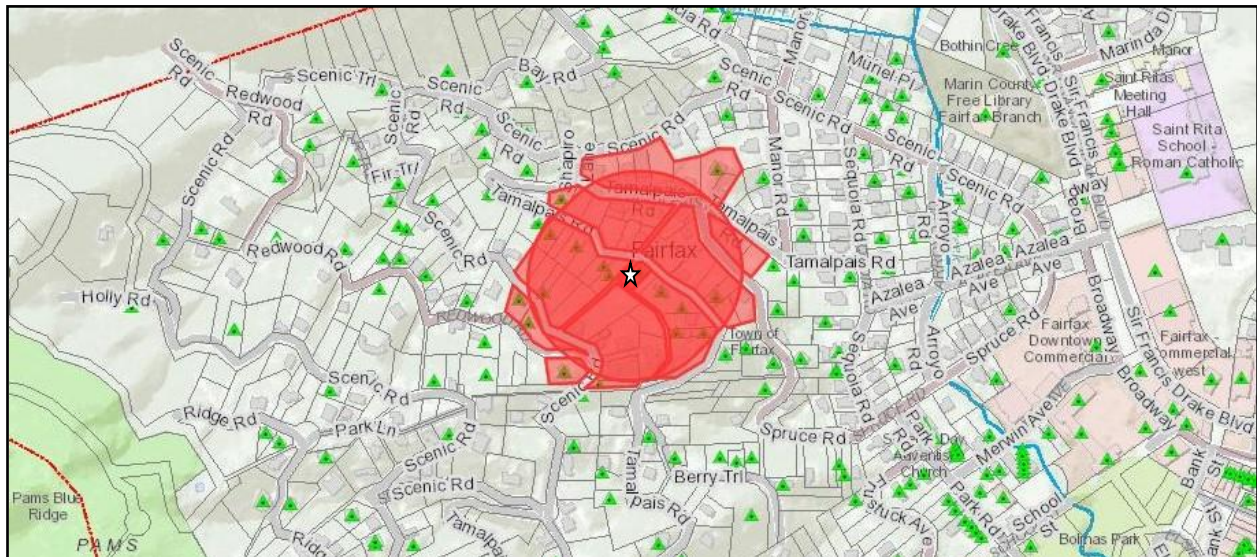


**TOWN OF FAIRFAX
STAFF REPORT**
Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: May 18, 2023
FROM: Kara Spencer, Assistant Planner
LOCATION: 142 Tamalpais Road; APN# 001-121-25
ZONING: RS-6 Single-family Residential Zone
PROJECT: 213 Square-foot deck addition and legalization of a stairway encroachment into the public pathway/trail adjacent to 142 Tamalpais Road
ACTION: Conditional Use Permit (CUP), Front-yard and Combined Side-yard Setback Variances, and Revocable Encroachment Permit; Application # 23-14
APPLICANT: Arrow Deck and Construction
OWNER: John Nolan
CEQA STATUS: Categorically exempt, § 15301(a).



142 TAMALPAIS ROAD

PROJECT DESCRIPTION

The project consists of the construction of an approximately 213 square foot wooden deck onto the upper floor of an existing approximately 964 square foot, two-bedroom, one-bathroom single-family dwelling. The project also proposes to rebuild and replace in kind an existing wooden stairway that is entirely within the public pathway/trail adjacent to the northwestern side of the property with a new code compliant wooden stairway and legalize its location with a revocable encroachment permit. The stairway provides

access to the backyard. No other changes are proposed. There would be no excavation or fill; no new lighting or landscaping; nor, any tree removal.

BACKGROUND

The approximately 4,643 square foot property slopes up from Tamalpais Road at an average rate of approximately 54 percent. It is developed with the house and an approximately 377 square foot carport. A variety of native and non-native vegetation is scattered throughout the property. The house was originally constructed in 1919. The upper floor of the house contains the living area and the lower floor has a small tool shed, storage area, and crawl space. A portion of the house and the entire wooden backyard access stairway encroach into the public pathway/trail adjacent to the northwestern side of the property. A portion of the carport encroaches into the Tamalpais Road right-of-way. There is a curved concrete stairway/retaining wall adjacent to the northwestern side of the project property that starts at Tamalpais Road and is located entirely within the public pathway/trail. This stairway provides public access to the pathway/trail and also provides the property owner access to the front of the house.

