## TOWN OF FAIRFAX STAFF REPORT

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

TO:

Fairfax Planning Commission

DATE:

October 15, 2020

FROM:

Linda Neal, Principal Planner

LOCATION:

1620 Sir Francis Drake Blvd.; APN # 001-235-11

PROJECT:

Continued consideration of a request to covert a commercial space

into living units

**ACTION:** 

Use Permit, Design Review & Parking Variance; Application # 20-9

APPLICANT:

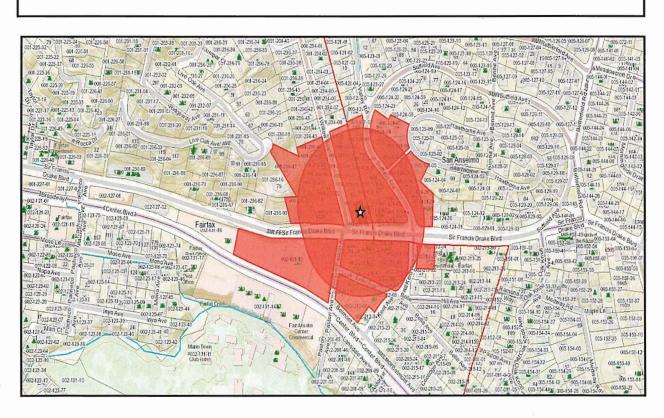
Art Chartock

OWNER:

Joyce and Arthur Chartock

**CEQA STATUS:** 

Categorically exempt, § 15301



1620 SIR FRANCIS DRAKE BOULEVARD ASSESSOR'S PARCEL NO. 001-235-11

#### **BACKGROUND**

At the August 20, 2020 meeting where the project was previously considered, the Planning Commission expressed support for the applicant's proposal to convert the existing commercial building at 1620 Sir Francis Drake Boulevard into a duplex with a residential unit upstairs and a residential unit downstairs. The Commission cited the need for affordable housing near mass transit and the fact that the 2010-2020 Fairfax General Plan indicates that the zoning for the area where 1620 Sir Francis Drake Boulevard is located is supposed to be rezoned from Highway Commercial (CH) to Central Commercial (CC), and CC zoning lists residential uses on the ground floor as Conditional Uses that can be approved by the Planning Commission.

Staff was unable to support the request to convert the lower level to an additional residential unit because the Highway Commercial (CH) Zone district in which the property is located currently does not allow residential use of the lower level of a commercial building.

This item was continued to a date uncertain, with the Commission directing staff to explore mechanisms that would allow the residential use on the ground floor. For a further discussion of the project specifics see the August 20, 2020 packet staff report and attachments on the Town website at <a href="https://www.townoffairfax.org">www.townoffairfax.org</a>.

#### DISCUSSION

Staff discussed the matter with the Town Counsel and determined that the following options are potential ways for the applicants to move forward with the project as proposed and in compliance with land use law:

Option 1 – Change the zoning for the site from CH to CC. Although it is unconventional to undertake the required CH to CC rezoning on a parcel-by-parcel basis, this rezoning would achieve consistency (albeit on a piecemeal basis) with the General Plan and Housing Element.

It is unclear whether the CC rezoning would be considered impermissible spot zoning. Under certain legal doctrines, spot zoning is a problem if it discriminates against the spot by creating an island of restricted use. Here there is no intent to discriminate against the parcel. It is a mixed bag whether the CC zone is more restrictive than the current CH zoning. The CC zone is more flexible than CH in allowing residential uses. By contrast, office uses are more restricted in the CC zone (only allowed on 2<sup>nd</sup> floor). The CC zone has a lesser number of listed allowed uses than the CH zone (67 vs. 82), but it is hard to tell because the use categories are overlapping, and distinctions seem arbitrary. In general it appears that the CC zone business types are more oriented to retail consumers, whereas the CH zone allows a bit more of the "light industrial" and highway oriented uses (with a use permit). What would be considered more or less restrictive depends on perspective and the desired use. Moreover, CC zoning contains no minimum building site requirements and no maximum density, whereas CH has site

width and lot size requirements. Neither zoning district contains density limits, and the floor area, FAR and parking would be the same in either zone (Zoning Chapters. 17.052 and 17.136).

