

RESOLUTION NO. 2021-03

A Resolution of the Fairfax Planning Commission Approving Application No. 21-03 for a Hill Area Residential Development Permit, Excavation Permit, Retaining Wall Height Variance, Design Review Permit and a Tree Removal Permit for a Residence at 63 Spring Lane

WHEREAS, the Town of Fairfax has received an application from Stacy and John Peoples to build a 3-story, 2,511 square-foot, 3 bedroom, 2½ bathroom single-family residence with an attached 648 square-foot internally connected garage/storage room February 3, 2020; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on February 18, 2021 at which time the Planning Commission determined that the project complies with the Hill Area Residential Development Overlay Ordinance, Excavation Ordinance, Design Review Criteria and Tree Removal 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 Hill Area Residential Development, Retaining Wall Height Variance for the driveway retaining wall, Excavation and Design Review Permits; and

WHEREAS, the Commission has 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.

Policy OS-3.2.2: Discourage development of any man-made structure on the ridgelines and within the ridge zones within the Fairfax Planning Area.

Hill Area Residential Development

The proposed development is consistent with the General Plan and the Residential Single-family RS 6 Zone regulations.

1. The site planning preserves identified natural features as much as possible while also complying with other agencies' regulations.
2. Vehicular access and parking are adequate.
3. The proposed development harmonizes with surrounding residential development and meets the design review criteria contained in Town Code § 17.020.040.
4. The approval of the Hill Area Residential Development permit for one single-family residence on this 42,200 square-foot parcel shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.
5. The development and use of property as approved under the Hill Area Residential Development Permit 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 use permit.
6. Approval of the proposed Hill Area Residential Development permit is not contrary to those objectives, goals or standards pertinent to the particular case and contained or set forth in any Master Plan, or other plan or policy, officially adopted by the City.
7. Approval of the Hill Area Residential Development permit will result in equal or better development of the premises than would otherwise be the case.

Excavation Permit

8. The Town Engineers have reviewed the following plans and reports and have determined the project can be constructed, with certain conditions of approval, without creating any hazards:

Architectural plans by Doug Thompson, sheets A0.1, A1.0A, A1.0B, A1.1, A1.4, A1.4A, A2.1, A2.2, A2.3, A2.4, A3.0, A3.1, A3.1R, A3.2R, A3.3 to A3.5 (revision date 10/16/20), Sheet A1.2, A1.3A, A1.3B, A1.3C, A1.6, (revision date 1/27/21 - driveway and wall),

Civil Engineering grading and Drainage plan pages C1 through C7 dated 8/4/20 and H1 dated 5/21/20.

Boundary and topographic map dated November 2018 and Record of Survey by Stephen Flatland.

Geotechnical report Dave Olnes, dated 11/15/19

Drainage Report by DVC Group dated 5/21/20

9. Based on the Town Engineer's review and recommendation that the project can be safely constructed, the Planning Commission finds that:

- a) The health safety and welfare of the public will not be adversely affected;
- b) Adjacent properties are adequately protected by project investigation and design from geologic hazards as a result of the work;
- c) Adjacent properties are adequately protected by project design from drainage and erosion problems as a result of the work;
- d) The amount of the excavation or fill proposed is not more than that required to allow the property owner substantial use of his or her property;
- e) The visual and scenic enjoyment of the area by others will not be adversely affected by the project more than is necessary;
- f) Natural landscaping will not be removed by the project more than is necessary; and
- g) The time of year during which construction will take place is such that work will not result in excessive siltation from storm runoff nor prolonged exposure of unstable excavated slopes (Town code § 17.072.090(c)(4) prohibits grading of hillside properties from October 1st through April 1st of each year).

