

RESOLUTION NO. 2022-27

A Resolution of The Fairfax Planning Commission Approving Application No. 22-29 for a Hill Area Residential Development (HRD), Design Review, Excavation, Encroachment and Tree Removal Permits and Retaining Wall Height Variance, Variance to Allow the Required Uncovered Parking in the Combined Side-Yard Setback and Combined Front-Rear Setback Variance for the Construction of a Single-family Residence with Attached Accessory Dwelling Unit and Garage at 67 Tamalpais Road

WHEREAS, the Town of Fairfax received an application from Stephen Altman to construct a 28 foot 6 inch tall, three-story structure with a 315 square-foot, one car garage and 497 square-foot, studio accessory dwelling unit (ADU) on the first floor, 968 square-foot, second story (includes interior stairway square footage) that includes two bedrooms and two bathrooms with a shared closet that will contain a stacked washer and dryer, and a third story with a great room providing a living room area, dining room area and the kitchen with a half bathroom; and

WHEREAS, the Commission held a duly noticed public hearing on the proposed project on December 15, 2022, on the project plans; and

WHEREAS, after holding the public hearing the Planning Commission determined that the project complies with the Hill Area Residential Development Overlay Ordinance and the Design Review Ordinance and that findings can be made to grant the requested HRD, Design Review, Excavation, Encroachment and Tree Removal permits and Retaining Wall Height Variance 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:

Policy LU-1.2.3: New and renewed development shall be designed and located to minimize the visual mass. The Town will require exterior materials and colors that blend the exterior appearance of structures with the surrounding natural landscape, allowing for architectural diversity.

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 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.

Hill Area Residential Development (Town Code § 17.072.110)

1. The proposed development is consistent with the General Plan (see above) and consistent with the purpose and intent of the Zoning Ordinance, Title 17, of the Fairfax Town Code.
2. The site planning preserves identified natural features as much as possible while providing two living units and complying with the Town parking standards providing three on-site parking spaces.
3. Based on the soils report findings, the site can be developed without geologic, hydrologic, or seismic hazards;
4. Vehicular access and parking are adequate.
5. The proposed development harmonizes with the surrounding residential development, meets the design review criteria, and does not result in the deterioration of significant view corridors.

Excavation Permit (Town Code § 12.20.080)

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

1. The health safety and welfare of the public will not be adversely affected;
2. Adjacent properties will be adequately protected by project investigation and design from geologic hazards as a result of the work;
3. Adjacent properties are adequately protected by project design from drainage and erosion problems as a result of the work;
4. 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;
5. The visual and scenic enjoyment of the area by others will not be adversely affected by the project more than is necessary;
6. Natural landscaping will not be removed by the project more than is necessary; and
7. 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).

Encroachment Permit (Town Code §12.32.010)

The driveway wing walls that project into the Tamalpais Road right-of-way will not use or obstruct any developed section of the road and the area is not currently being used by the public.

Design Review (Town Code § 17.020.040)

1. The project depicted in the plans submitted to the Town on 7/1/21 complies with the Design Review Criteria set forth in Town Code § 17.020.040.

Combined Sid-Yard Variance and Combined Front-Rear Setback Variance (Town Code § 17.028.070)

