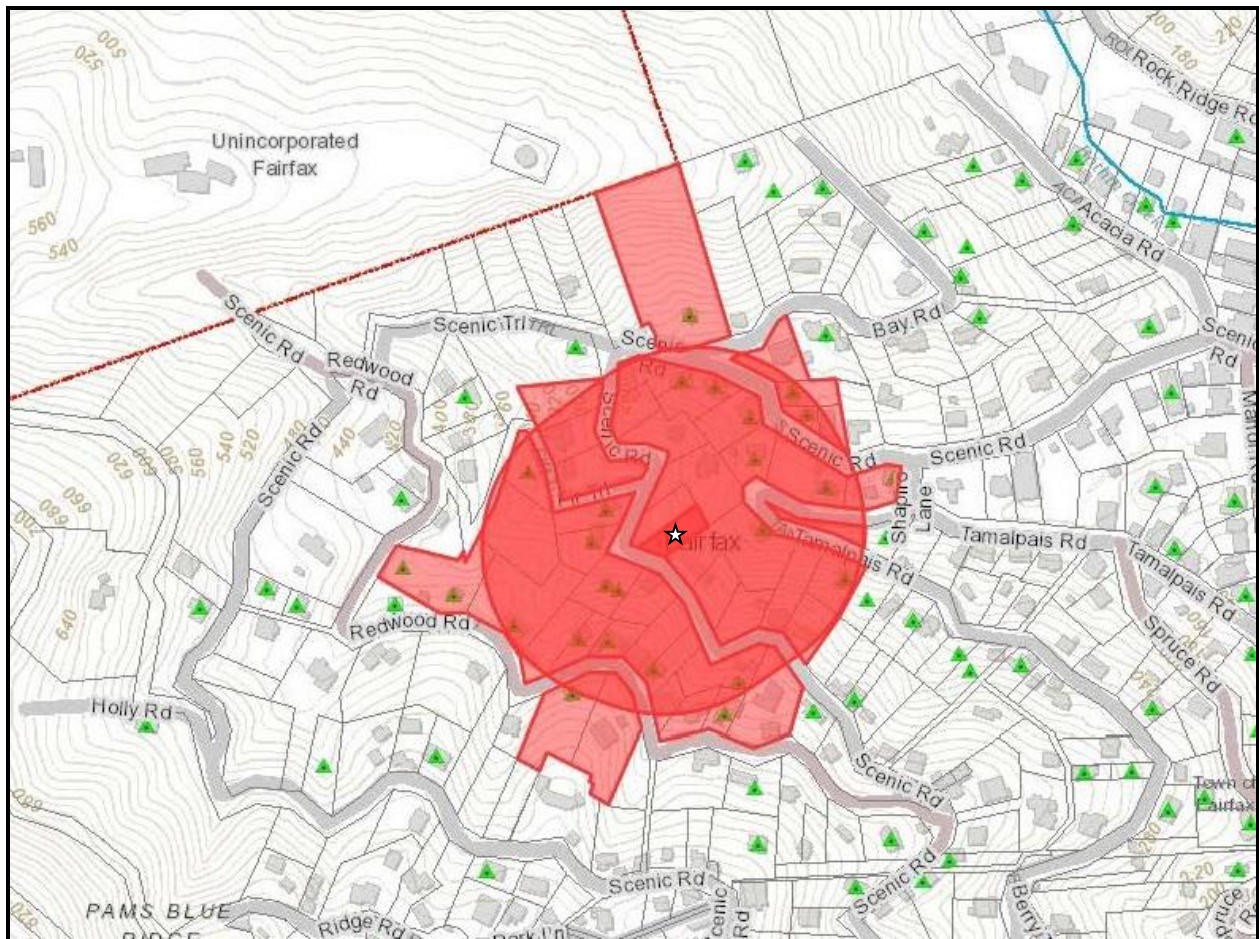


**TOWN OF FAIRFAX
STAFF REPORT**
Department of Planning and Building Services

TO: Planning Commission
DATE: May 26, 2022
FROM: Kara Spencer, Assistant Planner
LOCATION: 217 Scenic Road; APN # 001-121-56
ZONING: RS-6 Single-Family Residential Zone
PROJECT: Remodel an existing single-family residence
ACTION: Conditional Use Permit; Application # 22-08
APPLICANT: Rich Rushton, Architect
OWNER: Nicholas Pavis
CEQA STATUS: Categorically exempt, § 15301(e)(1)



217 SCENIC ROAD

AGENDA # 1

DESCRIPTION

The project consists of remodeling an existing 1,788 square-foot, three-story, two-bedroom, one-bathroom, single-family residence on a 5,400 square-foot property including the following: converting an existing storage area to a half bathroom; raising a section of the roof to add clearstory windows; expanding the middle floor deck by 77 square feet; and, reinforcing the lower floor deck. No expansion of building area would occur. Additional work consists of replacing upper floor windows and re-roofing the balance of the roof with new tar and gravel.

