

**TOWN OF FAIRFAX
STAFF REPORT**

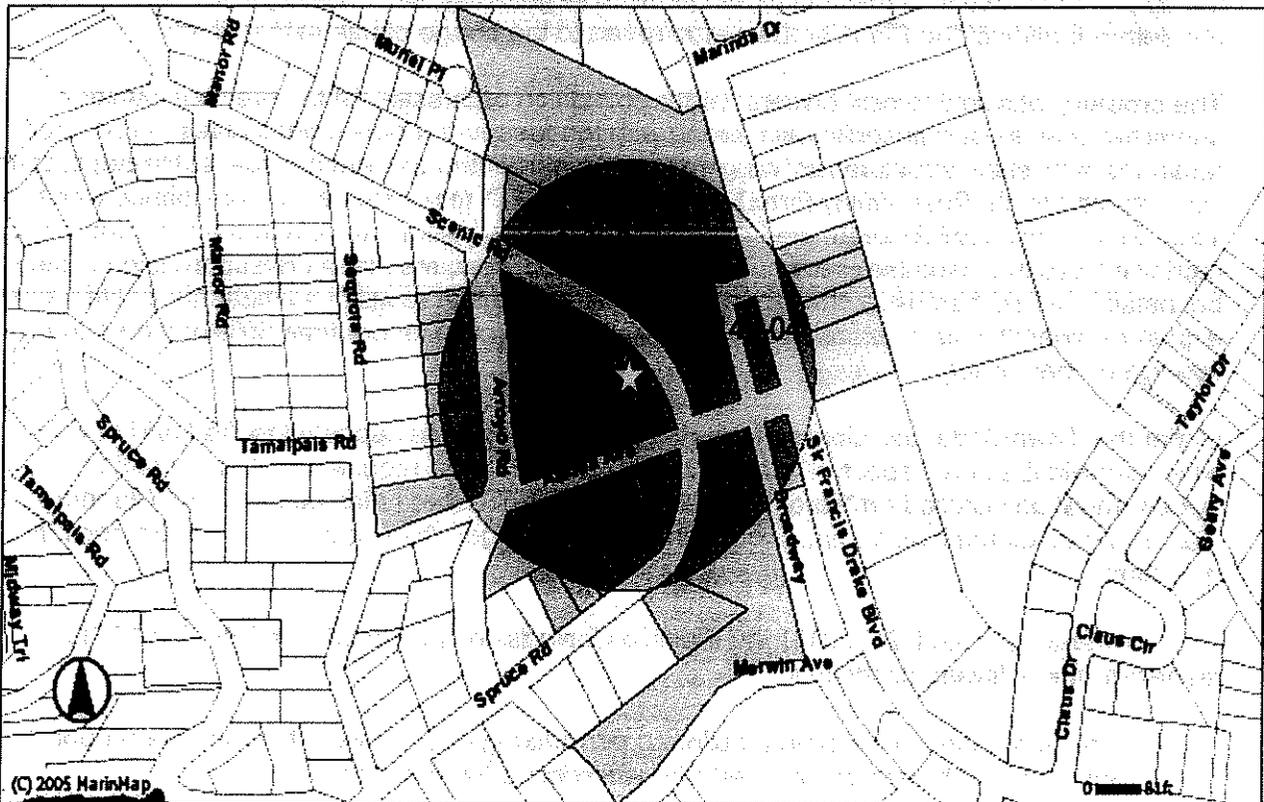
TO: Mayor and Town Council Members

FROM: Michael Rock, Town Manager
Jim Moore, Planning Director
Linda Neal, Senior Planner



DATE: July 13, 2011

SUBJECT: Appeal of Planning Commission approval of a Use Permit for 9 Scenic Road for the conversion of workshop/laundry to living space with conditions



9 SCENIC ROAD

RECOMMENDATION

Deny the appeal and uphold the decision of the Planning Commission including all the required

conditions of approval for Use Permit # 10-30 by approving attached Resolution 11-

BACKGROUND

The project site is 3,575 square feet in size and is developed with a 1,341 square foot single-family residence and a 400 square detached structure that has been converted into living space, including a full bathroom. The previously existing residence on the site fell into disrepair in the 1970's. The Planning Commission approved variances and a use permit to allow the construction of a new residence on the site in December of 1978. A condition of the project approval was that the then-existing dilapidated residence be reduced in size to 400 square feet and be used only as a workshop.

The applicant purchased the property in 1994 after receiving a resale report indicating that the accessory structure was a workshop/laundry room and was not to contain a bathroom. Without permits from the Town, she constructed a bathroom in the structure and improved it for living space sometime between 1994 and 2010, when she sold the property. The Building Official discovered the work that had been done without permits during the resale inspection on September 28, 2010, and the Planning Department determined that the change from a workshop to living space (i.e., a bedroom with a bathroom) was a change of use that requires the applicant to obtain a conditional use permit to legalize the unit. The applicant did not appeal the determination of the Planning Department as to the change of use at that time.

~~The property was sold to new owners, with a condition of the sale that the previous owner~~ submitted the use permit application along with the fees and required penalty fees in order to retain the accessory structure as living space. As part of the use permit process, the application was referred to the Ross Valley Fire Department ("RVFD") for its review for compliance with the Town Fire Code. RVFD determined that that the accessory structure required a fire suppression (sprinkler) system, because Fairfax Town Code § 903.2 requires that a fire suppression system be installed when there is a change in use of a structure that results in a higher fire or life safety exposure when the square footage of the area changing use is more than 50% of the square footage of the building.

Under the Town Code, decisions of the RVFD fire inspector are appealed to the RVFD Board, which upheld the Fire Inspector's interpretation of § 903.2 and requirement that a sprinkler system must be installed on March 10, 2011. The RVFS Board relied on the Town Planning Department's determination that there had been a change in the use and did not address that question.

At their meeting on April 21, 2011 the Planning Commission approved Use Permit # 10-30 subject to the following conditions:

1. The applicants shall obtain a building permit to legalize the work that has been done to install the bathroom and convert the workshop to living space.
2. Prior to issuance of the building permit the applicant shall sign, notarize and record at the Marin County Recorder's Office a deed restriction stating that the accessory structure is to be used by residents of the main house and shall not contain a kitchen.
3. The sewer lateral serving the detached structure will have to meet Sanitary District standards.
4. If not already installed, the Sanitary District requires that the side sewer serving the

existing structure be equipped with an appropriate backwater prevention device.

5. After the project is approved, the owner or contractor should contact the District to arrange for a Sanitary District Inspector to approve the existing installation (or approve the plans for the proposed installation) of the backwater prevention device(s) and make a record for the District's files.
6. The applicants must comply with Marin Municipal Water District's Water Conservation Ordinance 414.
7. Should backflow protection be required, said protection shall be installed as a condition of water service.
8. A fire protection sprinkler system shall be installed throughout the entire structure. Plans for the system shall be prepared by an individual or firm licensed to design and/or design-build sprinkler systems.
9. Prior to installing the system the applicants must obtain a permit from the Ross Valley Fire Department. The system must be installed before the building permit to legalize the conversion receives a final inspection by the Building Official.
10. The applicant shall obtain a Defensible Space/Vegetative Management permit prior to issuance of the building permit.
11. The smoke detector(s) in the accessory structure shall be provided with AC power and be interconnected for simultaneous alarm.

DISCUSSION

The applicant is appealing the inclusion of Planning Commission condition # 8 (i.e., that the accessory structure be provided with a sprinkler system) based on her argument that the sprinkler requirement was inappropriately applied to the property since there was no change in use.

The staff and the Planning Commission determined that the use of the accessory structure has been changed from a storage/workshop required by the 1978 approval into living space with a closet and bathroom. Town Code § 17.084.030(H) and (I) require that accessory uses other than those listed in Town Code § 17.084.040 require a Use Permit from the Planning Commission. This requirement has been in effect since March 13, 1973. No Use Permit or building permits were ever granted by the Town to convert the storage/workshop accessory structure into living space with a bathroom and closet.

Several overlapping codes, including the Fire Code, Building Code and the California Residential Code require that if the accessory structure is to be used for living space and legalized as living space through issuance of an after the fact building permit, a sprinkler system must be installed. The policy basis for this requirement are that the risks of succumbing to a fire are greater in a structure used for sleeping and bathing purposes than in a structure used for storage or a workshop where persons in the structure are awake and their hearing is not impaired by the sound of water, hairdryers, etc.

Consequently, staff recommends denying the appeal.

ATTACHMENTS

- Exhibit A – Code Sections requiring sprinklers**
- Exhibit B – Building Official's time line describing past uses of and permits issued for the accessory structure**
- Exhibit C – Existing floor plan for accessory structure**
- Exhibit D – Staff report and minutes from the 4/21/11 Planning Commission meeting**
- Exhibit E – Appellant's appeal form**
- Exhibit F – Appellant's supplemental information**

RESOLUTION 11-

A RESOLUTION OF THE FAIRFAX TOWN COUNCIL DENYING AN APPEAL OF THE USE PERMIT FOR 9 SCENIC ROAD, REQUESTING THAT THE TOWN COUNCIL ELIMINATE THE PLANNING COMMISSION CONDITION THAT THE PROJECT REQUIRES A FIRE SUPPRESSION SYSTEM

WHEREAS, the Town Council of the Town of Fairfax received an appeal from the owner for a Use Permit for the conversion of an accessory storage/workshop structure which is a U occupancy to residential living space including a closet and full bathroom which is an R-3 occupancy requesting that the Planning Commission's condition that the accessory structure be improved with a fire suppression system be deleted; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on April 21, 2011, at which time all interested parties were given a full opportunity to be heard and to present evidence; on the use permit application and

WHEREAS the Planning Commission, on the basis of substantial evidence in the record before it, made findings for approval based on the project complying with certain conditions including a fire suppression system as required by the California Fire Code, the Town of Fairfax Fire Code Section 903.2(5) and the California Residential Building Code sections 3408.1 and R313.3.1.1; and

WHEREAS, the Town Council held a duly noticed Public Hearing on July 13, 2011, on the appeal at which time all interested parties were given a full opportunity to be heard and to present evidence; and the Council reviewed the findings and the records of the Planning Commission meeting of April 21, 2011 and State of California and Local Fire and Building Codes; and

WHEREAS the appealed project is Categorically Exempt from the Environmental Quality Act (CEQA) pursuant to Section 15303, "New Construction or Conversion of Small Structures", Class 3(a) of the Public Resources Code (CEQA).

NOW, THEREFORE, the Town Council of the Town of Fairfax does hereby find and determine as follows:

1. There is substantial evidence in the record to support the findings, decision and conditions of the Planning Commission on this project.
2. The issuance of a use and building permit to legalize conversion of the accessory structure from a U occupancy to an R-3 occupancy without requiring that the conversion comply with the minimum requirements of the Fire and Building Codes would cause excessive or unreasonable detriment to adjoining properties and the neighborhood because of the increased fire risk.
3. Denial of the appeal does not deny the new owners substantial use of the property, which is

already improved with an existing single-family residence and the Use Permit has been approved to legalize the unpermitted conversion of the accessory structure to living space.

NOW, THEREFORE, the Town Council of the Town of Fairfax does, based on the findings enumerated above, resolve as follows:

1. The Council upholds the decision of the Planning Commission, which approved Use Permit application #10-30 for 9 Scenic Road.

THE FOREGOING RESOLUTION was duly and regularly adopted by the Town Council of the Town of Fairfax, at a regular meeting thereof, held on the 13th day of July, 2011, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Larry Bragman, Mayor

Attest

Judy Anderson, Town Clerk

Section 605.11.2. **Warning Sign.** The following wording shall be placed on a permanent sign attached at the main electrical disconnect from P.G. & E. The sign shall be red background with white letters or a white background with red letters. Minimum size 2-1/2" X 6" with a minimum 22pt. font. Minimum size example below.

WARNING:

This building supplied with an alternative power source. Alternate disconnect is: (describe location - on the right, below etc.) of this main disconnect. Both must be used.

