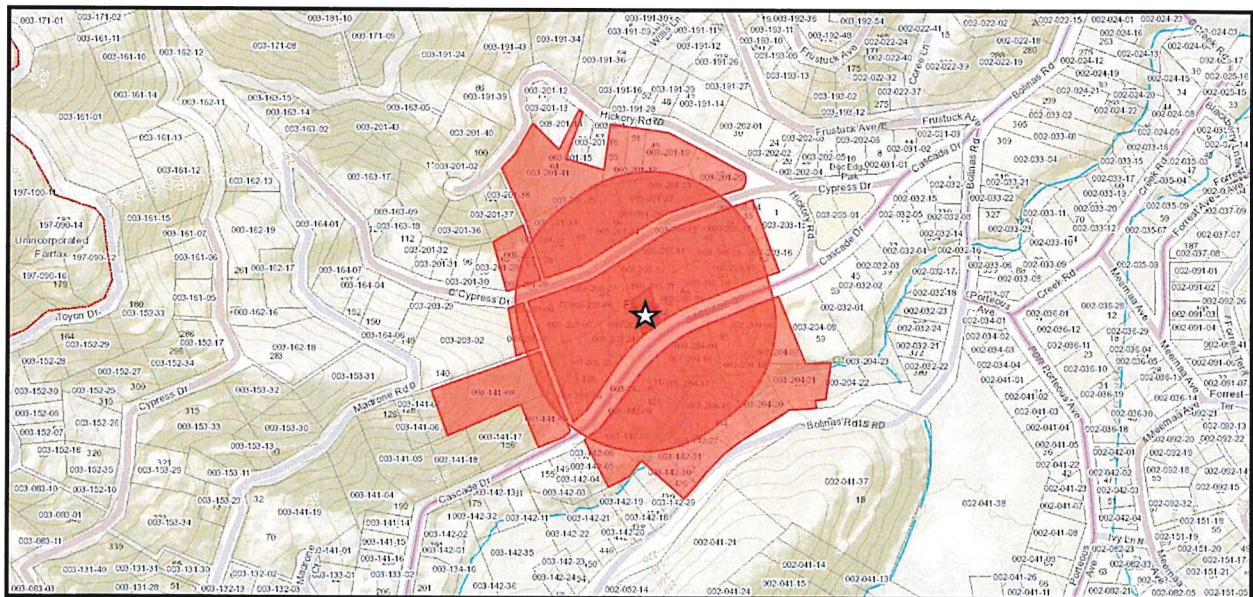


TOWN OF FAIRFAX STAFF REPORT

Department of Planning and Building Services

TO: Planning Commission
DATE: September 16, 2021
FROM: Linda Neal, Principal Planner
LOCATION: 100 Cascade Drive; APN # 003-203-32
ZONING: Residential Single-family RS 6 Zone
PROJECT: Construction of an approximately 21 s.f. bay window addition to an existing single-family residence
ACTION: Conditional Use Permit and Variance; Application # 21-19
APPLICANT: Christopher Schrader, Designer
OWNER: Daniel Neal
CEQA STATUS: Categorically exempt, § 15301(e)



100 CASCADE DRIVE

DESCRIPTION

Construction of an approximately 20 square-foot bay window addition to an existing 1,241, 3-bedroom, 1 ½ bathroom, single-family residence with an attached one car garage expanding the existing living room and resulting in a 1,261 square foot structure.

BACKGROUND

The 6,000 square-foot, approximately 54 foot wide, property was created on August 4, 1914, by the recordation of Map No. 1 of the Cascades. The existing residence was constructed in 1948. Also existing on the site is an above-grade deck at the rear of the site that is equal to or less than 30 inches above grade, and which did not require a building permit but was constructed within the required side and rear setbacks and would have required the approval of a Setback Variance by the Planning Commission. Staff can find no record that a Setback Variance was ever submitted or was approved by the Planning Commission.

DISCUSSION

Conditional Use Permit

Town Code § 17.080.050(A) requires that a Conditional Use Permit or a Hill Area Residential Development (HRD) Permit be obtained in the RS 6 Zone for any use, occupancy or physical improvement on a building side failing to be 6,000 square feet in size and 60 feet wide.

