

THE RESIDENTS
OF THE EIGHT.
HOUSES CLOSEST
TO 6 WALSH LANE

November 11, 2020.

Ms. Michele Gardner
Fairfax Town Clerk
Town of Fairfax
142 Bolinas Road
Fairfax, Calif. 94930

Re: Appeal to Fairfax Town Council of Fairfax Planning Commission
Decision to Approve
6 Walsh Lane: Application # 20-8
Request for Hill Area Residential Development, Design Review,
Tree Removal, and Excavation permits for a 50 percent
remodel of an existing 1,510 square foot, 3 bedroom, 2 bathroom,
single family residence and a 2-story addition to construct a 2,867
square foot, 5 bedroom, 4 bathroom single family residence with a
2-car garage.

Dear Members of the Fairfax Town Council,

The last meeting on November 4, 2020, was continued largely because the discussion became quite technically complex and time was needed to clarify some of the issues that were raised.

This submitted on behalf of the residents of the Walsh Lane neighborhood is an effort to help clarify some of the land use terms and concepts that arose.

The two central issues brought up by us last time were:

1. Front plus rear and side yard dimensions at 6 Walsh Lane that did not meet those required by the Zoning Code; and

2. The designation of the lowest level of 6 Walsh Lane as a "basement," allowing the exclusion of floor area at that level.

MISCELLANEOUS OBSERVATIONS:

A number of errors and incorrect assumptions have been made in the plans that require variances where none were requested.

1. FRONT/REAR AND SIDE YARD SETBACKS:

6 Walsh Lane is located in the Fairfax RS-6 single family residential zoning district.

The front and rear setback requirements [See Notes A and B] for a lot in the RS-6 zone, with a slope over 10% per Sec. 17.080.070 are:

Front: 6 foot minimum. Rear: 12 foot minimum

Combined depth: not less than 35 feet

The Project's proposed front and rear setbacks are:

Front: 11 feet. Rear: 18 feet.

Combined: 29 feet

The proposed combined front and rear setbacks of 29 feet do not meet the 35 feet required by Code [See Note C].

Because of this, the structure at 6 Walsh Lane is Legal Non-Conforming (Sec. 17.016.010). [See Note D]

Per Sec. 17.016.040 such non-conforming structures cannot increase the discrepancy between existing conditions and the standards prescribed in the Code. [See Note E] Such structures are prohibited from being moved, altered or enlarged.

A similar situation is triggered by a deficient side yard that exists at 6 Walsh Lane.

The 6 Walsh Lane proposal calls for raising the entire building by approximately two feet. By doing this, these areas of non-conformity, created by the deficient setbacks, are also being raised about two feet. This is an alteration of a non-conforming structure that increases increase in the discrepancy between what exists at 6 Walsh Lane and that permissible by the Code. Therefore, it is not only in violation of 17.016.040, but also 17.016.040 (B)(1) and 17.016.040(B)(2) [See Note F] which stipulates that this violation cannot “result in the addition of a bedroom.”

Because no provisions (i.e. variances) were sought or granted to correct this problem:

**Raising the building of 2 feet is not permitted, and
Adding 2 bedrooms to the existing 3 is not allowed.**

Continuing to 17.016.040(C)(2), [See Note G] one finds that this restriction does not apply when all of the following conditions exist:

- (a) the off-street requirements have been met;
- (b) the work does not increase an existing or create any new nonconformity; and
- (c) the structure is not located in a Ridgeline Development or Flood Zone.

Interestingly enough, Town Staff cites (C)(2)(b) as **allowing** the building to be raised. This is patently wrong.

2. THE LOWEST LEVEL OF 6 WALSH LANE IS NOT A BASEMENT. THEREFORE ITS CODE-COMPLYING FLOOR AREA IS NOT EXEMPTED FROM BEING INCLUDED IN THE STRUCTURE'S FLOOR AREA

If the habitable floor area in 6 Walsh Lane's lowest level is included, the overall floor area of the house increases. This increase, in turn, increases the FAR of 6 Walsh Lane above the allowable FAR of .4. A variance would be required for approval of this FAR. Variances for FAR's over .4 are rarely, if ever, granted.

