## TOWN OF FAIRFAX STAFF REPORT ADENDUM

## **Department of Planning and Building Services**

**TO:** Planning Commission **DATE:** January 26, 2023

FROM: Linda Neal, Principal Planner

LOCATION: 229 Tamalpais Rd.; APN # 001-054-22

ZONING: RS-6 Residential Single-family RS-6 Zone

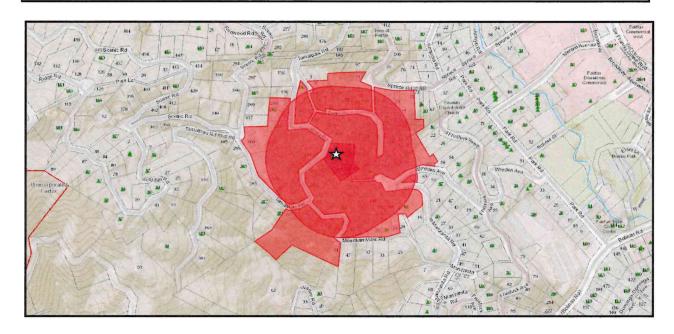
PROJECT: Deck/hot tub addition to single-family residence

ACTION: Conditional Use Permit (CUP); Application # 23-02

APPLICANT:Laura Kehrlein, Frederic C. Divine Associates, Architects

OWNER: Dan Cardozo

CEQA STATUS: Categorically exempt, § 15301(a).



#### 229 TAMALPAIS ROAD

#### PROJECT DESCRIPTION

Construction of a 615 square-foot deck attached to the existing 2,471 square-foot, 3-story, single-family residence. The deck will be constructed on the north side of the residence and include a stairway accessing the existing deck off the master bedroom on the second floor of the structure. A hot tub is proposed that will be set into the deck. The deck will be constructed on a portion of the site that was leveled by the construction and backfilling of two concrete retaining walls. The shorter western wall is approximately 1-foot tall and the larger wall on the eastern side of the site varies from approximately 6-feet to 8-feet in height and runs approximately 162 feet from north to south, downslope of the existing residence. The deck will be supported on a post and pier foundation with

deck supports and floor framing of pressure treated Douglas Fir. Construction will require the excavation of 1.5 cubic yards of material that will be filled on the site. The railing frame will be of redwood with a redwood (or similar material) cap with cable railing between the framing except for a small area at the top of the stairs accessing the second floor rear deck off the master bedroom which will have solid wood horizontal, 1 x 4 wood siding to provide visual articulation and privacy (see Attachment C – 1/17/23 e-mail from architect). The deck flooring will be Moso Bamboo (see plan page A3, deck siding details 4/A3 and 5/A3, photo of material sample below).



The wood hot tub will be located on the east side of the deck, installed within the deck with the tub bottom resting on a 6-inch thick, reinforced, concrete pad poured on grade (see plan page A2, site section 3/A2 and attachment B, Robert's Hot Tubs, Preinstallation Guide).

The owner has indicated that no lighting is proposed for the deck or hot tub and that the existing wall light on the north side of the house will provide adequate illumination for the safety of anyone using the proposed new stairway accessing the existing rear deck off the master bedroom (Attachment C - 1/4/23 e-mail from Daniel Cardoza, owner).

## **BACKGROUND**

The 23,547 square-foot site slopes down from Tamalpais Road at an average rate of 57% (Marin Map GIS system property slope) and is developed with a 2,471 square-foot, 3-bedroom, 2.5-bathroom, single-family residence with a detached two-car garage. The structure had a major remodel in 1997 after obtaining a Hill Area Residential Development (HRD) Permit and front setback and parking variances from the Planning Commission for a fifty percent remodel of the structure and to formalize the zero-foot front setback maintained by the existing garage.

A building permit was issued in 2002 to construct a recreation room in the unimproved underfloor area beneath the house on June 12, 2002.

### **DISCUSSION**

#### **Conditional Use Permit**

Town Code § 17.080.050 requires that a Conditional Use Permit (CUP) be obtained prior to any physical improvements of or on a building site failing to meet the minimum size and width requirements based on its average slope. Town Code § 17.080.050(C) requires that a property with a 57% slope be a minimum of 49,000 square-feet in size and 191 feet wide to comply with the code or the site is considered legal non-conforming, and any new construction proposed on the site requires a CUP.

The project site is 23,547 square-feet and 103 feet wide, so the proposed deck addition requires the approval of a CUP.