The project site is roughly 54 feet wide, six feet short of the required 60-foot width. Therefore, the project requires the approval of a conditional use permit. Note: An HRD permit is not required because the site is level, it is not in a landslide hazard zone and no significant amounts of materials will need to be excavated to construct this minor addition. The project does not constitute a 50% remodel so it also will not require the approval of a Design Review Permit by the Commission.

To approve a Conditional Use Permit, the Commission must be able to make the required following 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.
2. 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.
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, or other plan or policy, officially adopted by the City.
4. 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.

The project site is zoned Residential Single-family RS-6 and the project will comply with the regulations set forth in Town Code Chapter 17.80, Residential Single-family RS-6 Zone as follows:

	Front Setback	Rear Setback	Combined Front/rear Setback	Side Setbacks	Combined Side Setbacks	FAR	Coverage	Height
Required/ Permitted	6 ft.	6 ft.	25 ft.	5 ft. & 5 ft.	15 ft.	.40	.35	28.5 ft., 2 stories
Existing	16 ft.	2 ft.	18 ft.	0 ft. & 6 ft.	6 ft.	.20	.20	17.5 ft., 1 story
Proposed	No change	No change	No change	No change	No change	.21	.21	No change

The 20 square-foot addition will increase the square footage of the residence from 1,241 square-feet to 1,261 square feet and will not result in the addition of any bedroom or bathroom.

The exterior of the bay window addition will match the existing structure with respect to colors, materials, and architectural design. No new lighting is proposed as a part of the project.

Residences in the immediate neighborhood on similar sized, level, lots range from a 1,128 square-foot, 1-bedroom, 2-bathroom single-family residence on a 5,202 square-foot property with a Floor Area Ratio of .22 to a 1,945 square-foot, 6-bedroom, 2-bathroom residence on a 6,000 square-foot property with an FAR of .32 (see table below).

100 CASCADE DRIVE – COMPARABLE HOUSE NEIGHBORHOOD HOUSE SIZES							
APN #	ADDRESS	LOT SIZE	HOUSE SIZE	# BEDROOMS	# BATHS	garage	FAR
3-203-16	16 Cascade	5,500	1,413	2	2	420	.26
3-203-17	66 Cascade	5,500	1,175	2	1	180	.21
3-203-20	84 Cascade	5,202	1,128	1	2	288	.22
3-203-21	88 Cascade	6,000	1,945	6	2	315	.32
3-203-23	104 Cascade	5,880	1,240	3	2	313	.21
3-203-24	112 Cascade	6,380	1,498	3	2	380	.23
3-203-30	82 Cascade	5,000	1,984	3	3	544	.40
3-203-31	80 Cascade	6,000	1,302	2	1	198	.22
PROJECT RESIDENCE PLUS ADDITION							
3-203-22	100 Cascade	6,000	1,261	3	1.5	297	.21

Therefore, based on the information obtained from the Marin County Tax Assessor's Records, the proposed 1,261, three bedrooms, one-and-a-half-bathroom residence will not be out of scale or character with the surrounding neighborhood, will not have a negative impact on the adjacent properties, and will not constitute a grant of special privilege.

Side, Rear, and Combined Front-Rear Variance

The existing rear deck is located on the on the western side property line and a two and a half to four-foot setback from the rear property line. The setback varies because the rear property line does not run parallel to the edge of the deck.

Town Code § 17.080.070(A)(1) requires a minimum rear setback for structures of six feet, a combined front/rear setback of 25 feet, minimum side yard setbacks of five feet, and a combined side yard setback of 15 feet. Town Code § 17.044.070(A)(2) allows decks to encroach two feet into any required setback so a deck in the rear yard would have to maintain a three-foot setback from the west side property line and a four-foot setback from the rear property line to meet the minimum setback requirements, and an eight-foot setback to comply with the required combined 25-foot front/rear setback.

The existing owners were not aware that a deck that does not require a building permit to construct is still subject to zoning regulations. This is a common mistake made by homeowners and contractors alike. This application is seeking to legalize the rear deck which was constructed mostly to maintain the health by avoiding construction damage to the roots of the mature Japanese Maple tree at the rear northwest corner of the property (see the photo below).