1. The steep, 58% slope of the site and the close proximity of the existing parking decks at the rear of the site, are the site features that warrant granting the requested Combined Side-yard and Combined Front-Rear Setback Variances to construct the required covered and uncovered parking spaces to support the new single-family residence. The strict enforcement of the required setback backs would deprive the applicant of the ability to improve the on-site parking required to allow for construction of a single-family residence on this RS-6 single-family residentially zoned site.
2. Most properties in town that are hillside sites have some portion of their required spaces and/or parking structures within one or more required setbacks due to the Town roads not being developed to the entire width of the road easement. Due to the topography and narrow width of the developed portion of Tamalpais Road, the requested Combined Side-yard and Combined Front-Rear Setback Variance for portions of the uncovered parking spaces and front driveway retaining walls and the existing parking decks for 118 and 200 Tamalpais Road to encroach into the required side and front-rear setbacks will not be a grant of special privilege.
3. The strict application of the setback regulations would render the site undevelopable in compliance with the Town parking regulations and/or would require a significant increase in the amount of excavation required for development of the site.
4. The proposed garage, uncovered parking and driveway wing walls that will encroach into the required Combined Side-yard and Combined Front-Rear setbacks will not obstruct the visibility of passers-by utilizing the Tamalpais Road right-of-way or conflict with traffic patterns in the area. Therefore, the granting of the variance will not be detrimental to the public health, welfare and safety or injurious to other property in the vicinity in which the property is situated.

Retaining Wall Height Variance

The steep 58% slope is the feature applicable to the property that warrants the granting of the Retaining Wall Height Variance for a 24-foot long section of the rear patio wall to reach approximately 11-feet to create a level patio space to provide outdoor living space for the residents.

The variance or adjustment will not constitute a grant of special privilege because the section of wall that will reach 11-feet in height will be below the natural grade and visible primarily to the residence of 67 Tamalpais Road.

The strict application of this title would result in make it difficult for the owners to create outdoor living space that could be accessed directly from the upper floor of the residence.

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 because the wall is below grade and will not obstruct any of the neighboring residences views.

Tree Removal

Three Bay trees and one oak tree proposed for removal within the structure footprint have been reviewed by the Tree Committee who has recommended that the Commission approve the requested removal permit. Therefore, the project is in compliance with all the considerations listed in Town Code 8.36.060(B)(1 through 7) of the Tree Ordinance, Town Code Chapter 8.36. A recommendation from the Fairfax Tree Committee and a Tree Removal Permit will be obtained from the Planning Commission for the additional one oak tree that will be removed to accommodate the rear patio area prior to issuance of the building permit for the project.

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

The project is approved based on the following plans and reports:

Project Plan Set including the architectural plan by Ron Kappe, Kappe Architecture Inc., Topographic Survey by ILS, Civil Engineering and Land Surveying, Preliminary Grading and Drainage Plan by HEI Harrison Engineering Inc., Landscaping Plan by MTW group, Landscape Architecture and Planning, dated received by the Town on August 11, 2022, revised Geotechnical Investigation Report by DAC Geotechnical, Structural, Civil Engineering dated June 21, 2022, Temporary Shoring Report by DAC Geotechnical, Structural, and Civil Engineering dated August 2, 2022, and the Grading and Drainage Report by Randall Harrison, P.E. with Harrison Engineering Inc. dated July 27, 2022.

The project is subject to the following conditions of approval:

1. Prior to issuance of any building permit for this project an initial and separate shoring permit shall be submitted prior to issuance of the building permit for the construction of the house and the shoring permit shall be reviewed and approved by the Town Engineer prior to issuance.
2. The shoring system design shall include additional boring to the full extent of the anticipated excavation to inform the proposed shoring system design.
3. The Project Geotechnical Engineer shall observe and document conditions during the shoring wall drilling and construction and shall provide a letter to the Town summarizing his observations during the shoring pier drilling and either verify or supplement his recommendations.
4. If the proposed project design is impacted by the revised or supplemental recommendations, applicable plan sheets should be revised and will be subject for review and approval by the Planning Director and the Town Engineer prior to issuance of the building permit for construction of the house. If the Planning Director determines the changes are significant enough to require a modification of the originally approved discretionary permits, the modification approvals shall be obtained prior to issuance of the project building permit.
5. Prior to issuance of any of the building permits for the project the applicant or his assigns shall:
 - a) Submit an amended construction plan to the Public Works Department for their approval. The amended plan shall include, but is not limited to, the following:
 - I. Construction delivery routes approved by the Department of Public Works.
 - II. Construction schedule (deliveries, worker hours, etc.)
 - III. Notification to area residents
 - IV. Emergency access routes
 - V. Construction worker staging area
6. The applicant shall prepare, and file with the Public Works Director, a video of the roadway conditions on the public construction delivery routes (routes to be pre-approved by Public Works Director).
7. 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 plan 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.