Section 605.11.3. **Required Conduit.** All wiring that may contain electrical potential when the alternate service disconnect has been activated, (such as the wiring between the solar arrays and the DC electrical disconnect on a photovoltaic system) shall be completely contained in metal conduit.

Section 901.7 of Chapter 9 is hereby amended by adding the following sentence:

This section shall also apply to residential fire sprinkler systems.

Section 903.2 of Chapter 9 is hereby amended as follows:

Section 903.2 **Where Required.** All Occupancies and Facilities. An automatic fire sprinkler system shall be installed in all of the following:

1. Every newly constructed building and facility.

Exceptions:

- a. Free standing Group U Occupancies not more than 1,000 square feet and provided with exterior wall and opening protection as per Table 602 of the Building Code.

b. Agricultural buildings as defined in Appendix C of the Building Code and not exceeding 2,000 square feet, having clear unobstructed side yard of combustible materials, exceeding 60 feet in all directions and not exceeding 25 feet in height.

2. In newly created second units.

Exceptions:

a. Parcels that are not within the Wildland Urban Interface, as established by the Town.

b. Parcels for which there is less than a thirty percent (30%) grade change between the subject parcel and Sir Francis Drake Boulevard as illustrated in Attachment A.

3. In all buildings which have more than fifty percent (50%) floor area added or any "substantial remodel" as defined in this code, within any 12-month period. Exceptions may be granted by the Fire Code Official when alternate means of protection are installed as approved by the Fire Code Official.

4. In all buildings except R-3 occupancies, in excess of 3,000 sq. ft. which have more than ten per cent (10%) floor area added within any 12-month period. Exceptions may be granted by the Chief when alternate means of protection are installed as approved by the Fire Code Official.

5. A change in the use of a structure that results in a higher fire or life safety exposure when the square footage of the area changing use is more than 50% of the square footage of the building.



Section 903.3 of Chapter 9 is hereby amended by adding the following language:

The requirements for fire sprinklers in this code section are not meant to disallow the provisions for area increase, height increase, or Fire-Resistive substitution if otherwise allowed by sections 504 and 506 of the Building Code. All automatic fire sprinkler systems shall be installed in accordance with the written standards of the Fire Code Official and the following:

2010 Building Code

the existing structure shall be brought into compliance with the requirements for new construction for flood design.

For buildings and structures in flood hazard areas established in Section 1612.3, any repairs that do not constitute substantial improvement or substantial damage of the existing structure, as defined in Section 1612.2, are not required to comply with the flood design requirements for new construction.

SECTION 3406 FIRE ESCAPES

3406.1 Where permitted. Fire escapes shall be permitted only as provided for in Sections 3406.1.1 through 3406.1.4.

3406.1.1 New buildings. Fire escapes shall not constitute any part of the required means of egress in new buildings.

3406.1.2 Existing fire escapes. Existing fire escapes shall be continued to be accepted as a component in the means of egress in existing buildings only.

3406.1.3 New fire escapes. New fire escapes for existing buildings shall be permitted only where exterior stairs cannot be utilized due to lot lines limiting stair size or due to the sidewalks, alleys or roads at grade level. New fire escapes shall not incorporate ladders or access by windows.

3406.1.4 Limitations. Fire escapes shall comply with this section and shall not constitute more than 50 percent of the required number of exits nor more than 50 percent of the required exit capacity.

3406.2 Location. Where located on the front of the building and where projecting beyond the building line, the lowest landing shall not be less than 7 feet (2134 mm) or more than 12 feet (3658 mm) above grade, and shall be equipped with a counter-balanced stairway to the street. In alleyways and thoroughfares less than 30 feet (9144 mm) wide, the clearance under the lowest landing shall not be less than 12 feet (3658 mm).

3406.3 Construction. The fire escape shall be designed to support a live load of 100 pounds per square foot (4788 Pa) and shall be constructed of steel or other approved noncombustible materials. Fire escapes constructed of wood not less than nominal 2 inches (51 mm) thick are permitted on buildings of Type 5 construction. Walkways and railings located over or supported by combustible roofs in buildings of Type 3 and 4 construction are permitted to be of wood not less than nominal 2 inches (51 mm) thick.

3406.4 Dimensions. Stairs shall be at least 22 inches (559 mm) wide with risers not more than, and treads not less than, 8 inches (203 mm) and landings at the foot of stairs not less than 40 inches (1016 mm) wide by 36 inches (914 mm) long, located not more than 8 inches (203 mm) below the door.

3406.5 Opening protectives. Doors and windows along the fire escape shall be protected with $\frac{3}{4}$ -hour opening protectives.

SECTION 3407 GLASS REPLACEMENT

3407.1 Conformance. The installation or replacement of glass shall be as required for new installations.

SECTION 3408 CHANGE OF OCCUPANCY

3408.1 Conformance. No change shall be made in the use or occupancy of any building that would place the building in a different division of the same group of occupancies or in a different group of occupancies, unless such building is made to comply with the requirements of this code for such division or group of occupancies. Subject to the approval of the building official, the use or occupancy of existing buildings shall be permitted to be changed and the building is allowed to be occupied for purposes in other groups without conforming to all the requirements of this code for those groups, provided the new or proposed use is less hazardous, based on life and fire risk, than the existing use.

3408.2 Certificate of occupancy. A certificate of occupancy shall be issued where it has been determined that the requirements for the new occupancy classification have been met.

3408.3 Stairways. Existing stairways in an existing structure shall not be required to comply with the requirements of a new stairway as outlined in Section 1009 where the existing space and construction will not allow a reduction in pitch or slope.

3408.4 Change of occupancy. When a change of occupancy results in a structure being reclassified to a higher occupancy category, the structure shall conform to the seismic requirements for a new structure of the higher occupancy category. Where the existing seismic force-resisting system is a type that can be designated ordinary, values of R , Ω_o and C_d for the existing seismic force-resisting system shall be those specified by this code for an ordinary system unless it is demonstrated that the existing system will provide performance equivalent to that of a detailed, intermediate or special system.

Exceptions:

1. Specific seismic detailing requirements of this code or Section 1613 for a new structure shall not be required to be met where it can be shown that the level of performance and seismic safety is equivalent to that of a new structure. Such analysis shall consider the regularity, over strength, redundancy and ductility of the structure within the context of the existing and retrofit (if any) detailing provided.
2. When a change of use results in a structure being reclassified from Occupancy Category I or II to Occupancy Category III and the structure is located in a seismic map area where $S_{DS} < 0.33$, compliance with the seismic requirements of this code and Section 1613 are not required.

SECTION R312 GUARDS

R312.1 Where required. *Guards* shall be located along open-sided walking surfaces, including stairs, ramps and landings, that are located more than 30 inches (762 mm) measured vertically to the floor or *grade* below at any point within 36 inches (914 mm) horizontally to the edge of the open side. Insect screening shall not be considered as a *guard*.

R312.2 Height. Required *guards* at open-sided walking surfaces, including stairs, porches, balconies or landings, shall be not less than 42 inches (1067 mm) high measured vertically above the adjacent walking surface, adjacent fixed seating or the line connecting the leading edges of the treads.

Exceptions:

1. *Guards* on the open sides of stairs shall have a height not less than 34 inches (864 mm) measured vertically from a line connecting the leading edges of the treads.
2. Where the top of the *guard* also serves as a handrail on the open sides of stairs, the top of the *guard* shall not be not less than 34 inches (864 mm) and not more than 38 inches (965 mm) measured vertically from a line connecting the leading edges of the treads.

R312.3 Opening limitations. Required *guards* shall not have openings from the walking surface to the required *guard* height which allow passage of a sphere 4 inches (102 mm) in diameter.

Exceptions:

1. The triangular openings at the open side of a stair, formed by the riser, tread and bottom rail of a *guard*, shall not allow passage of a sphere 6 inches (153 mm) in diameter.
2. *Guards* on the open sides of stairs shall not have openings which allow passage of a sphere 4 $\frac{3}{4}$ inches (111 mm) in diameter.

R312.4 Exterior woodplastic composite guards. Woodplastic composite *guards* shall comply with the provisions of Section R317.4.

SECTION R313 AUTOMATIC FIRE SPRINKLER SYSTEMS

R313.1 Townhouse automatic fire sprinkler systems. An automatic residential fire sprinkler system shall be installed in *townhouses*.

Exception: An automatic residential fire sprinkler system shall not be required when *additions* or *alterations* are made to existing *townhouses* that do not have an automatic residential fire sprinkler system installed.

R313.1.1 Design and installation. Automatic residential fire sprinkler systems for *townhouses* shall be designed and installed in accordance with Section R313.3 or NFPA 13D.

R313.2 One- and two-family dwellings automatic fire systems. An automatic residential fire sprinkler system shall be installed in one- and two- family *dwellings*.

Exception: An automatic residential fire sprinkler system shall not be required for *additions* or *alterations* to existing buildings that are not already provided with an automatic residential sprinkler system.

R313.2.1 Design and installation. Automatic residential fire sprinkler systems shall be designed and installed in accordance with Section R313.3 or NFPA 13D.

R313.3 Dwelling unit fire sprinkler systems.

R313.3.1 General. Where installed, residential fire sprinkler systems, or portions thereof, shall be in accordance with NFPA 13D or Section R313.3, which shall be considered equivalent to NFPA 13D. Section R313.3 shall apply to stand-alone and multipurpose wet-pipe sprinkler systems that do not include the use of antifreeze. A multipurpose fire sprinkler system shall supply domestic water to both fire sprinklers and plumbing fixtures. A stand-alone sprinkler system shall be separate and independent from the water distribution system. A backflow flow preventer shall not be required to separate a stand-alone sprinkler system from the water distribution system.

R313.3.1.1 Required sprinkler locations. Sprinklers shall be installed to protect all areas of a *dwelling unit*.

Exceptions:

1. Attics, crawl spaces and normally unoccupied concealed spaces that do not contain fuel-fired appliances do not require sprinklers. In *attics*, crawl spaces and normally unoccupied concealed spaces that contain fuel-fired equipment, a sprinkler shall be installed above the equipment; however, sprinklers shall not be required in the remainder of the space.
2. Clothes closets, linen closets and pantries not exceeding 24 square feet (2.2 m²) in area, with the smallest dimension not greater than 3 feet (915 mm) and having wall and ceiling surfaces of gypsum board.
3. Bathrooms not more than 55 square feet (5.1m²) in area.
4. *Detached* garages; carports with no habitable space above; open attached porches; unheated entry areas, such as mud rooms, that are adjacent to an exterior door; and similar areas.

R313.3.2 Sprinklers. Sprinklers shall be new listed residential sprinklers and shall be installed in accordance with the sprinkler manufacturer's installation instructions.

R313.3.2.1 Temperature rating and separation from heat sources. Except as provided for in Section R313.3.2.2, sprinklers shall have a temperature rating of not less than 135°F (57°C) and not more than 170°F (77°C). Sprinklers shall be separated from heat sources



TOWN OF FAIRFAX

142 Bolinas Road, Fairfax, California 94930

(415) 453-1584 / Fax (415) 453-1618

2-4-2011

Chief Roger Meagor
Ross Valley Fire

Re: Accessory Structure Occupancy Classification 9 Scenic

Dear Chief Meagor,

You have asked for the occupancy classification of the accessory structure located at 9 Scenic Road Fairfax, Ca 94930 and background history.

The accessory structure was originally a portion of a single family dwelling that was officially condemned on September 11, 1978. Inspection records show that the building was completely gutted on May 30, 1979. Permits for a new home were issued on July 20, 1979 and a majority of the old home was demolished leaving an approximately 420 sq ft shell.

On February 19, 1980 the accessory structure was inspected and the use was documented as a gutted workshop. Workshop occupancy is classified as "U" for utility and miscellaneous.

On July 29, 1980 a permit was issued to work on the accessory structure

On October 16, 1980 an inspection was performed to check for an illegal second unit in the old structure. It was determined that the area was used as an "art Studio".

A residential resale inspection was performed on July 2, 1985 showing the accessory structure being used as a shop or "U" occupancy.