Under PROJECT DATA on Sheet A1 of the plans, Floor Area calculation may be found in an unlabeled table. The existing floor area of the Lower Floor is shown as 0 SF. This is incorrect.

The Project Architect mis-interpreted the definition of "basement". If the lowest level of 6 Walsh Lane is truly a basement, it's floor area is not considered floor area. [Note H]

To be a basement, the area below the first floor with an exterior wall extending no more than three feet above the adjacent grade of any side wall. [Diagrams I and J show portions of both existing side walls of 6 Walsh Lane that are more than three feet above grade. Diagram K shows that the entire West wall is above grade.]

The second definition of "basement" [Note H] is less rigorous, but the diagrams show that the floor of the lowest level at 6 Walsh Lane is not below ground level on all sides.

Therefore the Project Architect's exclusion of floor area at 6 Walsh Lane's lowest is wrong. The habitable floor area at that level must be counted. Some of the floor area at that level is not to be included because it lacks the minimum 7'-6" ceiling height required.

The existing floor area in the lower level to be counted is approximately 680 SF. Approximately 487 SF of the lower level will be "new". Re-tabulation of the Lower Level floor area results in a corrected floor area of $680 \text{ SF} + 487 \text{ SF} = 1167 \text{ SF}$.

The plans show the Floor Area of the Upper Level as 1916 SF.

Thus, applying the code definition of "basement", the **Total Floor Area** of the proposed Project is $1167 \text{ SF} + 1916 \text{ SF}^*$ or **3083 SF**.

It is not the claimed 2867 SF.

This correction results with the new F.A.R. = .43 which exceeds the maximum allowed FAR of .4.

* from Floor Area Calculation on plan Sheet A1

Because the claimed Floor Area of 2867 SF and FAR of .4 are incorrect, the true values being greater than what exists and what is

allowed, the Project requires variances. Variances for FAR issues are rarely, if ever granted.

As it stands, the Project should not have been approved.

Please do not deny our appeal.

The Residents of the Walsh Lane neighborhood.

NOTES

Setback from Marin County Development Code

6

22.20.090 -- Setback Requirements and Exceptions

A. **Purpose.** This Section establishes standards for the use and minimum size of setbacks. These standards are intended to provide for open areas around structures for: visibility and traffic safety; access to and around structures; access to natural light, ventilation and direct sunlight; separation of incompatible land uses; and space for privacy, landscaping, recreation, and fire safety.

The following table illustrates the project's compliance with the regulations of the RS-6 Single-family Residential Zone, High-Density District where the property is located:

	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	35 ft., 3 stories
Existing	11 ft.	18 ft.	29 ft.	4 ft., 6 in. & 34 ft.	38 ft., 6 in.	.21	.33	20 ft. 10 in., 2 stories
Proposed	11 ft.	18 ft.	29 ft.	4 ft., 6 in. & 15 ft., 6 in.	19 ft., 6 in.	.40	.30	31 ft. 10 in., 2 stories

(B) Except as otherwise permitted by variance, each building site in the RS-6 zone having a slope of more than ten percent shall have yards as follows:

(1) A front and a rear yard having a combined depth of not less than 35 feet, but the front yard having a depth of not less than six feet and the rear yard of not less than 12 feet; and

(2) Two side yards having a combined width of not less than 20 feet, but neither yard having a width of less than five feet.

Sec. 17.080.070 YARDS

variance of any

79

D

Sec. 17.016.010 DEFINITIONS

LEGAL NON-CONFORMING USE.

(1) A use of a structure or land which was lawfully established and maintained prior to the adoption of the ordinance codified in this title, but which, under this title, does not conform with the use regulations of the district in which it is located. This chapter is intended to limit the number and extent of non-conforming uses by prohibiting their enlargement and their reestablishment after abandonment and by prohibiting the alteration of the structures they occupy and their restoration after destruction. Eventually certain classes of non-conforming uses are to be eliminated.