On July 21, 1994, the Fairfax Planning Commission approved a revocable encroachment permit for the portion of the house within the public pathway/trail adjacent to the northwestern property boundary and a front setback variance, retaining wall height variance, a revocable encroachment permit, and an excavation permit for the construction of the carport. A building permit was issued for the carport construction on August 15, 1994. The plans approved at that meeting also show the curved concrete steps located within the public pathway/trail to the northwest of the project property and indicate that new steps would be located in the same approximate location; refer to Attachment B.

A previous property owner constructed the backyard access stairway entirely with the public pathway/trail adjacent to the northwestern side of the property in the late 1990s without permits. A stop work order was issued for the stairway construction in December of 1998. The property owner at that time applied for an after the fact encroachment permit and variance to legalize the stairway in early 1999. Planning staff determined that the application to legalize the stairway was incomplete and requested additional information. The applicant never provided the additional information to move the project forward to be heard by the Planning Commission and the stairway was never legalized with an encroachment permit or variance.

According to maps prepared by Marin County Parks in conjunction with the Marin Audubon Society, the project site is within a quarter mile of a known Northern Spotted Owl nesting site.

Table 1 below demonstrates the project's compliance with the regulations of the RS-6 Single-family Residential Zone, High-Density District where the property is located. As indicated in Table 1, the existing property meets the rear setback, the combined front

and rear setback, one of the individual side setbacks (eastern side), the FAR, lot coverage, and building height requirements.

Table 1: 142 Tamalpais Road Compliance with RS-6 Regulations

	Front Setback	Rear Setback	Combined Front/Rear Setback	Side Setbacks	Combined Side Setbacks	FAR	Lot Coverage	Height
Required/ Permitted	6 ft.	12 ft.	35 ft.	5 ft. & 5 ft.	20 ft.	.40	.35	28.5 ft., 3 stories
Existing	> 0 ft.	45'-6"	45'-6"	> 0 ft. & 12 ft.	12 ft.	.21	.31	24'-9" 2 stories
Proposed	No change	No change	No change	No change	No change	No change	No change	No change

DISCUSSION

Required Discretionary Approvals

Town Code § 17.080.050 specifies that improvements or modifications to any site zoned RS-6 that does not meet the minimum size and width requirements based on its slope require approval of either a Conditional Use Permit (CUP) or a Hill Area Residential Development (HRD) Permit. Based on the 54 percent slope of the project site, it would need to be 46,000 square feet in area and 117 feet wide to conform to the size and width requirements of § 17.080.050(C). At 4,643 square feet in area and approximately 47 feet wide along the street frontage, the project site does not meet the minimum size requirements of the code. The project does not require any excavation and would result in minimal site disturbance. Therefore, the HRD permit is not applicable and the project requires the approval of a CUP.

A small corner of the proposed deck would project approximately two and a half feet into the front-yard setback and another portion of it would project approximately eight feet into the combined side-yard setback requiring approval of a Front-yard Setback Variance and a Combined Side-yard Setback Variance [Town Code § §17.080.070(B) (1) and (2)]. The reconstruction of the backyard wooden access stairway within the public pathway/trail adjacent to the northwestern property boundary requires Planning Commission approval of a Revocable Encroachment Permit.

Conditional Use Permit (Town Code Chapter 17.032)

The proposed deck would add approximately 213 square feet of outdoor living space to the project property that would be approximately 16-feet from the neighboring house located at 146 Tamalpais Road and approximately 20'-6" from the neighboring house at 138 Tamalpais Road. Both the project property and 146 Tamalpais Road have views into each other's properties from their front and side yards and side windows. The rooftop deck at 146 Tamalpais Road has views into the project property. The front windows at 142 Tamalpais Road have views into the 146 Tamalpais Road property. The proposed deck would create an additional outdoor living area that could look into 146 Tamalpais Road from 142 Tamalpais Road. However, the view into 146 Tamalpais

Road that would be created by the proposed deck already exists from the front windows of 142 Tamalpais Road. The impact of the proposed deck on the privacy of the neighbor at 146 Tamalpais Road would be minimal, given that the views created by the deck already exist. Due to the angled orientation of the home at 138 Tamalpais Road, as well as the approximately 20'-6" distance, the proposed deck would have minimal impact on the privacy of that property. The proposed deck would not be expected to cause excessive or unreasonable detriment to either neighboring property or create undue or excessive burdens in the use and enjoyment of either property.