On December 12, 1988 a permit was issued to completely refurbish the studio.

On December 15, 1988 a permit was issued to install a gas heater.

A residential resale inspection was performed on November 2, 1994 showing the accessory structure being used as a workshop with heater and washer dryer hookup NO bathroom. This is a "U" occupancy.

A residential resale inspection was performed on September 29, 2010 showing the accessory structure being converted into habitable space with a bathroom or "R-3" occupancy.

At some point between November 2, 1994 and September 29, 2010 the workshop was converted from a "U" occupancy to "R-3" occupancy without building permits or planning approval.

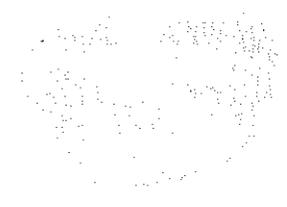
If you have further questions regarding this matter please feel free to contact me.

EXHIBIT #

B

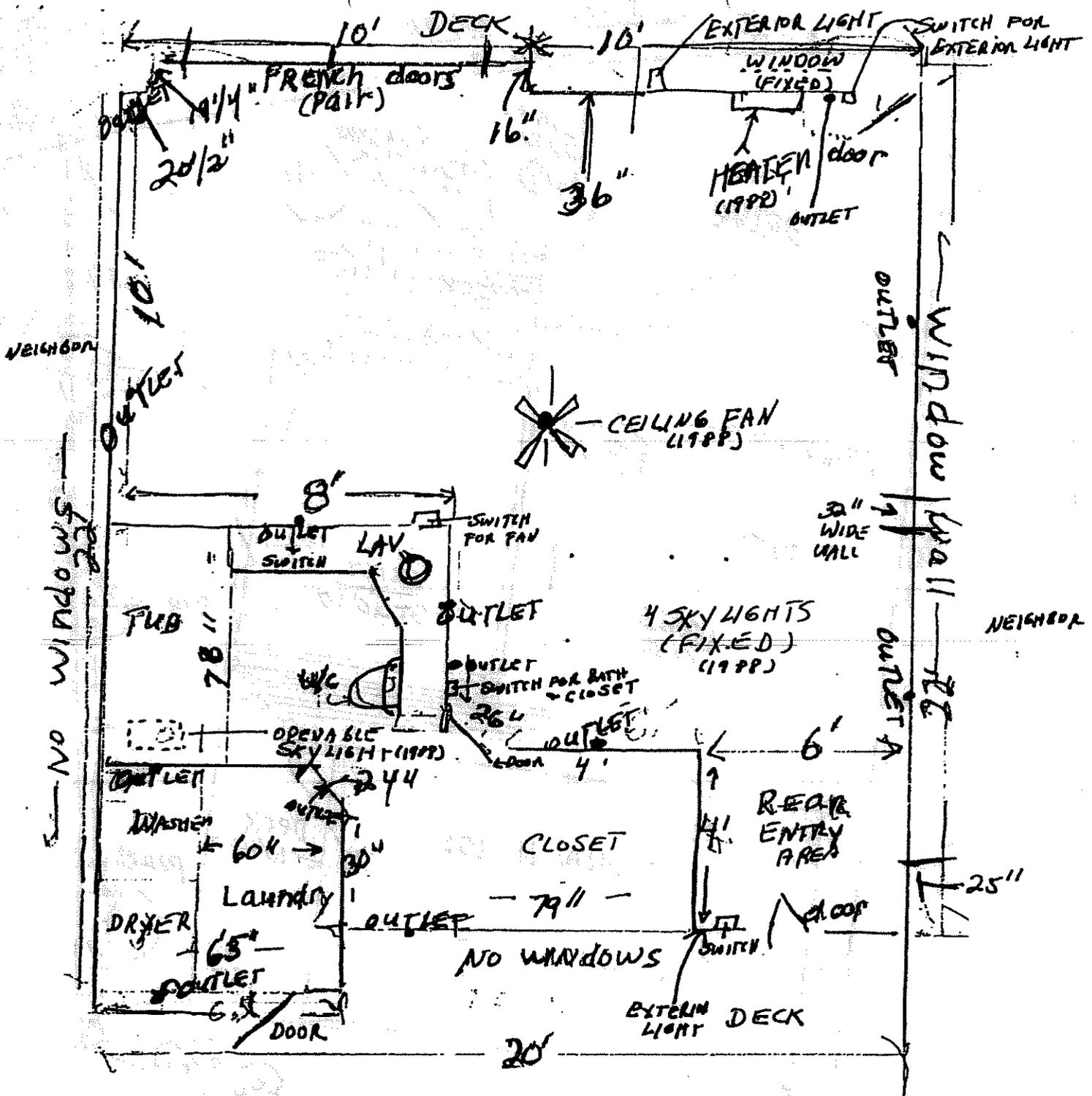
Sincerely

Mark Lockaby
Building Official



[The body of the letter contains several paragraphs of extremely faint and illegible text, which appears to be a standard letter format with a salutation, a main body, and a closing.]

11/11/11



9 SCENIC ROAD

STUDIO BATH

NO EXTERIOR
CHANGES

DOLORES CORDELL
415-608-3310
DCORDELL@BARTLINK.NE
OCT 2010

EXHIBIT #

C

5 OF 7

9 SCENIC Plans

SCENIC ROAD

$\Delta = 13^{\circ}27'20''$

$R = 276.78'$

$L = 65.00$

DRIVE

5" dia.
5 palm
4

COASTAL
OAKS

12" dia.
10

17"

DECK

PARK

Fence 20'

Fence

PATIO

WHITE
OAK

EXIST.
STUDIO

BIRCH

MAIN HOUSE

Deck
10'

PLUM

APPLY

54.81'

55.49'

Location +
drip lines
of
trees

DOLORES CORDELL
415-608-3310
DCORDELL@EARTHLINK.NET
OCT 2010

9 SCENIC ROAD
TREE MAP

SCENIC ROAD

$\Delta = 13^{\circ}27'20''$

$R = 276.78'$

$L = 65.00'$

DRIVE

PARK

PATIO

EXIST. Studio

OAK

MAIN HOUSE

Deck

10'

15' House

25' House

54.81'

55.49'

30' House

9 SCENIC ROAD

Other Houses

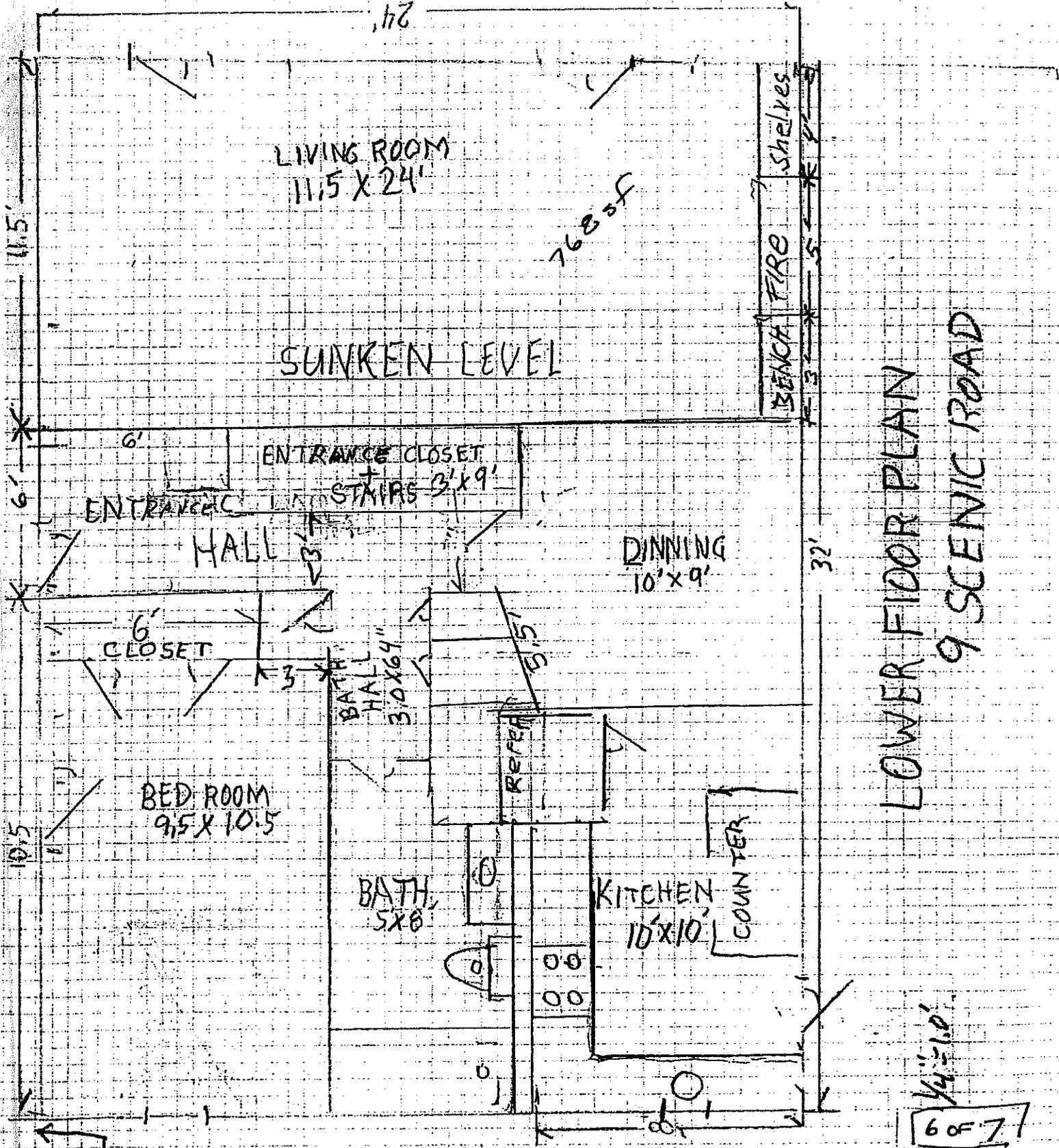
FOUNDATIONS

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DCORDELL@EARTHLINK.NET

OCT 2010

4 of 7

SCALE 1"=10'