To approve a CUP, the Commission must be able to make the following required legal findings:

- (A) 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.
- (B) The development and use of 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.
- (C) 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, development plan or other plan or policy, officially adopted by the town; and
- (D) 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.

The proposed deck and existing structures comply with the RS-6 Zoning setbacks, floor area ratio (FAR), lot coverage and height limitations as follows:

	Front Setback	Rear Setback	Combined Front/Rear Setback	Min. Side Setbacks	Combined Side Setbacks	FAR	Coverage	Height
Required/ Permitted	10 ft. (detached parking structure)	12 ft.	35 ft.	5 ft. & 5 ft.	20 ft.	.40	.35	35 ft., 3 stories
Existing	0 ft. (garage)	6 ft.	61 ft.	9 ft. & 18 ft.	27 ft.	.10	.07	31.5 ft., 3 stories
Proposed	No change	48 ft.	48 ft.	9 ft. & 9 ft.	18 ft. *	No change	No change	No change

<sup>\* (</sup>Note that Town Code §17.044.070(A)(3) allows decks to encroach up to 2-feet into a required setback reducing the required combined setback for the deck from a required combined side-yard setback of 20-feet to 18-feet which the proposed deck complies with).

The deck will not change the use of the exterior yard area that is currently used as outdoor living space but will raise the elevation approximately 4-feet from 330 to 334 (see plan set page A3, north elevation). The deck complies with the minimum and combined side yard setback regulations and will be approximately 43-feet away from the closest residential structure at 225 Tamalpais Road and approximately 48-feet from the residence downslope of the site at 86 Wreden Avenue. The deck will not be visible from Tamalpais Road.

There are other similar sized decks nearby in the Tamalpais neighborhood (407 Tamalpais- 735 square foot deck, 207 Tamalpais – 665 square foot deck).

Therefore, the proposed deck has been located appropriately on the site and complies with the purpose section of the Conditional Use Permit Ordinance, the deck will not negatively impact surrounding development, and the post and pier foundation will require minimal excavation and minimal site disturbance. The deck will be pervious, complies with the setback, height and lot coverage regulations of the RS-6 Zone (see table above) and therefore complies with Title 17, Zoning of the Town Code. There are similar sized decks in the immediate area so the project will not result in development out of character with the surrounding neighborhood.

It should be noted that pervious deck area is not counted towards the floor area ratio (FAR) calculation or the lot coverage calculation.

## Other Agency/Department Comments/Conditions

No comments or conditions were received on the project from any agency or Town Department.

#### **Northern Spotted Owl**

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

#### Tree Removal

The deck and stairway to the second-floor rear deck off the master bedroom will not require the removal of any trees.

#### RECOMMENDATION

Move to approve Application # 23-02 by adopting Resolution No. 2023-02 setting forth the findings and the conditions for the project approval.

## **ATTACHMENTS**

- A Resolution No. 2023-02
- B Hot tub pre-installation Guide
- C Lighting information e-mail from owner and deck siding information e-mail from the architect
- D Photographs of the project site
- E Project plans

#### **RESOLUTION NO. 2023-02**

# A Resolution of the Fairfax Planning Commission Approving Application No. 23-02 for a Conditional Use Permit for a 615 Square-foot Deck and Hot Tub at 229 Tamalpais Road

**WHEREAS**, the Town of Fairfax received an application from Dan Cardozo for a 615 square-foot, deck and hot tub addition at 229 Tamalpais Road on November 3, 2022; and

**WHEREAS**, the Planning Commission held a duly noticed Public Hearing on January 26, 2023, 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, with plans prepared by Laura Kehrlein, Architect with Frederic C. Divine Associates Architects, received by the Town on 12/15/22 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:

- 1) Goal LU-7: Preserve a human-centered scale, mixed use, and sense of community.
- 2) 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 deck addition complies with the RS-6 Residential Single-family Zone setback and height regulations and the deck does not affect the site floor area ratio which considers interior space square footage, or the lot coverage percentage which does not apply to the permeable deck.
- 2) The deck complies with the minimum and combined side yard setback regulations and will be approximately 43-feet away from the closest residential structure at 225 Tamalpais Road and approximately 48-feet from the residence downslope of the site at 86 Wreden Avenue. The deck also will not be visible to passersby using Tamalpais Road. 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 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) The project does not require the approval of any variances and does not change the single-family residential use of the site. Therefore, 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 Frederic C. Divine Associates Architects, received by the Town on 12/15/22.
- 2. 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 regulations.
- 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 the final inspection approval and sign off 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 # 23-02. Modifications that do not

significantly change the project, the project design or the approved discretionary permits *may* be approved by either the Planning Commission or the Planning Director. Any construction based on job plans that have been altered without the benefit of an approved modification of Application 23-02 will result in the job being immediately stopped and red tagged.