If it were not for the rear deck that projects to the west side property line and to 3 ½ feet from the rear property line in some areas, the project would comply with all the setback regulations set forth in Town Code § 17.080.070(1) and (2) maintaining in excess of the required minimum 6 foot front and rear setbacks and the combined 25 foot combined front/rear setback and the minimum 5 foot side yard setbacks and the combined 15 foot combined side yard setback. The existing house setbacks exceed those required in 1948 when it was constructed, and the addition of the bay window will not result in the house encroaching any further into any of the currently required setbacks.

Building decks at grade to beautify and frame level yards and avoid potentially damaging the roots of existing mature trees is a development trend that has always been around but has increased in recent years. While there are many other attractive ways to delineate level outdoor living spaces such as flagstone patios, crushed granite areas, etc. these other options require excavation and/or compaction that can damage/impact mature tree roots while low-level decks or platforms can provide level usable outdoor space while avoiding impacting these roots.

This deck is more of a box built at grade to protect the tree roots, it consists of two x fours placed horizontally at grade with decking on top, there are no stairs required to access the "deck". Staff believes that requiring a three-foot side setback for a deck this low to the ground and a four-foot setback from the rear line (inches from an existing rock wall planter, will create an area where a person could misstep, get their foot caught and fall.



The deck elevates a person standing on it no more than approximately four to six inches above grade, so it does not afford someone standing on it views into any of the neighboring yards, while creating a level surface for the owners to enjoy their yard.

While the deck meets the strict interpretation of the Town Code definition of "structure", in the spirit of maintaining the health of the tree, it should be considered more of an elevated patio improvement or a surface treatment to protect the tree roots and the Building Official described it as more of a platform.

Town Code § 17.008.020, Definitions, defines a structure as "Anything constructed or erected the use of which required a location on the ground or attached to something having a location on the ground, including but without limiting the generality of the foregoing, advertising signs, billboards, backstops for tennis courts, fences, pergolas, radio and television towers, masts and aerials".

The existing platform deck does not contradict the intent of the deck setback requirements due to its minimal four-to-six-inch height above grade while serving to help maintain the health of the existing mature Japanese Maple. The deck's minimal height of grade does not constitute a special privilege and does not adversely affect adjoining neighbors. Staff would consider granting equivalent variances to similarly situated properties. Therefore, staff are recommending approval of the requested minimum side yard and rear yard and combined front/rear setback variances to legalize the existing deck in its current location.

Other Agency Comments/Conditions

Staff received no comments or recommended conditions from any agency or department for this project.

Miscellaneous

The project is not located within ¼ mile of any known Northern Spotted Owl nesting site.

RECOMMENDATION

Conduct the public hearing.

Move to approve application # 21-19 by adopting Resolution No. 2021-21 setting forth the findings and the conditions for the project approval.

ATTACHMENTS

Attachment A - Resolution No. 2021-20

Attachment B – excerpt from Ordinance 102 passed in 1947

Attachment C – cross section showing bay window with window seat and storage beneath

RESOLUTION NO. 2021-21

A Resolution of the Fairfax Planning Commission Approving Application No. 21-19 for a Conditional Use Permit and a Combined Front/Rear Setback Variance for a 20 Square-foot Bay window addition to the Existing Single-family Residence and Legalization of a Rear Deck at 100 Cascade Drive

WHEREAS, the Town of Fairfax has received an application from the Erica and Daniel Neal for a 20 square-foot, bay window, addition to legalize a rear deck at 100 Cascade Drive on July 20, 2021; and

WHEREAS the Planning Commission held a duly noticed Public Hearing on September 16, 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 Front/Rear 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 (Town Code § 17.032.060)

- 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 bay window addition complies with the required minimum and combined setbacks and the rear deck, will not constitute a grant of special privilege because the location of the deck in the rear corner area was to maintain the health of the existing tree and its roots and due to its height of 6 inches or less above grade, it does not violate the intent of the Town Code setback regulations.
- 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.

- 3) Approval of the use permit is not contrary to those objectives, goals, or standards pertinent to the particular case and contained within the Residential Single-family RS 6 Zone District regulations; 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.