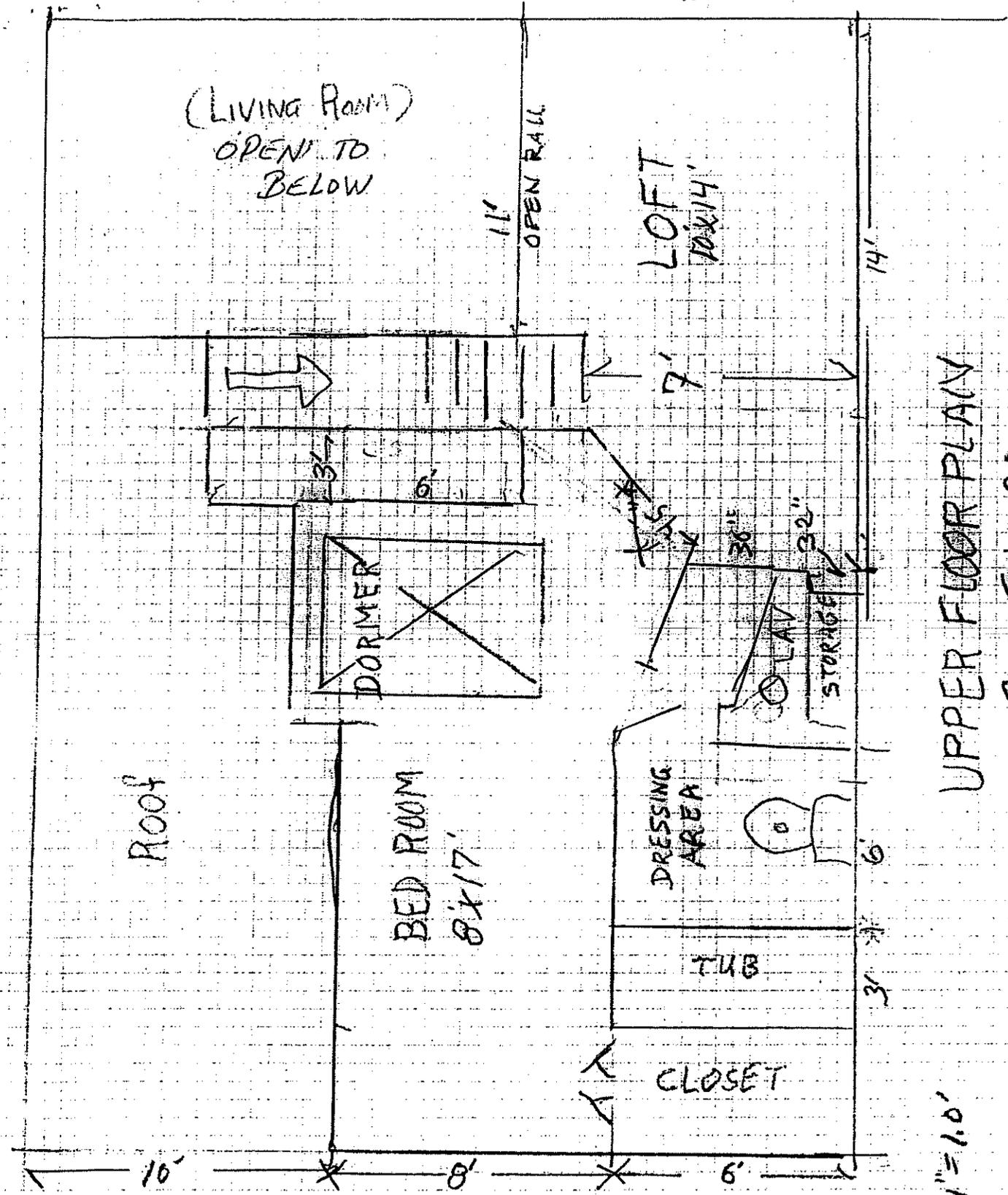
SCENIC ROAD

1/4" = 1.0'

9 SCENIC ROAD
MAIN HOUSE
LOWER FLOOR

DOLORES CORDELL
415-608-3310
BCORDELL@EARTHLINK.NET
OCT 2010

SCENIC ROAD ↑

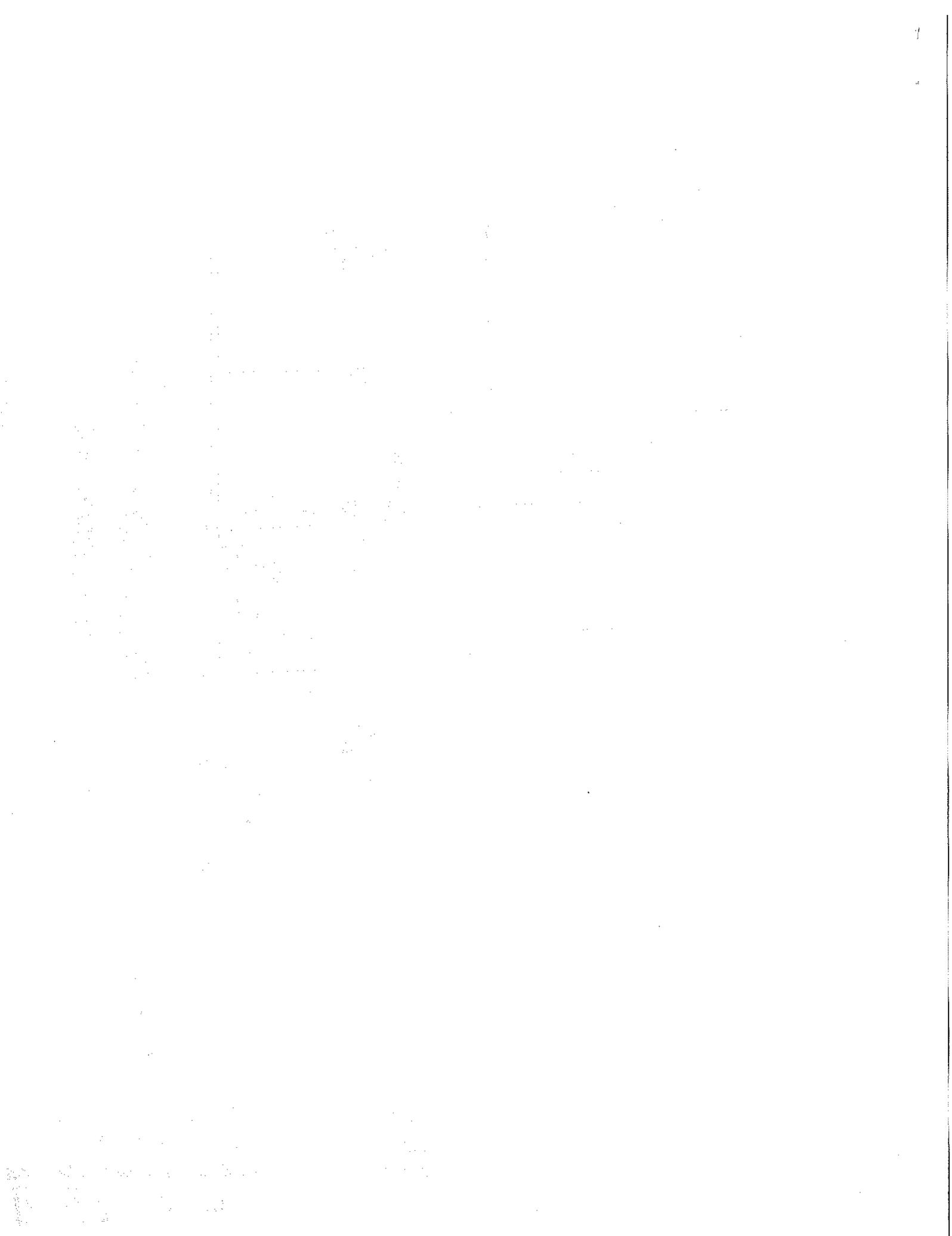


UPPER FLOOR PLAN
9 SCENIC RD

1/4" = 1.0'

9 SCENIC ROAD
MAIN HOUSE
UPPER FLOOR

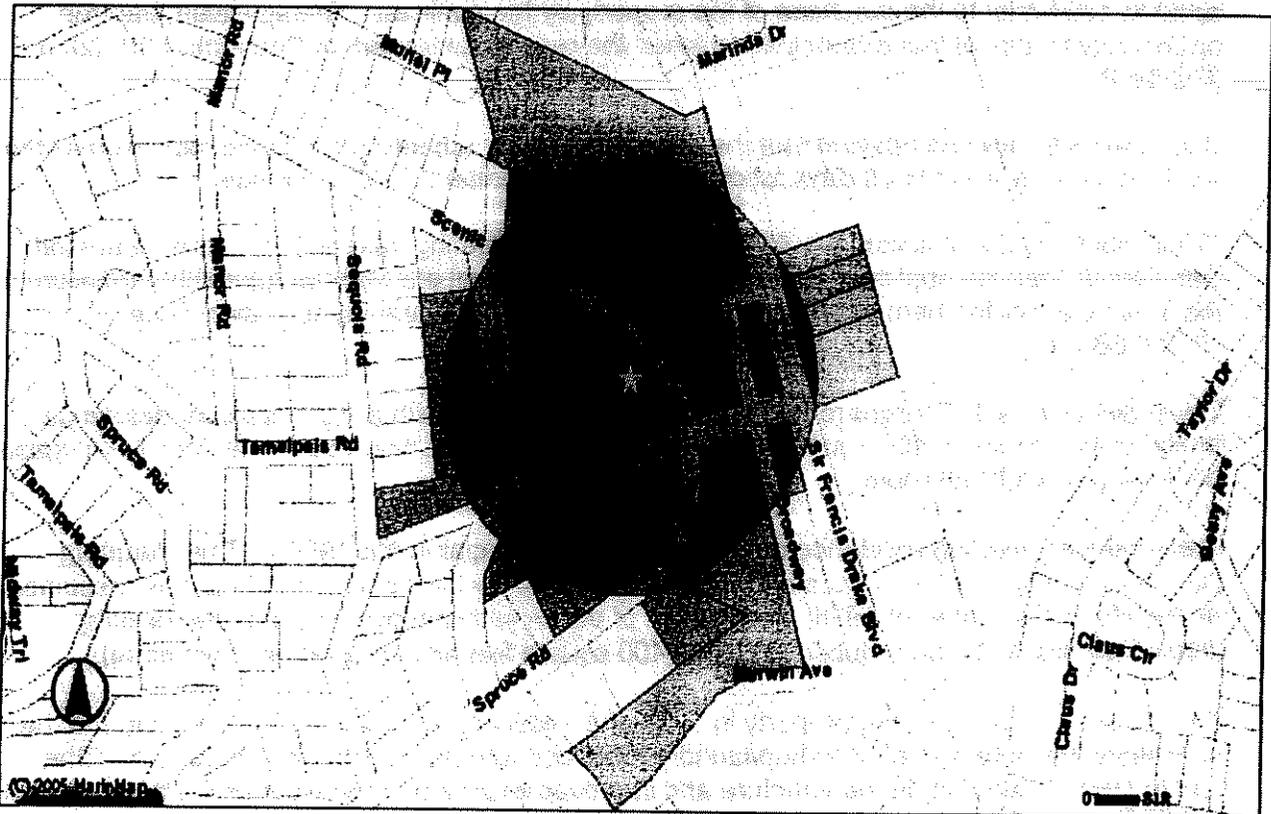
DOLORES CORDELL
415-608-3310
DCORDELL@EARTHLINK.NB
OCT 2010 70F7



**TOWN OF FAIRFAX
STAFF REPORT**

Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: April 21, 2011
FROM: Jim Moore, Director of Planning and Building Services
Linda Neal, Senior Planner
LOCATION: 9 Scenic Road; Assessor's Parcel No. 001-146-04
PROJECT: Conversion of workshop/laundry to living space
ACTION: Use Permit; application # 10-30
APPLICANT: Dolores Cordell
OWNER: Kenneth and Shawn De Mont
CEQA STATUS: Categorically exempt, § 15303(e)



9 SCENIC ROAD

BACKGROUND

This item was continued off-calendar from the November 19, 2011 Commission meeting because the applicant wanted additional time to prepare and also appeal the Ross Valley Fire Department condition that a fire suppression system be installed in the accessory structure as a condition of its change of use from a workshop (a U occupancy per the Building Code) to living space (an R occupancy per the Building Code).

At the November meeting the Commission requested that the applicant provide a complete floor plan for the accessory living space which the applicant has provided and it is attached to the plans.

At the March 20, 2011 meeting of the Ross Valley Fire Board the Board denied the appeal and determined that the Fire Chief had properly applied the requirement for sprinklers which applied due to the change in the use of the building as determined by the Town of Fairfax.

The determination that the structure was not authorized for use as living space and was a workshop and/or artist studio was made by the Town of Fairfax staff in 1978 (Exhibit A). The fact the detached accessory structure was not approved for use as living space was reiterated again in 1994 prior to the purchase of the property by the applicant. The applicant had the opportunity to appeal that determination when the resale was issued on September 29, 2010 (Exhibit B).

The Town Attorney has advised that the appeal period for appealing the conversion from a U to an R Occupancy was the 10 days following staff's September 29, 2010 Resale.

At this point the Commission should conduct the public hearing, take action on the requested Use Permit, then the applicant can determine whether or not she want to appeal the decision to the Town Council for them to address the matter in a de novo hearing per Town Code § 17.036.060.

The project site is 3,575 square feet in size and is developed with a 1,341 square foot single-family residence and a 400 square detached structure that has been converted into living space that includes a full bathroom.

The previously existing residence on the site fell into disrepair in the 1970's. The Planning Commission approved variances and a use permit to allow the construction of a new residence on the site in December of 1978. A condition of the project approval was that the existing dilapidated residence be reduced in size to 400 square feet and be used as a workshop.