Under a prior court case (the *Foothill* decision), spot zoning can include a parcel benefitted by rezoning, but a court could uphold the rezoning if it has some rational the public interest basis. Considering the statewide housing crisis, mandates to increase housing supply and the fact that this rezoning is required by the General Plan, a duplex housing project might qualify as in the public interest. Rezoning the whole downtown area listed in the General Plan to be rezoned from CH to CC would be more in the public interest and avoid the spot zoning issue. Alternatively, re-zoning the whole east side commercial zone (Site #6 in the Housing Element) reduces the possibility that the rezoning would be considered spot zoning.

# Option 2 - Amend the CH Zone Ordinance to allow residential uses on the second floor by right and on the ground floor with a Conditional Use Permit

The General Plan contemplates rezoning to CC, not amending the CH zoning. On the other hand, this would at least achieve one aspect contemplated by General Plan and Housing Element Program H-3.1.1.1, which states "Amend CH Zone. Rezone all CH zones to CC zones, which will allow housing on second floors by right instead of requiring Conditional Use Permits." The GP also contemplated that the CC zone would also be amended to provide transit oriented development (TOD) density bonus (Policy H-3.1.2), lower parking requirements (Program H-4.1.1.4), live/work units (H-4.1.1.2), and SROs (H-2.1.6.3). Further, the General Plan also includes Policy LU-7.1.1 (preserve the existing village character of the commercial center) and Program LU 07.1.1.2 (rezone all CH to CC and revise the CC zone as appropriate). General Plan consistency issues would come up when amending the zoning, and potentially also in processing a use permit. One argument is partial adoption via amendment is consistent even if it does not fulfill every related plan and policy.

By conditionally allowing residential use on ground floor, the rezoning may open the door to other projects involving SB 35/Housing Accountability Act non-discretionary streamlined review. That may already be a possibility because residential use is allowed on the second floor, and density bonus requests could be included in a project.

## Option 3 - Change the Zoning Designation for the project site and the duplex sites to the west and the east to the Residential RD 5.5-7.

Rezoning to RD 5.5-7 would avoid the spot zoning issue, since the sites would hav ethe same zoning as the abutting residential district to the north.

An RD 5.5-7 rezoning would conflict with the General Plan and Housing Element mandates to rezone these parcels to CC and would have unknown impact on the RHNA categories. It is unknown at this time how consistent it would be with the additional housing (14 units on 21 total parcels) projected for Housing Opportunity Site #6, in

which these properties are included. Re-zoning to a residential zoning classification would trigger the need to amend the General Plan and Housing Element. These Housing Element changes would be reviewed by HCD. Additional analysis would need to be done before pursuing this option, which seems to entail the most procedural steps of the options being considered.

It does not appear that rezoning to RD 5.5-7 would allow for as much housing density as CH or CC zoning. The Housing Element does not contain a maximum residential density in the CH or CC land use categories. The RD 5.5-7 zone's residential density range is 7-12 DU/acre.

Government Code 66300(b)(1)(A) states that where housing is an allowable use (it is under the GP designation for the site), then an affected city cannot enact regulations that would change "the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018..." This statutory provision might prevent the Town from rezoning to RD 5.5-7.

If the rezoning would mean that those sites cannot accommodate their share of RHNA as promised in the Housing Element, the No Net Loss law would be triggered. Government Code, Section 65863(a) provides that cities are not permitted to reduce the residential density for any parcel identified in the Housing Element sites inventory unless the city makes written findings that the remaining sites are adequate to accommodate the RHNA. In addition to maintaining the absolute numbers of housing units, the law also requires a city to maintain its housing capacity by income category. This obligation applies whether the city downzones the site itself or whether the city approves a developer's project with a lower density or with fewer units at the income levels shown in the Housing Element site inventory. If a reduction in residential density (or income category units) for any parcel would result in the remaining sites in the Housing Element not being adequate to accommodate the RHNA, the city may only reduce the density on that parcel if it identifies sufficient additional adequate and available sites with an equal or greater residential density at all income levels so that there is no net loss of residential unit capacity. (Gov. Code § 65863(c)(2).) There is a time limit of 180 days to identify additional sites. (Id.).

### Option 4 – Process a Conditional Use Permit for duplex under current CH zoning.

The CH zone enables the Planning Commission to issue use permits to those uses it deems "equivalent" to the other conditionally permitted uses. (Town Code § 17.096.050(10).) The CH zone conditionally allows residential uses on the second floor only. Therefore, this would require the Planning Commission to find that residential uses on the ground floor are "equivalent" to residential uses on the second floor. Given the distinctions made between ground floor and second floor throughout the General Plan, Zoning Code (CH vs. CC) and as a matter of general planning, this would be a

very dangerous precedent to set if the Town wants to maintain control over ground floor residential uses moving forward.

