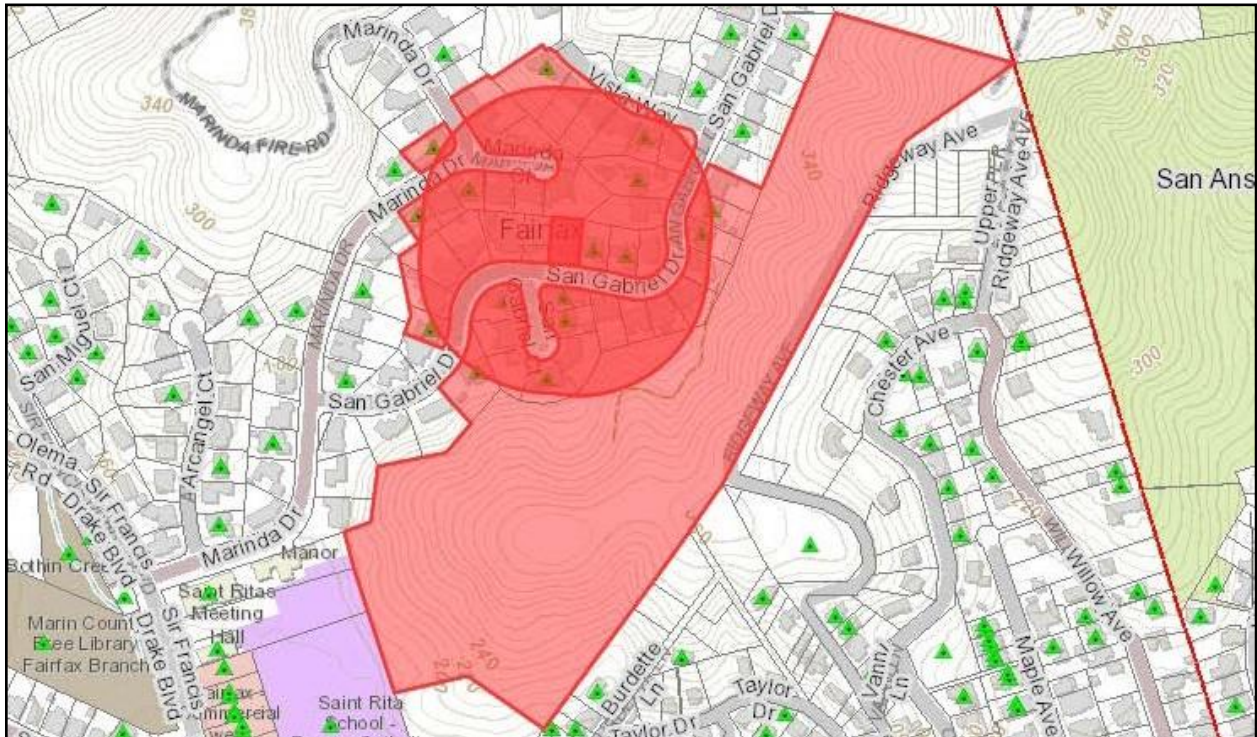


**TOWN OF FAIRFAX  
STAFF REPORT**  
**Department of Planning and Building Services**

**TO:** Fairfax Planning Commission  
**DATE:** December 15, 2022  
**FROM:** Kara Spencer, Assistant Planner  
**LOCATION:** 43 San Gabriel Drive; APN 001-261-08  
**ZONING:** RS 7.5 Single-family Residential Zone  
**PROJECT:** Addition to a single-family residence  
**ACTION:** Conditional Use Permit and Combined Side-yard Setback Variance; Application No. 22-27  
**APPLICANT:** Marin Kitchen Works  
**OWNER:** Marsha Jones and Kevin Shine  
**CEQA STATUS:** Categorically exempt, § 15301(e)(1)



**43 SAN GABRIEL DRIVE**

**PROJECT DESCRIPTION**

The project proposes to add a 46 square foot laundry room to the eastern side of a 1,491 square foot, three-bedroom, two-bathroom, single-story residence with an attached two car garage. The resulting square footage would total 1,537 square feet.

## BACKGROUND

The relatively flat project site is approximately 7,585 square feet in size with an average slope of approximately ten percent. According to maps prepared by Marin County Parks in conjunction with the Marin Audubon Society, the project site is not within a half mile of a known Northern Spotted Owl nesting site.

The following table demonstrates the project's compliance with the setback, FAR, lot coverage, and height regulations of the RS-7.5 Single-family Residential Zone, Medium Density District where the property is located.