- 7. Any damages to the public portions of Tamalpais 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.

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

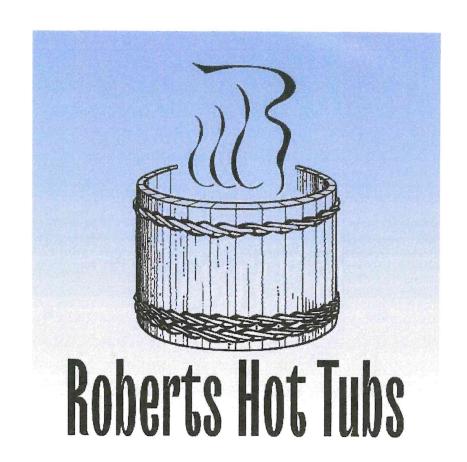
The approval of the Conditional Use Permit is in conformance with the 2010 – 2030 Fairfax General Plan, the Fairfax Town Code and the Fairfax Zoning Ordinance, Town Code Title 17; and

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 January 2023 by the following vote:

AYES: NOES: ABSENT:		
NOCENT.		
Attest:	Chair Cindy Swift	
David Woltering, Interim Plar		





## **Pre-installation Guide**

Contact information

510-234-7920

www.rhtubs.com

benny@rhtubs.com

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## **Wood Storage**

- Store and cover the wood carefully until the assembly is complete. Extreme temperatures, direct sunlight, and moisture can damage the wood.
- Once the tub is assembled, it needs to be kept covered and should be filled with water within 3 days.

## Installation

- Currently, Roberts Hot Tubs does installations, and you can order a tub to be delivered pre-assembled. If you choose to do so, please ensure you have adequate room to move the tub to its final location.

## Freight

- Roberts Hot Tubs only provides curbside delivery. The freight company will call to make an appointment for drop-off. If your home is not accessible by the freight company, you will need to pick up your tub at the terminal.

## Wood and Tub Guide

- Wooden tubs require a break in period, where the color of the wood (tannins) will bleed into the water. It is still perfectly safe to use during this time.
- Your tub will leak when first filled until the wood swells.
- Prolonged exposure to sunlight will cause the color of the tub to turn grey.

## **Wood Types:**

Western Red Cedar (WRC)	Alaskan Yellow Cedar (AYC)	Teak
15-year lifespan	25-year lifespan	40-year lifespan
1-year break in period	3-month break in period	6-month break in period

## **Tub Weight and Capacity:**

Size	Dry Weight	Gallon Capacity	Total Weight
4X4	250lbs	300gal	3,000lbs
5X4	300lbs	500gal	5,000lbs
6X4	400lbs	750gal	7,000lbs
7X4	500lbs	1,000gal	10,000lbs
8X4	600lbs	1,300gal	12,000lbs

## Concrete Pad For Tub

- A 6" thick reinforced concrete pad is recommended for tubs. Minimum diameter is 6" less than the diameter of the tub, example: 6' diameter tub requires a 5.5' diameter pad. Depending on soil conditions, size and thickness of pads may need to vary.
- A concrete pad is not required, however it is highly recommended. Should you not set your tub on a concrete pad, it is important that the surface can support the weight of the tub once filled.

## **Equipment:**

	Natural Gas / Propane	Electric	Chiller	Heat Pump
Electrical Service	220v 20a	220v 50a (11kw) or 220v 30a (5.5kw) + 220v 20a	220v 40a + 220v 20a	220v 30a (55kBTU) or 220v 40a (75kBTU) + 220v 20a
Gas Line	Please consult the gas heater manual or plumber	NA	NA	NA
Min. Footprint	4'x2' + 2'x2'	4'x2'	4'x2' + 3'x3'	4'x2' + 3'x3'
Clearances	Please consult the gas heater manual for the heater clearances.	The top loading filter is the tallest element at 2.5' otherwise no clearances	Please consult chiller manual for chiller clearances	Please consult heat pump manual for heater clearances

- Equipment may be stored at whatever distance from the tub is convenient. However, if the equipment is within 5' of the tub, it must be inaccessible from inside of the tub.
  - **Examples:** Placing the equipment in a room, behind a fence or under a deck.
- Equipment is best kept on grade with the tub. Please contact us if this is not the case.
- Depending on distance and difference in elevation, the size of the pipes that go between the tub and equipment will need to change. For tubs on grade between 5'-40' please use 2" PVC. For anything longer, or off grade please contact us.

