



# FAIRFAX TOWN COUNCIL MEETING SUPPLEMENTAL STAFF REPORT

<b>MEETING DATE</b>	February 29, 2024
<b>PREPARED FOR</b>	Mayor and Town Council
<b>PREPARED BY</b>	Linda Neal, Principal Planner
<b>SUBJECT</b>	Directed referral of Planning Commission Resolution No. 2024-01 temporarily suspending Planning Commission Resolution 2022-01 for Application # 21-17 due to non-compliance with conditions of approval, plans and discretionary permits, including a Hill Area Residential Development Permit, Design Review Permit, Excavation Permit, Tree Removal Permit and Minimum and Combined Side-yard Setback and Retaining Wall Height Variances for a Single-family Residence, Detached Garage/Accessory Dwelling Unit at 79 Wood Lane
<b>CEQA STATUS</b>	The revocation of approvals and permits is an administrative action and pursuant to California Environmental Quality Act (CEQA) Guidelines Section 21065 is not a project.

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## RECOMMENDATION

Clarifying details were added to the staff report and Resolution 24-\_\_\_, as follows.

- Changed the date of the hearing from Feb 7 to 29, 2024, reflecting the continuance of this item.
- Moved the last sentence from paragraph two to paragraph four of the Background section.
- Clarified that weatherization on the site has not been provided.

## ATTACHMENT

Staff Report and Resolution 24-\_\_\_



# SPECIAL TOWN COUNCIL MEETING STAFF REPORT

<b>MEETING DATE</b>	February 29, 2024
<b>PREPARED FOR</b>	Mayor and Town Council
<b>PREPARED BY</b>	Linda Neal, Principal Planner
<b>SUBJECT</b>	Directed referral of Planning Commission Resolution No. 2024-01 temporarily suspending Planning Commission Resolution 2022-01 for Application # 21-17 due to non-compliance with conditions of approval, plans and discretionary permits, including a Hill Area Residential Development Permit, Design Review Permit, Excavation Permit, Tree Removal Permit and Minimum and Combined Side-yard Setback and Retaining Wall Height Variances for a Single-family Residence, Detached Garage/Accessory Dwelling Unit at 79 Wood Lane
<b>CEQA STATUS</b>	The revocation of approvals and permits is an administrative action and pursuant to California Environmental Quality Act (CEQA) Guidelines Section 21065 is not a project.

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## RECOMMENDATION

Adopt Resolution No. 24-\_\_\_, A Resolution of The Fairfax Town Council Revoking and Rescinding Planning Commission Resolution No. 2022-01 for Application No. 21-17, Including Approvals for a Hill Area Residential Development Permit, Design Review Permit, Excavation Permit, and Tree Removal Permit and a Minimum and Combined Side-yard Setback and Retaining Wall Height Variances, and Accompanying Building Permits for a Residence Located at 79 Wood Lane

## APPROVED PROJECT DESCRIPTION

The January 2022 Planning Commission approval of Application No. 21-17 granted a Hill Area Residential Development Permit, Design Review Permit, Excavation Permit, Tree Removal Permit, Minimum and Combined Side-Yard Setback and a Retaining Wall Height Variances for a three bedroom, three and ½ bathroom, single-family residence with a detached combination 400 square-foot, two car garage and 500 square-foot accessory dwelling unit (ADU). The approved project included an elevator in the main residence accessing the 469 square-foot basement and second floor of the proposed 2,210 square foot residence. The basement was to be accessible from the exterior of the structure and was to be used as a mechanical room for the residence's heating/cooling system. The residence also was to have an interior stairway beginning on the first floor and accessing the second floor.

Prior to approving the permits listed above, the Commission reviewed the plan set dated 10/7/21 (Attachment B) and approved the permits based on the plan set and the requirement that the project be built to conform to the approved plans (Attachment A1- Resolution 2022-01, Condition #15 on page 6).

## BACKGROUND

On January 20, 2022, the Planning Commission approved a Hill Area Residential Development Permit, Design Review Permit, Excavation Permit, Tree Removal Permit, Minimum and Combined Side-yard Setback and Retaining Wall Height Variances for a 23-foot tall, three bedroom, three and one-half bathroom, 2,210 square-foot, single-family residence and a detached 400 square-foot, two-car garage with a 500 square-foot, accessory dwelling unit (ADU). The Planning Commission carefully addressed concerns of adjacent neighbors on the height, massing, and orientation of the structure to limit the visual and physical impacts

on adjacent properties prior to making the required legal findings approving the design review permit. Due to topographical constraints on the site (a relatively flat front yard of approximately 92 feet from the street, followed by a 42% slope for another 320 feet), the Planning Commission carefully reviewed and approved a project that could be safely constructed with a limited risk of landslide. This included requiring a limit on the excavation for a basement and careful placement of the structures on the site.

The building permit for the project was issued on August 4, 2022. All building permit submittals are required to be consistent with the Commission's approvals prior to building permit issuance and projects are required to be constructed according to the submitted and approved documents and conditions of approval. Shortly after the permit was issued, the Building Official discovered that the basement, which, in accordance with approved plans, was to have only 469 square-feet of basement area with 6-foot ceilings while the rest of the under-floor area was to be crawl space with overhead clearance of eighteen inches, was excavated so that the entire underfloor area was excavated to the same depth in violation of the building permit and Conditions of Approval (Attachment B - original plan set page A4.1). Due to this violation, the Building Department posted an Order to Stop Work (a red tag) and stopped the project construction. The property owner/applicant's attorney filed an ex parte application in Marin County Superior Court on August 26, 2022 seeking a lifting of the Order to Stop Work. Through negotiations, the property owner/applicant agreed to work with the Building Official to reach agreement regarding the basement. At that time, the property owner/applicant was told he needed to apply for Planning Commission approval of completed or planned revisions to the approved plans. This did not include approvals that, pursuant to State law and Town Code could be issued ministerially by the Building Official for ADUs.