Staff provided the above option information to the applicants. They have indicated that they are not interested in undertaking any of the options at this point in time. They are in the process of trying to sell the site and are willing to leave it to the new owners to determine how the property will be used in the future. The applicants would like to obtain approval for the upper floor unit at this time.

#### RECOMMENDATION

Conduct the public hearing.

Move to approve application # 20-9 based on the findings and subject to the conditions contained in the attached Resolution No. 2020-09 (Attachment A1) which include the following:

- A conditional use permit is being granted to allow residential use only on the second floor of the structure, with the ground floor remaining commercial and with the currently existing floor plan shown on page A4.1 of the plans.
- The parking lot shall remain as shown on page A4.1 of the plans.
- The first-floor plan showing a residential unit, reconfigured parking lot and including the expanded patio landscaped area, fence and gate/arbor shown on page A4.2 and A6.1 are denied.

#### **ATTACHMENTS**

Attachment A – Resolution No. 2020-09 approving a residential unit on the second floor of the building but retaining the commercial use on the ground floor

#### **RESOLUTION NO. 2020-09**

A Resolution of the Fairfax Planning Commission Approving a Conditional Use Permit to Retain the Parking Lot in its Current Configuration to Allow the Conversion of the Second Floor of the Commercial Building at 1620 Sir Francis Drake Boulevard to a Residential Unit While Retaining the Lower Floor as a Commercial Space, and Denial of a Requested Fence Height Variance

**WHEREAS**, the Town of Fairfax has received an application for a Conditional Use Permit, which includes a request for an exception to the parking regulations, and a Design Review Permit from Art and Joyce Chartock on June 17, 2020 to renovate the commercial building to convert it into a duplex.

WHEREAS, the application was deemed complete on August 5, 2020; and

WHEREAS, the Planning Commission held duly noticed Public Hearings on August 20, 2020 and October 15, 2020, at which time all interested parties were given a full opportunity to be heard and to present evidence, and at which time the Planning Commission approved the Conditional Use Permit with amendments that eliminated the need for a Design Review Permit but still required a parking modification to eliminate the requirement for a guest parking space in conjunction with the residential unit; and

WHEREAS, based on the plans and supplemental information provided by the applicant, the Planning Commission has determined that the project, modified to allow one residential unit above an existing commercial unit and retaining the parking lot in its current configuration, complies with the relevant Town of Fairfax General Plan Policies and Programs and Zoning Ordinance, and no longer requires the approval of a Design Review Permit or a Fence Height Variance; and

WHEREAS, allowing only the second floor of the structure to be converted to a residential unit and requiring the parking lot to retain its current configuration to meet the parking requirements for a mixed commercial/residential development has eliminated the need to make exterior changes requiring a Design Review Permit and a Fence Height Variance; and

WHEREAS, the Commission has made the following findings:

- 1. The project complies with the Fairfax General Plan goals and policies as follows:
- a) Policy LU-7.1.3: A combination of commercial and residential land uses that are consistent with established building height limits should be encouraged on the same parcel in the Town Center Area.
- b) Goal LU-8: Preserve community diversity through affordable housing opportunities primarily along transit corridors.

- c) Goal H-3: Create transit-oriented housing in the Town Center area that is less dependent on automobile travel and, thereby minimizing traffic impact to the greatest extent possible while providing support for transit.
- 2. Granting a use permit to allow residential use of the second floor of the structure would result in a development similar to other existing combined commercial and residential development found within the surrounding neighborhood, while avoiding removing all commercial use from a property in the CH zoning district.
- 3. The approval of the use permit shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.
- 4. The development and use of property as approved under the use permit shall not 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, or any or all of which effects are substantially beyond that which might occur without approval or issuance of the use permit.
- Approval of the use permit is not contrary to those objectives, goals, or standards
  pertinent to the case and contained or t forth in the 2020-2030 Fairfax General
  Plan or the Zoning Ordinance Town Code Title 17 adopted by the Town.
- Approval of the use permit will result in equal or better development of the
  premises than would otherwise be the case, and that said approval is in the
  public interest and for the protection or enhancement of the general health,
  safety, or welfare of the community.
- 7. Retention of the parking lot in its current configuration with 6 parking spaces meets the minimum parking requirements for a 677 square foot commercial space and 1-bedroom apartment.
- 8. Allowing an exception to not provide the required 3 guest parking space for the one bedroom residential unit is reasonable due to the size and configuration of the unit, the close proximity of the site to 2 bus stops and the fact that most commercial business uses will be operating in the daytime so the commercial spaces should open up for use by visitors of the residential use in the evenings.
- 9. The denial of the request to convert the building to a duplex and redesign the parking lot has eliminated the need to make exterior modifications to the building to accommodate an outdoor fence patio area. Therefore, the Commission is denying the requested Design Review Permit and Fence Height Variance.