(2) A structure which was lawfully erected prior to the adoption of the ordinance codified in this title, but which, under this title, does not conform with the standards of coverage, maximum floor area, yard spaces, height of structures or distances between structures prescribed in the regulations for the district in which the structure is located. While permitting the use and maintenance of non-conforming structures, this chapter is intended to limit the number and extent of non-conforming structures by prohibiting their being moved, altered or enlarged so as to increase the discrepancy between existing conditions and the standards prescribed in this title, and by prohibiting their restoration after destruction. Eventually all non-conforming structures of nominal value are to be eliminated or altered to conform.

E

§ 17.016.040 ALTERATIONS AND ADDITIONS TO NON-CONFORMING STRUCTURES.

(A) No non-conforming structure shall be moved, altered, enlarged or reconstructed so as to increase the discrepancy between existing conditions and the standards of coverage, floor area, front yard, side yards, rear yard or height of structures prescribed in the regulations for the district in which the structure is located without a variance issued under Chapter 17.028.

F

(B) The aggregate amount of construction, alteration, enlargement or reconstruction on any nonconforming building or structure, or on any building or structure located on a nonconforming property during the life of the building or structure subsequent to October 2, 2009 shall not:

(2) Result in the addition of a bedroom to such residential building or structure. For the purposes of this paragraph, when any changes are made in the building, such as walls, columns, beams or girders, floor or ceiling joists, roof rafters, roof diaphragms, foundations, piles or retaining walls or similar components, the floor area of all rooms affected by such changes shall be included in determining affected floor area.

G

(C) The restriction in this division shall not apply:

(1) ~~To projects that are limited to replacing windows and/or doors, installation of insulation to achieve greater energy efficiency, cosmetic floor or wall coverings, roof repairs that do not change the configuration of the existing roof, earthquake preparedness improvements or projects to generate alternative energy; or~~

(2) When all of the following conditions exist:

(a) The off-street parking requirements of Title 17 are met or a variance for an exception has been granted;

(b) The work does not increase an existing or create any new nonconformity; and

(c) The structure or building is not located in an area that is subject to the provisions of either Chapter 17.060 (Ridgeline Development) or Chapter 17.068 (Flood Zones).

14.