8. 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.
9. The grading, foundation, retaining, and drainage elements shall also be stamped and signed by the project geotechnical engineer as conforming to the recommendations made by the project Geotechnical Engineer.
10. 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.
11. Submit 3 copies of the recorded record of survey with the building permit plans.
12. All retaining walls that are visible from the street and are constructed of concrete shall be heavily textured or colorized in a manner approved by the planning staff prior to issuance of the building permit. This condition is intended to mitigate the visual impact of the proposed walls.
13. Prior to the removal of any 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 an ISA certified arborist to prune and treat trees having roots 2 inches or more in diameter that are disturbed during the construction, excavation or trenching operations. Tree root protection measures may include meandering the line, check dams, rip rap, hand trenching, soil evaluation and diversion dams.
14. The applicants shall obtain a recommendation from the Fairfax Tree Committee and a Tree Removal Permit from the Planning Commission for the oak tree that requires removal to allow construction of the rear patio prior to submitting a building permit for the project.
15. Both the tree permit approved at this December 15, 2022, Planning Commission meeting and the tree removal permit described above must be kept on the job site while the trees are being removed and the applicant must verify that the tree company performing the approved tree work has a current Fairfax Business License.

16. 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 the 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 the 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 always be situated off the travel lane of the adjacent public right(s)-of-way. 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.

17. 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 the 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. Additionally, the project engineer shall review the construction schedule and plans at each phase of the project construction to determine the best order for each phase to occur including the hillside retention/drainage phases.
- 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 including installation of landscaping and irrigation prior to issuance of the certificate of occupancy. The Planning Department Staff and the Town Engineer shall also review the construction schedule and plans at each phase of the project construction to determine the best order for each phase to occur including the hillside retention/drainage phases.

18. 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.
19. The roadways shall be kept free of dust, gravel, and other construction materials by sweeping them, daily, if necessary.
20. 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.
21. Any changes, modifications, additions, or alterations made to the approved set of plans will require a modification of Application # 22-29. Modifications that do not significantly change the project, the project design or the approved discretionary permits *may* be approved by the Planning Director or the Planning Commission. Any construction based on job plans that have been altered without the benefit of an approved modification of Application 22-29 will result in the job being immediately stopped and red tagged.
22. Any damages to the public portions of Tamalpais Road, Scenic Road, Shapiro Way, Azalea Avenue, or other public roadway used to access the site resulting from construction activities shall be the responsibility of the property owner.
23. 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 or 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.

24. 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.
25. Conditions placed upon the project by outside agencies, Town department or by the Town Engineer may be eliminated or amended with that agencies, department's, or the Town Engineer's written notification to the Planning Department prior to issuance of the building permit.
26. A separate Site Shoring permit shall be reviewed and approved by the Town Engineer prior to being issued by the Building Department. The engineering peer review shall be at the expense of the applicant.
27. The project shall be inspected by the Building Official and Project Planner prior to issuance of the occupancy permit for the residential structure for compliance with the approved project plans.

Town Engineer

28. All the recommendations contained in the 6/21/22 DAC Engineering report shall be conditions of the project approval with their inclusion in the project building permit plans to be verified by the project Geotechnical Engineers either by their signing and stamping the applicable civil engineering plan pages or in a signed stamped written communication verifying compliance with their recommendations.

Ross Valley Fire Department

29. All vegetation and construction materials are to be maintained away from the residence during construction.
30. Hydrant flow and location are to be identified before construction begins.
31. The project requires installation of a fire sprinkler system in the garage structure that complies with the National Fire Protection Association regulation 13-D and local standards. 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.

