required fees must be paid and the District's rules and regulations in effect at the time the service is requested must be complied with.
19. The development must comply with District Code Title 13 – Water Conservation.
20. Backflow prevention requirements must be met if the District's review indicates it is warranted.
21. Ordinance 429, requiring installation of gray water recycling systems when practicable for existing structures undergoing "substantial remodel" that necessitates an enlarged water service.

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 parking exception and denial of the Design Review Permit and Fence Height Variance can occur without causing significant impacts on neighboring businesses or residences. The exterior changes are unnecessary to provide a combined a commercial use on the ground floor with a residential unit on the second floor and compliance with the minimum parking requirements mandate that the parking lot configuration be maintained as it exists now, eliminating space for the fenced outdoor patio and landscaped area; and

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 20th August 2020, by the following vote:

AYES:
NOES:
ABSTAIN:

Chair Green

Attest:

Ben Berto, Director of Planning and Building Services

RESOLUTION NO. 2020-09

A Resolution of the Fairfax Planning Commission Approving a Conditional Use Permit and Design Review Permit to Allow the Conversion of the Commercial Building at 1620 Sir Francis Drake Boulevard to a Residential Duplex, Reconfiguration of the Parking Lot, and Denying Fence Height Variance

WHEREAS, the Town of Fairfax has received an application for a Conditional Use Permit, which includes a request for an exception to the parking regulations, a Design Review Permit from Art and Joyce Chartock on June 17, 2020 to renovate the commercial building to convert it into a duplex and a Fence Height Variance for a entry gate/arbor that would reach 9 feet 6 inches in height.

WHEREAS, the application was deemed complete on August 5, 2020; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on August 20, 2020 at which time all interested parties were given a full opportunity to be heard and to present evidence, and at which time the Planning Commission approved the Conditional Use Permit including the parking modification request and the Design Review Permit but denied the Fence Height Variance; and

WHEREAS, based on the plans and supplemental information provided by the applicant, the Planning Commission has determined that the project, modified to match the new patio fence to the existing front fence, to allow the commercial building to be converted into a residential duplex, complies with the relevant Town of Fairfax General Plan Policies and Programs and Zoning Ordinance, and, with minor exterior design modifications, the applicable Design Review Criteria; and

WHEREAS, the Commission has made the following findings:

1. The project complies with the Fairfax General Plan Goals as follows:
 - a) Policy LU-7.1.3, A combination of commercial and residential land uses that are consistent with established building height limits should be encouraged on the same parcel in the Town Center Area.
 - b) Goal LU-8: Preserve community diversity through affordable housing opportunities primarily along transit corridors.
 - c) Goal H-3: Create transit-oriented housing in the Town Center area that is less dependent on automobile travel and, thereby minimizing traffic impact to the greatest extent possible while providing support for transit.
2. Granting a use permit to allow residential use of the first and second levels of the structure would result in a development like other residential development in the surrounding neighborhood.

3. 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.
4. The on-site parking plan provides the required 4 parking spaces for a duplex and the site is located close to public transportation. Therefore, the development and use of property as a duplex under the use permit shall not cause excessive or unreasonable detriment to adjoining properties or premises, or cause significant 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.
5. Approval of the use permit is not contrary to those objectives, goals, or standards pertinent to the case and contained or set forth in the 2010-2030 Fairfax General Plan and Zoning Ordinance, Town Code Title 17 adopted by the City.
6. Approval of the use permit will result in equal or better development of the premises than would otherwise be the case, and said approval is in the public interest and for the protection or enhancement of the general health, safety or welfare of the community.
7. The project will comply with the design review criteria set forth in Town Code § 17.020.040 once the fence around the patio/landscaped area at the front of the site is redesigned to match the existing front 4 foot front fence that is framed with horizontal wooden slats and painted white.
8. The request for a fence height variance to allow the proposed gate/arbor feature of the proposed 4 foot tall fence surrounding the proposed landscaped patio structure is denied because; a) there are no special circumstances applicable to this property that require a 9 foot 6 inch entry gate; b) granting a variance to allow such a feature would be a grant of special privilege (the similar features that exist on site across the street are unpermitted); c) removing the gate design feature from the project will not result in excessive or unreasonable hardship for the owner or the tenants, and d) denial of the requested Fence Height Variance will not be detrimental to the public welfare or injurious to other property in the vicinity.