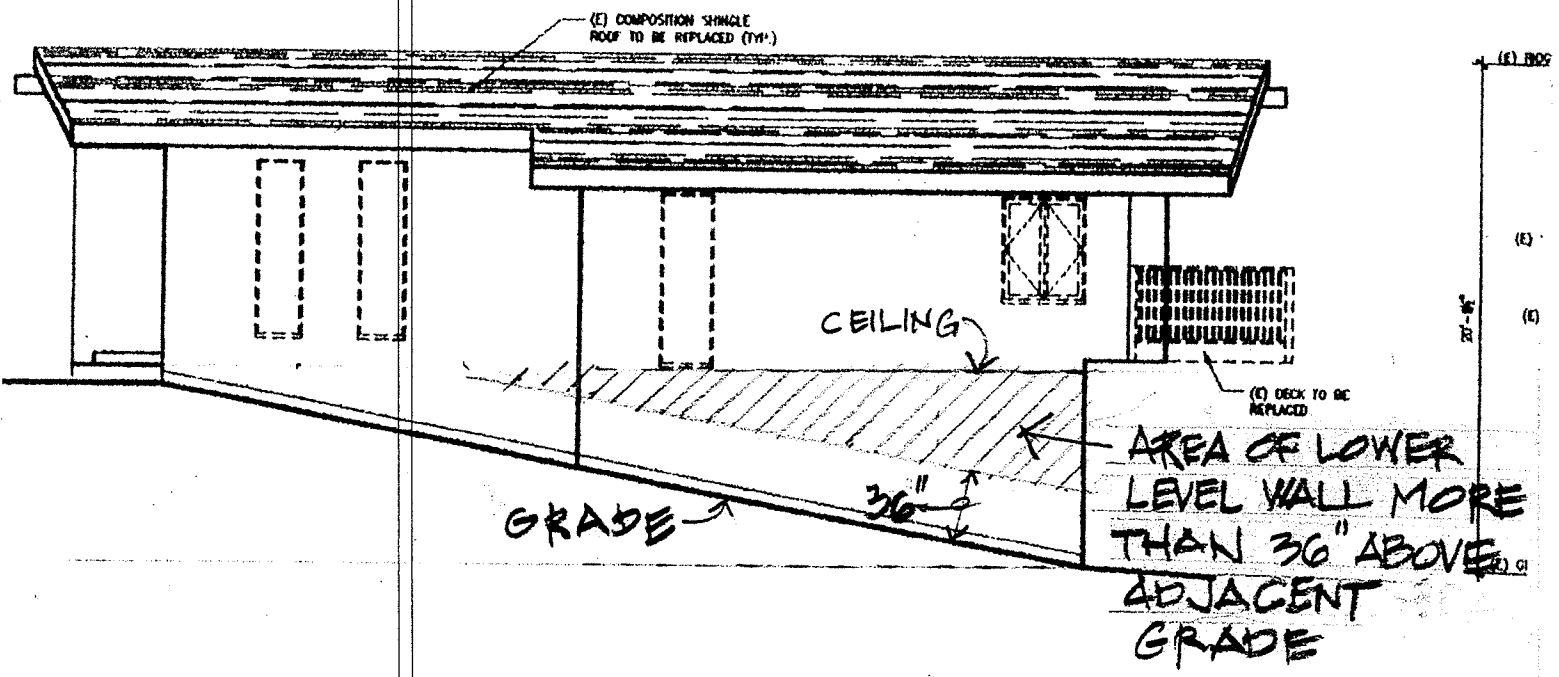
Sec. 17.008.020 DEFINITIONS

BASEMENT. An area below the first floor with an exterior wall extending no more than three feet above the adjacent grade of any side wall. An interior area of any single-family dwelling or duplex that meets this definition shall not be considered floor area.

Sec. 17.068.050 DEFINITIONS

BASEMENT. Any area of the building having its floor subgrade (below ground level) on all sides.

I



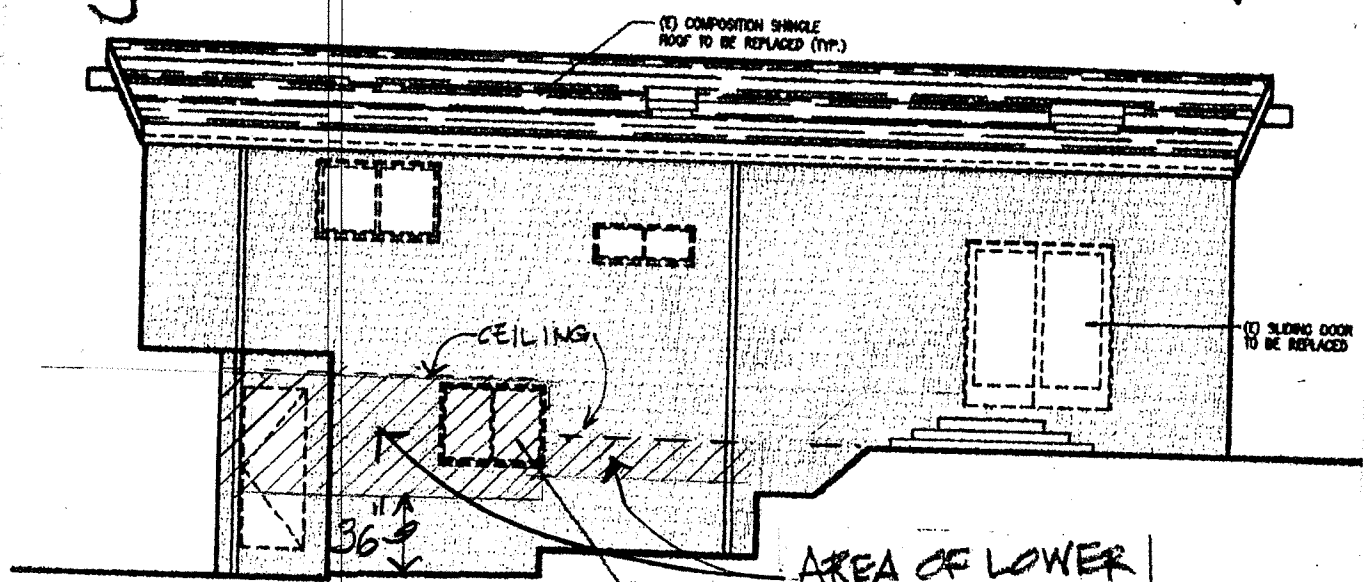
4
A30

AS BUILT NORTH ELEVATION

SCALE: 1/4" = 1'-0"

