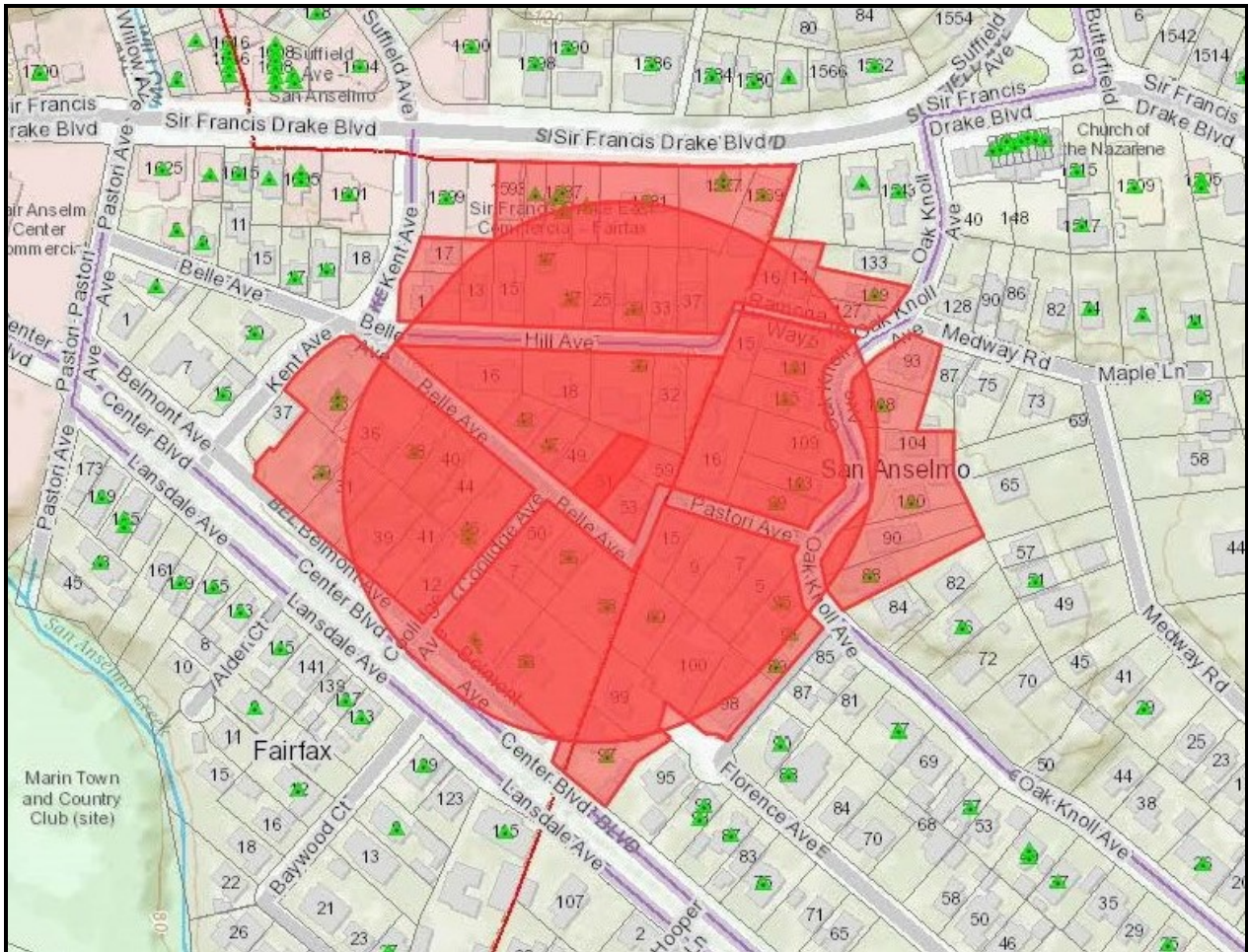


TOWN OF FAIRFAX STAFF REPORT

Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: March 18, 2021
FROM: Kara Spencer, Assistant Planner
LOCATION: 51 Belle Avenue; Assessor's Parcel No. 002-214-11
PROJECT: Single-car garage addition
ACTION: Conditional Use Permit, Minimum and Combined Side Yard Setback Variance, and Parking Variance Application # 20-17
APPLICANT: Peter Brandelius
OWNER: Same
CEQA STATUS: Categorically exempt, § 15301(e)(1)



51 BELLE AVENUE

AGENDA ITEM 3

DESCRIPTION

The project proposes to construct a new 330 square foot, single-car garage addition to a 1,017 square foot home. All exterior finishes and fenestration would match the existing home. The existing 11-foot-wide curb cut would be expanded by eight feet to create a total curb cut of 19 feet to accommodate a new off-street parking space for the residents of the home. All proposed work would be constructed over existing impermeable surfaces.