Numerous other houses in the immediate area have multiple decks fronting Tamalpais Road that are similar in size to the ones existing at the project site and to the one proposed by the project, so the project would not result in development out of character with the surrounding neighborhood. Due to the steep, winding, and hilly nature of Tamalpais Road and intervening vegetation, the proposed deck would not be very visible to passersby on Tamalpais Road. The project would have a negligible impact on the site as excavation and fill are not required and no new lighting is proposed.

The findings required to approve a Conditional Use Permit (Town Code § 17.032.060) can be made for the proposed deck. It would comply with the height and lot coverage requirements of the RS-6 Zone and with approval of the Variances it would comply with the setback regulations.

Front Setback and Combined Side-yard Setback Variances (Town Code Chapter 17.028)

A small corner of the proposed deck would project approximately two and a half feet into the required six foot setback. Town Code § 17.044.070(A)(2) allows decks to project no greater than two feet into a required setback, so the project requires a Variance to allow the deck to project the additional six inches into the required setback. The curving topography of the hillside creates an irregularly shaped angle along the property frontage where the deck would project into the front-yard setback. The six inch projection is negligible and would not intrude into the front-yard setback any further than the existing legally, non-conforming stairway that would be located approximately four feet beyond the footprint of the deck. The property's irregular shape and the siting of the existing house on the property make it difficult to add the proposed deck to the front of the house and comply with the front-yard setback requirement. The approximately 54 percent slope of the site provides limited usable outdoor living space. The proposed new deck would provide additional usable outdoor space on this sloped property without negatively impacting neighboring properties or requiring any excavation. Many other property owners in the vicinity and under identical zone classification have structures within the front-yard and combined side-yard setbacks.

Revocable Encroachment Permit [Town Code § 12.32.010(A)]

The property owner would like to keep the existing wooden stairway adjacent to the northwestern side of the property that is entirely within the public pathway/trail and rebuild it in kind to code. Town Code § 12.32.010(A) gives the authority to the Planning Commission to grant Revocable Encroachment Permits for private structures with public

easements/portions of public easements that are not being used by the public for vehicular or pedestrian traffic. As mentioned previously, the existing unpermitted stairway provides access to the back yard and was constructed in late 1998 by a previous property owner. It also provides additional ingress/egress from the property during an emergency. The public pathway/trail is approximately eight and a half feet wide where the stairway is located. The stairway projects approximately four feet from the side of the property into the public pathway/trail, as it has done for approximately 20+ years, leaving approximately four and a half feet of pathway/trail for the public to use. The public has not had access to the portion of the pathway/trail where the stairway is located for over 20 years and has been able to use the four and a half foot wide portion of the pathway/trail on the other side of the stairs. Allowing the stairway to remain in the public pathway/trail would not change the character of the neighborhood nor have a significant negative impact on the neighbors or the neighborhood. If the Planning Commission grants the Encroachment Permit to allow the stairway to remain in the public pathway/trail, it would be formalizing the use of the stairway that has existed for over 20 years. Formalizing the encroachment would be subject to the owner signing, notarizing and recording a "Revocable Encroachment" document prior to issuance of the building permit to reconstruct the stairway and build the proposed deck.

OTHER DEPARTMENT/AGENCY COMMENTS/CONDITIONS OF APPROVAL

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. 2023-12 and can be viewed in their entirety in that document.

RECOMMENDATION

Conduct the public hearing.

Move to approve application No. 23-14 by adopting the attached Resolution No. 2023-12 setting forth the findings and the conditions of project approval.