	Front Setback	Rear Setback	Combined Front/Rear Setback	Side Setbacks	Combined Side-yard Setbacks	FAR	Lot Coverage	Height
<b>Required/ Permitted</b>	10 ft.	10 ft.	30 ft.	5 ft. & 5 ft.	20 ft.	.40	.35	28.5 ft., 2 stories
<b>Existing</b>	22'-4.5"	36'-7.25"	58'-11.75"	10'-6.5" & 5'-6.75"	16'-1.25"	.20	.26	15 ft. 1 story
<b>Proposed</b>	No change	No change	No change	No change	No change*	.20	.26	No change

\* The proposed addition would encroach approximately two feet less into the combined side-yard setback than the existing structure.

## DISCUSSION

Pursuant to Town Code § 17.076.050 the project requires a Conditional Use Permit (CUP), as it proposes an addition to a house located on a property that does not meet the minimum 75-foot lot width requirement based on the approximate ten percent slope of the site. (The project site has a lot width of approximately 68 feet.) The existing house is approximately 10'-6.5" from the western property boundary and approximately 5'-6.75" from the eastern property boundary. The existing home intrudes approximately four feet into the combined side-yard setback.

To maintain the required combined side-yard setback of 20 feet [Town Code § 17.076.070(A)(2)], the laundry room addition on the eastern side of the home would need to be approximately 9'-5.5" from the eastern property boundary. The proposed laundry room addition would be approximately 7'-6.5" from the eastern property boundary. Therefore, the proposed addition requires the approval of a combined side-yard setback variance because it would encroach approximately two feet into the required combined side-yard setback [Town Code § 17.028.020(A)].

The addition would have a minimal impact on neighboring properties. It would be screened from the street by the attached garage. It would be visible to only the adjacent neighbor at 47 San Gabriel Drive, which would be approximately 15 feet from the addition at a slightly higher elevation. Moreover, the proposed addition would encroach approximately two feet less into the combined side-yard setback than the existing structure. Only one window and no doors are proposed for the addition. No external lighting is proposed that would affect adjacent neighbors. Lastly the addition would meet the minimum side-yard setback of five feet and would not exceed the footprint of the

existing house. The addition results in a residence that is similar in size and mass to other structures in the immediate and surrounding Marinda Oaks Subdivision, as indicated in the table below.

43 San Gabriel Drive –NEIGHBORING HOUSE COMPARISON						
APN	ADDRESS	LOT SIZE	HOUSE SIZE	BEDROOMS	BATHS	FAR
001-261-09	47 San Gabriel Dr.	7,590	1,478	3	2	.19
001-261-10	51 San Gabriel Dr.	7,521	1,617	3	2	.21
001-261-11	57 San Gabriel Dr.	6,600	1,618	3	2	.25
001-261-43	50 San Gabriel Dr.	6,720	1,761	3	2.5	.26
001-261-44	46 San Gabriel Dr.	8,450	1,810	4	2	.21
001-261-45	44 San Gabriel Dr.	6,050	1,485	3	2	.25
001-261-79	4 San Gabriel Ct.	9,450	1,362	2	2	.14
001-261-05	31 San Gabriel Dr.	10,400	1,366	3	2	.13
001-261-06	35 San Gabriel Dr.	9,600	2,444	4	2.5	.25
001-261-07	39 San Gabriel Dr.	7,548	1,595	2	2	.21
43 San Gabriel						
001-261-08	43 San Gabriel Dr.	7,585	1,537*	3	2	.20*

\*Proposed house size and FAR

### CUP Findings

The Planning Commission must be able to make the following findings to approve a CUP for the proposed laundry room addition (recommended findings shown in italic bold font below the Town Code required findings):

1. The approval of the conditional use permit shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.

***The proposed addition would comply with the individual and combined front and rear setbacks, the individual side-yard setback, the FAR, lot coverage, and height requirement of the RS-7.5 Single-family Residential Zone, Medium Density District where the property is located. The proposed addition would not comply with the combined side-yard setback requirement.***

***Project implementation would result in the property maintaining similar setbacks from the property lines as other developed properties in the vicinity. The approximate two-foot encroachment into the combined side-yard setback would be a negligible intrusion that would not exceed the footprint of the existing home. Finally, the addition would meet the individual five-foot side-yard setback requirement. Therefore, approval of the CUP 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.

***The proposed addition would only be visible to the adjacent neighbor to the east at 47 San Gabriel Drive, which would be approximately 15 feet away from the addition at a slightly higher elevation. Therefore, granting the CUP will not cause excessive or unreasonable detriment to adjoining properties or premises.***

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.