The applicant purchased the property in 1994 after receiving a resale report indicating that the accessory structure was a workshop/laundry room and was not to contain a bathroom. She constructed a bathroom in the structure and improved it for living space sometime between 1994 and 2010 when she went to sell the property. The Building

Official discovered the work without permits during the resale inspection on September 28, 2010.

The property has now been purchased by new owners and as a condition of the sale the previous owner submitted the use permit application along with the fees and required penalty

fees so that the new owners could go through the process to try and retain the accessory structure as living space.

DISCUSSION

Town Code 17.084.040 lists permitted accessory structure uses and they include cabanas, greenhouses, patios, tool sheds, play houses and garages. Detached bedroom/living space and baths are not listed as a permitted accessory structure use. However, Town Code § 17.084.030(H) allows the Planning Commission to grant use permits for accessory uses not listed in the code.

The Commission has granted other use permits to allow accessory structures to be used for living space and to include bathrooms as long as the structures are used by the residents of the main house and not rented out.

The applicants are proposing to use the accessory structure as an extension of the main residence and therefore, its use for living space will not change the single-family residential character of the property and will not negatively impact the neighborhood.

Other Department/Agency Requirements

Ross Valley Sanitary District

- The sewer lateral serving the detached structure will have to meet District standards.
- If not already installed, the District requires that the side sewer serving the existing structure be equipped with an appropriate backwater prevention device.
- After the project is approved, the owner or contractor should contact the District to arrange for a District Inspector to approve the existing installation (or approve the plans for the proposed installation) of the backwater prevention device(s) and make a record for the District's files.

Marin Municipal Water District

- The applicants must comply with the District's Water Conservation Ordinance 414.
- Should backflow protection be required, said protection shall be installed as a condition of water service.

Ross Valley Fire Department

The applicant must comply with the following fire code requirements:

- A fire protection sprinkler system shall be installed throughout the entire structure. Plans for the system shall be prepared by an individual or firm licensed to design and/or design-build sprinkler systems. The applicant can appeal any Commission action and this condition to the Town Council within 10 days.

- Prior to installing the system the applicants must obtain a permit from the Ross Valley Fire Department. The system must be installed before the building permit final inspection is done by the Building Official.
- The applicant shall obtain a Defensible Space/Vegetative Management permit prior to issuance of the building permit.
- The smoke detector(s) in the accessory structure shall be provided with AC power and be interconnected for simultaneous alarm.

RECOMMENDATION

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to approve application # 10-30 based on the following findings and subject to the following conditions:

Suggested Findings

The Commission has allowed other residential properties to be improved with accessory structures used for living space. 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.

The living space is created in an existing structure and will require only the legalization of the bathroom and other conversion improvements through the building permit process. The structure will only be used by residents of the main residence. Therefore 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.

The approval of the use permit and conversion of the accessory structure to living space with a bath will not change the single-family residential character of the property. Therefore, 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 will result in equal development of the premises than would otherwise be the case because the structure will only be used by residents of the main house and will not be rented out or converted to a second living unit.

Suggested Conditions

1. The applicants shall obtain a building permit to legalize the work that has been done to install the bathroom and convert the workshop to living space.

2. Prior to issuance of the building permit the applicant shall sign, notarize and record at the Marin County Recorder's Office a deed restriction stating that the accessory structure is to be used by residents of the main house and shall not contain a kitchen.
3. The sewer lateral serving the detached structure will have to meet Sanitary District standards.
4. If not already installed, the Sanitary District requires that the side sewer serving the existing structure be equipped with an appropriate backwater prevention device.
5. After the project is approved, the owner or contractor should contact the District to arrange for a Sanitary District Inspector to approve the existing installation (or approve the plans for the proposed installation) of the backwater prevention device(s) and make a record for the District's files.
6. The applicants must comply with Marin Municipal Water District's Water Conservation Ordinance 414.
7. Should backflow protection be required, said protection shall be installed as a condition of water service.
8. A fire protection sprinkler system shall be installed throughout the entire structure. Plans for the system shall be prepared by an individual or firm licensed to design and/or design-build sprinkler systems.
9. Prior to installing the system the applicants must obtain a permit from the Ross Valley Fire Department. The system must be installed before the building permit to legalize the conversion receives a final inspection by the Building Official.
10. The applicant shall obtain a Defensible Space/Vegetative Management permit prior to issuance of the building permit.
11. The smoke detector(s) in the accessory structure shall be provided with AC power and be interconnected for simultaneous alarm.

ATTACHMENTS

- Exhibit A -- minutes from the 12/21/78 Planning Commission meeting
- Exhibit B -- 10/26/94 Resale
- Exhibit C -- 9/29/10 Resale
- Exhibit D -- applicant's supplemental information
- Exhibit E -- Other Agency/Department memorandums

FAIRFAX PLANNING COMMISSION - REGULAR MEETING, DECEMBER 21, 1978

M/s Arnold, Silmar to recommend approval of a 25' pedestrian-equestrian easement on the portion of the fire road occurrence on Church property; this easement is intended to become one segment in a proposed trail system as shown in Exhibit "A".

AYES ALL

Item 7, Application for use permit for non-covered parking in front and side yards, and a use permit for a nonconforming front yard setback, 9 Scenic Rd., A.P. #1-146-04, Paul R. Lusczynski.

App for use permit for unco ed parking, nonconformin front yard s back.

The applicant, Paul R. Lusczynski, was present.

The staff report for this item to be corrected to read: 24' (instead of) 25', last paragraph, first page.

Commissioner Baker was concerned about the small oak tree close to the property line. Mr. Lusczynski said the proposed house would not affect this oak tree.

The Commission reiterated to the applicant that the existing structure could not be used for residence, and the applicant said he understood.

Commissioner O'Donnell asked the applicant if the house was at all salvageable, and he replied that it was 80% salvageable. Commissioner Arnold suggested moving the proposed parking deck back so that a use permit wouldn't be needed. Mr. Lusczynski said moving the parking deck back would disturb the large oak tree behind it.

Commissioner Baker stated that it was hard for her to visualize that oak tree because it was not clearly drawn on the site plan. She said she had trouble responding to the application because she felt it was incomplete.

M/s Wilson, Arnold to recommend approval of a use permit for zero front yard and side yard setback with the condition that the present existing parking pad be removed to become part of the yard.

AYES: Arnold, Silmar and Wilson

NOES: O'Donnell, Eckles and Baker

Motion Denied.

M/s O'Donnell, Arnold to continue item to the next regular meeting, asking the applicant to bring a new site plan showing the precise location of trees, removal of the existing parking pad, a parking deck with 2 spaces, one covered, and a survey of the site.

A
EXHIBIT #

FAIRFAX PLANNING COMMISSION - REGULAR MEETING, JANUARY 25, 1979

Item 2, Continuation of application for use permit for non-covered parking in front and side yard, and nonconforming front yard setback, 9 Scenic Road, A.P. #1-146-04, by Paul R. Lusczynski.

Cont. app. 1 use prmt for noncovered parking & r conforming setback, 9 Scenic.

The applicant was not present.

Commissioner Arnold said that upon examing the site at 9 Scenic he discovered a garage on the rear of the property.

Commissioner O'Donnell said that he expected a survey to be included in the applicant's new submittals. Planning Technician Hammond explained that a survey had been included in the first submittals which was traced from the survey done by Arthur Lang.

Mr. Charles Grossman of 15 Scenic Road said that his objection to the project was that he beleived that the lot was too small to begin with. He said he felt the existing house is well situated but the addition would not look good. He also said a plum tree will have to be removed.

M/s Wilson, Arnold to continue the application to the next regular meeting when the applicant is present.

AYES ALL, Baker Absent

Item 3, Application for multiple use permits to convert a single family house into a duplex, 33 Park Rd., A.P. #2-101-03, By JEAN B. McCabe.

App. for use prmts. for dup. 33 Park Rd.

The Commission was pleased with the building plans to convert the house into a duplex so that the real issue was the application for tandem parking.

Commissioner Wilson suggested that the applicant turn the area in front of the structure into four parking spaces and create a patio where tandem parking is proposed.

M/s Eckles, O'Donnell to recommend a use permit for a variance of Section 24.30, Ordinance. 352 to allow tandem parking at 33 Park Road.

AYES: Wilson, O'Donnell and Eckles

NOES: Arnold

ABSENT: Baker

FAIRFAX PLANNING COMMISSION, REGULAR MEETING, FEBRUARY 15, 1979.

Commissioners Present: John Arnold
Don O'Donnell
Wendy Baker, (ar. 8:25)
Lee Eckles, Chrmn.

Commissioners Absent: Adelaide Wilson

City Staff Present: Rebecca Hammond, Planning Technician.

Meeting called to order at 8:15 p.m.

Approval of Minutes

January 25, 1979

Approval of minutes

Page 1 - Commissioner O'Donnell requested "The Liquid Lense" in par. 1 be changed to "The Liquid Lens"

Page 2 - Commissioner Arnold requested that in par. 1 the words "a garage on the rear of the property" be deleted and replaced with "that a garage on an adjacent lot projected into the subject property."

M/s Arnold, Eckles to approve the corrected minutes of January 25.

AYES ALL, Baker, Wilson, absent

Item 1, Continuation of application for use permit for uncovered parking in front and side yard, and nonconforming front yard setback, 9 Scenic Road, A.P. #1-146-04, Paul R. Lusczynski.

Cont. of App. for use permit for uncovered parking in front and side yard, nonconforming frnt yard setback, 9 Scenic, P. Lusczynski.

The applicant was present.

Chairman Eckles stated that the present application is as per the drawing dated 5 Jan. 1979.

At the Jan. 25 Planning Commission meeting three residents living contiguously to 9 Scenic were present who expressed opposition to the project because it would result in considerably shorter distances between residences. The applicant did not arrive until after his neighbors left. Some concern was evident among the Commission with hearing the application without these neighbors present so the application was continued to the February 15 meeting.

At the February 15 meeting no one but the applicant showed up and again there was concern about hearing the application under these conditions.

FAIRFAX PLANNING COMMISSION, REGULAR MEETING, FEBRUARY 15, 1979.

Commissioner Arnold stated that those who came to the last meeting were aware that the item was to be heard again at this meeting and apparently chose not to come.

Motion Arnold to recommend use permits to allow 1) two uncovered parking spaces in the front and side yard setbacks and 2) to allow a 24' front and rear combined setback.

Motion died for lack of second.

Commissioner O'Donnell stated that he was concerned not about the uncovered parking, but the small amount of open space that would be left on the site.

Mr. Lusczynski stated that though the zoning ordinance requires that no more than 60% of the building site be covered by buildings, his plan with one covered space would cover only 50% of the site.

M/s Arnold, Baker to recommend approval of a use permit to allow a nonconforming front and rear yard setback at 9 Scenic Road.

AYES: Arnold, Baker, Eckles.

NOES: O'Donnell

ABSENT: Wilson

M/s Arnold, Baker to recommend approval of a use permit to allow parking in the front and side yard setbacks at 9 Scenic Road.

AYES: Arnold, Baker, Eckles.

NOES: O'Donnell

ABSENT: Wilson

Item 2, Continuation of the application for use permit for inadequate parking, Corbett's Antiques, 1621 Sir Francis Drake Blvd., A.P. 12-211-02, by Gustavo Kubichek.

Cont. of app. for inad. prk & ext. of lgl nonconforming use, Corbett' Antiques, 162 Sir Francis D

The applicant was present.

M/s Baker, Arnold to recommend approval of a use permit for extension of the legal nonconforming use at 1621 Sir Francis Drake Blvd.

AYES ALL, Wilson absent.