32. 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.
33. 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.
34. 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.
35. 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 an adjacent light controlled by a photocell that can be switched off only by a breaker so it will remain illuminated all night.
36. Alternative materials or methods may be proposed for any of the above conditions in accordance with Section 104.9 of the Fire Code.
37. 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)

38. A copy of the building permit must be provided to the district along with the required applications and fees.
39. The foundation must be completed within 120 days of the date of application.
40. All indoor and outdoor requirements or District Code Title 13, Water Conservation must be complied with.
41. Any landscaping plans must be reviewed and approved by the District.
42. Backflow prevention requirements must be met.
43. 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.

44. All the District's rules and regulations in effect at the time service is requested must be complied with.

Ross Valley Sanitary District (RVSD)

45. A sewer connection permit and a side sewer connection permit are required for all work outside the new building footprint.
46. Fees will include sewer capacity charges as well as permit fees.
47. Test the sewer lateral(s) from the outer face of the building to the connection at the existing sewer main, in accordance with RVSD Ordinance 100 and Standards.
48. Include a sewer cleanout and backwater protection device within 2-feet of the building foundation.
49. The Ross Valley Sanitary Standard Notes shall be shown on the submitted plans and are found in Subsection L of Section 3 of the Design and Construction Standards and demonstrate that all materials used in the construction of the sewer improvements are from the approved materials list.
50. A hold will be placed on the property when the building permit is issued and will not be released for occupancy until the District permit and sewer requirements have been fulfilled.
51. A Certificate of Compliance for the lateral must be obtained from the RVSD prior to the project final inspection by the Fairfax Building Department.

Fairfax Public Works Department

52. All large trucks with more than 2 axles accessing the site for construction will be limited daily to the hours between 9 AM to 3 PM.
53. Complete road closures will be limited to concrete pours and steel placement and will be coordinated with the Fairfax Police Department and Ross Valley Fire Department.
54. 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 proposed employee parking locations during construction and be approved by the Department of Public Works.

55. The applicant shall prepare, and file with the Public Works Director, a video of the roadway conditions on the construction delivery routes.
56. A bond will be submitted prior to issuance of the building permit in an amount that will cover the cost of grading, weatherization, and repair of possible roadway damage in an amount equaling 100% of the estimated construction costs and pay for the Town Engineer's/Plan Checker's time to review and confirm the contractor's estimate.
57. The parking, driveway, drainage improvements shall be completed at 67 Tamalpais Road and shall be inspected and approved by the Building Official/Public Works Director prior to the project final inspection.

Building Official

58. Prior to the start of construction, the surveyor shall mark the western side property line and the front property line in the field and shall meet the Building Official for a preconstruction inspection once the markings are in place.
59. After the foundation framing and prior to the foundation concrete pour, the contractor shall call for a second inspection by the Building Official to ensure that the proposed setbacks are being maintained.

Miscellaneous

60. A drainage system maintenance agreement including a system location plan and required maintenance schedule shall be approved by the Town Engineer and then be recorded at the Marin County Recorder's Office setting forth the required maintenance schedule to ensure the drainage system continues to function as designed. A copy shall be provided to the Town prior to issuance of the building permit. 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 plan shall be submitted with the building permit application and be approved by the Planning Department prior to issuance of the project building permit. The lighting shall not emit direct offsite illumination and shall be the minimum necessary for safety.
61. Prior to issuance of the building permit the applicant 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 on-site 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 Hill Area Residential Development (HRD), Design Review, Excavation, Encroachment and Tree Removal Permits and Retaining Wall Height Variance, Variance to Allow the Required Uncovered Parking in the Combined Side-Yard Setback and Combined Front-Rear Setback Variance for the Construction of a Single-family Residence with Attached Accessory Dwelling Unit and Garage at 67 Tamalpais Road are approved and the findings have been made to grant the requested discretionary permits. Therefore, the project 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:
ABSENT:

Chair Norma Fragoso

Attest:

David Woltering, Interim Planning Director