## In Deck Installs

- It is easier to build a deck around a tub rather than drop a tub into a deck. In the latter, please construct the tub next to the hole and drop it in after it has been assembled.

## Installs Below Grade/In A Pit

- Tubs may go into a pit or below grade, but please make sure the following conditions are satisfied:
- 1. There is a slab under the tub of appropriate strength.
- 2. There is drainage in the pit.
- 3. There are retaining walls of appropriate thickness.
- 4. There is a minimum of 6" of clearance on all sides of the tub. 1' on all sides is highly recommended.
- 5. If pipes and/or conduit are going to go through the retaining walls please use sleeves.

#### **Linda Neal**

From: Laura Kehrlein < laura@fdivinearchitects.com>

Sent: Wednesday, January 4, 2023 4:15 PM

To: Linda Neal

Subject: FW: 229 Tamalpais Road **Attachments:** IMG\_9758 Crop.JPG

#### Hi Linda

The Owner's response to your comment regarding exterior lighting is below and that no new additional exterior lighting is proposed. I have attached a photo of the existing lighting that is proposed to remain. Let me know if you need any other documents submitted as the applicant would like to be scheduled for the January meeting as you have mentioned in your current letter.

Sincerely

Laura Kehrlein **Project Architect** Fredric C Divine Architects 1924 Fourth Street San Rafael, CA 94901 Office Ph: 415-457-0220 x 103

Mobile Ph: 415-300-7337

----Original Message-----

From: Daniel Cardozo < DCardozo@adamsbroadwell.com>

Sent: Wednesday, January 4, 2023 2:42 PM

To: Laura Kehrlein < laura@fdivinearchitects.com>

Subject: RE: 229 Tamalpais Road

No new exterior lighting planned. There is already an exterior light on the wall above where the new stairway will be.

----Original Message----

From: Laura Kehrlein < laura@fdivinearchitects.com>

Sent: Wednesday, January 4, 2023 2:36 PM

To: Daniel Cardozo < DCardozo@adamsbroadwell.com>

Subject: FW: 229 Tamalpais Road

Hi Dan

I hope you had a good holiday. The town is ready to schedule your project but would like to know if any additional outside lighting will be proposed. I need to respond back to the town this week in order to get scheduled for the Jan. meeting, so let me know at your earliest convenience what you would like to include for new exterior lighting.

Sincerely

Laura Kehrlein

Project Architect
Fredric C Divine Architects
1924 Fourth Street
San Rafael, CA 94901

Office Ph: 415-457-0220 x 103 Mobile Ph: 415-300-7337

----Original Message----

From: Linda Neal < Ineal@townoffairfax.org> Sent: Wednesday, January 4, 2023 2:18 PM

To: Laura Kehrlein < laura@fdivinearchitects.com>

Subject: FW: 229 Tamalpais Road

Hi Laura,

Hope you had a good holiday. I was sick the entire time, not with Covid, with some other cold like thing. Anyway, this project is almost there - see attached letter.

Linda Neal Principal Planner (415) 453-1584

----Original Message----

From: copier@townoffairfax.org <copier@townoffairfax.org>

Sent: Wednesday, January 4, 2023 2:06 PM To: Linda Neal < lneal@townoffairfax.org>

Subject:

2

#### Linda Neal

From:

Laura Kehrlein < laura@fdivinearchitects.com>

Sent:

Tuesday, January 17, 2023 4:45 PM

To: Subject: Linda Neal RE: A question

Attachments:

IMG\_9759.JPG

#### Hi Linda

The current deck rail has a low solid stucco wall at that end that provides privacy from the neighboring house. I want to maintain this privacy with the new deck extension to access the new stairway. New railings at the house are comprised of this "slat" rail design and helps breaks up the visual appearance of the deck.

See attached photo for reference of the existing solid stucco rails at end of decks.