The applicant subsequently modified the subfloor so that the east and west sides of the subfloor areas have slightly higher finished elevations than the center portion of the basement but not high enough to comply with the Planning Commission approved project plans for the basement (Attachment B - see the building sections on page A4 of the approved plan set). No information was provided to the Department of Planning and Building Services on whether the change in the excavated basement area changed the excavation and fill amount approved by the Planning Commission on January 20, 2022, which was for the excavation of 130 cubic yards of material and the fill of 125 cubic yards of material. Work resumed when areas of the underfloor identified in the approved plans as crawlspaces were partially filled, though not to the extent to be in compliance with the plans approved by the Planning Commission (Attachment B - page A4).

The following year, on June 5, 2023, the Building Official went to the site to perform a framing inspection and discovered the project structure was not being constructed in accordance with the Planning Commission approved plans, conditions of approval and approved building permit plans. Due to this violation of the Conditions of Approval, approved plans and building permit plans, as well as the property owner/applicant's failure to submit an application to the Planning Commission for approval of his completed and planned revisions to the project plans, the Building Official once again issued an Order to Stop Work (red tag) on the project. A verbal agreement was reached between the property owner/applicant and Building Official as outlined in the Building Official's email to the property owner/applicant (Attachment "E" to the staff report – email dated June 7, 2023).

On August 10, 2023 the Building Official went to the project site due to concerns expressed by the adjacent neighbor regarding excavation at the site. The Building Official found that once again the property owner/applicant had commenced work inconsistent with his approved plans and Conditions of Approval and still had not submitted an application to Planning Commission for approval of the modifications to the approved plans and permits. As a result, the Building Official suspended the building permit for the project and again stopped work on the job site. Thereafter, the property owner/applicant presented to the Building

Official, incomplete drawings depicting completed and proposed construction on the site. These incomplete drawings do not show existing or proposed site topography, building elevations, finished floor elevations or ceiling height dimensions, complete room dimensions, revised excavation and fill information, revised retaining wall heights, revised grading and drainage plans, required addendums to the geotechnical report and is missing a drainage study or calculations that reflect the proposed changes. In addition, the property owner/applicant still has not submitted an application to the Planning Commission seeking approval of the constructed and, according to the incomplete drawings, planned revisions to the Planning Commission approved plans, despite knowing since at least August of 2022 that he is required to do so.

Instead, on August 29, 2023, the property owner/applicant's attorney filed another ex parte writ in Marin County Superior Court seeking a lifting of the suspension and order to stop work. A hearing on the writ resulted in the Court setting another hearing date of October 6, 2023, to allow the Town and the property owner/applicant time to try to resolve the issues informally.

On September 7, 2023, the property owner/applicant requested an appeal of the permit suspension, which the Town Council heard on September 13, 2023. The Town Council denied the appeal and upheld the Building Official's suspension of the building permit "until such time as Mr. Friedman submits an application and receives approval of his modifications from the Planning Commission."

The Court, on October 6, 2023, agreed in part and disagreed in part with Friedman's writ claims, directing the Town to "set aside the Order to Stop Work to the extent it applies to construction that was specifically identified in Friedman's original application, construction documents, approved plans, and the permit issued based on those documents," further stating that "Friedman was entitled to a hearing prior to any suspension of the permit (and order to stop work based on that suspension)...." Friedman's petition was denied to the extent that it required the Town to adopt a different appeal process, and the Court never ruled on the issue of the Order to Stop Work on construction not yet approved by the Town, or the issuance of the electrical approval (green tag). In other words, the Court determined that the property owner/applicant was permitted to continue work on previously approved portions of the construction, but not on portions not previously approved and he was entitled to a hearing prior to a suspension of the permit or an order to stop work based on such a suspension.

On December 21, 2023, a permit suspension/revocation hearing was noticed before the Planning Commission for January 11, 2024. The Commission considered all of the evidence that the property was being developed in violation of the approved plans, Conditions of Approval, and building permits and continued the hearing to on or before May 16, 2024, directing that the property owner/applicant submit a complete application, including applicable fees, to the Planning Commission, showing both the revisions that have already been constructed, as well as proposed revisions and all of the missing information as outlined above, no later than March 5, 2024. This timeline was established to give the property owner/applicant enough time to submit an application for the revisions and provide enough time for the information to be reviewed by Town staff and the Town Engineer and brought back to the Commission on or before May 16, 2024.

#### **CHANGES TO THE PROJECT NOT REFLECTED IN THE APPROVED PLANS**

The below listed changes, both already constructed and proposed in the property owner/applicant's incomplete drawings, are those Planning and Building staff were able to identify based on a site visit and the incomplete drawings.

1. The house has been shifted approximately three feet to the southwest, increasing the northeast setback of the structure from approximately 5-feet to approximately 8-feet and decreasing the

southwest setback from approximately 15-feet to approximately 12-feet (further away from 75 Wood Lane and closer to 85 Wood Lane). The structure location change was viewed onsite and is depicted in the incomplete drawings received by the Building Official in August 2023 (Attachment C).