WHEREAS, the Commission has approved the project subject to the applicants' compliance with the following conditions:

- 1. The project shall be built in conformance with the plans for 1620 Sir Francis Drake Boulevard, by Art Chartock, dated 5/7/20, pages A4.1, A4.2 and A6.1, modified to retain the lower floor commercial space in its existing configuration with a ½ bathroom, and 3 office space rooms, retention of the parking lot with 6 parking spaces and the existing 33 square foot landscaped area at the front of the building, and removal of the expanded landscaped area and surrounding fence shown on plan page A4.2, prior to issuance of the building permit to convert the upper floor to living space, except as modified by these conditions.
- Any changes, modifications, additions or alterations made to the approved set of plans will require a modification of Application # 20-9. Any construction based on job plans that have been altered without the benefit of an approved modification of Application # 20-9 will result in the job being immediately stopped and red tagged.
- 3. The applicants shall maintain the premises in a neat and attractive manner at all times. Such maintenance shall include, but not be limited to, exterior building materials, windows, the planters, the ground and the pavement surfaces.
- 4. The applicant shall comply with all applicable local, county, state and federal laws and regulations. Local ordinances which must be complied with include, but are not limited to: the Noise Ordinance, Chapter 8.20, Polystyrene Foam, Degradable and Recyclable Food Packaging, Chapter 8.16, Garbage and Rubbish Disposal, Chapter 8.08, Urban Runoff Pollution Prevention, Chapter 8.32 and the Americans with Disabilities Act.
- 5. Any changes made to the exterior of the building, including but not limited to new lighting, new signs, planters, etc., shall comply with the design review regulations of the Town Code, Chapter 17.020, and be approved by the Fairfax Design Review Board or staff as required.
- 6. The applicant and its heirs, successors, and assigns shall, at its sole cost and expense, defend with counsel selected by the Town, indemnify, protect, release, and hold harmless the Town of Fairfax and any agency or instrumentality thereof, including its agents, officers, commissions, and employees (the "Indemnitees") from any and all claims, actions, or proceedings arising out of or in any way relating to the processing and/or approval of the project as described herein, the purpose of which is to attack, set aside, void, or annul the approval of the project, and/or any environmental determination that accompanies it, by the Planning Commission, Town Council, Planning Director or any other department or agency of the Town. This indemnification shall include, but not be limited to, suits, damages, judgments, costs, expenses, liens, levies, attorney fees or expert witness fees that may be asserted or incurred by any person or entity, including the applicant, third parties and the Indemnitees, arising out of or in connection with the approval of this project, whether or not there is concurrent, passive, or active negligence on the part of the Indemnitees. Nothing herein shall prohibit

the Town from participating in the defense of any claim, action, or proceeding. The parties shall use best efforts, acting in good faith, to select mutually agreeable defense counsel. If the parties cannot reach agreement, the Town may select its own legal counsel and the applicant agrees to pay directly, or timely reimburse on a monthly basis, the Town for all such court costs, attorney fees, and time referenced herein, provided, however, that the applicant's duty in this regard shall be subject to the Town's promptly.

- 7. There shall be no outside storage of any materials or supplies for the commercial space or the second floor 1-bedroom residential unit.
- 8. Any equipment installed on the either the roof or exterior of the building must be screened from public view.
- The applicants must comply with all conditions imposed by an outside agency unless that agency waives its conditions in a written letter to the Department of Planning and Building Services Department prior to issuance of the building permit.
- 10. If security lighting is installed, it shall be the minimum necessary for illumination and shall not be overhead. All exterior lights shall be shrouded and directed downward to avoid off-site light spillage.
- 11. The bamboo hedge on the east side of the site shall either be removed, or be placed on an irrigated timer, trimmed to the permitted 6 feet in height and regularly maintained to remove dead material to minimize its fire hazard potential. This condition shall be complied with prior to issuance of the project building permit. Future plant substitutions shall be subject to the approval of the Planning Director.