***The proposed 46 square-foot addition complies with the individual and combined front and rear setbacks, the individual side-yard setbacks, the FAR, lot coverage, and height regulations of the RS 7.5 Zone. While it would intrude approximately two feet into the Combined Side-yard Setback, it would not project beyond the footprint of the existing structure. The addition does not change the residential character of the property. The applicant has applied for a Variance to the Combined Side-yard Setback requirement, which if granted would ensure that the granting of the CUP would not be contrary to those objectives, goals or standards contained in the Zoning Ordinance or the 2010-2030 Fairfax General Plan.***

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 addition would be located on the eastern side of the residence, screened from the street by the existing attached garage. It would result in a small, "bump out" on this side of the home with only one window and no doors. It would only be visible to the nearest structure to the east at 47 San Gabriel Drive, which would be approximately 15 feet away from the proposed addition at a higher elevation. While it would intrude approximately two feet into the combined side-yard setback, it would not project beyond the footprint of the existing structure. Therefore, approval of the CUP will result in equal or better development of the premises than would be the case if the addition were proposed as an expansion of the structure to the north, west, or south outside of the footprint of the existing structure.***

## **Combined Side-setback Variance Findings**

To approve a Combined Side-yard Setback Variance for the proposed laundry room addition, the Planning Commission must be able to make the following findings (recommended findings shown in italic bold font below the Town Code required findings):

1. Because of special circumstances applicable to the property, including size, shape, topography, location of surroundings, 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.

***The existing house was constructed in 1961 in conformance with the three-foot side-yard setback requirement that was in place at that time. The Town did not require a combined side-yard setback in 1961. After the Zoning Ordinance was amended in 1973 to include a combined side-yard setback, the project property, along with many other properties in the vicinity and under identical zone classification became legally non-conforming with respect to the combined side-yard setback requirement. Given the following: (1) the Zoning Ordinance requirements changed after the existing house was constructed; (2) the proposed addition wouldn't intrude into the combined side-yard setback any further than the existing structure; and, (3) other property owners in the vicinity and under identical zone classification have structures within the combined side-yard setback, the strict application of this title would 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.

***Refer to the response above. The applicant has applied for a Variance to the Combined Side-yard Setback requirement, which if granted would ensure that the proposed addition would be consistent with the objectives of the Zoning Ordinance.***

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

***Forty-six square feet is the minimum amount of space the applicant has determined is necessary to construct the laundry room addition. Reducing the size of the addition to conform to the combined side-yard setback would limit the space necessary for the laundry room and preclude its construction. Relocating the laundry room to either the western or southern sides of the house would not be feasible due to the existing bedroom and bathroom configuration. Relocating the laundry room***

***addition to the northern side of the house would not be feasible as existing windows and sliding doors would be lost, reducing access to the back yard, limiting light, and negatively affecting the house's interior design and flow. Therefore, the strict application of this title would result in unreasonable hardship.***

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

***The approximate 15-foot distance of the addition from the nearest house at 47 San Gabriel Drive and its location well into the interior of the site behind a portion of the existing structure ensure that the project would not be detrimental to the general public using San Gabriel Drive or to the neighbors.***

#### **OTHER AGENCY/DEPARTMENT COMMENTS/CONDITIONS**

No agencies or Town of Fairfax Departments had any comments or conditions for the project. The standard conditions of approval for all projects from the Ross Valley Fire Department, Marin Municipal Water District and Ross Valley Sanitary District have been included in the attached Resolution No. 2022-34 and can be viewed in their entirety in that document.

#### **RECOMMENDATION**

Conduct the public hearing.

Move to approve application No. 22-27 by adopting attached Resolution No. 2022-35 setting forth the findings and the conditions for the project approval.

#### **ATTACHMENTS**

Attachment A – Resolution No. 2022-35

Attachment B – Project Plan Set

## RESOLUTION NO. 2022-35

### **A Resolution of the Fairfax Planning Commission Approving Application No. 22- 27 for a Conditional Use Permit and a Combined Side-yard Setback Variance to Construct a 46 Square-foot, Laundry Room Addition to the Existing Single-family Residence at 43 San Gabriel Drive**

**WHEREAS**, the Town of Fairfax received an application from Marsha Jones and Kevin Shine for a 46 square-foot laundry room addition to a single-family residence at 43 San Gabriel Drive; and

**WHEREAS**, after holding a duly noticed public hearing on December 17, 2022, on the project, the Planning Commission determined that the project complies with the Conditional Use Permit Regulations and findings can be made to grant the requested Conditional Use Permit and the requested Combined Side-yard Setback Variance and at 43 San Gabriel Drive; 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 Combined Side-setback Variance; and

**WHEREAS**, the Planning Commission has made the following findings:

#### General Plan Compliance

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

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-7.2.1: New and renewed development shall be compatible with the general character and scale of structures in the vicinity.

#### Conditional Use Permit

1. While proposed addition would result in new living space being constructed within the required 20-foot combined side yard setback, it would conform to the rest of the required setbacks, Floor Area Ratio, and Lot Coverage Limitations of the RS 7.5 Single-family Residential Zone and would not decrease the combined side-yard setback already being maintained by the existing residence. The project would result in development of the site similar to development seen throughout the Marinda Oaks Subdivision and would not be a grant of special privilege.

