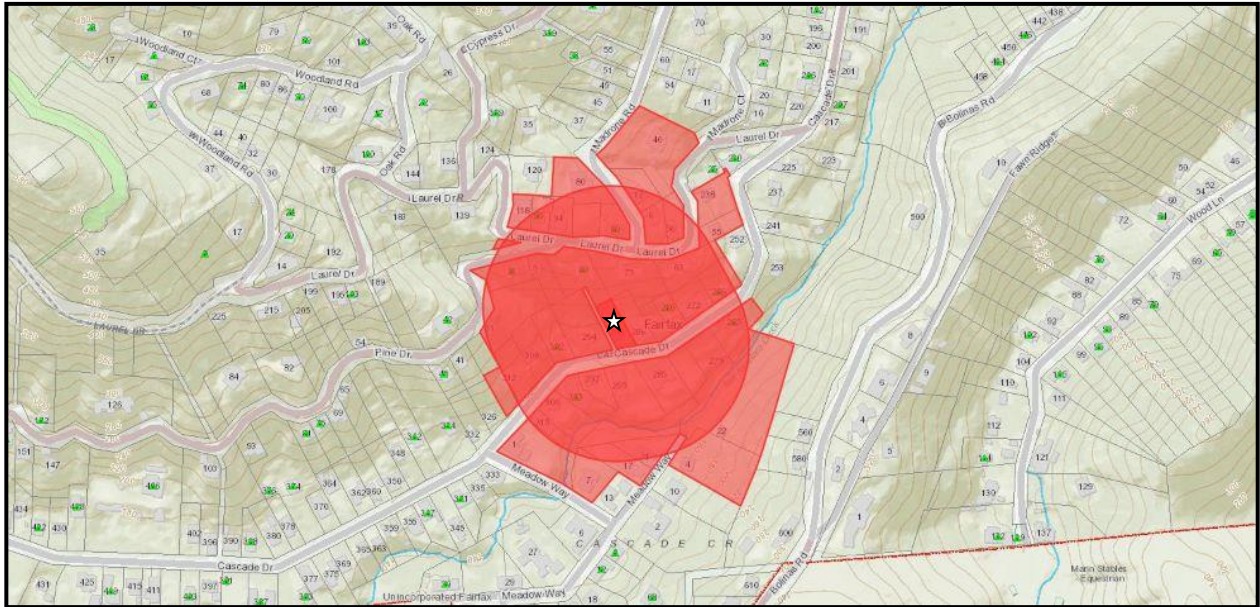


**TOWN OF FAIRFAX
STAFF REPORT
Department of Planning and Building Services**

TO: Fairfax Planning Commission
DATE: February 15, 2024
FROM: Kara Spencer, Assistant Planner
LOCATION: 290 Cascade Drive; APN 003-121-06
ZONING: RS-6 Single-family Residential Zone
PROJECT: Enclosure of a covered entry porch and conversion of a half bathroom to a full bathroom
ACTION: Conditional Use Permit and Combined Side-yard Setback Variance; Application No. 24-01
APPLICANT: Jody Timms
OWNER: Jody Timms and Silver Clark
CEQA STATUS: Categorically exempt, § 15301(e)(1)



290 CASCADE DRIVE

PROJECT DESCRIPTION

The project proposes to enclose an approximately 161 square foot covered entry porch to create a mudroom and convert a half bathroom to a full bathroom in the primary residence. Project implementation would increase the square footage of the primary residence from approximately 1,130 square feet to approximately 1,291 square feet and result in two full bathrooms in the primary residence.

BACKGROUND/EXISTING CONDITIONS

The project site is approximately 6,600 square feet in size with an average slope of approximately 31 percent. It is developed with a two-story house that was originally constructed in 1924. The lower floor of the house has an approximately 151 square foot, studio accessory dwelling unit (ADU) and an approximately 438 square foot, junior ADU (JADU) studio. The upper floor primary residence is approximately 1,130 square feet with two-bedrooms and one and a half bathrooms. Town Code § 17.136.030(B) excludes up to two accessory dwelling units from the floor area of a property containing a single-family residence.