ATTACHMENTS

Attachment A – Resolution No. 2023-12

Attachment B – 1994 Carport Site Plan

RESOLUTION NO. 2023-12

A Resolution of the Fairfax Planning Commission Approving Application 23-14 for a Conditional Use Permit and Front-yard and Combined Side-yard Setback Variances for a 213 Square Foot Deck Addition at 142 Tamalpais Road and a Revocable Encroachment Permit for a Stairway Encroachment into the Public Pathway/Trail Adjacent to 142 Tamalpais Road

WHEREAS, the Town of Fairfax received an application from John Nolan for a 213 square foot deck addition at 142 Tamalpais Road and the legalization of a stairway encroachment into the public pathway/trail adjacent to 142 Tamalpais Road on August 31, 2022; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on May 18, 2023 at which time the Planning Commission determined that the project complies with the Town Code and that findings can be made to grant the requested Conditional Use Permit, the Front-yard and Combined Side-yard Setback Variances, and Revocable Encroachment Permit and has made the following findings:

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

Policy LU-7.1.5: New and renewed residential development shall preserve and enhance the existing character of the Town's neighborhoods in diversity, architectural character, size, and mass.

Conditional Use Permit Findings [Town Code Sections 17.032.060 (A) through (D)]

- A. The approval of the Conditional Use Permit to allow the approximately 213 square foot deck addition will not be a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.
- B. The impact of the proposed deck on the privacy of the neighbor at 146 Tamalpais Road would be minimal, given that the views created by the deck already exist from the front windows of 142 Tamalpais Road. Due to the angled orientation of the home at 138 Tamalpais Road, as well as the approximately 20'-6" distance, the proposed deck would have minimal impact on the privacy of that property. Due to the steep, winding, and hilly nature of Tamalpais Road and intervening vegetation, the deck addition would not be very visible to passersby on Tamalpais Road. The project would have a negligible impact on the site as excavation and fill are not required and no new lighting is proposed. Therefore, the development of the property as approved under the Conditional Use Permit shall not create a public nuisance or cause excessive of unreasonable detriment or physical or economic effects to adjoining properties beyond that which might occur without approval of the Conditional Use Permit.
- C. Approval of the Conditional Use Permit is not contrary to the Zoning Ordinance regulations or standards with the approval of the Front-yard and Combined Side-yard Setback Variances.

- D. Approval of the Conditional Use Permit to allow the proposed approximately 213 square foot deck addition will result in better development of the property than would otherwise be the case and is in the best interest of the public and for the protection and enhancement of the community.

Front-yard Setback and Combined Side-yard Setback Variances

[Town Code sections 17.028.070(A)(1) through (4)]

1. Due to the property's steep 54% slope, narrow 47 foot width, and irregular shape; and due to the siting of the existing house on the property, the strict application of the six-foot front-yard setback and the 20-foot combined side-yard setback would deprive the applicants of the ability to add new usable outdoor living space without disturbing new areas of the site or requiring excavation.
2. The proposed deck would maintain similar setbacks from the property lines as other decks on uphill lots along Tamalpais Road. Therefore, the granting of the Front-yard Setback Variance and the Combined Side-yard Setback Variance will not be a grant of special privilege.
3. The strict application of the six-foot front-yard setback and the 20-foot combined side yard setback would prohibit the construction of the deck and require the owners to create more outdoor living space by building level areas on the sloped site, resulting in excavation and disturbance of the natural slope which would be a hardship.
4. The granting of the Front-yard and Combined Side-yard Setback Variance will benefit the owners by creating usable level outdoor living space without increasing the site disturbance.

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

1. The project is approved per the plans prepared by Arrow Deck and Construction, dated received by the Town of Fairfax on May 8, 2023.
2. Prior to issuance of any of the building permits for the project the applicant or his assigns shall:
 - a. Submit a construction plan to the Public Works Department which may 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