2. The project would not project closer to the front or side property lines than the existing structure and the addition would maintain the existing height of the residence. Therefore, 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 conditional use permit.
3. Approval of the conditional 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 conditional use permit will result in equal or better development of the premises than would otherwise be the case, and the approval to accommodate the existing residents changing needs is in the public interest and for the protection or enhancement of the community.

### **Combined Side-yard Setback Variance**

1. The project would maintain similar setbacks from the property lines to other properties in the vicinity. Therefore, the strict application of the 20-foot Combined Side-yard Setback regulations will deprive the applicants of privileges enjoyed by other property owners in the vicinity.
2. The variance to maintain a combined side-yard setback of 16'-1.25" is consistent with the limitations upon other properties in the vicinity and in the Residential RS 7.5 Residential Zone and the granting of the variance is consistent with the objectives of Title 17, Zoning.
3. The strict application of the required 20-foot combined side-yard setback would result in unreasonable hardship for the owner since they would be unable to build the new laundry room addition due to the configuration of the existing house.
4. The approximately 15-foot distance of the addition from the nearest house at 47 San Gabriel Drive and the and its location well into the interior of the site behind a portion of the existing structure ensure the project will not be detrimental to the general public using San Gabriel Drive or to the neighbors.

**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 by Marin Kitchen Works received by the Town of Fairfax on October 13, 2022.



2. Prior to issuance of any of the building permits for the project the applicant or his assigns shall:
  - a) Submit a construction plan subject to approval of the Public Works Director 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; and,
    - iv. Contractor employee parking locations.
  - 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. The foundation elements shall be designed by a structural engineer certified as such in the state of California. Plans and calculations of the foundation elements shall be stamped and signed by the structural engineer and submitted to the satisfaction of the Town Structural Engineer.
4. Prior to submittal of the building permit plans, the applicant shall secure written approval from the Ross Valley Fire Department, Marin Municipal Water District, and the Ross Valley Sanitary District noting the development conformance with their recommendations.
5. During the construction process the following shall be required:
  - a) Prior to the concrete form inspection by the building official, the project Structural Engineer shall field check the forms of the foundations 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.
  - b) The Building Official shall field check the concrete forms prior to the pour.

- c) 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.
  - d) 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.
6. Prior to issuance of an occupancy permit the Planning Department and Building Official shall field check the completed project to verify that any and all Planning Commission conditions and required engineering improvements have been complied with.
  7. Excavation shall not occur between October 1st and April 1<sup>st</sup> of any year. The Town Engineer has the authority to waive this condition depending upon the weather.
  8. The roadways shall be kept free of dust, gravel and other construction materials by sweeping them, daily, if necessary.
  9. Any changes, modifications, additions, or alterations made to the approved set of plans will require a modification of Application No. 22-27. Modifications that do not significantly change the project, the project design or the approved discretionary permits **may** be approved by the Planning Commission or Planning Director. Any construction based on job plans that have been altered without the benefit of an approved modification of Application 22-27 will result in the job being immediately stopped and red tagged.
  10. 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.
  11. The applicant and its heirs, successors, and assigns shall, at its sole cost and expense, defend with counsel selected by the Town and 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.

12. 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 and Best Management Practices for Stormwater Pollution Prevention.
13. 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.
14. 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**

15. All vegetation and construction materials are to be maintained away from the residence during construction.
16. A class A roof assembly is required.
17. All smoke detectors in the residence shall be provided with AC power and

be interconnected for simultaneous alarm. Detectors shall be located in each sleeping room, outside of each sleeping room in a central location in the corridor and over the center of all stairways with a minimum of one detector on each story of the occupied portion of the residence.

18. 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.
19. 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.
20. Alternative materials or methods may be proposed for any of the above conditions in accordance with Section 104.9 of the Fire Code.
21. All approved alternatives requests, and their supporting documentation, shall be included in the plan sets submitted for final approval by the Fire Department.

#### **Marin Municipal Water District (MMWD)**

22. All indoor and outdoor requirements or District Code Title 13, Water Conservation must be complied with.
23. Backflow prevention requirements must be met.
24. Ordinance 420, requiring installation of a 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.
25. All the District's rules and regulations in effect at the time service is requested must be complied with.

#### **Ross Valley Sanitary District (RVSD)**

26. The project may 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.

**Miscellaneous Conditions**

27. All the exterior fixtures must be Dark Sky compliant (fully shielded and emit no light above the horizontal plane with no sag or drop lenses, side light panels or uplight panels) as well as compliance with color temperature to minimize blue rich lighting. The lighting shall not emit direct offsite illumination and shall be the minimum necessary for safety.

**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 Side-yard Setback Variance 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 15th day of December 2022 by the following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT

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Chair Norma Fragoso

Attest:

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David Woltering, Interim Planning Director