2. The 210 square-foot front porch that ran the entire width of the first-floor front of the structure has been removed and been replaced with an approximately 91 square-foot, front entry addition (Attachment D – photograph of the front of the structure, September 2023).
3. The peaked, "Slate Gray" roof over approximately one-third of the first story and the front porch has been replaced with an approximately 440 square-foot, second story, roof deck (Attachment D – photograph of the front of the structure under construction).
4. The 400 square-foot, two car garage/ADU structure has been eliminated. The incomplete drawings show a two-car garage located 10-feet further south than the approved garage site, maintaining a 30-foot setback from the house. However, measurements of the garage foundation in the field by staff revealed the structure foundation is only 14-feet in width and can accommodate only one parking space with some extra width possibly for storage so the foundation that has been constructed on the site does not match the location or size of the garage on the submitted revised plan set.
5. The elimination of the ADU attached to the garage has decreased the retaining wall maximum height from approximately 10-feet to approximately 4-feet.
6. The plans show a 180 square-foot deck at the ground level at the rear of the structure. In the attached June 7, 2023, e-mail to the Building Official the owner indicates that this deck will be removed from the final plans he will present to the Tax Assessor (Attachment E, page 2, item # 4, and last paragraph in red).
7. A portion of the top floor is proposed to be a JADU (junior accessory dwelling unit), resulting in a change to the approved plans to convert the approved rear upper floor deck to living space and the addition of an exterior access stairway to the rear of the house.
8. Additional living space is shown in the basement including an ADU and an office and half-bathroom for the main residence. To comply with the Building Code a window well has been constructed on the east side of the residential structure that projects out from the structure wall maintaining a 5-foot side setback from the east side property line.
9. A second driveway has been added to the northeast corner of the site. Second driveways are not permitted. The Town Code only allows a second driveway by right into a property developed with multiple housing units if the two driveways into the site and the distance between any proposed driveway and the driveways on adjacent properties are separated by a distance not less than 40-feet. The second proposed driveway is only 24-feet from the existing driveway and requires an exception to the Town Code Driveway Standards which can only be granted by the Planning Commission through a variance and only if the required findings for a variance can be made (Town Code § 12.12.050 and §12.12.090).
10. The windows on the east side of the first floor have increased in number from four to five.

11. The windows on the east side of upper level have increased in number from two to five.
12. The window at the rear southeast corner of the first floor has been replaced with a sliding glass door to a rear ground level deck.
13. The ground floor of the west side of the structure was approved for four windows but the incomplete drawings provided to the Building Official propose only three windows.
14. The approved plans for the upper floor of the west side of the building show two windows but the incomplete drawings provided to the Building Official now propose four windows.
15. Two clerestory windows have been added to the basement floor on the west side of the structure.
16. The window over the kitchen sink has been replaced with a bay window in the incomplete drawings provided to the Building Official.
17. The approved Landscape plan, approved project plans set page A1, has two trees shown to be maintained in the area but the incomplete drawings provided to the Building Official show a second driveway/parking space (Attachment C - unnumbered first page of the revisions plan set).

The relocation of the house and redesign of the garage/ADU structure without a revised drainage plan or information from the project engineers that the changes will not alter drainage patterns and will not negatively impact the public road or neighboring properties is concerning due to the soil makeup and slide history of the Wood Lane neighborhood. All of the hillsides behind the houses on Wood Lane are identified as landslide hazard zones based on landslide hazard maps that were prepared after extensive investigation and site surveys done by the California Division of Mines in conjunction with Marin County, the City of San Rafael, the Town of San Anselmo and the Town of Ross in 1976 and updated in 2013. The Town's 2010-2030 General Plan Safety Element Figure S-3, Areas Susceptible to Landslides map shows the sloped portions of all the properties on both the north and south sides of Wood Lane being subject to landslide hazards.

Prior to any development, the Wood Lane area was a valley with steeply sloping sides from which silt has washed down from the hillsides to the valley floor where the creek ran for many years, covering it with varying thicknesses of relatively weak and compressible fills and native soils which are subject to differential settlement and creating the level portions of the sites on both sides of the street and sites where the homes are now built. The hillsides above the houses have stability issues and that becomes obvious when Fairfax receives a lot of rain falling over short periods of time.

Historically, there have been two slides that damaged structures in the Wood Lane neighborhood, one at 104 Wood Lane in 1982, that damaged a single-family residence and another at 39 Wood Lane in 2006, that damaged a duplex. A third slide and hillside sloughing above the house at 15 Wood Lane could have caused major damage if a proposed substantial remodel and addition wasn't proposed. The project required review by the Planning Commission with peer review of the project geotechnical study and drainage study by the Town Engineer, that resulted in the project incorporating improvements to intercept the existing unstable soils and protect the house. Unstable soils have been found by Registered Professional Engineers at 50 Wood Lane in 1982 (report by Bala and Strandgaard Civil and Structural Engineer's/Planner 7/30/82), 18 Wood Lane, in 1985 (Robert Setgast, Geotechnical Engineer, 3/27/85), at 7

Wood Lane in 1990 (John Brotshi, Civil Engineer, 5/1/92) Geotechnical Engineer 3/27/85), and at 60 Wood Lane in 1992 (Geotechnical report by Torikian Associates 5/1/92). The underground water table also rises during these storms.

These types of features on sites in landslide hazards zones are why the Hill Area Residential Development Overlay (HRD) Zone was adopted. The intent of the HRD overlay zone is to minimize grading in hillside areas, minimize water runoff and soil erosion problems during and after construction, prevent loss of life, reduce injuries and property damage and minimize economic dislocations from geologic hazards [Town Code § 17.072.010(B)(2), (4) and (5)]. Town Code § 17.072.090(B) of the Hill Area Residential Development Overlay Zone Ordinance reads, "Construction shall not be permitted on identified seismic or geologic hazard areas such as on slides, on natural springs, or on identified fault zones, without approval from the Town Engineer". The Town Engineer approved the plans, including the preliminary grading and drainage plans prior to the Commission taking action on a Hill Area Residential Development Permit which is required for all projects proposed in a landslide hazard zone.