### **Ross Valley Fire District**

- 12. A fire sprinkler system shall be installed throughout the entire building which complies with the requirements of the National Fire Protection Association (NFPA) 13 and local standards. A separate deferred permit shall be required for this system. Plans and specifications for the system shall be submitted by an individual or firm licensed to design and/or design-build sprinkler systems.
- 13. A fire alarm system shall be required. A separate deferred permit is required for this work. Plan should be submitted directly to the Fire Department for this work. The existing fire alarm system shall meet minimum fire code requirements and shall have a current certification. Inspection report shall be available to the field inspector upon request.
- 14. Address numbers at least 6" tall must be in place adjacent to the front door. If not clearly visible from the street, additional numbers are required.

#### **Ross Valley Sanitary District**

- 15. The project will require testing and lateral certification requirements. The sewer line must be tested and be determined to be adequate for the proposed new bathroom and kitchen plumbing and waste fixtures or a new sewer lateral will need to be installed that is in conformance with the RVSD's Design and Construction Standards.support the proposed new residential unit and new lateral may be required.
- 16. Drawings submitted for the new lateral, if one is necessary shall include the district's standard notes of the Standard Specifications and drawings and should identify the materials of construction as complying with the District's approved materials list.
- 17.All RVSD Standard details for the sewer lateral should be referenced or included on the drawing set for the new lateral (including trenching/backfill, clean- outs, backwater prevention devices, utility boxes, connection to main, etc.).

#### **Marin Municipal Water District**

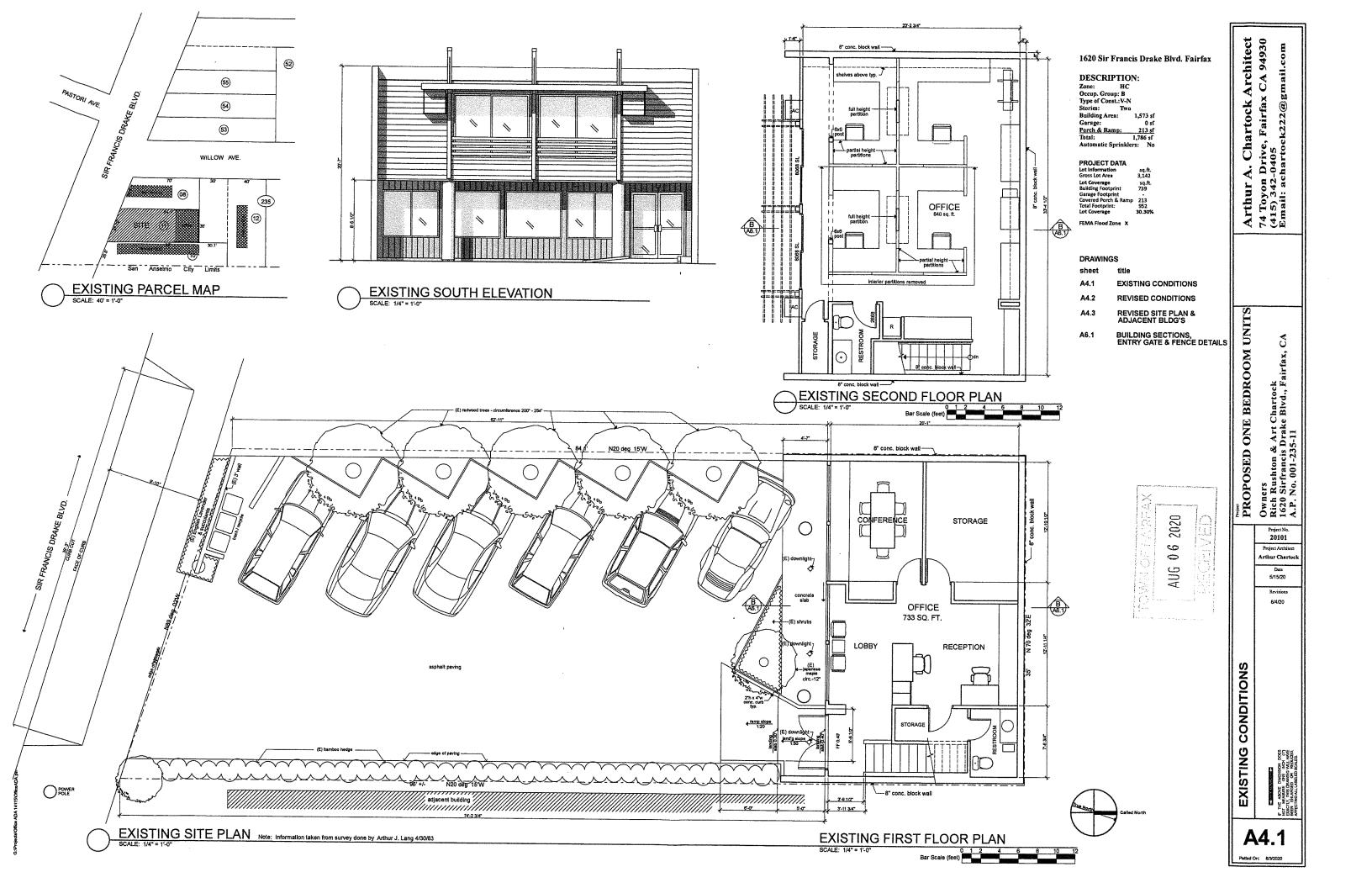
- 18.A High-Pressure Water Service Application must be submitted along with a copy of the building permit, required fees must be paid and the District's rules and regulations in effect at the time the service is requested must be complied with.
- 19. The development must comply with District Code Title 13 Water Conservation.
- 20. Backflow prevention requirements must be met if the District's review indicates it is warranted.
- 21. Ordinance 429, requiring installation of gray water recycling systems when practicable for existing structures undergoing "substantial remodel" that necessitates an enlarged water service.