Minimum Side, Rear, and Combined Front/rear Setback Variances (Town Code § 17.028.070)

- 1) The narrow 55-foot width and location of the existing mature tree at the rear northwest corner of the site are the special circumstances applicable to the property which makes it difficult to comply with the minimum side and rear and combined front/rear setback regulations. Therefore, the strict application of this title will deprive the applicant of privileges of having usable, level yard area while also maintaining the health of a mature tree which are 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. The six inch above grade deck does not contradict the intent of the setback regulations while enable the owners to use the entire yard without negatively impacting the existing tree.
- 3) The strict application of this title might result in a safety issue and an 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 plans by Christopher Schrader, received by the Town on 9/20/21.
2. 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.
3. 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.
4. 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.
 5. The roadways shall be kept free of dust, gravel, and other construction materials by sweeping them, daily, if necessary.
 6. Any changes, modifications, additions, or alterations made to the approved set of plans will require a modification of Application # 21-19. 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 21-19 will result in the job being immediately stopped and red tagged.
 7. Any damages to the public and/or private portions of Cascade 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.
 8. 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.

9. 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.
10. 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.
11. 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.

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 Combined Front/Rear 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.

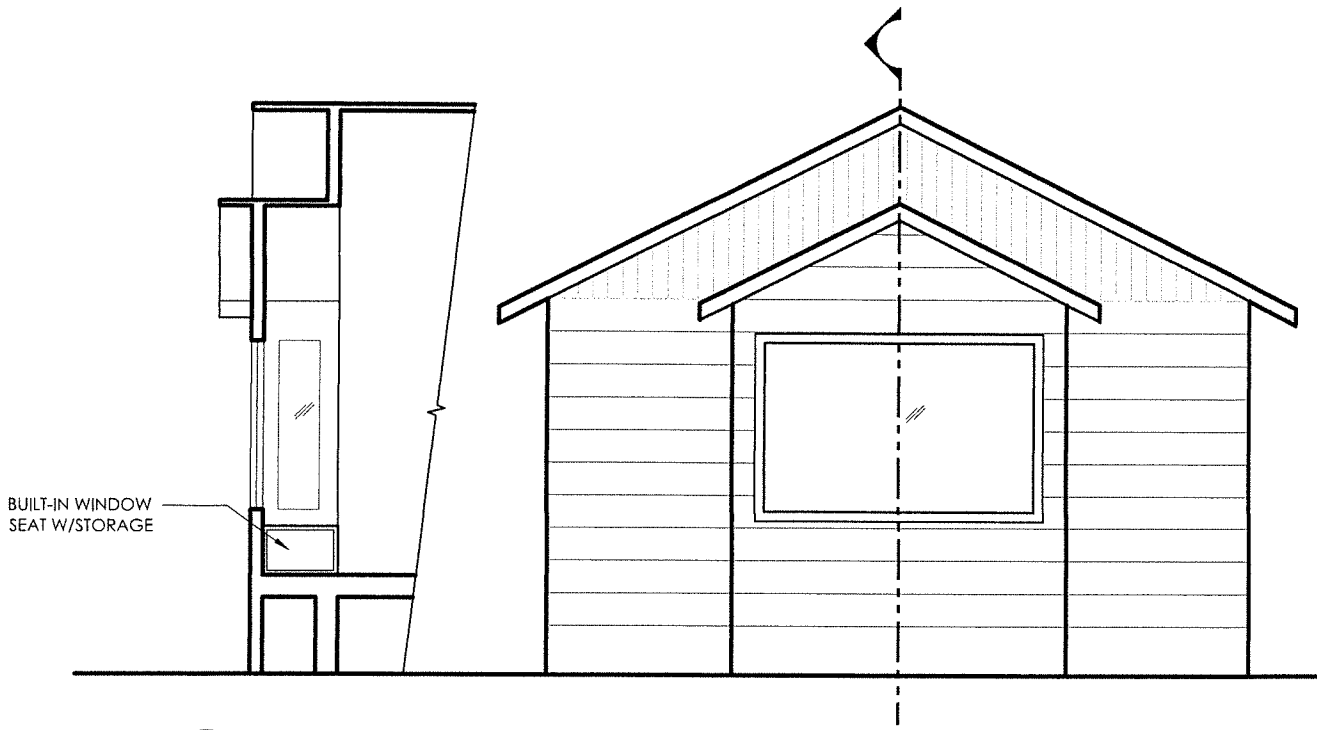
The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 16th day of September 2021 by the following vote:

AYES:
NOES:

Chair Mimi Newton

Attest:

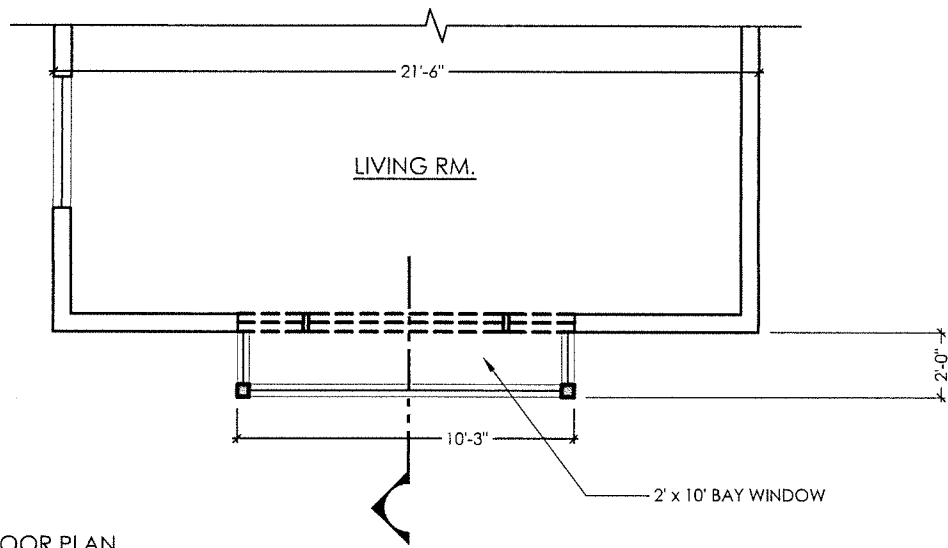
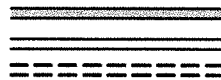
Ben Berto, Director of Planning and Building Services