The project property is located within the RS-6 Single-family Residential Zone, High-Density District (RS-6 Zone). It is also located within a Wildland Urban Interface (WUI) Zone according to the Ross Valley Fire Department “Town of Fairfax Wildland-Urban Interface Zones” Map. The project site is not within a half mile of a known Northern Spotted Owl (NSO) nesting site according to NSO nesting data from the Marin Audubon Society.

Table 1 demonstrates the project’s compliance with the regulations of the RS-6 Zone where the property is located. As indicated in Table 1, the existing property meets the front setback, the rear setback, the combined front and rear setback, one of the individual side setbacks (western side), the FAR, lot coverage, and the building height requirement. The existing, legally, non-conforming house encroaches into the individual, eastern side-setback, which causes it to not meet the combined side-setback as well.

Table 1: 290 Cascade Drive 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	24 ft.	65 ft.	89 ft.	4 ft. & 8 ft.	12 ft.	.17	.22	18 ft. 2 stories
Proposed	No change	No change	No change	No change	No change	.20	No change	No change

DISCUSSION

Required Discretionary Permits

Town Code § 17.080.050 requires approval of a Conditional Use Permit (CUP) or a Hill Area Residential Development (HRD) Permit by the Planning Commission for any physical improvements to a property in the RS-6 Zone that does not meet the minimum size and width requirements based on its slope. A property with a slope of 31 percent is required to be a minimum of 23,000 square feet in area and 113 feet wide [Town Code § 17.080.050(C)]. At approximately 6,600 square feet in area and approximately 52 feet wide the project site does not meet the minimum size and width requirements and is considered legally non-conforming. The project does not require any excavation and site disturbance would be negligible. Therefore, the HRD permit is not applicable and

the project requires Planning Commission approval of a CUP. The proposed enclosure of the covered entry porch would create additional living space within the combined side-yard setback, requiring approval of a Combined Side-yard Setback Variance.

Conditional Use Permit (Town Code Chapter 17.032)

Approval of the CUP to allow the property owner to enclose their existing covered entry porch and turn their half bathroom into a full bathroom would not constitute a grant of special privilege nor contravene the doctrines of equity and equal treatment. Enclosing the covered entry porch and converting the half bathroom to a full bathroom would not change the existing setbacks, lot coverage, or height of the residence, which are similar to other developed single family residential properties found in the immediate neighborhood and throughout the Cascades Subdivision, many of which also have two full bathrooms and/or houses and other structures that intrude into the individual and combined side-yard setbacks. Enclosing the covered entry porch would increase the FAR from 0.17 to 0.20, which would be well within the 0.40 allowable FAR, and similar to the FAR of other residences in the immediate neighborhood, as indicated in Table 2 below.

Table 2: 290 Cascade Drive Neighborhood Comparison

APN #	ADDRESS	LOT SIZE	HOUSE SIZE	# BEDROOMS	# BATHS	Floor Area Ratio
003-121-32	294 Cascade Drive	16,150 SF	1,308 SF	2	3	0.08
003-121-09	302 Cascade Drive	7,000 SF	1,102 SF	2	1	0.16
003-121-29	308 Cascade Drive	9,100 SF	960 SF	2	1	0.11
003-121-45	315 Cascade Drive	6,486 SF	1,662 SF	3	2	0.26
003-122-26	303 Cascade Drive	8,060 SF	2,270 SF	5	3	0.28
003-122-22	297 Cascade Drive	6,800 SF	1,332 SF	3	1	0.20
003-122-44	295 Cascade Drive	18,000 SF	2,570 SF	4	3.5	0.14
003-122-48	285 Cascade Drive	12,000 SF	2,768 SF	4	2	0.23
003-122-15	275 Cascade Drive	7,200 SF	1,632 SF	3	1.5	0.23
003-121-23	272 Cascade Drive	7,200 SF	1,726 SF	3	2.5	0.24
003-121-03	276 Cascade Drive	5,100 SF	965 SF	1	1	0.19
003-121-04	284 Cascade Drive	5,100 SF	1,002 SF	2	1	0.20
003-121-05	288 Cascade Drive	7,500 SF	1,048 SF	2	1	0.14
003-121-06	290 Cascade Drive	6,600 SF	1,880 SF	2	2	0.20