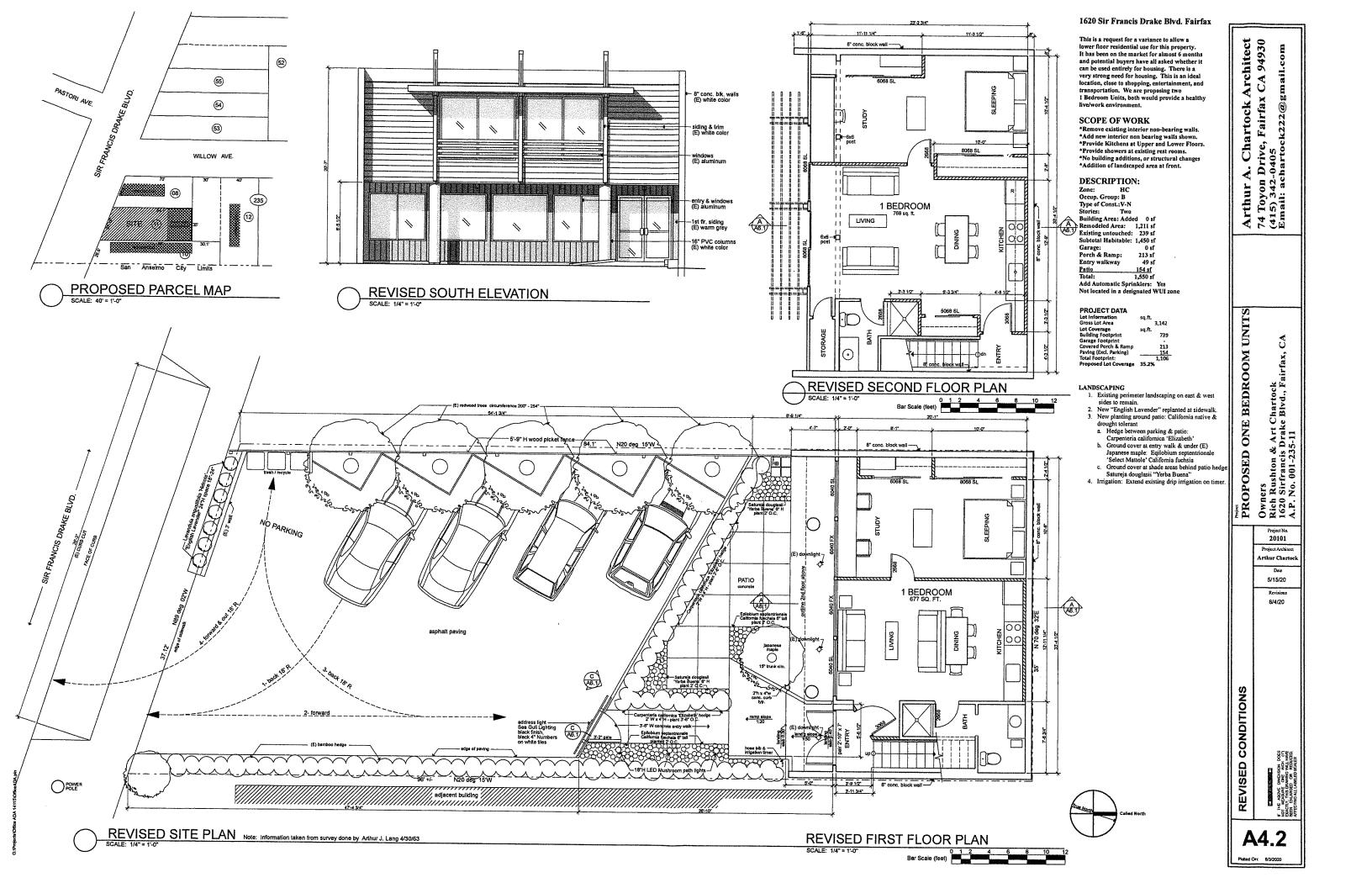
**NOW, THEREFORE BE IT RESOLVED**, the Planning Commission of the Town of Fairfax hereby finds and determines as follows:

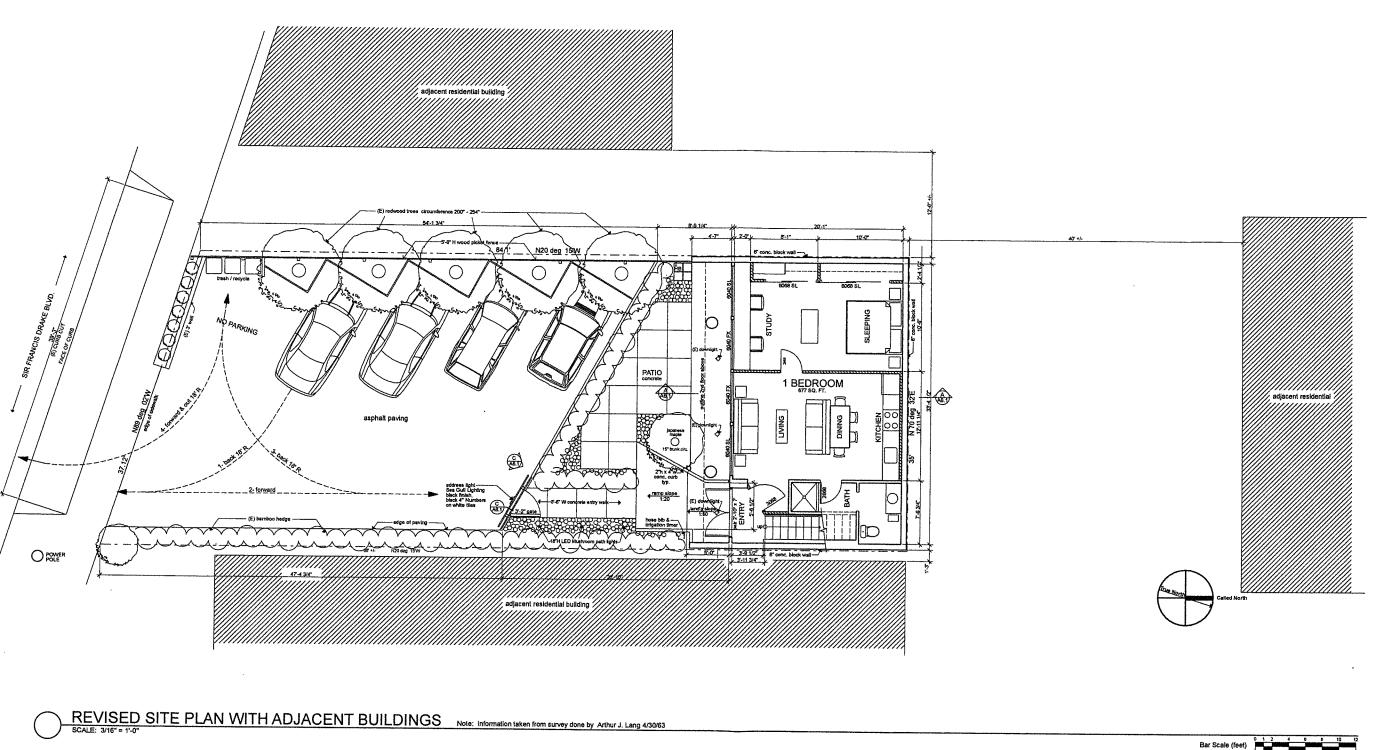
The approval of the Conditional Use Permit and parking exception and denial of the Design Review Permit and Fence Height Variance can occur without causing significant impacts on neighboring businesses or residences. The exterior changes are unnecessary to provide a combined a commercial use on the ground floor with a residential unit on the second floor and compliance with the minimum parking requirements mandate that the parking lot configuration be maintained as it exists now, eliminating space for the fenced outdoor patio and landscaped area; and