BACKGROUND

The 4,240 square foot site is level with an approximate four percent average slope. It is located within the RD 5.5-7 Residential Zone, High Density and is developed with a 1,017 square foot, three-bedroom, one-bathroom residence. The one-story, 18 foot, eight-inch-high structure was constructed in 1910.

REQUIRED DISCRETIONARY APPROVALS

The project requires the approval of a Conditional Use Permit and a Minimum Side Yard and Combined Side Yard Setback Variance.

Conditional Use Permit. Town Code Section 17.084.050 requires that a Conditional Use Permit (CUP) be obtained prior to any expansion/modification of a property or residence on a parcel that does not meet the minimum size and width requirements based on the slope of the site. More specifically, Town Code Section 17.084.050(A) requires a minimum area of 5,000 square feet and a minimum width of 60 feet for a site in the RD 5.5-7 zone with a slope of ten percent or less. The project site has an average slope of four percent. It is 4,240 square feet in area and 40 feet wide. Therefore, since the project site does not meet the minimum size and width requirements based on its slope, the proposed project requires the approval of a CUP by the Planning Commission.

Minimum Side Yard and Combined Side Yard Setback Variance. Town Code Section 17.084.070(A)(2) requires that properties in the RD 5.5-7 zone with a slope of ten percent or less maintain minimum five-foot side yard setbacks and a combined side yard setback of 15 feet, unless the Planning Commission grants a Variance to allow smaller setbacks. The existing home is three feet from the eastern property boundary and 13 feet from the western property boundary. As such, it meets the combined side yard setback of 15 feet and the minimum side yard setback at its western side but does not meet the minimum side yard setback on its eastern side.

The project proposes to construct a new attached garage on the western side of the house that would intrude into the western side yard setback by three feet. This would result in a minimum side yard setback on the western side of two feet and a combined side yard setback of five feet. Consequently, the project requires the approval of a Variance by the Planning Commission to encroach into the minimum and combined side yard setbacks.

Parking Variance. Town Code Section 17.052.010(B) prohibits a garage in the required side yard setback unless the Planning Commission grants a Variance. As noted above, the project proposes to construct a new attached garage on the western side of the house that that would intrude into the western side yard setback by three feet and the combined side yard setback by ten feet. Therefore, the project requires the approval of a Variance by the Planning Commission to locate the garage in the minimum side yard setback and the combined side yard setback.

DISCUSSION

The existing and proposed building’s compliance with the regulations of the RD 5.5-7 Zone is as follows:

	Front Setback	Rear Setback	Combined Front/Rear Setback	Side Setbacks	Combined Side Setbacks	FAR	Lot Coverage	Height
Required/ Permitted	6 ft.	6 ft.	25 ft.	5 ft. & 5 ft.	15 ft.	.40	.35	28 ft. 6 in., 2 stories
Existing	21 ft.	45 ft. 10 in.	66 ft. 10 in	3 ft. & 13 ft.	16 ft.	.24	.44	18 ft. 8 in., 1 story
Proposed	No change	No change	No change	3 ft. & 2 ft.	5 ft.	.24	No change	No change

Conditional Use Permit. In order to approve a CUP for the project, the Planning Commission must make the following findings (Town Code Section 17.032.060): (1) granting of the approval would not constitute a “special privilege” nor contravene the doctrines of equity and equal treatment; (2) the project would not create a public nuisance, cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects or create undue or excessive burdens in the use or enjoyment of the property; (3) approval of the project is in keeping with the objectives, goals or standards set forth in the Town of Fairfax General Plan; and (4) approval of the project would result in equal or better development of the premises than would otherwise be the case and the approval is in the public interest and for the protection and enhancement of the community.