Retaining Wall Height Variance

- 10. The 15.5 foot tall driveway retaining wall is necessary to create access to the structure and garage and to create a driveway that is accessible to Fire Trucks and other emergency vehicles. The wall cannot be stepped back as multiple walls due to the close proximity of the existing residence at 65 Spring Lane. The orientation of the site with respect to the improved roadway and the site slope necessitate the need for the wall height variance because the strict application of the retaining wall height limit will deprive the applicant of privileges enjoyed by other property owners in the vicinity and under identical zone classification.
- 11. 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.
- 12. The strict application of this title would result in excessive or unreasonable hardship.
- 13. 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 limited to that shown in the Architectural plans by Doug Thompson, sheets A0.1, A1.0A, A1.0B, A1.1, A1.4, A1.4A, A2.1, A2.2, A2.3, A2.4, A3.0, A3.1, A3.1R, A3.2R, A3.3 to A3.5 (revision date 10/16/20), Sheet A1.2, A1.3A, A1.3B, A1.3C, A1.6, (revision date 1/27/21 - driveway and wall).
Civil Engineering grading and Drainage plan pages C1 through C7 dated 8/4/20 and H1 dated 5/21/20.
Boundary and topographic map dated November 2018 and Record of Survey by Stephen Flatland.
Geotechnical report Dave Olnes, dated 11/15/19
Drainage Report by DVC Group dated 5/21/20
Colors and materials board
Fairfax Tree Committee action of 2/24/20 recommending approval of the requested tree removals contained in the tree removal application received and date stamped by the Town on February 03, 2020.
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 is not limited to the following:
 - 1) Construction delivery routes approved by the Department of Public Works.
 - 2) Construction schedule (deliveries, worker hours, etc.)
 - 3) Notification to area residents
 - 4) Emergency access routes
 - 5) A detailed construction management plan must be submitted with the building permit application that includes construction delivery routes, construction schedule (deliveries, worker hours, etc.), notification to area residents, emergency access and egress routes and a carpooling plan for employees that will minimize the parking of additional private vehicles during construction on Spring Lane during construction and be approved by the Department of Public Works.
 - 6) The applicant shall prepare, and file with the Public Works Director, a video tape of the roadway conditions on the public construction delivery routes (routes must be approved by Public Works Director).
 - B. 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 to public 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. The foundation and retaining elements shall be designed by a structural engineer certified as such in the state of California. Plans and calculations of the foundation and retaining elements shall be stamped and signed by the structural engineer and submitted to the satisfaction of the Town Structural Engineer.
4. The grading, foundation, retaining, and drainage elements shall also be stamped and signed by the site geotechnical engineer as conforming to the recommendations made by the project Geotechnical Engineer.
5. 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.
6. The minor discrepancies between the property legal description, boundary distances and dimensions shown on the Topographic and Boundary Survey and the Recorded Survey shall be addressed in writing by the project surveyor and shall include a brief commentary on the basis for his determination of the property boundaries and reasons for the observed discrepancies for review and approval by the Town Engineer.
7. If approved and prior to issuance of the building permit the owner shall provide access easements across APN 002-174-05 for all applicable utility agencies, the Town of Fairfax and the owners of the 2 parcels to the east, APN # 002-174-03 and 04 (the parcels further east of APN # 002-174-04 have either been merged with developed parcels or are already developed on Crest Road or Deer Park Drive).
8. The height and proximity of the driveway retaining wall proposed on the 65 Spring Lane property lies within roughly 15 feet of the 65 Spring Lane residential structure. The retaining wall design and construction sequencing must be designed to maintain adequate lateral support for the property and improvements at 65 Spring Lane and include a detailed shoring plan with the structural plans submitted at the building permit stage, for review and approval by the Town Engineer.
9. Submit 3 copies of the record of survey with the building permit plans.
10. All retaining walls that are visible from the street and are constructed of concrete shall be heavily textured and colorized or otherwise provided with a surface treatment in a manner approved by planning staff prior to issuance of the building permit. This condition is intended to mitigate the visual impact of the proposed walls.
11. Three copies of the Landscape Tree Inspection Report dated 2/6/20 by Robert Morey, Arborist, updated to include the removal of the two oak trees on the east

side of the driveway approach, shall be submitted with the building permit application and all recommendations included in this report shall be conditions of the project approval.