The enclosure of the covered entry porch and conversion of the half bathroom to a full bathroom would not cause excessive or unreasonable detriment to adjoining properties or premises. The covered entry porch already exists; meets the minimum five-foot side-yard setback requirement; and, is approximately 33 feet from the neighboring property to the west at 294 Cascade Drive, whose owners signed a letter of support for the project (Attachment B), as did the adjacent neighbor to the east at 288 Cascade Drive, and the neighbor across the street at 295 Cascade Drive. Only one exterior light is proposed next to the entry door, which is not excessive or anticipated to result in a substantial source of light or glare. A condition of project approval requires the light fixture to be Dark Sky compliant. Because of its location at the back northwestern corner of the house, the covered entry porch is not very visible to passersby and enclosing it would not be expected to negatively affect the neighborhood or public use of Cascade Drive.

The new bathroom window would not infringe on neighboring privacy. It would be a small, three by two awning window with tempered glazing that would face the steeply sloped backyard that contains a number of trees. The neighbor to the west at 294 Cascade Drive would be the closest to the window at approximately 33 feet away, but the window would not face the neighbor 294 Cascade Drive. The house to the back would be approximately 135 feet from the proposed bathroom window.

Enclosing the covered entry porch and converting the half bathroom into a full bathroom would have several beneficial impacts. Enclosing the covered entry porch would create more privacy between the project property and the adjacent neighbor to the west at 294 Cascade Drive. It would also improve the residence's fire safety and energy efficiency. The proposed second full bathroom would contain a shower that would be more accessible to the occupants of the home than the bathtub in the existing full bathroom. As proposed, the project would result in equal or better development of the site with minimal site disturbance, which is in the public interest.

Granting the CUP to enable the property owner to enclose the covered entry porch would add living area within the combined side-yard setback. However, this does not change the residential character of the property; and, 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. Conversion of the half bathroom to a full bathroom would not be contrary to those objectives, goals or standards contained in the Zoning Ordinance or the 2010-2030 Fairfax General Plan.

Combined Side-yard Setback Variance (Town Code Chapter 17.028)

The house on the property does not comply with the individual eastern side-yard setback or the combined side-yard setback requirements, as it was constructed in 1924, prior to the Town's incorporation in 1931 and consequently prior to the establishment of setback requirements. As a result, the structure is legally non-conforming. Enclosing the covered entry porch would not change the building footprint; and, as stated above, it would not change the residential character of the property. Other property owners in the vicinity and under identical zone classification have structures within the combined side-yard setback. Therefore, 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. Compliance with the combined side-yard setback requirement would be impractical due to the siting of the existing house and an unreasonable and excessive hardship for the property owner, as it would require demolishing a portion of the house. The approximate 33-foot distance of the covered entry area from the nearest house at 294 Cascade 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 neighbors or the public using Cascade Drive.

OTHER AGENCY/DEPARTMENT COMMENTS/CONDITIONS

No comments or project specific conditions of approval were received from the Ross Valley Fire Department (RVFD), the Ross Valley Sanitary District (RVSD), or the Town of Fairfax Police, Building, or Public Works Departments. A project specific condition of approval from the Marin Municipal Water District (MMWD) requires completion of a High Pressure Water Service Application. All other standard conditions of approval from MMWD and RVFD are in the attached Resolution No. 2024-04 and can be viewed in their entirety in that document.

RECOMMENDATION

Conduct the public hearing. Move to approve application No. 24-01 by adopting attached Resolution No. 2024-04 setting forth the findings and the conditions for the project approval.