The applicant proposes to add a 330 square foot garage to the western side of the existing 1,017 square foot home. The garage addition would have minimal electrical improvements (e.g., two outlets and two overhead lights) and would be constructed over existing impermeable surfaces. All exterior finishes and fenestration would match the existing house. The project would provide the required three on-site parking spaces, decreasing the on-street parking burden on the neighborhood. As proposed, the garage would encroach into the minimum side yard setback and the combined side yard setback. There are limited opportunities for providing usable covered parking space on the site as the property is quite narrow at 40 feet. The area where the garage would be constructed is essentially the only area on site that could be utilized for covered parking and is already developed with impermeable surfaces.

Many other properties in Town and the immediate neighborhood with similarly sized parcels contain garages constructed within the required side yard setbacks. For example, 46 and 47 Belle Avenue (40 feet wide), 50 Belle Avenue (35 feet wide) and 59 Belle (irregularly shaped with a 39-foot street frontage) all have garages within the required side yard setback. In addition, 53 Belle Avenue, immediately adjacent to the eastern project property boundary, also contains a garage within the required rear yard setback.

Approving a CUP for the project would not result in a grant of special privilege as several other similarly sized, narrow properties contain garages in the minimum and combined side yard setbacks, providing the occupants with covered parking space, a “privilege” that is enjoyed by many Town residents. The project would result in three off-street parking spaces, two for the residents of the home and one for visitors, thereby decreasing the on-street parking burden on the neighborhood. In addition, one required covered space would be provided by the garage. The garage would maintain a two-foot setback from the adjacent property, leaving some space on the project property for exterior maintenance of its western side. In addition, the garage would not be out of scale with neighboring properties as it would be 12 feet six inches high (lower than the existing house) and 330 square feet in size. The project is consistent with the Town General Plan and would increase on-site parking opportunities, resulting in better development of the site.

Because the project would be comparable to other development in the neighborhood and would increase off-street parking, the project would not create a public nuisance, or cause unreasonable detriment to adjoining properties, and would result in better development of the site. Therefore, the project would be consistent with the CUP findings required by Town Code Section 17.032.060 and staff recommends that the Planning Commission approve the CUP for the project.

Minimum Side yard and Combined Side yard Setback Variance. Town Code Section 17.028.070 requires the Planning Commission to make the following findings when approving a variance to the Town Code requirements: (1) because of special circumstances applicable to the property, including size, shape, topography, location of surroundings, the strict application of the title will deprive the applicant(s) of privileges enjoyed by other property owners under identical zone classifications; (2) the variance will not constitute a grant of special privilege, is consistent with the limitations upon other properties in the vicinity under identical zone classifications and is consistent with the objectives of the title; (3) the strict application of the title would result in excessive hardship; and (4) the granting of the variance will not be detrimental to the public welfare or injurious to the other property in the vicinity of the project.

The project site is quite narrow at 40 feet, which limits the area available for providing a garage. Because of this, the project proposes to construct the new garage in the only area on site that could be utilized for a garage, which is within the western side yard setback and by default the combined side yard setback. This would reduce the minimum western side yard setback to two feet and the combined side yard setback to five feet. As occurs with many Town residential sites, the narrow width of the lot makes

compliance with the combined side yard setback requirement difficult/ There is no reasonable way to construct a garage or any covered parking on the property and comply with setbacks.

After consulting with the neighbor on the western side of the property at 49 Belle, the property owner decreased the width of the garage by two feet from its original proposed size, so it would not be flush with the property boundary. This reduction in width was done to create some space on the project property for the property owner to use for any kind of maintenance that might be necessary on the western side of the garage. No windows or doors are proposed along the western side of the garage either, so the privacy of the neighboring property at 49 Belle would not be impacted. The area where the garage would be constructed is already developed with impermeable surfaces, so project implementation would not increase impermeable surfaces on the project site.

In 1973 the Town updated its Zoning Ordinance increasing the setbacks required for residential properties and limiting lot coverage to 35% [Town Code Sections 17.084.070(A)(1) and (2) and 17.040.010]. The ordinance rendered most of the residences in the developed residential neighborhoods non-conforming with respect to setbacks. Due to the narrow width of the site and current restrictions, it would be difficult to provide a garage that complies with the current regulations.

