



# FAIRFAX TOWN COUNCIL MEETING SUPPLEMENTAL STAFF REPORT

**MEETING DATE** February 7, 2024  
**PREPARED FOR** Mayor and Town Council  
**PREPARED BY** Linda Neal, Principal Planner  
**SUBJECT** Supplement to Agenda Item #4 Directed referral of Planning Commission Resolution No. 24-01 temporarily suspending Planning Commission Resolution 22-01 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 Combined Side-yard Setback and Retaining Wall Height Variances for a Single-family Residence, Detached Garage/Accessory Dwelling Unit at 79 Wood Lane

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## **RECOMMENDATION**

Include Resolution 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, as noted in the staff report.

## **ATTACHMENT**

Resolution

## RESOLUTION NO. 24-\_\_

### **A Resolution of The Fairfax Town Council 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 an 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 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 91 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 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.
- 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**, 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 7, 2023, 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.

**NOW, THEREFORE BE IT RESOLVED,**

1. That the statements, findings and determinations reflected above 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 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

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.

4. Therefore, the Town Council of the Town of Fairfax 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 7<sup>th</sup> day of February 2024, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Mayor Barbara Coler

Attest:

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Christine Foster, Deputy Town Clerk