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

1. The project shall be built in conformance with the plans for 1620 Sir Francis Drake Boulevard, by Art Chartock, dated 5/7/20, pages A4.1, A4.2 and A6.1, modified to remove the 9 foot 6 inch tall entry gate and with the fence surrounding the landscaped patio redesigned to match the existing fence on the front property line prior to issuance of the building permit for the project.

2. Any changes, modifications, additions, or alterations made to the approved set of plans will require a modification of Application # 20-9. Any construction based on job plans that have been altered without the benefit of an approved modification of Application # 20-9 will result in the job being immediately stopped and red tagged.
3. The applicants shall maintain the premises in a neat and attractive manner at all times. Such maintenance shall include, but not be limited to, exterior building materials, windows, the planters, the ground, and the pavement surfaces.
4. 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.
5. Any changes made to the exterior of the building, including but not limited to new lighting, new signs, planters, etc., shall comply with the design review regulations of the Town Code, Chapter 17.020, and be approved by the Fairfax Design Review Board or staff as required.
6. 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.
7. There shall be no outside storage of any materials or supplies.

8. Any equipment installed on the either the roof or exterior of the building must be screened from public view.
9. The applicants must comply with all conditions imposed by an outside agency unless that agency waives its conditions in a written letter to the Department of Planning and Building Services Department prior to issuance of the building permit.
10. If security lighting is installed, it shall not be overhead and the minimum necessary to provide illumination. All exterior lights shall be shrouded and directed downward to avoid off-site light spillage.
11. The bamboo hedge on the east side of the site shall either be removed, or be placed on an irrigated timer, trimmed to the permitted 6 feet in height and regularly maintained to remove dead material to minimize its fire hazard potential. This condition shall be complied with prior to issuance of the project building permit. Future plant substitutions shall be subject to the approval of the Planning Director.

Ross Valley Fire District

12. A fire sprinkler system shall be installed throughout the entire building which complies with the requirements of the National Fire Protection Association (NFPA) 13 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.
13. A fire alarm system shall be required. A separate deferred permit is required for this work. Plan should be submitted directly to the Fire Department for this work. The existing fire alarm system shall meet minimum fire code requirements and shall have a current certification. Inspection report shall be available to the field inspector upon request.
14. Address numbers at least 6" tall must be in place adjacent to the front door. If not clearly visible from the street, additional numbers are required.

Ross Valley Sanitary District

15. The project will require testing and lateral certification requirements. The sewer line must be tested and be determined to be adequate for the proposed new bathroom and kitchen plumbing and waste fixtures or a new sewer lateral will need to be installed that is in conformance with the RVSD's Design and Construction Standards. support the proposed new residential unit and new lateral may be required.
16. Drawings submitted for the new lateral, if one is necessary shall include the

district's standard notes of the Standard Specifications and drawings and should identify the materials of construction as complying with the District's approved materials list.

17. All RVSD Standard details for the sewer lateral should be referenced or included on the drawing set for the new lateral (including trenching/backfill, clean-outs, backwater prevention devices, utility boxes, connection to main, etc.).

Marin Municipal Water District

18. A High-Pressure Water Service Application must be submitted along with a copy of the building permit, required fees must be paid and the District's rules and regulations in effect at the time the service is requested must be complied with.
19. The development must comply with District Code Title 13 – Water Conservation.
20. Backflow prevention requirements must be met if the District's review indicates it is warranted.
21. Ordinance 429, requiring installation of gray water recycling systems when practicable for existing structures undergoing "substantial remodel" that necessitates an enlarged water service.

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 the Design Review Permit and denial of the Fence Height Variance to allow the duplex use, parking lot redesign and the fenced landscaped patio area with the fence redesigned to match the front fence in height and design can occur without causing significant impacts on neighboring businesses or residences; and

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 20st day of August, 2020 by the following vote:

AYES:

NOES:

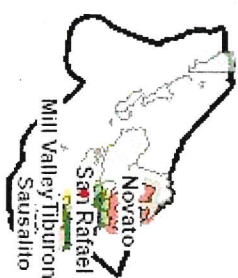
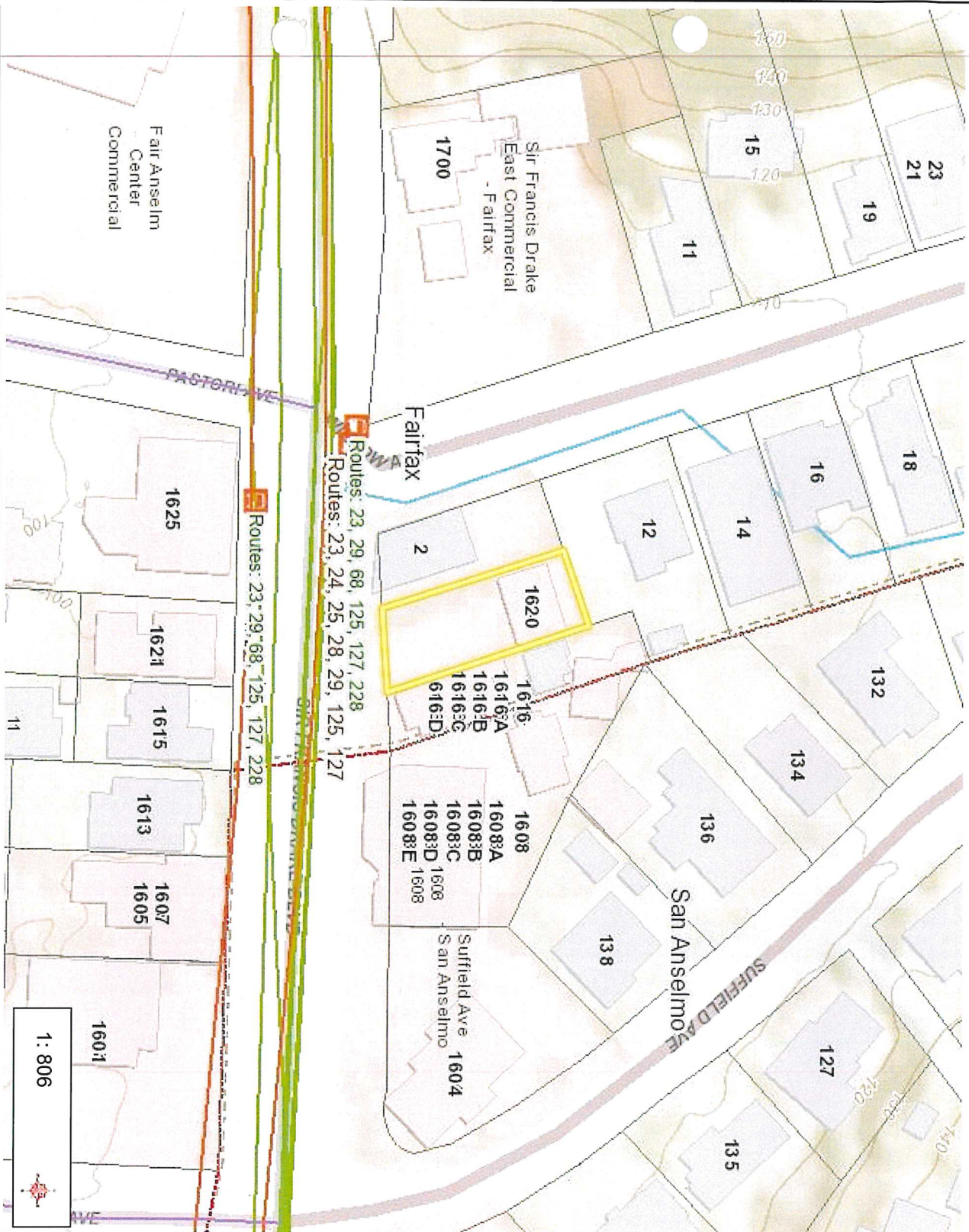
ABSTAIN:

Chair Green

Attest:

Ben Berto, Director of Planning and Building Services

Map Report



Legend

- ☐ Parcel Note
- ☐ easement
- ☐ centerline
- ☐ Mile Post
- ☐ Park and Ride
- ☐ Transit Hub
- ☐ Existing
- ☐ Proposed
- ☐ SMART Train
- ☐ Golden Gate Ferry
- ☐ Bikeway
- ☐ Marin Transit Bus Stop
- ☐ Marin Transit only
- ☐ Marin Transit and Golden Gate
- ☐ Golden Gate Bus Stop
- ☐ Golden Gate Route
- ☐ Marin Transit Route
- ☐ Address
- ☐ Parcel
- ☐ Condominium Common Area
- ☐ Mobile Home Pad
- ☐ City
- ☐ Community
- ☐ Marin County Legal Boundary
- ☐ Other Bay Area County
- ☐ Stream - Perennial (NHD)

Notes

134.3 0 67.16 134.3 Feet

NAD 1983_HARN_StatePlane_California_III_FIPS_0403_Feet

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THIS MAP IS NOT TO BE USED FOR NAVIGATION

1 : 806