12. Prior to the removal of any additional trees not approved by the Planning Commission through this action, the applicant shall secure a tree cutting permit, if required, from the Fairfax Tree Committee prior to removal of any on-site trees subject to a permit under Town Code Chapter 8.36. To further minimize impacts on trees and significant vegetation, the applicant shall submit plans for any utility installation (including sewer, water and drainage) which incorporates the services of the project arborist to prune and treat trees having roots 2 inches or more in diameter that are disturbed during the construction, excavation or trenching operations. In particular, cross country utility extensions shall minimize impacts on existing trees. Tree root protection measures may include meandering the line, check dams, rip rap, hand trenching, soil evaluation and diversion dams.
13. The following arborist inspections shall occur:
 - a. Before Equipment Mobilization, Delivery of Materials, Tree Removal, Site Work. Prior to the start of construction, the project arborist will meet with the general contractor and owners to review tree-protection measures, designated tree removals, identify and mark tree protection zone fencing, specify equipment access routes and storage areas, and review existing conditions of trees to provide any additional necessary protection measures
 - b. Following Installation of Tree-Protection Fencing/Armoring. The project arborist will inspect the site to ensure that all protection measures are properly installed. Review contractor requests for access within tree-protection zones. Assess changes in tree health since previous inspection.
 - c. During Soil Excavation or Work Potentially Affecting Protected Trees. The project arborist will inspect the site during any work within non-intrusion zones of protected trees and document implemented recommendations. Assess changes in tree health since previous inspection.
 - d. Final Site Inspection. The project arborist will inspect tree health and provide necessary recommendations to promote tree health and longevity. A letter report will be provided to the Town of Fairfax that summarizes the project arborist's findings and conclusions.
14. If deemed necessary by the Town Engineers, the applicants shall prepare a drainage system maintenance agreement including a recordable exhibit of the proposed drainage system in its entirety including a maintenance schedule to be approved by the Town Engineer. The maintenance agreement will have to be signed by the owner, notarized and recorded at the Marin County Recorder's office prior to issuance of the building permit.

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

- a) The geotechnical engineer and the project arborist shall be on-site during the grading process and both shall submit written certification to Town Staff that the grading and tree protection measures have been completed as recommended prior to installation of foundation and/or retaining forms and drainage improvements, piers, and supply lines.
- b) Prior to the concrete form inspection by the building official, the geotechnical and structural engineers shall field check the forms of the foundations and retaining elements and provide written certification to Town staff that the work to this point has been completed in conformance with their recommendations and the approved building plans.
- c) The Building Official shall field check the concrete forms prior to the pour.
- d) 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.
- e) 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.

16. Prior to issuance of an occupancy permit the following shall be completed:

- a) The geotechnical engineer shall field check the completed project and submit written certification to Town Staff that the foundation, retaining, grading and drainage elements have been installed in conformance with the approved building plans and the recommendations of the soils report.
- b) The Planning Department and Town Engineer shall field check the completed project to verify that all planning commission conditions and required engineering improvements have been complied with including installation of landscaping and irrigation prior to issuance of the certificate of occupancy.
- c) The landscaping depicted on page A1.3A and the irrigation depicted on page A1.3B of the project plan set dated 1/27/21 shall be installed, inspected and approved by the Planning Department Staff prior the issuance of the project certificate of occupancy.

17. Excavation shall not occur between October 1st and April 1st of any year. The Town Engineer has the authority to waive this condition depending upon the weather.
18. The roadways shall be kept free of dust, gravel and other construction materials by sweeping them, daily, if necessary.
19. Any changes, modifications, additions or alterations made to the approved set of plans will require a modification of Application # 21-03. 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 21-03 will result in the job being immediately stopped and red tagged.
20. Any damages to the public portions of Spring Lane, Meernaa Avenue, Creek Road, or other public roadway used to access the site resulting from construction-related activities shall be the responsibility of the property owner.
21. 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.
22. 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.

23. Conditions placed upon the project by outside agencies or by the Town Engineer may be eliminated or amended with that agency's or the Town Engineer's written notification to the Planning Department prior to issuance of the building permit.
24. Conditions placed upon the project by the project arborist may be amended or eliminated by the approval of the Planning Director after receiving a request for the elimination/amendment in writing from the project arborist.
25. The building permit plans especially the driveway plans, shall be reviewed and approved by the Town Engineer, at the expense of the applicant, prior to issuance of the building permit. The project shall be inspected by the Town Engineer prior to issuance of the occupancy permit for the residential structures and driveway for compliance with the engineering plans.

Ross Valley Fire Department

26. A fire sprinkler system that complies with the National Fire Protection Association regulation 13-D and local standards shall be installed throughout the entire structure. The system will require a permit from the Fire Department and the submittal of plans and specifications for a system submitted by an individual or firm licensed to design and/or design-build sprinkler systems.
27. The property is located within the Wildland Urban Interface Area for Fairfax and the new construction must comply with Chapter 7A of the California Building Code or equivalent.
28. 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 1 detector on each story of the occupied portion of the residence.
29. 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.
30. Address numbers at least 4 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.
31. Alternative materials or methods may be proposed for any of the above conditions in accordance with Section 104.9 of the Fire Code.