- b. The applicant shall prepare, and file with the Public Works Director, a video tape of the roadway conditions on the public construction delivery routes (routes must be approved by the Public Works Director).
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 # 23-14. 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 23-14 will result in the job being immediately stopped and red tagged.
7. Any damages to the public portions of Tamalpais Road or other public roadway used to access the site resulting from construction-related activities shall be the responsibility of the property owner.
8. The applicant and its heirs, successors, and assigns shall, at its sole cost and expense, defend with counsel selected by the Town, indemnify, protect, release, and hold harmless the Town of Fairfax and any agency or instrumentality thereof, including its agents, officers, commissions, and employees (the "Indemnitees") from any and all claims, actions, or proceedings arising out of or in any way relating to the processing and/or approval of the project as described herein, the purpose of which is to attack, set aside, void, or annul the approval of the project, and/or any environmental determination that accompanies it, by the Planning Commission, Town Council, Planning Director, or any other department or agency of the Town. This indemnification shall include, but not be limited to, suits, damages, judgments, costs, expenses, liens, levies, attorney fees or expert

witness fees that may be asserted or incurred by any person or entity, including the applicant, third parties and the Indemnitees, arising out of or in connection with the approval of this project, whether or not there is concurrent, passive, or active negligence on the part of the Indemnitees. Nothing herein shall prohibit the Town from participating in the defense of any claim, action, or proceeding. The parties shall use best efforts, acting in good faith, to select mutually agreeable defense counsel. If the parties cannot reach agreement, the Town may select its own legal counsel and the applicant agrees to pay directly, or timely reimburse on a monthly basis, the Town for all such court costs, attorney fees, and time referenced herein, provided, however, that the applicant's duty in this regard shall be subject to the Town's promptly notifying the applicant of any said claim, action, or proceeding.

9. The applicant shall comply with all applicable local, county, state and federal laws and regulations. Local ordinances which must be complied with include, but are not limited to: the Noise Ordinance, Chapter 8.20, Polystyrene Foam, Degradable and Recyclable Food Packaging, Chapter 8.16, Garbage and Rubbish Disposal, Chapter 8.08, Urban Runoff Pollution Prevention, Chapter 8.32, and the Americans with Disabilities Act.
10. In accordance with Town Code §8.20.060(C)(1) and (2), the operation of any tools or equipment used in construction or demolition work or in property maintenance work between the hours of 6:00 PM and 8:00 AM Monday through Friday, or on weekends and holidays between 4:00 PM and 9:00 AM is prohibited.
11. Conditions placed upon the project by outside agencies may be eliminated or amended with that agency's written notification to the Planning Department prior to issuance of the building permit.

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

The approval of the Conditional Use Permit and the Minimum Front-yard Setback Variance and Combined Side-yard Setback Variance are in compliance with the Fairfax Town Code and the Fairfax Zoning Ordinance, Town Code Title 17 and the Encroachment Permit is being issued in compliance with the Fairfax Municipal Code Chapter 12.32, Temporary Carports and Other Structures in Public Rights-of-Way; 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 18th day of May 2023 by the following vote:

AYES:
NOES:
RECUSED:
ABSENT:

Chair Cindy Swift

Attest:

Linda Neal, Principal Planner



50.51

A.P.N.R 1-121-25
TRACT/FAIRFAX MANOR
LOT #S 54855
142 TAMALPAIS RD.
FAIRFAX CA

ABOVE & BELOW RETAINING WALL AND @ FRONT CORNERS OF GARAGE STAKE WITH FLAG & ELEV. ELEV.

NAIL WITH FLAG & ELEV. ELEV.

NAIL WITH FLAG & ELEV. ELEV. HOUSE & PROPERTY LINE EXIST. RETAINING WALL ADDITIONAL STAIRS FTG @ OVERHANG

EASEMENT 12'

90.19

92.33

A2

40'

30'

12'

+160.81

+151.89

+124.87

CUT TO TOP OF FTG. 13' 6 7/8"

*NOTE 4" SLAB OVER 4" CRUSHED GRAVEL ABOVE TOP OF FTG

+128.21

EXIST. NEW STEPS APPROX LOCATION

OLD STAIRS

B.M. 0

-18.39

+15.39

EXIST FLOW LINE

*ADDITION 18' WIDE 17" DEEP EXCAVATION SHOWN 18'

142 TAMALPAIS RD
FAIRFAX CA. SCALE 1/8" = 1'
BY: KLEIST CONSTRUCTION
DATE: 6-20-94 SHEET A-1

SHEET A-1 OF