BACKGROUND

The 5,400 square-foot site slopes down from Scenic Road at an average rate of approximately 70 percent. It is located within the RS-6 Single-Family Residential Zone (RS-6 zone). The existing single-family residence was constructed in 1972. On August 13, 1979, the Town Council granted a Conditional Use Permit for the addition of the upper floor living space adjacent to the garage and a Variance to the side setback requirement to allow the addition to have a 3'-8" setback from the side property line.

REQUIRED DISCRETIONARY APPROVALS

Conditional Use Permit. Town Code Section 17.080.050 requires that a Conditional Use Permit (CUP) be obtained prior to any physical improvement on a property that does not meet the minimum size and width requirements based on the slope of the site. Town Code Section 17.080.050(C) requires a minimum area of 7,000 square feet and a minimum width of 65 feet for a site in the RS-6 zone with a slope of more than 15 percent. The project site has an average slope of 70 percent. It is 5,400 square feet in area and 58 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. The proposed project does not require an HRD permit as no significant amounts of materials will need to be excavated for the deck expansion/reinforcement. In addition, the project does not require Design Review permit, since less than 50 percent of the home would be remodeled and an additional bedroom is not proposed.

To approve a Conditional Use permit, the Planning 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.

DISCUSSION

The table below identifies the project’s compliance with the requirements of the RS-6 zone.

	FRONT SETBACK	REAR SETBACK	COMBINED FRONT/REAR SETBACK	SIDE SETBACKS	COMBINED SIDE SETBACKS	FAR	COVERAGE	HEIGHT
REQUIRED/ PERMITTED	6 ft.	12 ft.	35 ft.	5 ft. & 5 ft.	20 ft.	.40	.35	35 ft., 3 stories
EXISTING	10 ft.	69 ft.	79 ft.	3'-8" & 6'-6"	10' -2"	.33	.16	36'-5", 3 stories
PROPOSED	No change	No change	No change	No change	No change	No change	No change	No change

The conversion of the existing storage area to a half bathroom would not increase the mass or size of the home nor change its exterior appearance with the exception of the addition of a small window. The location of the half bathroom at the rear of the home would not decrease nor infringe on neighboring privacy. It would provide an additional amenity for the home and enhance the usefulness of the upper floor.

Raising a section of the roof to add clearstory windows would increase the height of a portion of the roof along the front right side (southeastern side) by approximately 4'-10". The height of the home, as measured from the natural grade to the highest point of the structure, varies due to the steep and irregular slope of the property. At its highest at the rear, the home is approximately 36'-5". This height was approved in 1972. The portion of the home where the roof would be raised is approximately 22'-2" high, as measured from the natural grade to the top of the roof. The approximate 4'-10" increase in height would result in an approximately 27-foot-high roof in that portion house, which is under the 35-foot height limit of the RS-6 zone. As stated on the project plans, raising the ceiling and adding the clearstory windows would provide better natural light from the south and a more spacious feeling in a space now constrained by existing low ceiling beams. The raised portion of the roof would match the existing structure with respect to colors, materials, and architectural design. No new lighting is proposed as a part of the project.

The existing home has three decks at the rear: one that spans the middle floor and two smaller decks on the lower floor. The middle floor deck is approximately 163 square feet in size and extends approximately seven feet outward from the rear of the home. The existing middle floor deck ranges from approximately 35 feet to 35'-6" to the nearest neighbor, which is the 219 Scenic Road property to the east. The project proposes to extend the eastern portion of the middle deck outward by approximately four feet for a total of approximately 77 square feet of additional deck space. The resulting middle floor deck would be approximately 240 square feet in size and extend outward 11 feet from the home from roughly the middle of the house to the eastern side. The remaining western portion of the middle floor deck would continue to extend approximately seven feet out from the home. The proposed middle floor deck extension would range from approximately 35'-6" to 37 feet from neighbor at 219 Scenic Road. The expanded deck area would be farther away from the nearest neighbor at 219 Scenic than the existing deck. In addition, several trees between the project property and 219 Scenic Road screen views from the deck addition to 219 Scenic Road. Due to the angled orientation of the home on the property, the tapering of the proposed deck extension, as well as the 35'-6" to 37-foot distance, the proposed deck expansion would not infringe on the privacy of the residence at 219 Scenic Road.

Several other structures in the immediate area have decks as large as the one proposed by this project. The expanded deck area is located on the north side of the home. Due to the winding, hilly nature of Scenic Road, the expanded deck area would be above some of the roadbed elevation as visible from the west side and rear (north), but would be partially screened by trees, so it will not be very visible from Scenic Road.

Approximately 6.3 cubic yards of soil would be excavated and removed from the property for the deck reinforcement, which is well under the 100 cubic yards that requires Planning Commission approval. (Town Code § 12.20.080 requires Planning Commission approval of an excavation permit for project resulting the excavation/fill of more than 100 cubic yards of material).

The proposed project is consistent with all underlying zoning standards such as setbacks (including combined setback), size, and height. Overall grading or other site disturbance is very modest.