Laura Kehrlein Project Architect Fredric C Divine Architects 1924 Fourth Street San Rafael, CA 94901 Office Ph: 415-457-0220 x 103

Office Ph: 415-457-0220 x 103 Mobile Ph: 415-300-7337

From: Linda Neal < Ineal@townoffairfax.org> Sent: Tuesday, January 17, 2023 9:05 AM

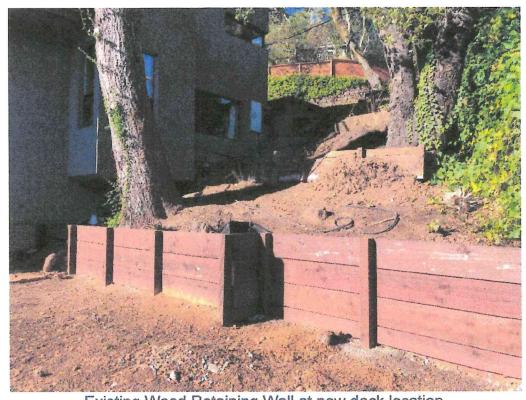
To: Laura Kehrlein < laura@fdivinearchitects.com>

**Subject:** A question

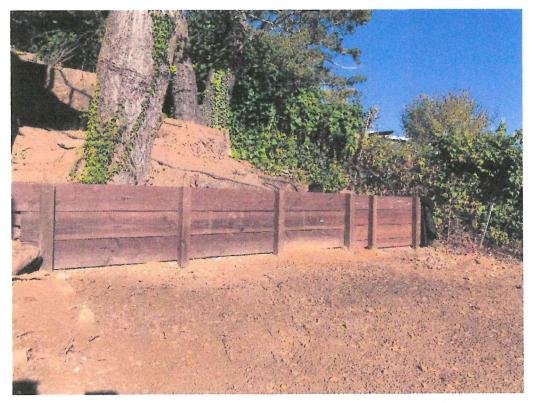
Hi Laura,

I just want to verify that the reason for the solid wood deck rails at the top of the new stairway accessing the existing deck off the master bedroom is just a visual thing, correct? To break up the visual appearance of the deck? Or is there some other reason this small section will have solid wood siding?

Linda Neal Principal Planner (415) 453-1584



Existing Wood Retaining Wall at new deck location.



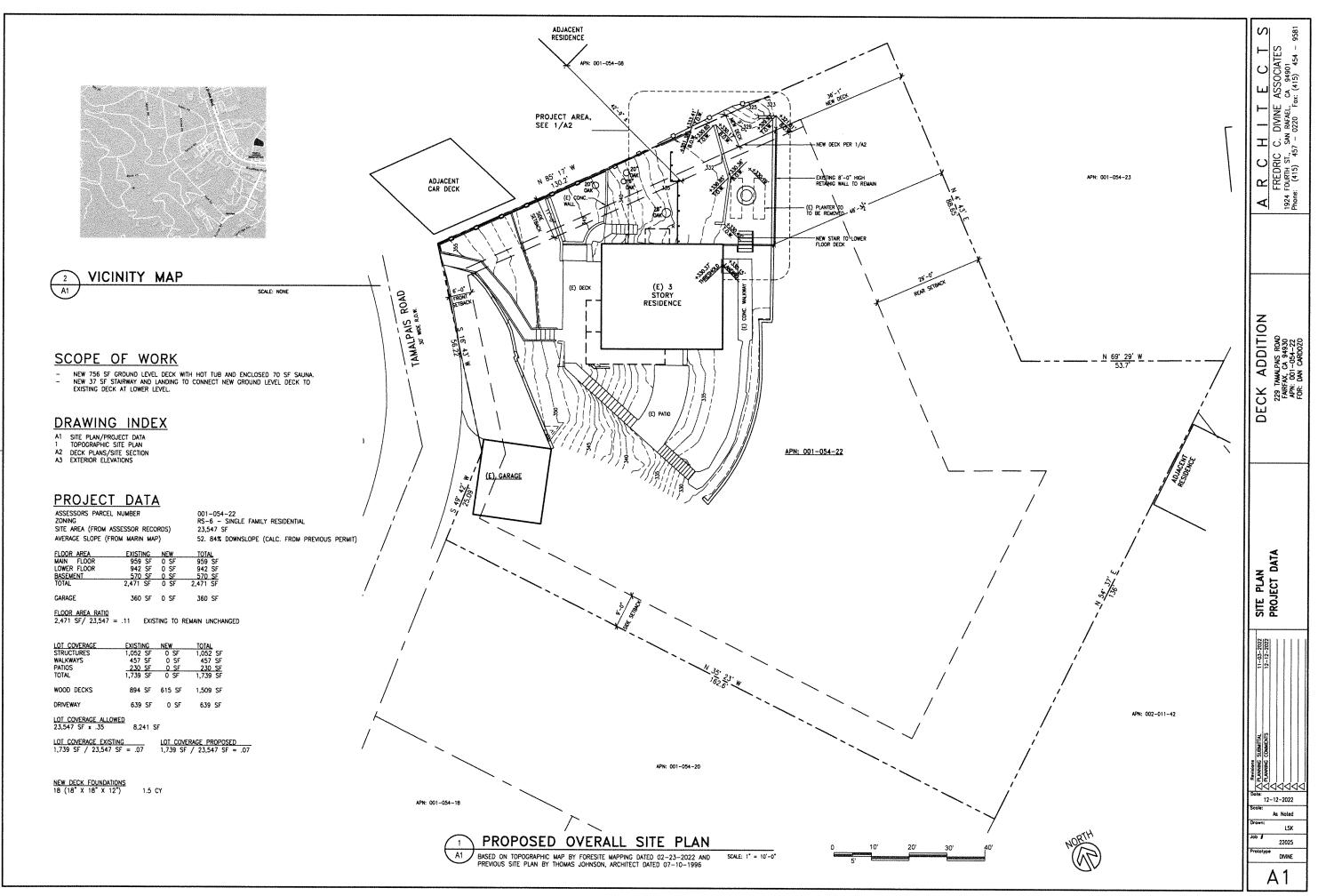
Existing Wood Retaining Wall at new deck location continued.