ATTACHMENTS

- Attachment A – Resolution No. 2024-04
- Attachment B – Neighbor Support Letter

RESOLUTION NO. 2024-04

A Resolution of the Fairfax Planning Commission Approving Application No. 24-01 for a Conditional Use Permit and a Combined Side-yard Setback Variance for the Enclosure of an Approximately 161 Square-foot Covered Entry Porch and Conversion of a Half Bathroom to a Full Bathroom at 290 Cascade Drive

WHEREAS, the Town of Fairfax received an application from Jody Timms for the enclosure of an approximately 161 square-foot, covered entry porch and the conversion of a half bathroom to a full bathroom at 290 Cascade Drive; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on February 15, 2024, 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 and Combined Side-yard Setback Variance; 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-yard Setback Variance; and

WHEREAS, The project is exempt from the California Environmental Quality Act per Categorical Exemption Section 15301(e)(1); and

WHEREAS, the Planning Commission 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 characteristics of the Town's neighborhoods in their diverse architectural style, size, and mass.

Objective LU-7.2, Preserve, maintain, and enhance in a sustainable manner, the existing design aesthetic, scale, and quality of life in Fairfax's residential neighborhoods.

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

Conditional Use Permit Findings (Town Code § 17.032.060)

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. Enclosing the covered entry porch to create a mudroom and converting the half bathroom to a full bathroom will not change the existing setbacks, lot coverage, or height of the residence, which are similar to other developed single family residential properties found in the immediate neighborhood and throughout the Cascades Subdivision, many of which also have two full bathrooms and/or houses and other

structures that intrude into the individual and combined side-yard setbacks. Enclosing the covered entry porch will increase the FAR from 0.17 to 0.20, which will be well within the 0.40 allowable FAR, and similar to the FAR of other residences in the immediate neighborhood.

2. The enclosure of the covered entry porch to create a mudroom and conversion of the half bathroom to a full bathroom will not change the footprint or height of the house or require the removal of any trees or other vegetation. No excavation is required to implement the project. No visual impacts are anticipated. The project does not propose any additional bedrooms and will not increase the use of public parking. The mudroom created by enclosing the covered entry porch would be approximately 33-feet away from the closest residential structure at 294 Cascade Drive. Only one exterior light is proposed next to the entry door and Condition 12 below requires it to be Dark Sky compliant. Therefore, the development and use of the property, as approved under the Conditional 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. The proposed project maintains the single-family use of the site in compliance with the RS-6 Single-family Residential Zoning and the 2010-2030 Fairfax General Plan land use designation for the site. The project is compliant with Fairfax General Plan 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;" Land Use Objective LU-7.2, "Preserve, maintain, and enhance in a sustainable manner, the existing design aesthetic, scale and quality of life in Fairfax's residential neighborhoods;" and, General Plan Policy LU-7.2.1, "New and renewed development shall be compatible with the general design and scale of structures in the vicinity." Approval of the Variance to the Combined Side-yard Setback requirement ensures that the project is consistent with the objectives, goals and standards contained in the Zoning Ordinance and the 2010-2030 Fairfax General Plan.
4. Enclosing the covered entry porch would create more privacy between the project property and the adjacent neighbor to the west at 294 Cascade Drive. It would also improve the residence's fire safety and energy efficiency. The proposed second full bathroom would contain a shower that would be more accessible to the occupants of the home than the bathtub in the existing full bathroom. Therefore, 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 is in the public interest and for the protection and enhancement of the community.