2 WALL SECTION
Scale: 1/4"=1'-0"

LEGEND

(N) 2X WALLS
(E) WALLS TO REMAIN
TO BE REMOVED



1 FLOOR PLAN
Scale: 1/4"=1'-0"

100 CASCADE DR.

ATTACHMENT B

Christopher Holm

100 Cascade Drive - Bay Window Addition

Bay Window Addition

Owner: Daniel Neal
 100 Cascade Drive
 Fairfax, CA 94930

APN: 003-203-22

General Project Information, Site Plan

<p>SITE PLAN</p>	<p>PARCEL MAP - assessor's map Bk. 3 - Pg. 20</p>	<p>VICINITY MAP</p>	<p>AERIAL PHOTO</p>																																																											
<p>LEGEND</p> <ul style="list-style-type: none"> PROPOSED IMPROVEMENTS REQUIRED SETBACK PROPERTY LINE <p>1 SIMPLE SITE PLAN Scale: 1/8"=1'-0"</p>	<p>CODE SUMMARY</p> <ol style="list-style-type: none"> 1.) 2019 Edition, California Building Code ("CBC"), chapters 2 through 28, 30, 31, 32, 33, 35 and Appendices C, H, I, and N. 2. 2.) 2019 Edition California Electrical Code ("CEC"). 3.) 2019 Edition, California Energy Code ("CEG"). 4.) 2019 Edition, California Existing Building Code ("CEBC"), chapters 2 through 16 and Appendices. 5.) 2019 Edition, California Green Building Construction Standards Code ("CalGreen"), chapters 1 through 8 and Appendices A4 and A5. 6.) 2019 Edition, California Historical Building Code ("CHBC"). 7.) 2019 Edition, California Mechanical Code ("CMC") chapters 2 through 17. 8.) 2019 Edition, California Plumbing Code ("CPC"), chapters 2 through 17 and Appendices A, C, D, and I. 9.) 2019 Edition, California Referenced Standards Code. 10.) 2019 Edition, California Residential Code ("CRC"), chapters 2 through 10, chapter 44, and Appendices H, J, K, O, Q, R, S, T, and X. 11.) 2018 International Property Maintenance Code ("IPMC") chapters 1 through 8 and Appendix A. 12.) 2018 Edition, International Swimming Pool and Spa Code ("ISPSA"), chapters 2 through 11. 	<p>PROJECT DATA / FAR CALCS.</p> <table border="1"> <thead> <tr> <th></th> <th>CODE REQUIRED</th> <th>EXISTING</th> <th>ADDITION</th> <th>PROPOSED</th> </tr> </thead> <tbody> <tr> <td>LOT SIZE</td> <td></td> <td>6,000</td> <td></td> <td></td> </tr> <tr> <td>AVERAGE SLOPE</td> <td></td> <td>6.26%</td> <td></td> <td></td> </tr> <tr> <td colspan="5">FAR (FLOOR AREA RATIO)</td> </tr> <tr> <td>TOTAL</td> <td></td> <td>1,241 (21%)</td> <td>20</td> <td>1,261 (21%)</td> </tr> </tbody> </table> <p>PARCEL/SITE DATA</p> <table> <tr> <td>ORIGINAL CONSTRUCTION DATE:</td> <td>1948</td> </tr> <tr> <td>CONSTRUCTION:</td> <td>TYPE V</td> </tr> <tr> <td>OCCUPANCY:</td> <td>GROUP R3</td> </tr> <tr> <td>ZONING:</td> <td>RS-6</td> </tr> <tr> <td>STORIES:</td> <td>1</td> </tr> <tr> <td>UNITS:</td> <td>1</td> </tr> <tr> <td>WUI:</td> <td>YES</td> </tr> <tr> <td>FLOOD ZONE:</td> <td>NO</td> </tr> <tr> <td>STREAM CONSERVATION AREA:</td> <td>NO</td> </tr> <tr> <td>%SLOPE:</td> <td>6.26%</td> </tr> </table>		CODE REQUIRED	EXISTING	ADDITION	PROPOSED	LOT SIZE		6,000			AVERAGE SLOPE		6.26%			FAR (FLOOR AREA RATIO)					TOTAL		1,241 (21%)	20	1,261 (21%)	ORIGINAL CONSTRUCTION DATE:	1948	CONSTRUCTION:	TYPE V	OCCUPANCY:	GROUP R3	ZONING:	RS-6	STORIES:	1	UNITS:	1	WUI:	YES	FLOOD ZONE:	NO	STREAM CONSERVATION AREA:	NO	%SLOPE:	6.26%	<p>PROJECT DESCRIPTION</p> <p>1.) ADD BAY WINDOW TO FRONT OF HOUSE. ALL MATERIALS, FINISHES AND COLORS TO MATCH EXISTING.</p> <p>DRAWING INDEX</p> <p>ARCHITECTURAL</p> <p>A0 DRAWING INDEX, VICINITY MAP, NEIGHBORHOOD PLAN, PROJECT DATA, PROJECT TEAM, PROJECT DESCRIPTION.</p> <p>A1 SITE PLAN, FLOOR PLAN, BUILDING ELEVATIONS</p> <p>PROJECT TEAM</p> <table> <tr> <td>DESIGNER</td> <td>OWNER</td> </tr> <tr> <td>CHRISTOPHER HOLM</td> <td>DANIEL NEAL</td> </tr> <tr> <td>SCHRADER DESIGN</td> <td>100 CASCADE DRIVE</td> </tr> <tr> <td>PO BOX 150486</td> <td>FAIRFAX, CA 94930</td> </tr> <tr> <td>SAN RAFAEL, CA 94915</td> <td>T. (415) 858-9978</td> </tr> <tr> <td>T. (415) 509-8541</td> <td>DANIEL@DANIELNEALPHOTOGRAPHY.COM</td> </tr> <tr> <td>INFO@CSCHRADERDESIGN.COM</td> <td></td> </tr> </table>	DESIGNER	OWNER	CHRISTOPHER HOLM	DANIEL NEAL	SCHRADER DESIGN	100 CASCADE DRIVE	PO BOX 150486	FAIRFAX, CA 94930	SAN RAFAEL, CA 94915	T. (415) 858-9978	T. (415) 509-8541	DANIEL@DANIELNEALPHOTOGRAPHY.COM	INFO@CSCHRADERDESIGN.COM	
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Ralph Schrader