Town Code 17.072.110(C) requires that construction in a landslide hazard zone (as shown in Figure S-3 of the 2010-2030 Fairfax General Plan) cannot be developed without geologic, hydrologic or seismic hazards being assessed based on the project soils report finding. Given the property owner's unilateral redesign and relocation of the house and garage, the original soils, hydrologic and seismic information and impacts caused by the project must be reassessed to ensure that the changes will not impact adjacent hillsides, properties and public improvements.

## **DISCUSSION**

The project construction as outlined above, is in violation of the conditions set forth in Resolution 2022-01 approving the project at 79 Wood Lane as the structure and garage locations and exterior designs have been changed from what was approved by the Planning Commission on January 20, 2022. The applicant has failed to submit the required application, fees, plans and reports to the Planning Commission for consideration of a modification to his prior approvals.

Planning Commission Resolution 2022-01 approving the original project design and including the project original conditions of approval, is attached to this report as Attachment A1. The Resolution requires the Planning Commission to review and approve proposed changes to the approved project plans. Amending a previously acted on Resolution requires the Commission to hold a public hearing and allow input from neighboring property owners on the revised design before taking action on a new resolution approving the proposed modifications to the previously approved project.

On January 11, 2024 the Planning Commission held a noticed public hearing and adopted attached Resolution No. 2024-02 (Attachment A2), A Resolution of The Fairfax Planning Commission Temporarily Suspending Planning Commission Resolution No. 2022-01 Including Approvals for a Hill Area Residential Development Permit, Design Review Permit, Excavation Permit, and Tree Removal Permit and a Minimum and Combined Side-yard Setback and Retaining Wall Height Variances for a Residence Located at 79 Wood Lane (Application No. 21-17) Until a Complete Application, Including Required Fees, is Submitted and Acted on by the Planning Commission at a Public Hearing to be Held on or Before May 16, 2024. The Resolution further included an interim deadline of March 5, 2024 for the property owner/applicant to submit a completed application to the Planning Commission, including all required plans, studies and fees, for the revisions already built as well as the intended future revisions to the approved plans.

On January 16, 2024, the property owner/applicant requested to appeal the Planning Commission's

decision to temporarily suspend his permits pending the Commission's continued hearing and final decision on or before May 16, 2024. In accordance with Town Code § 17.036.110, on January 22, 2024, the Mayor filed a directed referral with the Town Manager and Town Clerk's Office requesting a hearing before the Town Council to review the matter and the Planning Commission's action. A hearing was scheduled and noticed for February 7, 2024, and continued to February 29, 2024, as the property owner did not receive timely notice of the hearing due to incorrectly listing his address with the County Assessor's Office as the vacant lot at 79 Wood Lane. This hearing has been noticed by posting the property, mailing notice to the property owner's home address at 96 Forrest Avenue, mailing notice to all property owners and tenants within 300 feet of 79 Wood Lane, and sending email notice to both the property owner and his attorney.

This hearing is being held and conducted as provided in Chapter 17.036, section 17.036.090, which permits the Town Council to assume jurisdiction on matters where action has been taken and is normally final at a lesser level of authority. In accordance with Town Code section 17.036.130, any action brought before the Town Council by the directed referral process is before the Council and the Council may conduct a de novo hearing on the pending application. All alternatives available to the primary authority (Planning Commission) are also available to the Council.

The approved project plans are not being followed. The house has been relocated on the site, the approved subgrade basement has been enlarged and the garage has been relocated and decreased in size with the attached ADU relocated into the basement of the house. Staff observed large amounts of the water, that previously could have soaked into the ground, both during the winter of 2022 and continuing into the spring of 2023, being pumped from the site into the Wood Lane roadway. The relocation of the house and garage and increasing the size of the below grade basement can negatively impact the site drainage, but because the applicant has failed to file the required revised plans and studies for review and action by the Planning Commission, the Town has no way to assess the potential impacts the changes may cause. The failure of the applicant to file the required application, fees, plans and reports has eliminated the ability of the Town to place conditions upon the project design and construction to safeguard the neighbors and the public roadway improvements with the required Town Engineer and Planning Commission review and approval of the required plans, reports and drainage calculations.

**Findings to support the revocation of Application 21-17 and Resolution 2022-01:**

Due to the applicant not submitting a complete revised project application to modify the original Hill Area Residential (HRD) Permit, Application 21-17, approved by the Fairfax Planning Commission by the adoption of Resolution No. 2022-01, the following findings to revoke the permit and rescind the resolution can be made:

**HRD Permit (Town Code § 17.072.030)**

1. Except for uses listed in § 17.072.050, land in the HRD overlay zone may not be used or developed until plans for development have been approved by the town and a Hill Area Residential Development permit is issued.

When a project approved by the Planning Commission in accordance with the Hill Area Residential Development Overlay Zone is revised, the plan revisions require the approval of a modification of the approved Hill Area Residential Development Permit (Resolution No. 2022-01, condition #15, approved by the Fairfax Planning Commission on January 20, 2022). The applicant has not filed the required HRD application to amend the project plans as required by the code.