10

J



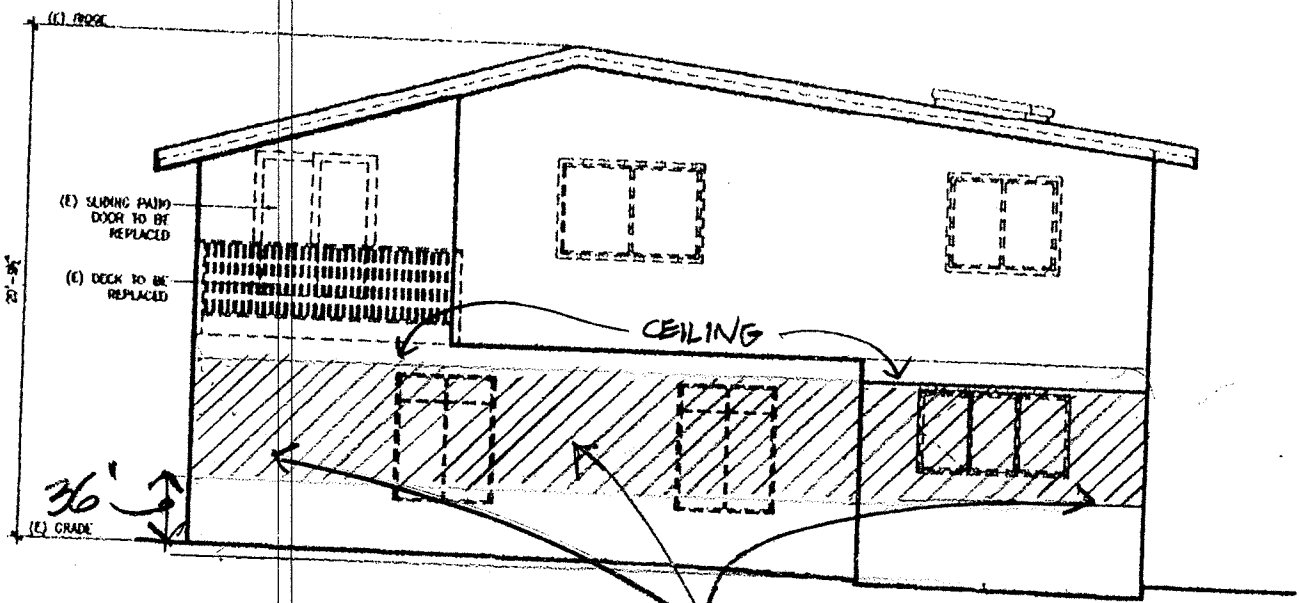
AREA OF LOWER
LEVEL WALL MORE
THAN 36" ABOVE
ADJACENT GRADE

3
A3.0

AS BUILT SOUTH ELEVATION

SCALE: 1/4" = 1'-0"

K



ENTIRE LOWER
LEVEL WALL MORE
THAN 36" ABOVE
ADJACENT GRADE

2
A3.0

AS BUILT WEST ELEVATION

NEW FLOOR AREA

30'-0" ±

27'-1" ±

LOWER LEVEL WALL MORE THAN 30" ABOVE ADJACENT GRADE

LOWER LEVEL WALL MORE THAN 30" ABOVE ADJACENT GRADE

6800 SF OF FLOOR AREA PREVIOUSLY NOT INCLUDED IN FLOOR AREA [CEILING HT. > 7'-6"]

CRAWL SPACE

BASEMENT

NEW FLOOR AREA

35'-7" ±

1'-0" ±

35'-7" ±

2
A2.0

AS BUILT BASEMENT PLAN

993 SF. (NO LIVING SPACE)

SCALE 1/4" = 1'-0"

NORTH