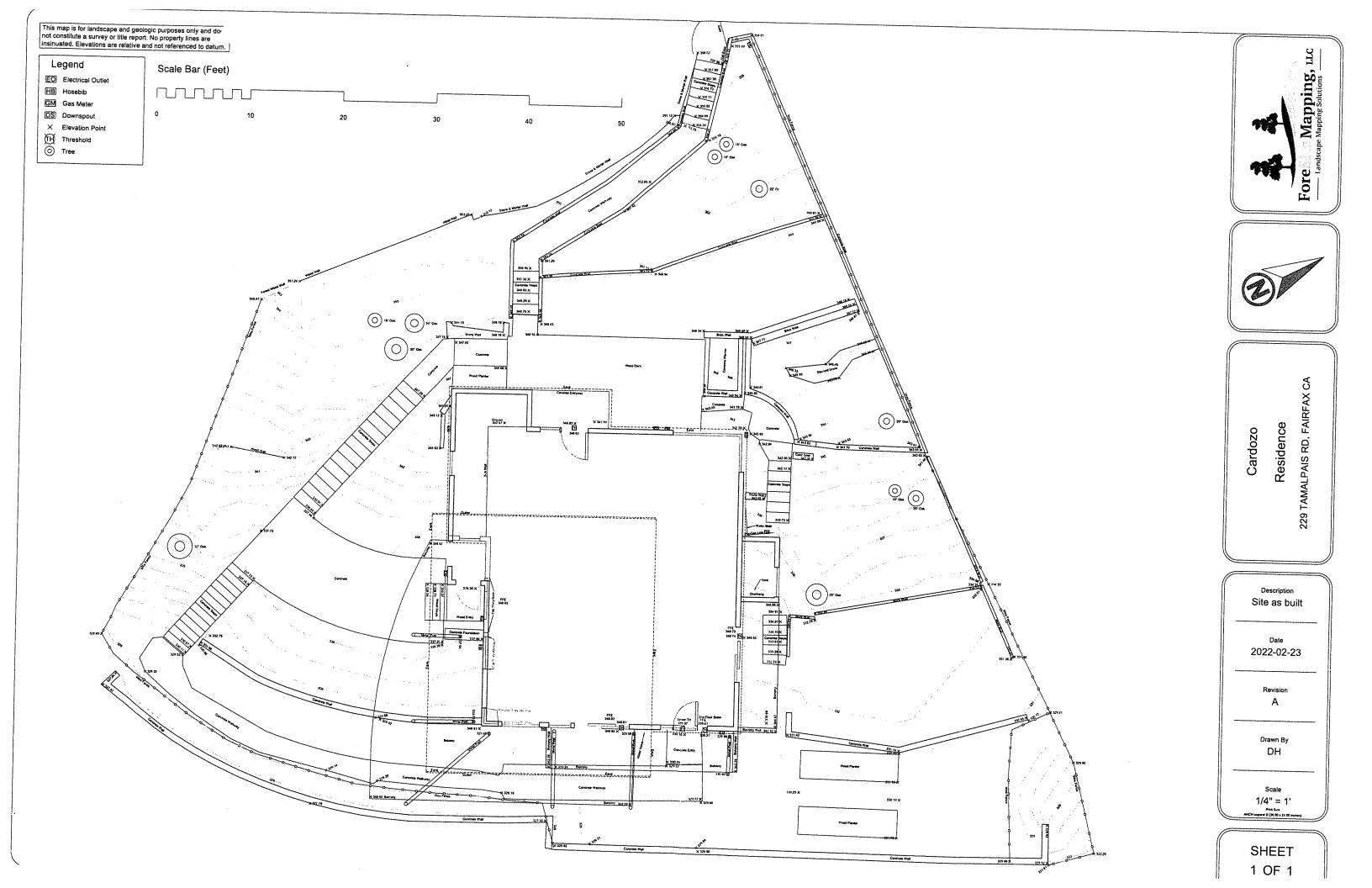


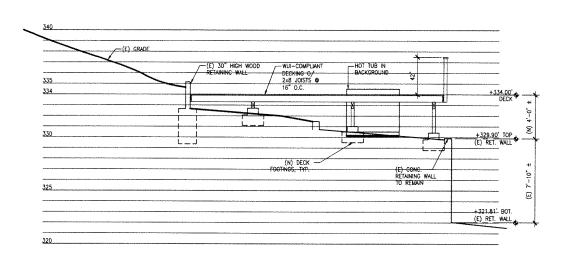
View of existing house at new stair location.



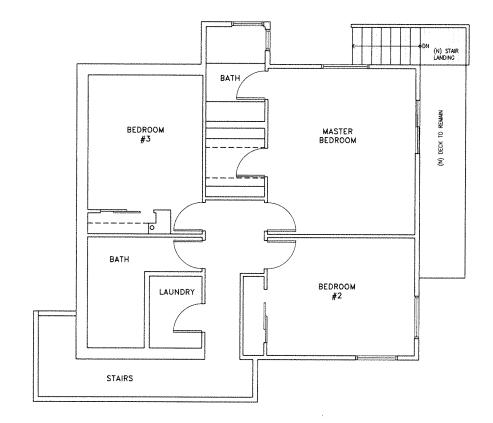
View of side yard at new deck location.