Other Agency Comments/Conditions

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

Miscellaneous

The project is located within ¼ mile of a known Northern Spotted Owl nesting site. Staff has incorporated the following condition into Resolution No. 2022-12:

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.

RECOMMENDATION

Conduct the public hearing.

Move to approve application # 22-08 by adopting Resolution No. 2022-12 setting forth the findings and the conditions for the project approval.

ATTACHMENTS

Attachment A – Resolution No. 2022-12

Attachment B – Letter from neighbor at 219 Scenic Road

RESOLUTION NO. 2022-12

**A Resolution of the Fairfax Planning Commission Approving
Application No. 22-08 for a Conditional Use Permit to Add a Bathroom;
Raise a Portion of the Roof to Add Clearstory Windows;
and, Expand a Deck at the Residence at 217 Scenic Road**

WHEREAS, the Town of Fairfax received an application from Nicholas Pavis to convert an existing storage area to a half bathroom; raise a section of the roof to add clearstory windows; expand the middle floor deck by 77 square feet; and, reinforce the lower floor deck at 217 Scenic Road on November 30, 2021; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on May 26, 2022, 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 Regulations; 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 discretionary Conditional Use Permit; 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 a human-centered scale, mixed use, and sense of community.

Policy LU-7.1.5: New and renewed residential development shall preserve and enhance the existing characteristics of the Town's neighborhoods in their diverse architectural style, 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 remodeling project complies with all underlying zoning standards such as setbacks (including combined setback), size, and height. It will not encroach any further into the required individual side setback and 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 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 within the RS-6 Single-Family Residential Zone 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.

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 Richard Rushton, received by the Town on 5/11/22.
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 # 22-08. 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 22-08 will result in the job being immediately stopped and red tagged.

7. Any damages to the public and/or private portions of Scenic Road 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 of Fairfax, 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.
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.

12. 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.

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 is 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 26th day of May 2022 by the following vote:

AYES:

NOES:

Chair Norma Fragoso

Attest:

Linda Neal, Principal Planner

From: Watershed Sculpture-McCormick/O'Brien <watershedsculpture@gmail.com>

Sent: Tuesday, April 26, 2022 9:55 AM

To: Linda Neal <lneal@townoffairfax.org>; Mark Lockaby <mlockaby@townoffairfax.org>

Subject: Concerns with 217 Scenic Remodel

Dear Linda and Mark,

We want to express for your consideration our needs as adjacent neighbors to the 217 Scenic Road proposed expansion, specifically the middle floor expanded deck. We've talked with Nick Pavis and his architect several times and they agreed (on 10/10/21) to take our suggestions and apply for a variance for the "Alternate Deck Expansion" idea they show on pA2.1. of the current plans. We're not sure the variance idea is going forward and we think it is important that our viewpoint be officially considered.

1. Given that his proposed remodel would create an expanded deck that is 11' deep, and at about 3' higher than our lower bedroom level, anyone on the 217 proposed upper deck would easily look back toward our house and inside our bathroom and the other private areas of our only 2 bedrooms. This room-sized outdoor deck would create an unreasonable privacy problem for us as there is no way to mitigate a direct view into the private areas of our master bathroom, our master bedroom, through both windows of our second bedroom, as well as our private rear deck. An 11' deep deck becomes an outside room and place for large gatherings. Those gatherings or even just a few folks on this large of a deck could look right into our bathroom as we bathe and our bedroom as we dress. The tree canopy shown on the plans is outdated as rendered.

A survey of the six houses on this side of our block from 217 through 251 Scenic (the newly built house), shows no decks extending out enough so that neighbors can view inside other adjacent houses. This allows each house to have plenty of light and views outward, with plenty of privacy. It works well for the 6 neighboring houses on this block, and has for many for decades. We're asking you not set a precedent here on the privacy that our homes currently enjoy.

2. In addition, the plans show a window on the remodeled top floor bedroom suite (E Elevation) enlarged to a 3' X 6' window. As they stand in this floor-to-ceiling sized window 217 Scenic residents would have a birds-eye-view into our 2nd bedroom and again, our bathing area of our master bathroom and well as our private rear deck. There is no screening that we can do to prevent the view from this enlarged window a floor above us. And yet there are plenty of areas where windows could be installed without creating views into our private spaces. We feel this is an unnecessary alternation to a small bedroom with 2 skylights and 7 other windows.

ATTACHMENT B

We have expressed before that 217 Scenic was allowed to be built too close to our house, even into the side-yard setback. We don't want this to continue and the town shouldn't either as it creates decades of issues for neighbors. We are asking you to consider these reasonable alterations to Nick's plans in order to preserve mutual privacy in the neighborhood.

We are asking that you place these concerns in the official record as the application makes it way through the planning process. Can you let us know how we can get engaged and informed of the application's progress?

Thank you for your help,
Daniel McCormick
Mary O'Brien
219 Scenic Road
(415) 459-4395

A PDF of this letter is attached.