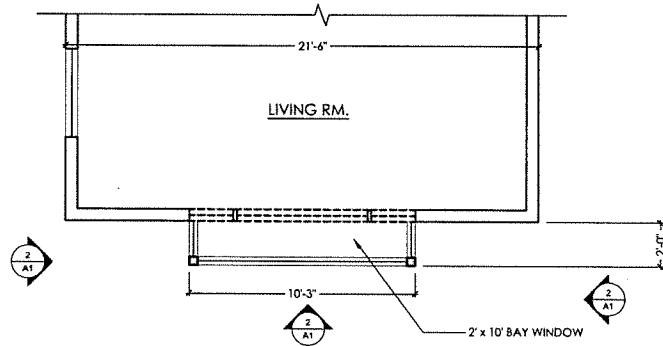
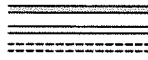
Bay Window Addition

Owner: Daniel Neal
100 Cascade Drive
Fairfax, CA 94930
APN: 003-203-22

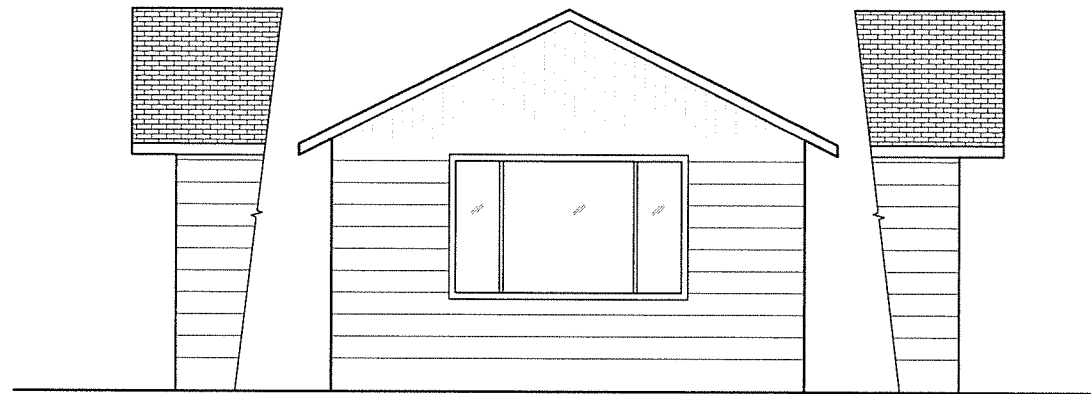
Site Plan, Floor Plan, & Elevations

LEGEND

(N) 2X WALLS
(E) WALLS TO REMAIN
TO BE REMOVED

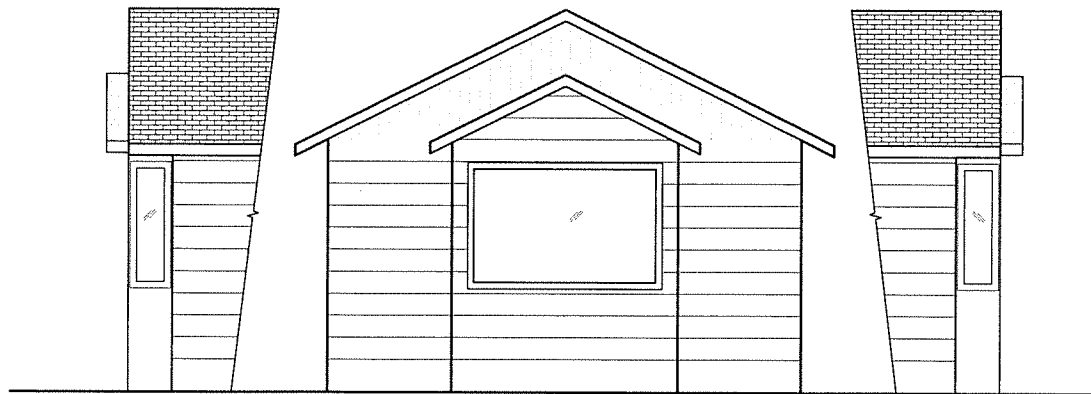


4 FLOOR PLAN
