RESOLUTION NO. 2021-07

A Resolution of the Fairfax Planning Commission Approving Application No. 21-05 for a Conditional Use Permit and Combined Side-yard Setback Variance for a 181 Square-foot Addition and Second Story Remodel of the Existing Single-family Residence at 46 San Gabriel Drive.

WHEREAS, the Town of Fairfax has received an application from the Kevin and Susan Daniel for a 181 square foot addition and second story remodel of a single-family residence at 46 San Gabriel Drive on October 20, 2020; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on April 15, 2021 at which time the Planning Commission took public testimony on the project, reviewed the facts of the proposed project and the project plans and determined that the project complies with the Conditional Use Permit and Variance Regulations; 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 discretionary Conditional Use Permit and Combined Side-yard Setback Variance; and

WHEREAS, the Commission has made the following findings:

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

Goal LU-7: Preserve community and neighborhood character.

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.

Conditional Use Permit Findings

1) The approval of the use permit shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment. The proposed addition will not extend beyond the existing structure footprint and will not encroach any further into the required combined side setback than the existing building.

2) The development and use of the property, as approved under the use permit, shall not create a public nuisance, 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, any or all of which effects are substantially beyond that which might occur without approval or issuance of the use permit. The project will not increase the height or number of bedrooms in the structure and will not impact neighboring properties visually or increase the use of public parking.

3) Approval of the use permit is not contrary to those objectives, goals or standards pertinent to the particular case and contained or set forth in any master plan, development plan or other plan or policy, officially adopted by the town; and

4) Approval of the use permit will result in equal or better development of the premises than would otherwise be the case, and that the approval is in the public interest and for the protection or enhancement of the community.

Combined Side-yard Setback Variance

1) The narrow 65-foot width of the site is the special circumstances applicable to the property which makes it difficult to comply with the combined side yard setback regulation adopted in 1973, after the residence was built. Therefore, the strict application of this title will deprive the applicant of privileges enjoyed by other property owners in the vicinity and under identical zone classification.

2) The variance or adjustment 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. Many of the residences in the Marinda Oaks subdivision do not comply with the required combined 20-foot sideyard setback regulation as they were also constructed prior to the adoption of said regulation in 1973.

3) The strict application of this title would result in excessive or unreasonable hardship.

4) The granting of the variance of adjustment will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated.

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

1. The project is approved per the following plans and documents: Architectural Plans received by the Town of Fairfax on February 9, 2021, pages G-0.0 through G-0.2, G-0.4, A1.0, A1.1, A1.01, A1.2 through A1.12, A2.0, A2.1, A2.2, A3.0 through A3.3, A-4.0, A4.1 and A.10.

2. Prior to issuance of any of the building permits for the project the applicant or his assigns shall:

a) submit a construction plan to the Public Works Department which may include but need not be limited to the following:

i. Construction delivery routes approved by the Department of Public Works.
ii. Construction schedule (deliveries, worker hours, etc.)
iii. Notification to area residents
iv. Emergency access routes

b) The applicant shall prepare, and file with the Public Works Director, a video tape of the roadway conditions on the public and private construction delivery routes (routes must be approved by Public Works Director).

c) Submit a cash deposit, bond or letter of credit to the Town in an amount that will cover the cost of grading, weatherization and repair of possible damage (including emergency damage) to public or private roadways. The applicant shall submit contractor's estimates for any grading, site weatherization and improvement plans for approval by the Town Engineer. Upon approval of the contract costs, the applicant shall submit a cash deposit, bond or letter of credit equaling 100% of the estimated construction costs.

3. 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.

4. During the construction process the following shall be required:

   a) 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.

   b) 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.

5. Prior to issuance of an occupancy permit the Planning Department shall field check the completed project to verify that it has been constructed per the plans that were approved by the Planning Commission.

6. The roadways shall be kept free of dust, gravel and other construction materials by sweeping them, daily, if necessary.

7. Any changes, modifications, additions, or alterations made to the approved set of plans will require a modification of Application # 21-05. Modifications that do not significantly change the project, the project design or the approved discretionary permits ***may*** be approved by the Planning Director. Any construction based on job plans that have been altered without the benefit of an approved modification of Application 21-05 will result in the job being immediately stopped and red tagged.

8. Any damages to the public and/or private portions of San Gabriel Drive or other public or private roadway used to access the site resulting from construction-related activities shall be the responsibility of the property owner.

9. 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, Design Review Board 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.

10. 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.

11. In accordance with Town Code §8.20.060(C)(1) and (2), the operation of any tools or equipment used in construction or demolition work or in property maintenance work between the hours of 6:00 PM and 8:00 AM Monday through Friday, or on weekends and holidays between 4:00 PM and 9:00 AM is prohibited.

12. Conditions placed upon the project by outside agencies may be eliminated or amended with that agency's written notification to the Planning Department prior to issuance of the building permit.

Ross Valley Fire Department

13. All vegetation and construction materials are to be maintained away from the residence during construction.

14. Smoke detectors shall be installed throughout the entire building and be provided with AC power and be interconnected for simultaneous alarm.

15. Carbon monoxide alarms shall be provided outside each sleeping area in the immediate vicinity of the bedrooms.

16. Address numbers at least 4" tall visible from the street and internally illuminated or illuminated by and adjacent light controlled by a photocell and switched off only by a breaker so it will remain illuminated all night shall be installed.

Marin Municipal Water District (MMWD)

17. All indoor and outdoor requirements or District Code Title 13, Water Conservation must be complied with.

18. Backflow prevention requirements must be met.

19. Ordinance 420, requiring installation of grey water recycling system when practicable, must be incorporated into the project building permit plans or an exemption letter from MMWD must be provided to the Town, all of MMWD's rules and regulations if effect at the time service is requested must be complied with.

Ross Valley Sanitary District (RVSD)

20. The project will require trigger the District testing and lateral certification requirements. All work on the sewer lateral must be done with a Ross Valley Sanitary District (RVSD) permit, after the payment of applicable fees, must be inspected by RVSD Inspectors prior to backfill and must comply with District Codes including Ordinance 100.

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 Minimum and Combined Side-yard Setback Variance are in conformance with the 2010 – 2030 Fairfax General Plan, the Fairfax Town Code 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 15th day of April 2021 by the following vote:

AYES:
NOES:

_____
Chair Michel Rodriguez

Attest:

_____
Ben Berto, Director of Planning and Building Services