TOWN OF FAIRFAX
ACKNOWLEDGEMENT OF RECEIPT
OF RESALE INSPECTION

I acknowledge receipt of the resale inspection
report for the property located at 9 Sanic Road,

Fairfax

Check one: (Party responsible for performing
required work)

BUYER SELLER BOTH PARTIES

Seller's new address: General Delivery
Nicasio, Ca. 94946

[Signature]

Date: Nov. 2, 1994

BUYER'S SIGNATURE

Dolores CORDELL (Print name)



TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
(415) 453-1584 / FAX (415) 453-1618

Mayor
Steven M. Vanni

Council
Susan Brandborg
Frank Egger
Sue Peterson
Doug Wilson

Town Administrator
Linda Christman

DATE: *October 26, 1994*

TO: *Pat Oppenheim*
16 Coldwell Banker - Novato
901 Reichert Ave.
Novato, CA 94945

Re: *9 Scenic Road.*
Resale Inspection Report

Dear *Ms. Oppenheim*

Attached is the Resale Inspection which you requested for the above noted property address, and an acknowledgment card. The acknowledgment card should be completely filled out and returned to the Building Department at the time of the sale of the property. Most important is the information pertaining to the party responsible for performing the necessary work to bring the property up to health and safety code standards. These requirements must be completed within 30 days of the date of the sale of the property unless additions, repairs and or second units have been constructed without the benefit of permits. If work has been done without permits, the Planning and Building Services Department requires that the illegal improvements be legalized or removed prior to the close of escrow.

THIS LETTER SHALL SERVE TO NOTIFY ANY PROSPECTIVE BUYER THAT NO STATEMENTS IN THIS REPORT SHALL AUTHORIZE THE USE OR OCCUPANCY OF ANY RESIDENTIAL BUILDING CONTRARY TO THE PROVISIONS OF ANY LAW OR ORDINANCE.

THE TOWN RESERVES THE RIGHT TO ENFORCE ALL OF ITS ORDINANCES AND REGULATIONS AND TO REQUIRE THE CORRECTION OF ANY UNSAFE OR ILLEGAL CONDITIONS EVEN THOUGH NOT DISCLOSED IN THE RESIDENTIAL RESALE INSPECTION REPORT.

THE SIGNING OF THE ATTACHED RESALE POSTCARD (INDICATING WHO WILL PERFORM ANY WORK REQUIRED IN THE RESALE) BY THE BUYER SHALL INDICATE THAT THE BUYER HAS READ AND UNDERSTANDS THE ABOVE DISCLAIMER. THIS RESALE IS NOT COMPLETE UNTIL THE RESALE POSTCARD IS SIGNED AND RETURNED TO THE TOWN OF FAIRFAX AND THE REPORT IS SIGNED OFF BY THE FAIRFAX BUILDING OFFICIAL ON PAGE 7.

Please contact the Fairfax Building Official at 453-1585 after the work has been completed to arrange for a follow-up inspection or if you have any questions about the report.

Sincerely,

Linda Neal
Senior Planner



TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
(415) 453-1584 / FAX (415) 453-1618

REPORT OF RESIDENTIAL RESALE INSPECTION

Mayor

Steven M. Vanni

Council

Susan Brandborg

Frank Egger

Sue Peterson

Doug Wilson

FOR STAFF USE:

Business License Paid yes

Inspection Date 10/00/94 Time 2:00

Fee \$ 125 : Receipt # 2-1028 By LD

Town Administrator

Linda Christman

ADDRESS 9 SCENIC

FEES Fees are set by Resolution of the Town Council.

PROCESSING One copy of the report shall be mailed to the person designated on page 2 within 2 weeks of the date of inspection.

LEGAL REQUIREMENTS

1. Pursuant to the provisions of Sections 38780 through 38785 of the Government Code of the State of California, it is the intent of the Council that the grantee of a residential building within the Town be furnished a report of matters of Town record pertaining to the authorized use, occupancy, and zoning classifications prior to sale or exchange. The report must be obtained by the seller and delivered to the buyer.
2. This report is valid for a period not to exceed six months from date of issue. Upon written request of the owner, prior to the expiration date, the Building Inspector may issue an endorsement to the report, extending the validity for one additional three-month period and showing any change to the information on the original report. The fee for such endorsement shall be one-third the original filing fee. In cases where the Building Inspector makes a site visit prior to issuing an endorsement, a \$10.00 fee may be charged.

INSPECTION PROCEDURE

ACCURACY NOT WARRANTED - NO STATEMENTS IN THIS REPORT SHALL AUTHORIZE THE USE OR OCCUPANCY OF ANY RESIDENTIAL BUILDING CONTRARY TO THE PROVISIONS OF ANY LAW OR ORDINANCE.

3. Based upon its files, the Town will attempt to provide accurate information in the Residential Resale Inspection Report. Nevertheless, the Town will not warrant the accuracy of such information. The Town reserves the right to enforce all of its ordinances and regulations and to require the correction of any unsafe or illegal conditions even though not disclosed in the Residential Resale Inspection Report. No statements in the report authorize the use of occupancy of the property contrary to the provisions of any law or ordinance.

The entire building must be available for a complete and continuous inspection at the time for which the inspection is arranged. The Building Inspector will not inspect buildings which are occupied unless he is accompanied by either the owner or the owner's authorized agent. If neither the owner nor the owner's authorized agent appear at the scheduled time of the inspection, a \$10.00 fee will also be charged.

Property address 9 Scenic
Applicant's name Pat OPPENHEIM Day phone 899-8400
Person to receive report Pat OPPENHEIM
Mailing address Coldwell Banker 901 Reidway ^{Novato} Zip 94945
Person to meet inspector Pat OPPENHEIM Day phone 899-8400
Owner's name, if different Steven Vermillion
Owner's address, if different 2 Dan Rd, Nicasio 94946
General Delivery

Type of Building

Single family or condominium Number of bedrooms in each unit _____
 Duplex Other

I am the () Legal Owner, (X) Authorized Agent of the Legal Owner of the property at the address of subject building and hereby request that a physical inspection be made of the subject building and agree to furnish buyer with a copy of the final report.

Patricia Q. Oppenheim
Signature

18 Oct. 1984
Date

Town of Fairfax Residential Resale Inspection Report
TOWN RECORD HISTORY OF BUILDING AND ZONING

The following represents the zoning and permitted uses of the property according to Town records. If no information is available in our file as of the date of this inspection, it will be indicated by N/A (not available).

1. Address 9 scenic Road. Assessor's Parcel No. 1-146-04
2. Lot(s) 11 Block 4 Tract Fairfax Manor Zoning RDS.5-7
single family homes on lots of 5,500 sq ft. for property with
3. Present permitted use duplex on lots of 7,000 sq ft. } *less than a 10% slope*
4. Overlay zones _____
5. Flood zone C; area of minimal flooding
6. Date constructed prior to 1947-48 - previous SFD demolished 1979. New home bu
7. Permitted use under previous ordinance residential 6/27/79
8. Required parking at time of construction none
9. 50% remodel date _____ Applicable zoning ordinance _____
10. Building permits:
Date 6/27/79 For demolition of single family home
Date 7/20/79 For construction of new home
Date 8/1/79 For electrical + plumbing for new single family home
Date 7/29/80 For repair of accessory building
Date 12/12/85 For new windows, doors, skylight
Date 12/15/88 For new gas heater
11. Encroachment permit: Date _____ For _____
12. Use permit: Date 2/15/79 For front + side setback variances for parking
13. Variance: Date _____ For _____
14. Other: Date _____ For _____
Date _____ For _____

Compiled by R. Neal
Planning and Building Services Staff

CIRCLED ITEMS ARE TO BE CORRECTED, WHEN CORRECTED AND REINSPECTED, THE BUILDING OFFICIAL WILL CHECK THEM OFF

Electrical

- ___ 1) All residences must be supplied by an electrical main, 100 amps minimum.
 - ___ 2) All residences must be provided with an exterior main service disconnect.
 - ___ 3) All exposed romex wiring must be protected from physical contact if it is located at 8 feet or less in height.
 - ___ 4) All splices must be within junction boxes.
 - ___ 5) All Edison-based fuses must be replaced with Type S fuses.
 - ___ 6) Electrical panel must be labeled.
 - ___ 7) (Other) _____
-

Gas Appliances

- ___ 1) The gas service to all appliances must be provided with an epoxy coated, flexible gas connector. Provide one for _____
 - ___ 2) All flues shall be maintained in good order and not leak at joints or couplings. Repair the flue for the: _____
 - ___ 3) Provide a pressure relief valve (PSI) to the hot side of your water heater piping or to the appropriate provided connection.
 - ___ 4) The pressure relief valve needs a full diameter metallic overflow to the exterior of the building and down to within 6 inches from grade.
 - ___ 5) Provide an earthquake strap for your water heater.
 - ___ 6) (Other) _____
-

Plumbing

- ___ 1) Replace the worn "p" trap under the sink in the _____

- ___ 2) Provide an air gap separator for the dishwasher waste line.
- ___ 3) Provide proper venting for the drain _____
- ___ 4) Contact Environmental Health Dept. at (415)499-6907 regarding:

General

✓ (1)

ALL STAIRWAYS (interior and exterior) with four or more risers shall be provided with a handrail, 1-1/2" to 2" in cross sectional dimension, the shape shall provide an equivalent gripping surface and shall be placed 34 inches to 38 inches above the stair nosing. Ends shall be returned or shall terminate in newel posts or safety terminals.

- ___ 2) All areas that have a 30" drop such as decks or landings shall be provided with a guardrail 36" in height with openings not greater than 4".
- ___ 3) Provide smoke detectors to all sleeping areas.
- ___ 4) The area around your pool or spa must be provided with a continuous, solid, non-climbable fence, 6' in height and all gates into the area must be self-closing and self-latching, with the latch no lower than 4' high.
- ___ 5) Provide a spark arrestor for your chimney with screening, 1/2" openings maximum.
- ___ 5A) Remove tree limbs within ten feet of chimney (if 24" or more in circumference, a tree permit must first be granted. contact Town Hall for tree cutting permit application.
- ___ 6) Post your address in numerals at least three inches in height and in a contrasting color so that it is clearly visible from the street.
- ___ 7) The required firewall must be provided and maintained between the garage and your dwelling. Repair holes in sheetrock and tape where necessary.
- ___ 8) The door between your dwelling and your garage must be a 1-3/8" solid wood door, and be self-closing.

Additional Requirements/Comments

Structural

- ___ 1) The foundation shows extensive cracking and distress. It is recommended that a licensed architect or engineer be employed to analyze the structure.
- ___ 2) The fireplace chimney appears to be unreinforced masonry construction. It is recommended that a licensed architect or engineer be employed to analyze the structure.
- ___ 3) (Other) _____

Town of Fairfax Residential Resale Inspection Report for 9 SCENIC AVE

PLEASE NOTE:

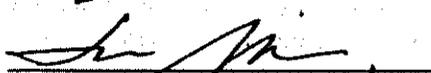
The circled corrections must be made within 30 days. Contact the Building Department to schedule a reinspection appointment for completed items to be checked off. There is no fee for the reinspection. However, should the items not be corrected at the scheduled second visit, or should the owner(s) or their representatives fail to be present on site, an additional \$60.00 will be charged for the third visit to the property.

Date inspection made 10/29/94



Building Official

Date corrections made 10/31/94



Building Official

Zoning and uses of property observed during on site inspection.

Please note that all measurements are estimates.

1. PRESENT USE: single family residence condominium
 duplex second unit
 multiple residence commercial
 accessory structures: height 15 ft. or less.

specify use: WORKSHOP WITH GAS HEATER AND WASHING/DRYER
NO BATHROOM, HOOK-UP

2. Number of structures: TWO

3. Number of stories: TWO

4. PARKING: (a) Number of spaces: THREE

(b) Number of covered spaces: 0

(c) Size of spaces (visual, not surveyed) 10' X 20'

(d) Location of parking (visual, not surveyed):

On private property In city right-of-way

In front yard setback In side yard setback

5. Setbacks - approximate number of feet between structure and property line:

Front yard 12' Side yards 10' & 5'
Back yard 10' Creek setback _____ (as measured from edge of bank)

Property: Sloped [up/down]
Flat _____

6. Fences and/or retaining walls:

Front: (fence / wall) height: 6'

Sides: (fence / wall) height: 8' & 6'

Rear: (fence / wall) height: 8'

ZONING AND PLANNING INFORMATION

1. Zoning:

Conforming (Means that the structures and uses are in accordance, without exception, to current zoning law.)