32. All approved alternatives requests, and their supporting documentation, shall be included in the plan sets submitted for final approval by the Fire Department.
33. All vegetation within the 30 foot fire defensible space zone around the structure shall be irrigated.
34. Erosion control methods shall be maintained that are in compliance with the Town Regulations.
35. Vegetation shall be maintained to ensure address numbers are visible from the street and these requirements shall be met prior to the final fire clearance of the project.

Marin Municipal Water District (MMWD)

36. The project will require a pipeline extension from the end of the District's existing facilities, the applicant must enter a pipeline extension agreement for the installation of the necessary facilities and said agreement must be approved by the District's Board of Directors. All costs associated with the extension shall be borne by the applicant though the applicant may apply for a variance to these requirements
37. A copy of the building permit must be provided to the district along with the required applications and fees.
38. The foundation must be completed within 120 days of the date of application.
39. All indoor and outdoor requirements or District Code Title 13, Water Conservation must be complied with.
40. Any landscaping plans must be reviewed and approved by the District.
41. Backflow prevention requirements must be met.
42. 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 the District must be provided to the Town.
43. All of the District's rules and regulations in effect at the time service is requested must be complied with.

Ross Valley Sanitary District (RVSD)

44. The project will require a connection permit from the District.

45. The size of the sewer lateral will depend on the fixture count calculated during the permitting process.

Fairfax Building and Public Works Departments

46. All large trucks with more than 2 axels accessing the site for construction will be limited to the hours of 9 AM to 3 PM.

47. Trucks removing off-haul will be limited to 10-yard dump trucks.

48. The driveway improvements shall be completed and be signed off by the Town Engineer, the Building Official/Public Works Manager and the Ross Valley Fire Department before construction on the house begins.

49. Road closures shall be noticed in the field a minimum of 5 days prior to the event and individual written notifications shall be delivered to each resident on Spring Lane.

50. If constructing the driveway approach will involve connecting to the Town road in a manner that will result in changes to the paved public roadway, an encroachment permit must be obtained from the Public Works Department prior to issuance of the building permit.

51. A detailed construction management plan must be submitted with the building permit application that includes construction delivery routes, construction schedule (deliveries, worker hours, etc.), notification to area residents, emergency access and egress routes and a carpooling plan for employees that will minimize the parking of additional private vehicles during construction on Spring Lane during construction and be approved by the Department of Public Works.

52. Prior to issuance of the building permit the applicants shall provide the Town with a Northern Spotted Owl Survey that will include identification of any nesting sites within ¼ mile of the project site, and recommendations for measures that will become conditions of project approval to minimize the negative impacts of the construction on the birds. Construction shall be prohibited during the Northern Spotted Owl nesting season from February 1st through July 31st unless a plan for allowing construction activities during this period is submitted by a qualified spotted owl biologist and approved by the State, with documentation of the approval provided to the Town, prior to initiating any construction activities. All requirements listed in the plan, including potential onsite monitoring, must always be met by the applicants.

53. Drainage improvements to take the site water to the drainage channel along Spring Lane shall be accomplished in a manner that does not impede vehicle or pedestrian access to the unpaved Spring Lane fire road, shall be shown in the building permit application construction plans and shall be subject to review and approval by the

Town Engineer, Planning Director and Building Official prior to issuance of the building permit and prior to the issuance of the occupancy permit.

- 54. As recommended by the Fairfax Tree Committee in their 2/24/20 action, non-diseased trees that are outside of the 100 feet of defensible space that are approved to be removed shall be replaced at a minimum 1:1 ratio.
- 55. Fencing on the site shall be limited to around the house and landscaped areas. The perimeter of the property shall remain unfenced.
- 56. If so desired, the applicant and the property owner of 65 Spring Lane shall work together to create a landscaping plan for the area between the retaining wall safety railing and 65 Spring Lane prior to issuance of the building permit. The plan shall be reviewed and approved by the Planning Director.

NOW, THEREFORE BE IT RESOLVED, the Planning Commission of the Town of Fairfax hereby finds and determines as follows:

The approval of the Hill Area Residential Development Permit, Excavation Permit, Retaining Wall Height Variance, Tree Removal Permit and Design Review Permit 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 18th day of February 2021 by the following vote:

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

Chair Michele Rodriguez

Attest:

Ben Berto, Director of Planning and Building Services