Several other narrow properties in Town have garages within minimum and combined side yard setbacks, thus denial of the variance would deprive the owner of privileges of enjoyed by other properties in the vicinity. In addition, granting of a variance to the setback requirements would not constitute a special privilege as it reflects site constraints and would enable the owner to improve his home, while complying with the Town's off-street parking requirements. Other similarly burdened sites would be given similar consideration.

Granting of the variance would decrease the on-street parking burden on the neighborhood and improve circulation, a benefit to the property owner and the public. The garage addition would be located a sufficient distance from the neighboring residence at 49 Belle and would maintain a two-foot setback from the property line. Therefore, the project would not be detrimental to the public welfare or injurious to other property in the vicinity. For these reasons, staff recommends that the Planning Commission approve the minimum and combined side yard setback variances for the project.

Parking Variance. The applicant also seeks a Variance to Town Code Section 17.052.010(B) which prohibits the location of parking within the required side yard setback. The applicant proposes to locate the garage and one of the required three, on-site parking spaces within the required side yard, maintaining only a two-foot setback from the western side property line. Historically, parking was allowed in the side yard setback, and parking and parking structures can be found in the side yard setback throughout the Town. Many properties in the project vicinity have garages spaces in the side yard setback, as noted previously. Therefore, allowing this property to have a

garage in the side yard would not change the character of the neighborhood or have a significant negative impact on the neighbors or the neighborhood.

Other Agency/Department Comments/Conditions

Ross Valley Fire Department (RVFD). The following summarizes RVFD requirements, which have been incorporated into conditions of approval in the attached resolution. Construction shall comply with the requirements of Chapter 7A of the 2016 California Building Code. A Class "A" roof assembly is required. All vegetation and construction materials are to be maintained away from the residence during construction. Smoke detectors shall be installed throughout the entire building and be provided with AC power and be interconnected for simultaneous alarm. Carbon monoxide alarms shall be provided outside each sleeping area in the immediate vicinity of the bedrooms. Address numbers at least 4 " tall are required and must be visible from the street, controlled by a photocell and illuminated all night.

Marin Municipal Water District (MMWD). Written requirements submitted by MMWD have been incorporated into conditions of approval in the attached resolution. The following summaries those comments: comply with Ordinance No. 429 requiring the installation of grey water recycling system when practicable for all projects required to install new water service and existing structures undergoing a substantial remodel that necessitates enlarged water service; indoor and outdoor requirements of District Code Title 13 - Water Conservation must be complied with; any landscaping plans subject to review by the Town of Fairfax or subject to a Town permit must be reviewed and approved by the District; backflow prevention requirements must be met.

Ross Valley Sanitary District (RVSD). The RVSD has no comments and did not place any conditions upon the project.

Fairfax Police, Building and Public Works Departments. The Police, Building, and Public Works Departments have no comments and did not place any conditions upon the project.

RECOMMENDATION

Conduct the public hearing and then move to approve Application # 20-17 by adopting Resolution No. 2021-03 setting forth the project findings and conditions of approval.

ATTACHMENTS

Attachment A – Resolution No. 2021-03

RESOLUTION NO. 2021-03

A Resolution of the Fairfax Planning Commission Approving Application No. 20-17 for a Conditional Use Permit, Minimum and Combined Side Yard Setback Variance, and Parking Variance for a 330 Square foot Garage Addition at 51 Belle Avenue

WHEREAS, the Town of Fairfax received an application from Peter Brandelius to construct a 330 square foot garage addition; and

WHEREAS the Planning Commission held a duly noticed Public Hearing on March 18, 2021, at which time the Planning Commission determined that the proposed project complies with the Town Zoning Ordinance; and

WHEREAS, based on the plans and other documentary evidence in the record the Planning Commission determined that the applicant met the burden of proof required to support the findings necessary to approve the Conditional Use Permit, Minimum and Combined Side Yard Setback Variance, and Parking Variance; and

WHEREAS, the Commission made the following findings:

The project is consistent with the 2010-2030 Fairfax General Plan as follows:

Policy LU-7.1.5: New and renewed residential development shall preserve and enhance the existing character of the Town's neighborhoods in diversity, architectural character, size, and mass.