Conforming by use permit or variance (Means that the structure and use are in accordance with current zoning law with exception to that law as granted by use permit or variance.)

Expiration date: _____

Legal, Non-conforming (Means that the structures and uses are in accordance with a previously adopted zoning ordinance, which is different from existing zoning law.)

Non-conforming features: parking; setbacks; lot size

Illegal, Non-conforming (Means that the structure and/or uses are not in accordance with existing or prior zoning laws and must be corrected by abatement of the non-conformity.)

Illegal, Nonconforming features: 8 ft^{high} fences on side & rear property lines

Required Zoning Action: fences must either be cut down to left on height or owners must obtain a fence height variance from the Fairfax Planning Commission

Parcels merged? NA

Report completed by: S. Deal Date: 10/26/94
Planning Staff

THE LAW REQUIRES THAT, PRIOR TO THE CONSUMMATION OF THE SALE OR EXCHANGE OF PROPERTY, THE SELLER MUST DELIVER THIS REPORT TO THE BUYER(S), AND THE BUYER(S) MUST SIGN AND RETURN THE ATTACHED POSTCARD TO THE FAIRFAX TOWN HALL. This report will not be considered complete until 1) the postcard is signed and returned to the Town of Fairfax; and 2) the report is signed off by the Building Official on page 7.



TOWN OF FAIRFAX
BUILDING & PLANNING DIVISION

142 Bolinas Road, Fairfax, California 94930
(415) 453-1584 / Fax (415) 453-1618

September 29, 2010

Dolores Cordell
9 Scenic Road
Fairfax, CA. 94930

Re: 9 Scenic Road, Fairfax, CA 94930

Dear: Ms. Cordell,

Attached is the Resale Inspection Report and acknowledgement card, which you requested for the above referenced property. The acknowledgement card must be completed and returned to the building department at the time of sale of the property. Most important is the information pertaining to the party responsible for performing the necessary work to bring the property up to health and safety code requirements. These requirements must be completed within 30 days of the sale of the property unless otherwise specified by this department.

Please contact me at 453-1584 after the work has been completed to arrange for a follow-up inspection or if you have any questions about the report.

Sincerely

Building Inspector

EXHIBIT #

C

BUILDING CODE INSPECTION REPORT

The purpose of the following inspection is to identify any building deficiencies that are unsafe. It is not the purpose of this inspection to evaluate craftsmanship or require work done under old codes to be brought up to today's codes **unless a safety and/or permit problem(s) exists**. This report does not address termite damage; this problem must be analyzed by a private termite repair service.

This inspection is performed for general compliance to the Uniform Housing Code and does not imply or intend to imply any warranty to the subject structure. This inspection does not cover engineering for soils, geotechnical, drainage, foundation, structural, or any related areas. It is recommended that any party with concerns about these or any other items contact an architect or engineer licensed by the State of California for that specific area of concern.

Building permits issued for: 9 Scenic Rd., Fairfax, CA 94930

Date:	<u>7/20/79</u>	Description:	<u>Single-family dwelling</u>	Number:	<u>1413</u>
Date:	<u>8/1/79</u>	Description:	<u>Electrical/plumbing - new sfd</u>	Number:	<u>1424</u>
Date:	<u>7/29/80</u>	Description:	<u>Accessory building</u>	Number:	<u>1762</u>
Date:	<u>12/12/88</u>	Description:	<u>Misc. insulation/repair</u>	Number:	<u>18929</u>
Date:	<u>12/15/88</u>	Description:	<u>New gas heater</u>	Number:	<u>8945</u>
Date:	<u>9/21/10</u>	Description:	<u>New furnace</u>	Number:	<u>10-243</u>
Date:	<u>9/21/10</u>	Description:	<u>Bathroom remodel</u>	Number:	<u>10-244</u>
Date:		Description:		Number:	

PHYSICAL INSPECTION OF PROPERTY

The physical inspection of the property is limited to visual site observation at the time of inspection. Please note that all measurements are estimates and this information is based on a limited investigation.

Present Use

Single Family	<input checked="" type="checkbox"/>	Stories:	<u>2</u>	Structures:	<u>2</u>
Condominium	<input type="checkbox"/>				
Duplex	<input type="checkbox"/>	Parking Open:	<u>2</u>	Covered:	
Second Unit	<input type="checkbox"/>				
Multiple Residence	<input type="checkbox"/>	Parking:	Private	Public	
Commercial	<input type="checkbox"/>	Spaces:	<u>2</u>		
Accessory Structure	<input checked="" type="checkbox"/>				
		Setbacks:	<u>Side</u>	<u>Front</u>	<u>Back</u>
Accessory Use: <u>room with bath</u>			<u>Fencing</u>	<u>Front</u>	<u>Side</u> <u>Rear</u>

Additional Comments: Construction of the bathroom in the accessory structure was done without permits. The structure is currently approved for use as a workshop/laundry room only. Bathroom must be removed or must be legalized through issuance of a Use Permit and building permit from the Town. There will be penalty fees because the work was done without the required approvals/permits.

X

PROJECT DESCRIPTION: FULL BATH & STORAGE AREA IN STUDIO.
NOTE: STUDIO WAS THE ORIGINAL HOUSE ON THE PROPERTY

GENERAL INFORMATION (if applicable):

Item	Existing	Proposed
Lot size	3,575 - PER ASSESSOR	N/A
Size of structure(s) or commercial space (square feet)	1,344 + 400	N/A
Height and No. of stories	2 STORY MAIN - 1 STORY STUDIO	N/A
Lot coverage	1168	N/A
No. of dwellings units	1	N/A
Parking ¹ No. of spaces	3	N/A
Size of spaces	2 SPACES: 30' X 17' 1 SPACE: 17' X 8'	N/A

Amount of proposed excavation and fill	Excavation = NONE	Fill = NONE
--	-----------------------------	-----------------------

Estimated cost of construction \$5,000

Lot Coverage is defined as the land area covered by all buildings and improvements with a finished height above grade and all impervious surfaces except driveways.

¹Minimum parking dimensions are 9' wide by 19' long by 7' high. Do not count parking spaces that do not meet the minimum standards.

Restrictions: Are there any deed restrictions, easements, etc. that affect the property, and, if so, what are they? NONE

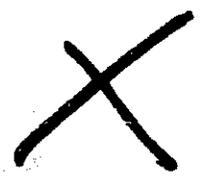
[Signature]
Signature of Property Owner

[Signature]
Signature of Applicant

Oct 25, 2010
Date

Oct 25, 2010
Date

Planning Department staff is available by appointment between 8:30 a.m. and 12:00 noon and 1:00 p.m. and 5:00 p.m. Monday through Thursday at 142 Bolinas Road, Fairfax, CA. (415) 453-1584



Use Permit application attachment page 1

Use Permit Applications - Additional information required.

- > A written description of the proposed use, major activities, hours of operation, number of employees on the premises during the busiest shift and when the busiest shift is expected and other information pertinent to the application.
- > Floor plans must include location of any special equipment.
- > Designate customer, employee and living areas.
- > If different uses are included in this activity, for example storage, retail, living space, etc. Indicate square footage of each proposed use.

In order to approve your project, the Planning Commission must make findings of fact which state that the project will not have a negative impact on the general public welfare, conforms with the policies of the Town, does not create excessive physical or economic impacts on adjacent property and provides for equal treatment with similar properties in Town.

In the space below, please provide any information which you feel is relevant to these issues and which further explains your project.

THIS IS A USE PERMIT TO LEGALIZE A BATH ROOM INSTALLED IN 1975,
("STUDIO")
IN AN EXISTING STRUCTURE THAT WAS PART OF THE ORIGINAL
HOUSE ON THE LOT. AT THE TIME OF INSTALLATION THE "STUDIO"
STRUCTURE ALREADY HAD A SOIL PIPE, WATER HEATER, HOT &
COLD WATER LINES, AND A GAS HEATER & GAS LINE.



The final disposition of each use permit shall be in accordance with the facts of the particular case, and such facts must support the following determinations and findings before a use permit may be approved. Indicate how the findings below can be made:

- > 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.

THERE ARE SEVERAL 2ND UNITS IN THE NEIGHBORHOOD: EG. 25+25A SCENIC; 34+34A SCENIC; 17 SEQUOIA (3 UNITS); 27 SEQUOIA, 61 SCENIC/75 SEQUOIA(?); 10+10A SCENIC. THE COUNTY OF SCENIC + ABILEA HAS MULTIPLE UNITS ON 2 OF THE 4 CORNERS. THERE ARE OTHER 2ND AND 3RD UNITS IN THE NEIGHBORHOOD.

The development and use of property, as approved under the use permit, shall not create a public nuisance, cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects thereto, or create undue or excessive burdens in the use and enjoyment thereof, any or all of which effects are substantially beyond that which might occur without approval or issuance of the use permit.

THE BATH ROOM HAS BEEN IN USE WITHOUT INCIDENT SINCE 1995.

- > Approval of the use permit is not contrary to those objectives, goals or standards pertinent to the particular case and contained or set forth in any master plan, development plan or other plan or policy, officially adopted by the town.

THE BATHROOM + STRUCTURE ARE CONSISTENT WITH THE USAGE AND SIZE OF THE NEIGHBORHOOD AND ZONING.

March 2, 2011

To: Planning Commission – Town of Fairfax
From: Dolores Cordell
Property: 9 Scenic Road
Hrg. Date: March 17, 2011
Issue: Use Permit for Studio

As requested, attached is a floor plan for the Studio structure at issue. This failed to copy as "Page 5 of 7" when I originally submitted the drawings for my application for a Use Permit in October 2010.

In addition, I wish to take this opportunity to correct a misconception about the Resale Report I received in 1994. I want to make it clear that I did not believe that the Report informed me that I could not install a bathroom in the Studio. The only reference to the Studio is on page 8 of the Report and it states in full:

"Zoning and uses of property observed during on-site inspection. [Emphasis added]

...
"1. PRESENT USE: v single family residence

...
v Accessory structures: Height 15 ft. or less

"Specify use: Workshop with gas heater and washer/dryer hook up. No bathroom."

I do not want the Commission to be left with the impression that the former inspector who underlining the word "no" somehow gave me notice that no bathroom was allowed. Merely underlining "no" simply did not express any such limitation. With all respect, I do feel I'm entitled to expect government officials to communicate with me in English, not squiggles!

At no point does the Resale Report state that a bathroom could not be installed in the Studio. The Resale Report does NOT say: "No bathroom allowed" or "No bathroom permitted" or "Bathroom cannot be installed." All it says is that under the "Present Use", the "Accessory Structure" has "no bath", which was a correct statement at the time.

Finally, as of today's date, the hearing before the Fire Board regarding the Fire Department's directive for the installation of fire sprinklers in the Studio is still pending. The matter will be heard on March 10, 2011, and I therefore anticipate having a decision prior to the March 17, 2011 hearing on the Use Permit.

Thank you for your time and attention to this matter.

Sincerely,



Dolores Cordell

TOWN OF FAIRFAX

MAR 11 2011

RECEIVED

To: Planning Commission, Town of Fairfax
From: Dolores Cordell
Re: 9 Scenic Road, Fairfax, CA – Fire sprinklers in Studio
Hearing: March 17, 2011
[Submission date: March 11, 2011]

SUPPLEMENTAL STATEMENT

ISSUE: This Supplemental Statement is addressed to the issue of installation of fire sprinklers in the Studio at 9 Scenic Road. The installation of the sprinklers was made a part of the Staff Report following a directive of the Ross Valley Fire Chief for installation as a condition of granting a Use Permit for the use of the Studio as living space.

FIRE BOARD HEARING: On March 10, 2011, my appeal of the Fire Chief's directive was heard before the Ross Valley Fire Board. (This Planning Commission hearing on the Use Permit was continued pending the Fire Board hearing.) The appeal requested that the Board find that the installation of sprinklers in the 400 square foot detached Studio should be waived.