2. The revised project submittal to the Planning Commission for a Hill Area Residential Development Permit (HRD) must include the following: 1) a completed application form and fees; 2) a site plan



that is drawn to scale include existing and proposed finished grades around buildings and any areas proposed for grading or fill; 3) floor plans; 4) elevations; 5: revised preliminary grading plan and drainage plans; 6) an updated report by a registered civil engineer specializing in soils and foundations including site soil drainage, relevant watershed boundaries, relationship of the proposed construction to drainage patterns in the vicinity and the cumulative effects of runoff, site geology and the safety of the proposed construction and the foundation adequacy [Town Code § 17.072.080(C)(1) and (2) and (E)(1) through (5)]. The applicant has not submitted the required application, fees, revised complete plans, and updated geotechnical report and drainage plans including revised calculations to ensure the development can occur safely without impacting neighboring properties and adjacent public improvements.

3. The Town Engineer has been unable to review a complete revised plans set and updated geotechnical report, drainage analysis and drainage plan which are required to recommend the Planning Commission take an informed action on the modified HRD application.
4. The original drainage analysis by the applicants Civil Engineer, Aurthur J. Smith, of ILS Associates Inc. Civil Engineering and Land Surveying, cited the following drainage improvements as requirements for development at 79 Wood Lane based on drainage calculations comparing the peak storm water discharge from a ten year and one-hundred-year design storm in the lower flat area and upland area of the site before and after the approved plan improvements. They determined the following would be required to address the increased water flows from the approved house and detached garage/ADU structure:
  - Upland flows will be detained with a pipe sized to limit peak one-hundred-year total flows to that of a ten-year flow to regulate the amount of water discharged to the street.
  - Water quality will be treated by the landscaped areas. The sizing factor for the required landscaped area to decrease off-flow from the site will be 0.2 inches per hour, the rainfall intensity, divided by five inches per hour, the infiltration rate, equaling 0.04.

The Planning Commission has not been provided with an updated drainage analysis or plan that assesses the potential impacts of the house and garage relocation and the basement expansion that would enable them to make the required findings to approve a modification of the original Hill Area Residential Development permit.

5. Without the required application submittal the Planning Commission/Town Council are unable to make the following required legal findings to support the plan revisions
  - Town Code § 17.072.110(A), The proposed development is consistent with the general plan, other adopted codes and policies of the town and is consistent with the purpose and intent of this title.
  - Town Code § 17.072.110(C), Based on the soils report finding, the site can be developed without geologic, hydrologic, or seismic hazards.

#### **Excavation Permit (Town Code 12.20.080)**

6. Without updated plans, geotechnical and hydrology information the Planning Commission/Town Council are unable to determine that the health, welfare, and safety of the public will not be adversely affected and that adjacent properties are adequately protected by project design from

drainage and erosion problems as a result of the work.

## **ATTACHMENTS**

- A. Resolution No. 24-\_\_\_, A Resolution of The Fairfax Town Council Revoking and Rescinding Planning Commission Resolution 2022-01 for Application No. 21-17, Including Approvals for a Hill Area Residential Development Permit, Design Review Permit, Excavation Permit, and Tree Removal Permit and a Minimum and Combined Side-yard Setback and Retaining Wall Height Variance, and Accompanying Building Permits for a Residence Located at 79 Wood Lane will be available as a supplement.
- A1. Planning Commission original Resolution 2022-01
- A2. Planning Commission Resolution No. 2024-02 for temporary suspension of Resolution 2022-01 and continued hearing on or before May 16, 2024
- B. Approved plans by Laura Kehrlein, Frederic C. Divine Associates, dated 10/7/21
- C. Incomplete revised plans received by the Building Official after the June 5, 2023, stop work order
- D. Photos of the building and building site
- E. E-mail from Building Official to property owner memorializing a verbal agreement regarding the revised project plans, prior to agreeing to lift the initial stop work order in 2022 and property owner/applicant's response
- F. Directed Referral Request
- G. Applicant's presentation to Planning Commission
- H. Neighbor comments
- I. Building Permit for 79 Wood Lane

**RESOLUTION NO. 24-\_\_**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX  
REVOKING AND RESCINDING PLANNING COMMISSION RESOLUTION NO. 2022-01 INCLUDING  
APPROVALS FOR A HILL AREA RESIDENTIAL DEVELOPMENT PERMIT, DESIGN REVIEW  
PERMIT, EXCAVATION PERMIT, AND TREE REMOVAL PERMIT AND A MINIMUM AND  
COMBINED SIDE-YARD SETBACK AND RETAINING WALL HEIGHT VARIANCE FOR A  
RESIDENCE LOCATED AT 79 WOOD LANE (APPLICATION NO. 21-17)**

**WHEREAS**, on January 20, 2022, the Planning Commission approved Resolution No. 2022-01 for a Hill Area Residential Development Permit, Design Review Permit, Excavation Permit, Tree Removal Permit, Minimum and Combined Side-yard Setback and Retaining Wall Height Variance for a 23-foot tall, three bedroom, three and one-half bathroom, 2,210 square-foot, single-family residence and a detached 400 square-foot, two-car garage with a 500 square-foot, accessory dwelling unit (ADU) for the property located at 79 Wood Lane (“Project”) in the RS 6 Zone and within the Landslide Hazard Zone; and

**WHEREAS**, due to topographical constraints on the site, including a relatively flat front yard of approximately 92 feet from the street, followed by a 42% slope for another 320 feet, the Planning Commission carefully reviewed and approved construction that included a limit of 469 square feet for the excavation for a basement and careful placement of the structures on the site in order to ensure a project that could safely be constructed with a limited risk of landslide; and

**WHEREAS**, before adopting Resolution 2022-01, the Planning Commission carefully considered all testimony, both oral and written, including the height, massing, and orientation of the proposed structure in order to limit the physical impacts on adjacent properties; and

**WHEREAS**, Resolution No. 2022-01 contains condition of approval #15 that requires the project be built to conform to the approved plans; and