Combined Side-yard Setback Variance [Town Code § § 17.028.070(A)(1) through (4)]

1. The approximate 52 foot width of the site is the special circumstance applicable to the property which makes it difficult to comply with the combined side-yard setback regulation that was adopted in 1973, approximately 50 years after the residence was built. Therefore, the strict application of the 20-foot Combined Side-yard Setback regulation will deprive the applicant of privileges enjoyed by other property owners in the vicinity.
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 the Fairfax Zoning Ordinance. Many of the residences in the Cascades Subdivision do not comply with the required 20-foot combined side-yard setback regulation as they were also constructed prior to the regulation's adoption in 1973.
3. The strict application of the required 20-foot combined side-yard setback would result in unreasonable hardship for the property owners since they would be unable to enclose the covered entry porch to create a mudroom and enhance the fire safety and energy efficiency of the house; and, convert the half bathroom to a second full bathroom with an accessible shower.
4. The approximate 33-foot distance of the covered entry area from the nearest house at 294 Cascade 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 neighbors or the public using Cascade Drive.

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

1. The project is approved per the plans by ae Design received by the Town on 1/29/24.
2. The plans submitted for building permits shall include the final approved conditions of approval on one of the plan pages.
3. During the construction process the following shall be required:
 - a. All construction-related vehicles 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. The Building Official shall field check the completed project to verify compliance with the approved plans and building code requirements.
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 No. 24-01. 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 No. 24-01 will result in the job being immediately stopped and red tagged.
7. Any damage to the public portions of Cascade Drive, Bolinas 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 their heirs, successors, and assigns shall, at their 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 following: the Noise Ordinance, Chapter 8.20, Polystyrene Foam, Degradable and Recyclable Food Packaging, Chapter 8.16, Garbage and Rubbish

Disposal, Chapter 8.08, Urban Runoff Pollution Prevention, Chapter 8.32, and the Americans with Disabilities Act.

10. In accordance with Town Code §8.20.060(C)(1) and (2), the operation of any tools or equipment used in construction or demolition work or in property maintenance work between the hours of 6:00 PM and 8:00 AM Monday through Friday, or on weekends and holidays between 4:00 PM and 9:00 AM is prohibited.
11. Conditions placed upon the project by outside agencies may be eliminated or amended with that agency's written notification to the Planning Department prior to issuance of the building permit.
12. The exterior light fixture shall 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 compliant with color temperature to minimize blue rich lighting.

Ross Valley Fire Department (RVFD) Conditions

11. All vegetation and construction materials are to be maintained away from the residence during construction.
12. A class A roof assembly is required.
13. 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.
14. 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.
15. Address numbers at least four inches tall shall be installed. The address numbers shall be visible from the street and internally illuminated or illuminated by an adjacent light controlled by a photocell that switches off only by a breaker so it will remain illuminated all night.
16. Alternative materials or methods may be proposed for any of the above conditions in accordance with Section 104.9 of the Fire Code.
17. 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) Conditions

18. Complete a High Pressure Water Service Application.

19. Submit a copy of the building permit.
20. Pay appropriate fees and charges.
21. All the District's rules and regulations in effect at the time service is requested must be complied with.
22. Comply with all indoor and outdoor requirements of District Code Title 13 – Water Conservation. This may include verification of specific indoor fixture efficiency compliance.
23. Backflow prevention requirements must be met.

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 15th day of February 2024 by the following vote:

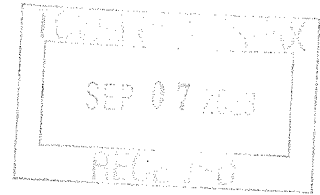
AYES:
NOES:
ABSTAIN:
ABSENT:

Chair Robert Jansen

Attest:

Jeffrey Beiswenger, Director of Planning and Building Services

September 4, 2023



To: Fairfax Planning Department

From: Three most immediate neighbors to 290 Cascade Drive, Fairfax, CA

We are writing in support of the construction project at 290 Cascade Drive which aims to enclose the front entrance deck to the home of Jody Timms & Silver Clark. We have reviewed the plan to add two solid walls and extend an existing roof to create a "mud room," a sheltered and enclosed entrance to their home. Please feel free to contact us if necessary.

Renee Goddard & Alexei Tcherepanov
294 Cascade Drive
415-459-2892

John & Karen Montenero
288 Cascade Drive
415-250-6287

Nick & Sylvia Calder
295 Cascade Drive
415-458-2904