Policy LU-7.2.2: To the extent feasible natural features including the existing grade, mature trees and vegetation shall be preserved for new and renewed development.

Policy LU-4.1.4: New and renewed development shall be designed to minimize run-off in a manner that does not cause undue hardship on neighboring properties.

Policy S-3.1.3: Maximize access and egress for emergency response vehicles.

Conditional Use Permit

1. The proposed garage addition conforms to most of the regulations set forth in the RD 5.5-7 Residential Zone, High Density and findings can be made for the requested variances for the non-conforming aspects of the property and Conditional Use Permit.
2. The 330 square foot garage addition is similar in size, mass, design, and location on the site to other accessory garages in the Belle Avenue neighborhood and does not change the character of the neighborhood. Therefore, the proposed 330 square foot

garage addition is not out of scale with the property or with other residential structures in the neighborhood.

3. The development and use of the property as approved herein will not cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects thereto, or create undue or excessive burdens in the use and enjoyment thereof, or any or all of which effects are substantially beyond that which might occur without approval or issuance of the Conditional Use Permit.
4. The project as conditioned herein will not be 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 or set forth in the Zoning Ordinance, Title 17 of the Fairfax Town Code.
5. Approval of the project will result in equal or better development of the premises than would otherwise be the case by providing three on-site parking spaces and decreasing the on-street parking burden on the neighborhood, so the property complies with the Fairfax General Plan and Zoning Ordinance. Therefore, the project is in the public interest and will enhance the general health, safety, and welfare of the community.

Minimum and Combined Side Setback and Parking Variances

1. The project site is narrow at 40 feet in width. A portion of the residence currently extends into the eastern side setback by two feet. Construction of the project will intrude into the western side setback by three feet and reduce the combined side setback by 11 feet. The narrow width of the site necessitates the need for the minimum and combined side yard setback and parking variances because the strict application of the minimum and combined side yard setback limitation and side yard setback parking prohibition will deprive the applicant of privileges enjoyed by other property owners in the vicinity and under identical zone classification. Due to the narrow width of the site and the siting of existing home on the site, granting of a variance to the minimum and combined side setback requirement and side yard parking structure prohibition will not constitute a grant of special privilege and will not be detrimental to the public welfare or injurious other property.
2. The variances or adjustments will not constitute a grant of special privilege, are consistent with the limitations upon other properties in the vicinity and under identical zone classification, and are consistent with the objectives of this title.
3. The strict application of this title would result in excessive or unreasonable hardship.
4. The granting of the variances or adjustments will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated.

WHEREAS, the Commission approved the project subject to the applicant's compliance with all conditions set forth in this approval, as follows:

1. The project is approved per the following plans: Architectural Plans by Peter Brandelius, pages A99, A99.5, A100, A102-A107, A109-A112.
2. Prior to issuance of any building permits for the project the applicant or his assigns shall submit a construction plan to the Public Works Department which may include but is not limited to the following:
 - a. Construction delivery routes approved by the Department of Public Works.
 - b. Construction schedule (deliveries, worker hours, etc.)
 - c. Notification to area residents
 - d. Emergency access routes
4. The foundation shall be designed by an architect certified to design such plans in the state of California. Plans and calculations of the foundation elements shall be stamped and signed by the project engineer and submitted to the satisfaction of the Town Engineer or Building Permit Plan Checker.
5. The grading, foundation, and drainage elements shall also be stamped and signed by the project architect.
6. Prior to submittal of the building permit plans the applicant shall secure written approval from the Ross Valley Fire Authority, Marin Municipal Water District, and the Ross Valley Sanitary District noting the development conformance with their recommendations.
7. Prior to submittal of the building permit plans, and if a sprinkler system is going to be installed in the project, a separate fire suppression system application shall be filed and approved by the Ross Valley Fire Department with an approved copy of the plan included in the building permit application.
8. During the construction process the following shall be required:
 - a. The Building Official shall field check the concrete forms prior to the pour.
 - b. 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.
 - c. Any proposed temporary closures 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.