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 15<sup>th</sup> day of Ocftober 2020, by the following vote:

AYES: NOES: ABSTAIN:		
	Chair Green	
Attest:		
Ben Berto, Director of Planning an	 nd Building Services	



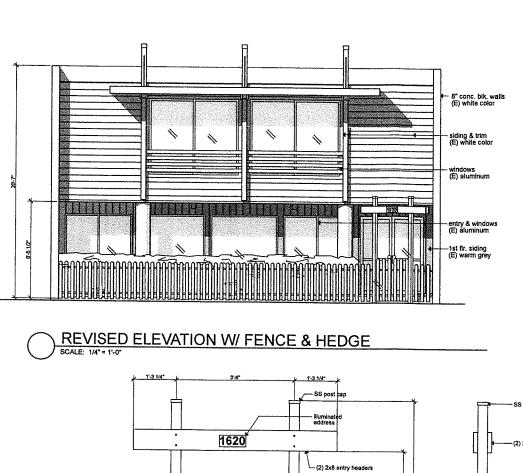




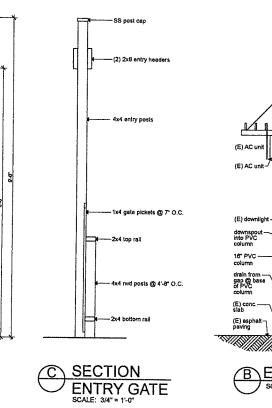
Arthur A. Chartock Architect 74 Toyon Drive, Fairfax CA 94930 (415) 342-0405 Email: achartock222@gmail.com PROPOSED ONE BEDROOM UNITS

Owners

Rich Rushton & Art Chartock
1620 Sirfrancis Drake Blvd., Fairfax, CA
A.P. No. 001-235-11 Project No. 20101 Arthur Chartoc REVISED SITE PLAN & ADJACENT BUILDINGS 8/4/20



- 4x4 entry posts



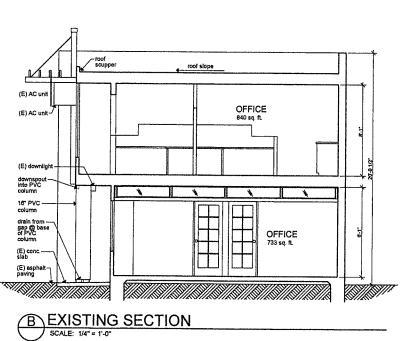
(E) downlight
downspout—
into PVC
column

16" PVC —
drain column

drain from —
gap @ base
of PVC
column

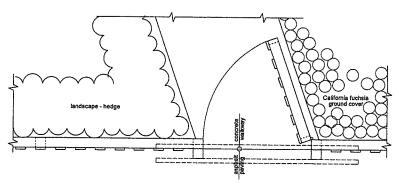
A REVISED SECTION

SCALE: 1/4" = 1'-0"



1 BEDROOM 768 sq. ft.

1 BEDROOM 677 sq. ft.



E PLAN VIEW ~ ENTRY GATE
SCALE: 3/4" = 1'-0"

D ELEVATION - ENTRY GATE
SCALE: 3/4" = 1'-0"

Arthur A. Chartock Architect 74 Toyon Drive, Fairfax CA 94930 (415) 342-0405 Email: achartock222@gmail.com PROPOSED ONE BEDROOM UNITS CA Owners Rich Rushton & Art Chartock 1620 Sirfrancis Drake Blvd., Fairfax, A.P. No. 001-235-11 Project No. 20101 BUILDING SECTIONS, ENTRY GATE & FENCE DETAILS Project Architect Arthur Chartocl Date 5/15/20 Revisions 8/4/20 A6.1

3: Projects/Office ADA 14115/OfficeADA.pla