**WHEREAS**, Resolution No. 2022-01 more specifically contains a conditions of approval that project be built in compliance with the plans presented to the Commission as follows:

1. The architectural plans by Laura Kehrlein, Frederic C. Divine Associates, dated 10/7/21, the record of survey dated 9/2018, the site plan dated 11/10/21 and the erosion control plan dated 11/10/21 by ILS Associates, Inc. Civil Engineering and Land surveyors, the geotechnical report by Herzog Geotechnical Consulting Engineers dated 2/26/18 and the drainage analysis by ILS Associates Inc. Civil Engineering and Land Surveying dated 11/15/21, except as amended as follows:

a. The windows on the east and west sides of the structure shall be modified so that they are non-operable and feature obscured glass; and

**WHEREAS**, in accordance with the plans, the 469-square-foot basement was to be constructed with 8-foot ceilings, with the remainder of the area to be a crawl space of 30-inches; and

**WHEREAS**, shortly after issuing the building permit, the Fairfax Building Official issued an Order to Stop Work as the Project was not being constructed in accordance with the architectural plans of Laura Kehrlein, Frederic C. Divine Associates, dated 10/7/21, the record of survey dated 9/2018, the site plan dated 11/10/21 and the erosion control plan dated 11/10/21 by ILS Associates, Inc. Civil Engineering and Land surveyors, the geotechnical report by Herzog Geotechnical Consulting Engineers dated 2/26/18 and the drainage analysis by ILS Associates Inc. Civil Engineering and Land Surveying dated

11/15/21 (“Plans”) as the basement area had been excavated for the full foundation to a depth of 8 feet and was not stepped as shown on the plans; and

**WHEREAS**, on August 26, 2022, the property owner/applicant (“applicant”) filed an ex parte writ application with Marin Superior Court seeking a lifting of the Order to Stop Work; and

**WHEREAS**, the applicant modified the excavation and work was permitted to continue by the Building Official as long as in accordance with the Planning Commission Resolution No. 2022-01; and

**WHEREAS**, on June 5, 2023, the Building Official was conducting a framing inspection and discovered the Project once again was not being constructed in accordance with the Planning Commission Resolution No. 2022-01, resulting in the Building Official issuing another Order to Stop Work on the Project; and

**WHEREAS**, the Building Official and applicant reached a verbal agreement to allow applicant to continue working on the Accessory Dwelling Unit (“ADU”), Junior Accessory Dwelling Unit (“JADU”), approved portions of the Project, and the applicant would submit an application to the Planning Commission requesting a public hearing and amendment of the entitlements; and

**WHEREAS**, the Building Official memorialized this verbal agreement in an email to the applicant dated June 7, 2023 and the applicant responded regarding submitting revised plans to the Planning Commission as follows: “I intend to submit plans showing the changes when the project is done and for the County Assessor's purposes only, so the property can be assessed for tax purposes. If you'd like to show the plans to the Planning Commission then be my guest. However, I don't agree that the Planning Commission should have anything to do with any work or changes relating to the ADU or JADU or with any other changes so long as the house complies with all the zoning standards.”; and

**WHEREAS**, the applicant continued working on unapproved portions of the Project, resulting in the Building Official suspending the building permit; and

**WHEREAS**, the applicant gave the Building Official an incomplete set of drawings depicting completed and proposed construction on the site. These incomplete drawings do not appear to have been drafted by an architect, but rather by the applicant. The drawings do not show existing or proposed site topography, building elevations, finished floor elevations or ceiling height dimensions, complete room dimensions, revised excavation and fill information, revised retaining wall heights, revised grading and drainage plans, a required addenda to the geotechnical report and is missing a drainage study or calculations that reflect the proposed changes; and

**WHEREAS**, on August 29, 2023, the applicant filed another ex parte writ in Marin Superior Court seeking a lifting of the suspension of the building permit, and the Court directed an administrative resolution of the suspension; and

**WHEREAS**, the applicant filed an appeal of the suspension of the building permit and the Town Council heard this appeal on September 13, 2023 and upheld the Building Official’s decision to suspend the building permit until the applicant submitted an application to the Planning Commission for review and approval of the modifications to the approved plans and permits; and

**WHEREAS**, to date the applicant has not submitted an application to the Planning Commission to review and approve modifications the applicant has made and plans to make to the Project; and

**WHEREAS**, the Department of Planning and Building Services pursuant to Town Code §17.024.080,

initiated revocation of Resolution No. 2022-01 (application 21-17) and land use entitlements related to the construction of the single-family residence and detached garage/accessory dwelling unit as a result of the Building Official determining the Project was not being built as depicted in the approved building permit and plans during an on-site inspection; and

**WHEREAS**, on January 11, 2024, the Planning Commission conducted a duly noticed public hearing to determine if the project at 79 Wood Lane was being constructed in compliance with the approved Project Plans, approved building permit plans, and the Planning Commission Resolution No. 2022-01 including conditions of approval; and

**WHEREAS**, planning staff and the Building Official identified deviations from the approved plans, both already constructed and anticipated to be a deviation based upon a set of incomplete drawings the applicant gave to the Building Official:

1. The house has been shifted approximately three feet to the southwest, further away from 75 Wood Lane and closer to 85 Wood Lane. The structure location change was viewed onsite and is depicted in the incomplete drawings received by the Building Official in August 2023. This will necessitate a revised drainage analysis and is in violation of the granted variance by further encroaching into the required setbacks.
2. No information has been provided to the Department of Planning and Building Services on whether the change in the excavated basement changed the excavation and fill amount approved by the Planning Commission on January 20, 2022, which was for the excavation of 130 cubic yards of material and the fill of 125 cubic yards of material.
3. The addition of the second driveway is in violation of Town Code §12.12.050. A second driveway has been added to the northeast corner of the site. Second driveways are not permitted. The Town Code only allows a second driveway by right into a property developed with multiple housing units if the two driveways into the site and the distance between any proposed driveway and the driveways on adjacent properties are separated by a distance not less than 40-feet. The second proposed driveway is only 24-feet from the existing driveway and requires an exception to the Town Code Driveway Standards which can only be granted by the Planning Commission through a variance and only if the required findings for a variance can be made (Town Code § 12.12.050 and §12.12.090).
4. In addition, the following changes are not shown on the approved plans and necessitate review to determine if they are in compliance with Building and Town Codes:
  - The 210 square-foot front porch that ran the entire width of the first-floor front of the structure has been removed and been replaced with an approximately ninety-one square-foot, front entry addition.
  - The peaked, "Slate Gray" roof that extends over about a third of the first story has been replaced with an approximately 440 square-foot, second story, roof deck.
  - The four hundred square-foot, two car garage/ADU structure has been eliminated. The incomplete drawings show a two-car garage located 10-feet further south than the approved garage site, maintaining a 30-foot setback from the house. However, measurements of the garage foundation in the field by staff revealed the structure foundation is only 14-feet in width and can accommodate only one parking space with some extra width possibly for storage so the foundation that has been constructed on the site does not match the location or size of the garage on the submitted revised plan set.

- The elimination of the ADU attached to the garage has decreased the retaining wall maximum height from approximately 10-feet to approximately 4-feet.
- The plans show a 180 square-foot deck at the ground level at the rear of the structure. In the attached June 7, 2023, e-mail to the Building Official the owner indicates that this deck will be removed from the final plans he will present to the Tax Assessor.
- A portion of the top floor is proposed to be a JADU, resulting in a change to the approved plans to convert the approved rear upper floor deck to living space and the addition of an exterior access stairway to the rear of the house.
- Additional living space is shown in the basement including an ADU and an office and half-bathroom for the main residence. To comply with the Building Code a window well has been constructed on the east side of the residential structure that projects out from the structure wall maintaining a 5-foot side setback from the east side property line.
- The windows on the east side of the first floor have increased in number from four to five.
- The windows on the east side of upper level have increased in number from two to five.
- The window at the rear southeast corner of the first floor has been replaced with a sliding glass door to a rear ground level deck.
- The ground floor of the west side of the structure was approved for four windows but the incomplete drawings provided to the Building Official propose only three windows.
- The approved plans for the upper floor of the west side of the building show two windows but the incomplete drawings provided to the Building Official now propose four windows.
- Two clerestory windows have been added to the basement floor on the west side of the structure.
- The window over the kitchen sink has been replaced with a bay window in the incomplete drawings provided to the Building Official.
- The approved Landscape plan, approved project plans set page A1, has two trees shown to be maintained in the area but the incomplete drawings provided to the Building Official show a second driveway/parking space; and

**WHEREAS**, after holding a noticed public hearing on January 11, 2024, the Planning Commission determined that the construction occurring at 79 Wood Lane is not in compliance with the approved Project Plans and building permit plans and Planning Commission Resolution No. 2022-01 and, pursuant to Town Code Section 17.024.090 (D), which provides that when “[t]here is or has been a violation of, or failure to observe or comply with, the terms or conditions of the permit...is a ground for revocation of any zoning permit.” took action to temporarily suspend Application # 21-17, continue the hearing to a date on or before May 16, 2024 and directed the following to occur:

1. The applicant must submit a complete application, including plans for the changes that have been made, or intended to be made to the Project including the payment of fees, revised architectural plans, addendums to the geotechnical and drainage reports and a revised drainage plan by no later than March 5, 2024; and
2. The Department of Planning and Building Services and the Fairfax Town Engineer shall provide comments to applicant regarding the completeness of the application within 30 days of receipt of the application.
3. The applicant is allowed to weatherize the property within fifteen (15 days) of the date of this resolution as follows:

- Use straw wattles along contours
- Install erosion control blankets (or equivalent)
- Cover all stockpiles and landscape material
- Cover all exposed soils with straw mulch
- Weatherization does not include alteration to the structures; and

**WHEREAS**, to date, the applicant has not weatherized the site; and

**WHEREAS**, the applicant desired to appeal this interim action of the Planning Commission; and

**WHEREAS**, Town Code §17.036.090 permits the Town Council to assume jurisdiction on matters where action has been taken and is normally final at a lesser level of authority and §17.036.130 permits the Town Council to conduct a de novo hearing on the pending application, meaning that all alternatives available to the primary authority (Planning Commission) are also available to the Town Council; and

**WHEREAS**, on January 22, 2023, the Mayor filed a directed referral request with the Town Manager and Town Clerk pursuant to Town Code §17.036; and

**WHEREAS**, the Town Council held a duly noticed public hearing on February 29, 2024, to consider revocation and rescission of Planning Commission Resolution N. 2022-01 including all approvals and permits issued for Application 21-17; and

**WHEREAS**, the Town Council of the Town of Fairfax hereby finds and determines the following.

Due to the applicant not submitting a complete revised project application to modify the original Hill Area Residential (HRD) Permit, Application 21-17, approved by the Fairfax Planning Commission by their approval of Resolution No. 2022-01, the following findings to revoke the permit and rescind the resolution can be made:

**HRD Permit (Town Code Chapter 17.072.030)**

1. (Town Code) § 17.072.030, Development Permit Required. Except for uses listed in § 17.072.050, land in the HRD overlay zone may not be used or developed until plans for development have been approved by the town and a hill area residential development permit is issued.