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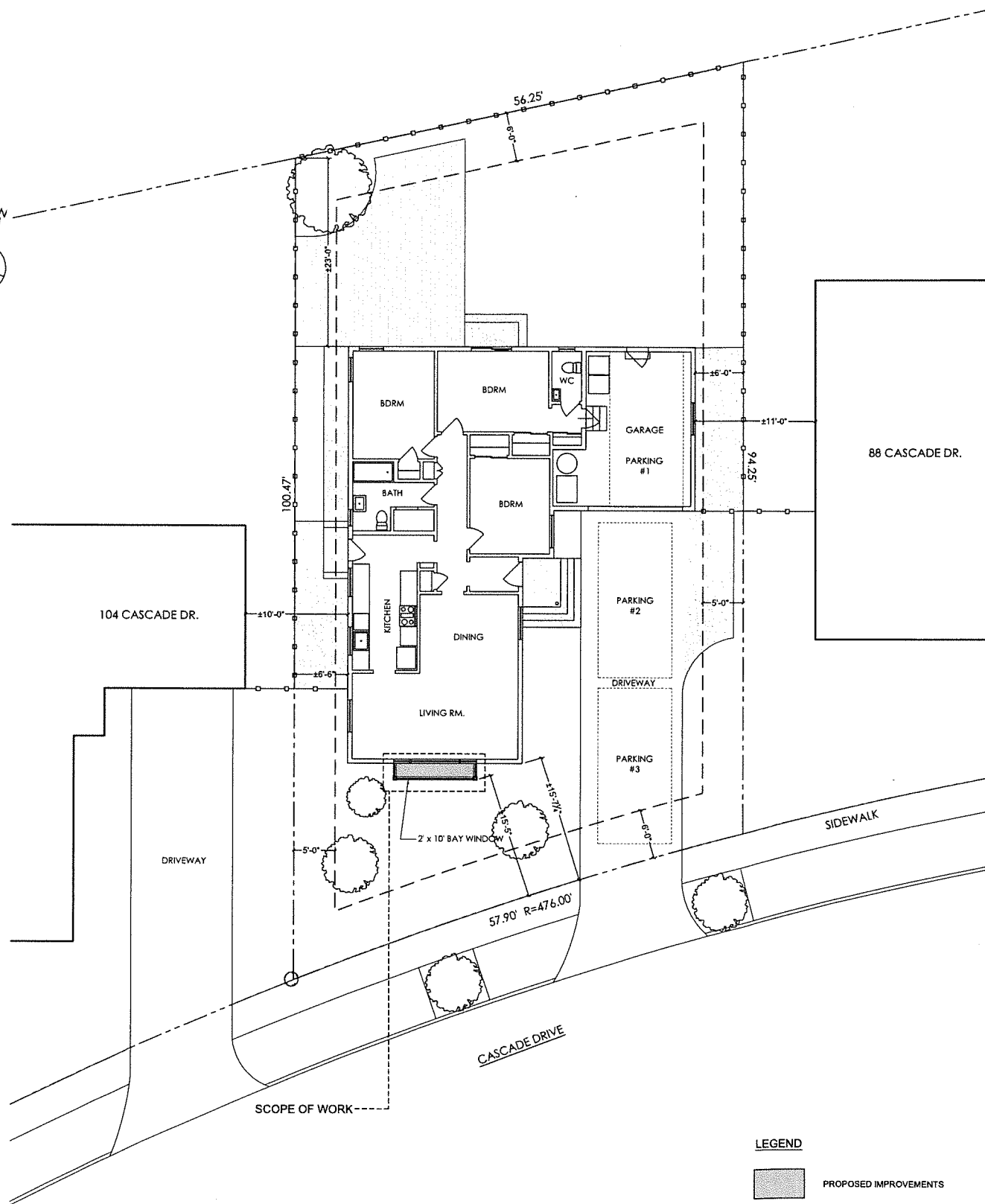
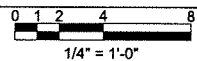


3 EXISTING BUILDING ELEVATIONS
Scale: 1/4"=1'-0"

NOTE:
ALL COLORS, MATERIALS & FINISHES
TO MATCH EXISTING.



2 PROPOSED BUILDING ELEVATIONS
Scale: 1/4"=1'-0"



1 SITE PLAN
Scale: 1/8"=1'-0"

LEGEND

■ PROPOSED IMPROVEMENTS
- - - REQUIRED SETBACK
- - - PROPERTY LINE