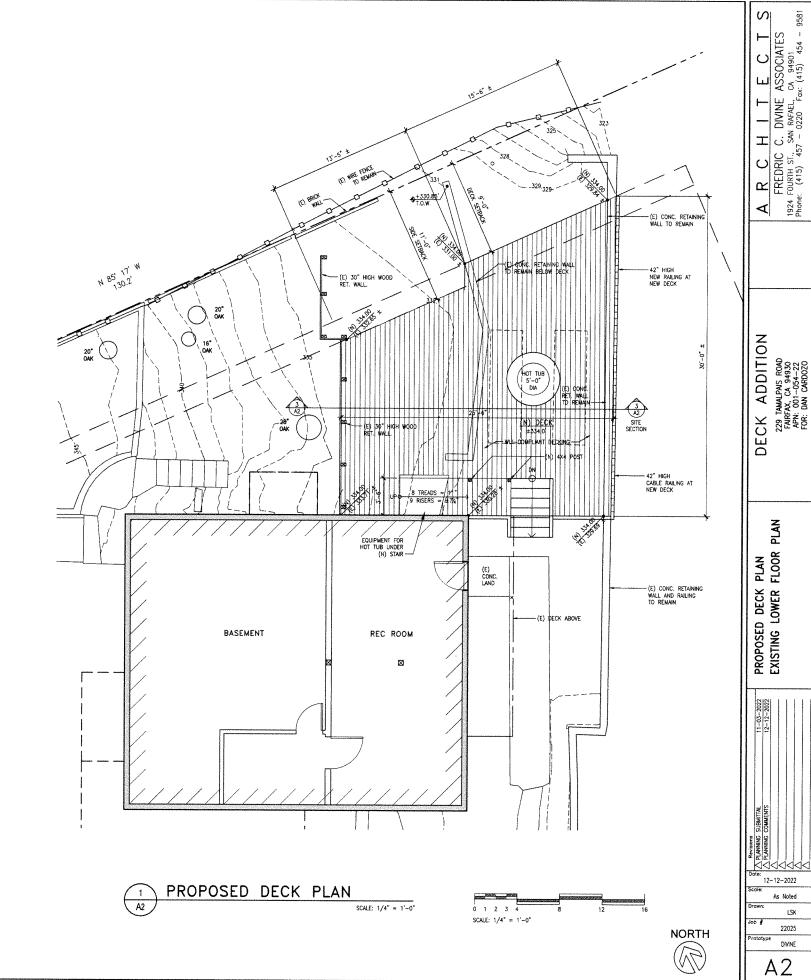


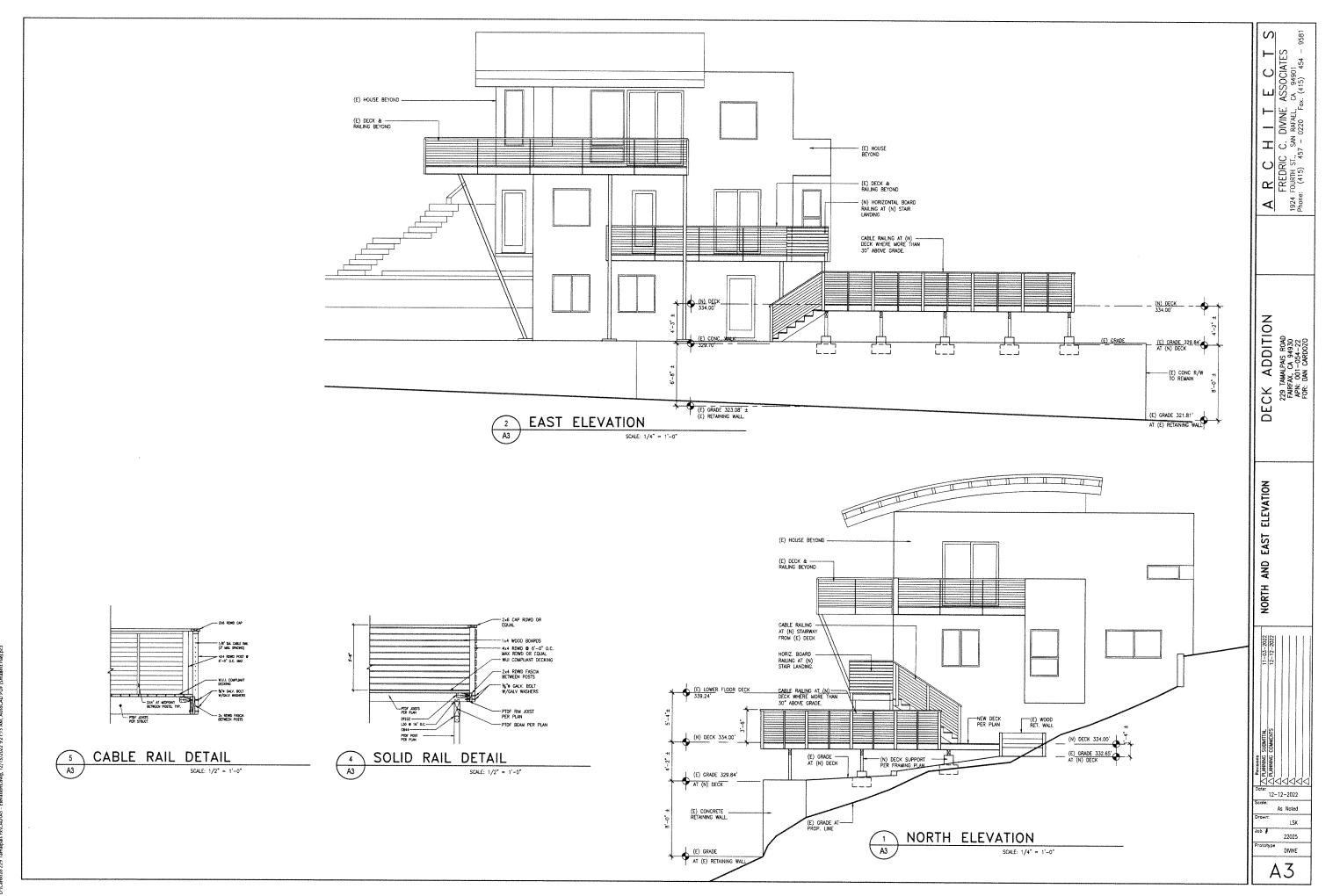












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