When a project approved by the Planning Commission in accordance with the Hill Area Residential Development Overlay Zone is revised, the plan revisions require the approval of a modification of the approved Hill Area Residential Development Permit (Resolution No. 2022-01, condition #15, approved by the Fairfax Planning Commission on January 20, 2022). The applicant has not filed the HRD application to amend the project plans as required by the code.

2. The revised project submittal to the Planning Commission for a Hill Area Residential Development Permit (HRD) must include the following: 1) a completed application form and fees; 2) a site plan that is drawn to scale include existing and proposed finished grades around buildings and any areas proposed for grading or fill; 3) floor plans; 4) Elevations; 5) revised preliminary grading plan and drainage plans; 6) an updated report by a registered civil engineer specializing in soils and foundations including site soil drainage, relevant watershed boundaries, relationship of the proposed construction to drainage patterns in the vicinity and the cumulative effects of runoff, site geology and the safety of the proposed construction and the foundation

adequacy [Town Code § 17.072.080(C)(1) and (2) and (E)(1) through (5)]. The applicant has not submitted the required application, fees, revised complete plans, and updated geotechnical report and drainage plans including revised calculations to ensure the development can occur safely without impacting neighboring properties and adjacent public improvements.

3. The Town Engineer has been unable to review a complete revised plans set and updated geotechnical report, drainage analysis and drainage plan which are required to recommend the Planning Commission take an informed action on the modified HRD application.

The original drainage analysis by the applicants Civil Engineer, Aurthur J. Smith, of ILS Associates Inc. Civil Engineering and Land Surveying, cited the following drainage improvements as requirements for development at 79 Wood Lane based on drainage calculations comparing the peak storm water discharge from a ten year and one-hundred year design storm in the lower flat area and upland area of the site before and after the approved plan improvements. They determined the following would be required to address the increased water flows from the approved house and detached garage/ADU structure:

- Upland flows will be detained with a pipe sized to limit peak one-hundred-year total flows to that of a ten-year flow to regulate the amount of water discharged to the street.
- Water quality will be treated by the landscaped areas. The sizing factor for the required landscaped area to decrease off-flow from the site will be 0.2 inches per hour, the rainfall intensity, divided by five inches per hour, the infiltration rate, equaling 0.04.

The Planning Commission has not been provided with an updated drainage analysis and/or plans addressing the house relocation, basement enlargements and garage/ADU relocation.

4. Without the required application submittal, the Planning Commission/Town Council are unable to make the following required legal findings to support the plan revisions.
  - Town Code § 17.072.110(A), The proposed development is consistent with the general plan, other adopted codes and policies of the town and is consistent with the purpose and intent of this title.
  - Town Code § 17.072.110(C), Based on the soils report finding, the site can be developed without geologic, hydrologic, or seismic hazards.

#### **Excavation Permit (Town Code 12.20.080)**

5. The applicant has modified the subfloor so that the east and west sides of the subfloor areas have slightly higher finished elevations than the center portion of the basement but not high enough to comply with the Planning Commission approved project plans for the basement (Attachment B - see the building sections on page A4 of the approved plan set). No information was provided to the Department of Planning and Building Services on whether the change in the excavated basement area, the relocation of the ADU to that basement and the relocation of the garage changed the excavation and fill amount approved by the Planning Commission on January 20, 2022, which was for the excavation of 130 cubic yards of material and the fill of 125 cubic yards of material and potentially changing the flow and direction of water entering and leaving the site.
6. Without updated plans, geotechnical and hydrology information the Planning Commission/Town Council are unable to determine that the health, welfare, and safety of the public will not be adversely affected and that adjacent properties are adequately protected by project design from



drainage and erosion problems as a result of the site excavation and fill.

**NOW, THEREFORE BE IT RESOLVED,**

1. That the statements, findings, and determinations reflected above in the recitals are true and correct, and incorporated by this reference herein as the findings, cause and foundation for the action taken by this Resolution.
2. The construction at 79 Wood Lane (Application 21-17) is not being constructed and completed in accordance with approved plans, permits and conditions of approval, and is therefore in violation of Planning Commission Resolution No. 2022-01.
3. These unapproved modifications create a heightened risk of damage to the surrounding properties and negative impact to the neighborhood by failing to allow review of revised plans or information regarding the expansion and/or modification of excavation and fill on a site within the Landslide Hazard Zone and in violation of the Town Code and General Plan.
4. Excavation Permit. Moreover, the shifting of the structures has resulted in a further encroachment into the required setbacks. Finally, the planned second driveway is in violation of the Town Code and negatively impacts the safety of the site and neighborhood.
5. The Town Council of the Town of Fairfax has determined that the revocation of approvals and permits is an administrative action that is not a project under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 21065.

**AND THEREFORE BE IT FURTHER RESOLVED,** that the Town Council of the Town of Fairfax hereby adopts Resolution No. 24-\_\_\_ A Resolution of the Fairfax Town Council, Revoking and Rescinding Planning Commission Resolution No. 2022-01 for application 21-17, for a Hill Area Residential Development Permit, Design Review Permit, Excavation Permit, and Tree Removal Permit and a Minimum and Combined Side-yard Setback and Retaining Wall Height Variance for the Project located at 79 Wood Lane.

The foregoing resolution was adopted at a regular meeting of the Town Council held in said Town, on the 29th day of February 2024, by the following vote:

AYES:  
NOES:  
ABSENT:

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Mayor Barbara Coler

Attest:

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Christine Foster, Deputy Town Clerk