9. The Building Official shall field check the completed project to verify compliance with the approved plans and building code requirements.
10. Prior to issuance of a certificate of occupancy or final inspection, the Planning Department shall verify compliance with all Planning Commission conditions.
11. The roadways shall be kept free of dust, gravel and other construction materials by sweeping them, daily, if necessary.
12. Any changes, modifications, additions, or alterations made to the approved set of plans will require a modification of Application # 20-17 or the approval of the Planning Director of minor changes that do not modify the intent of this approval. Any construction based on job plans that have been altered without the benefit of an approved modification by the Planning Commission or the Planning Director of Application 20-17 will result in the job being immediately stopped and red tagged.
13. Any damages to the public portions of Belle, Kent, or Pastori Avenues or Sir Francis Drake Boulevard or other public roadway used to access the site resulting from construction activities shall be the responsibility of the property owner.
14. 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.

15. 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.
16. The applicant 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.
17. All exterior fixtures shall be dark sky compliant (fully shielded and emit no light above the horizontal plane with no sag or drop lenses, side light panels or up light panels) and the lighting plan shall be submitted with the building permit application and be approved by the Planning Department prior to issuance of the project building permit.
18. The lighting shall not emit direct offsite illumination and shall be the minimum necessary for safety.

Ross Valley Fire Department

19. The project site is located in a Wildland Urban Interface Zone (WUI). Construction shall comply with the requirements of Chapter 7A of the 2016 California Building Code, including installation of a Class A Roof Assembly.
20. All smoke detectors in the residence shall be provided with AC power and be interconnected for simultaneous alarm. Detectors shall be located in each sleeping room, outside of each sleeping room in a central location in the corridor and over the center of all stairways with a minimum of one detector on each story of the occupied portion of the residence.
21. Carbon monoxide alarms shall be provided in existing dwellings when a permit is required for alterations, repairs, or addition and the cost of the permit exceeds \$1,000.00. Carbon monoxide alarms shall be located outside of each sleeping area in the immediate vicinity of the bedrooms and on every level of the dwelling, including basements.
22. Address numbers at least four inches tall must be in place adjacent to the front door. If not clearly visible from the street, additional numbers must be placed in location that is visible from the street. The numbers must be internally illuminated or illuminated by and adjacent light controlled by a photocell that can be switched off only by a breaker so it will remain illuminated all night.
23. Alternative materials or methods may be proposed for any of the above conditions in accordance with Section 104.9 of the Fire Code.

24. All approved alternatives requests, and their supporting documentation, shall be included in the plan sets submitted for final approval by the Fire Department.

Marin Municipal Water District

25. Comply with MMWD Ordinance No. 429, requiring the installation of gray water recycling systems when practicable for all projects required to install new water service and existing structures undergoing "substantial remodel" that necessitates an enlarged water service.

26. The plans must comply with all the indoor and outdoor requirements of District Code Title 13, Water Conservation. Landscaping plans must be submitted to the District and be approved.

27. The District's backflow prevention requirements must be met and if installation of a backflow device is required, the device shall be tested/inspected and be approved by a District Inspector prior to the project final inspection and issuance of the occupancy permit.

Other outside agency requirements

28. The applicant must comply with all outside agency conditions unless a specific agency waives their conditions in a written letter to the Department of Planning and Building Services Department prior to issuance of the building permit.

Miscellaneous

29. To minimize impacts on trees and significant vegetation, the applicant shall incorporate tree protection measures, which may include installation of four foot high deer fencing around trees, vertical 2 x 4's wrapped around the tree trunk, mulch placement within the root zone, limiting heavy equipment use around trees and roots, and reporting any tree damage to the Director of Public Works so remedial action can be taken, pneumatic or hand trenching within the critical root zone, etc.

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, Minimum and Combined Side Yard Setback Variances, and Parking Variance is in conformance with the 2010 – 2030 Fairfax General Plan and the Fairfax Zoning Ordinance, Town Code Title 17; and

Construction of the project can occur without causing significant impacts on neighboring residences and the environment.

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 18th day of March of 2021 by the following vote:

AYES:

NOES:

ABSENT:

Chair Rodriguez

Attest:

Ben Berto, Director of Planning and Building Services