At the hearing the Board was informed by legal counsel that it was not within the Board's legal jurisdiction to grant such a waiver since that would require making a determination as to whether or not there was a "change in use" of the Studio from a "workshop" to residential use such that the code would require the sprinklers. Thus, for purposes of the Board hearing, the only information on "use" from the Town of Fairfax was that contained in the Fairfax Staff Report.

Based on that Staff determination, the Board upheld the Fire Chief's decision by a slim margin: only 2 Board members voted to uphold the installation requirement, 1 opposed the installation, and 1 abstained. Since the Board could NOT make the determination regarding whether there has been a "change in use" of the Studio, it was agreed that the decision on this point – and hence whether sprinklers were required – was reserved to the Fairfax Planning Commission, and ultimate the Town Council

NO CHANGE IN USE: As will be discussed in the attached, there has not been a FACTUAL change in the use of the Studio – the Studio was built as the original residence on the property and used as a residence for over 50 years. It was extensively rehabbed in the 1980's, with all of the necessary Town permits, and has been used as residential space without complaint or incident for the last 15 years.

ATTACHMENTS: Attached is a copy of my statement to the Fire Board regarding the unique history and use of the Studio, together with the Statement of Peter Coyle, a general contractor, regarding the excessive cost and destruction that would attend the installation of the sprinklers in this small building – at least \$11,000 plus \$4,000 for a new water line hook up with the Town water main, i.e. \$15,000 for sprinklers in a 400 square foot building.

The Fire Board hearing was only held last night (March 10) and only then did the issue of usage become clear. Since the Planning Commission hearing is imminent, I would request that the

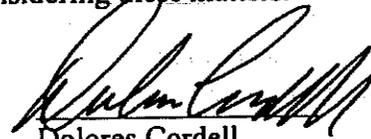
Commissioners consider the attached and the information contained in it even though not all of it will be necessary to the Commission's decision at this point.

In the interests of saving paper and bulk, I have not included most of the Exhibits referenced in the attached Statement since those are already in the materials provided to the Commissioners. However, I have included photographs of the exterior and interior of the Studio (the Commission already has photos of the bathroom and closet at issue.)

FAIRNESS & DISCRETION: I am aware that the Fire Chief felt constrained by his mandate and local ordinances in his decision making. The Fire board review of the Chief's decision was likewise constrained by the scope of its mandate. Nonetheless, the dissenting opinion of Fire Board member and Fairfax Town Council member Lou Tremaine points to the central issue: The limits of statutory language here leads to unfairness.

Accordingly, the role of the Planning Commission and the scope of its mandate are quite different and its discretion to achieve a fair result here is not constrained by the Fire Board review.

~~Thank you for your time, attention and community service in considering these matters.~~


Dolores Cordell

APPEAL BEFORE THE ROSS VALLEY FIRE BOARD

RE: 9 SCENIC ROAD, FAIRFAX, CA

Appeal from Denial of Waiver re Installation of Fire Sprinklers

Appellant: Dolores Cordell

Date of Hearing: March 10, 2011

The history, details and legal issues regarding this appeal are lengthy. However, in view of the costs involved, I believe I need to cover all of the facts and issues in order to preserve my legal rights. Accordingly, please forgive the length of this statement.

SUMMARY OF FACTS & ISSUES

This appeal is a request for a waiver from an order of the Ross Valley Fire Department that built-in fire sprinklers be installed in a 400 square foot building ("Studio") at 9 Scenic Road on the "flats" of Fairfax ("Property") as a condition of granting a Use Permit for residential occupancy of the Studio due to the 1995 installation of a bathroom without permit.

The Fire Department's basis for the order is that Section 903.2 (10) of the Fairfax Code requires the installation of sprinklers in any building where the "use" of "more than 50%" of its square footage is changed to a "use" with a higher fire or life safety risk. However, as will be made clear, there has been no change in the factual or legal residential use of the Studio as defined by the Fairfax Code itself. As a consequence, section 903.2(10) has been incorrectly applied to this situation.

The following points should be strongly noted, all of which will be explained further, below:

- 1) **Fairfax Code's Definition of "Use"**: The only definition of "use" in the Fairfax Code is found in its Definitions in section 17.008.020. The definition of "use" is not defined as "legally permitted use" or an "authorized use". All the Code defines as a "use" is:
 - (1) (a) Any purpose for which a building or other structure or tract of land may be designed, arranged, intended, maintained or occupied; or (b) Any activity, occupation, business or operation carried on, or intended to be carried on, in a building or other structure or on a tract of land. (2) To *USE* means to convert to one's service.¹ [Emphasis added.]
- 2) **Studio History**: The Studio was built and used as a residence for over 50 years. Thus, the Studio has a long history of residential "use."
- 3) **Studio's Residential Amenities in 1994**: When I purchased the Property in 1994, the Studio had the following residential amenities:

¹ This is the only definition of "Use" I have found in the Fairfax Code.

- Gas wall heater (fully functioning)
 - Hot water heater (in the Studio basement – fully functioning)
 - Washer/dryer hook up (in use)
 - French doors to the front of the Studio (double-paned insulated)
 - Three other exterior doors, 1 front, 2 in back (2 double-paned insulated)
 - Five skylights
 - Six exterior windows (double-paned insulated)
 - Wired-in ceiling fan with wall switch (fully functioning)
 - Electrical switches and outlets (fully functioning)
 - Finished interior walls, ceiling and floor
 - Front exterior deck of approximately 60 square feet, with two sets of exit stairs
 - Sound wood shingle roof (replaced with Class A composition in 2003)
- 4) **Less Than 50% Change in Use:** The bathroom uses less than 25% of the square footage of the Studio, and therefore does not constitute a “change in use” of more than 50% of the building. Thus, subsection 10 of Fire Code 903.2 does NOT apply.
- 5) **Costs & Destruction of Installation:** Installing fire sprinklers would result in²:
- Tearing up the city street to hook a new 1 ¼ “ pipe to the water main
 - Tearing up 60 feet of the front of the Property, including going through a field stone retaining wall, several feet of planting, and 20 feet or more of decking. In addition there is a well-established coastal oak in the path of the work.
 - Tearing out paneled walls in the Studio, all resulting in:
 - Construction and installation costs which could easily exceed \$11,000, plus
 - A \$4,000 fee to hook up the new 1 ¼ “ pipe to the water main
 - Finally, as all home owners know, few construction projects are without costly “surprises.”
- 6) **Residential Use is Safer:** Even if Section 903.2(10) is applicable, that section only requires that sprinklers be installed “when there is a change in the use of the structure that results in a higher fire or life safety exposure.” **Emphasis added.]** In fact, using the Studio as living space is SAFER than using it as a “workshop.”
- 7) **No Precedent:** Because the Property and Studio have an unusual and unique history, structure and location, granting of a fire sprinkler waiver under the conditions and circumstances presented here would NOT set a precedent for waivers in future cases.

² See Statement of Peter Coyle, general contractor. Mr. Coyle will be present at the hearing to answer questions.

Since the "use" of the Studio – as defined by the Fairfax Code – has been residential for decades, the mere installation of a bathroom – which affects less than 25% of the Studio's square footage - should not require tearing up the Property, the streets or the building to install a sprinkler system whose utility will be at best marginal in this small residential building with 4 exterior doors.

THE FACTS

A. Property Location

This is a very accessible property, centrally located on the "flats" of Fairfax, less than ½ mile from the Fire Department (.41 miles). The Studio is a 20' X 20' structure, with 4 exterior doors. In 2003 a Class A "Presidential" fire retardant roof was installed on both the Studio and the main house and in 2004 the electrical panel was upgraded, both with permits. **Exhibit 1.** (All Exhibits are from the Fairfax building department files unless otherwise noted.)

The Studio is a considerable distance from the buildings on neighboring Properties: On the East side, the closest building from the Studio on neighboring property is approximately 41 feet away; on the West side, the closest building on neighboring property is approximately 50 feet away; on the South side, the closest such building is approximately 58 feet away. The front of the Property faces Scenic Road on the north. (See plot map prepared by me– **Exhibit 2.**)

B. Property History

Contrary to common situations in Use Permit applications, it is undisputed that the Studio at issue was **designed and maintained** as the residence at 9 Scenic Road, Fairfax ("Property") for at least 50 years. In 1979-80, a new main house was built and the original residence was then truncated to a 20 X 20 foot structure and completely renovated, turning it into what is now the Studio.³

In 1988, the Town issued permits for the remodeling and renovating of the Studio by the installation of clearly residential amenities [**Exhibit 3**]:

- Replacement of windows and doors with insulated glass
- Adding skylights
- Insulating the ceiling
- Covering the ceiling with tongue and groove pine
- Installation of a gas heater

³ Based on photos in the Fairfax files, substantial work was performed on what became the Studio, including a new foundation where the residence was truncated.

Apparently the Studio already had the washer/dryer hook-up, hot water heater, front deck, electrical outlets and switches, etc. set forth above.

In other words, when I purchased the Property in 1994, the Studio had a full complement of residential amenities, i.e. in all respects by 1994 the Studio was fully useable as living space. Clearly, from the front of the building, it presented as living space. [Exhibit 4 – my photo of the front of the Studio.] All the Studio required was a bathroom to make it more comfortable and convenient. This was not a shed or garage converted to living space. This was a fully functional residential building. Anyone looking at it would assume that it could be used as such, and I did use it as my bedroom from the time I moved in 1994.

C. Installation of Studio Bathroom in 1995

Due to the clear livability of the Studio, in 1995 I installed a lovely bathroom and closet the. [See enclosed color photos of Studio bath, closet, and living area - Exhibit 5], and moved the washer/dryer hook up to a corner of the building to form a separate laundry room. These changes impacted less than 25% of the total building. Enclosed is a copy of the floor plan for the Studio showing the layout of the Studio, including the bath, closet and washer/dryer area [Exhibit 6.] ~~The bathroom itself is open to the ceiling and for the most part the Studio remains an open room with minimal interior walls.~~

Please note that no new sewer line was required for the Studio bath. The plumber who did the installation of the toilet informed me that the "soil pipe" needed for the toilet was *already in place*. In other words, everything was in place as one would expect in a residential building, including the waste removal pipe and all of the other amenities one would expect in a living space, e.g. windows, doors, hot water, heater, electricity, etc.

D. Application for Use Permit

In September of 2010 I was informed by the Town of Fairfax that I should have applied for a Use Permit. My fault was in not applying for a building permit for the bathroom in 1995, and I confess to not having done so. (See section 2 E regarding this issue.) However, in connection with my sale of the Property to Ken & Shaun DeMont late 2010, I did apply for the permit and it was then that I was informed that I would first have to apply for a Use Permit because the Studio was not supposed to be living space.⁴

It should be noted again that while the Town is requiring a "Use Permit" the Fairfax Code does NOT define "use" as a use which requires a permit. Accordingly, the meaning of the term "use" as in "Use Permit" is NOT the same meaning as the definition of "use" applicable to section 903.2 (10). As set forth above, "use" is only defined by the Code in terms of how the property

⁴ Although the DeMonts are now the owners of the Property, I am contractually obligated to obtain a permit for the bathroom in the Studio.

is in fact used. More significantly, section 903.2 (10) does NOT refer to a legally permitted use as the basis for requiring sprinklers. It only refers to a change in "use", i.e. the factual use of the property as defined by the Code in its section on Definitions.

The application for the Use Permit was filed in October 2010, and is currently awaiting a conclusion of all proceedings involving the fire sprinkler system. The Fairfax Staff Report supports the granting of the Use Permit. However, as part of the conditions for granting it, the Staff is of course including the Fire Department's report which states that a built in sprinkler systems and alarm system is required by Section 903.2 (10) on the grounds that more than 50% of the building use is being changed, i.e. the Studio itself would now be declared "living space." [Town of Fairfax Staff Report dated November 18, 2010]

The hearing on the Use Permit has been continued pending the resolution of the issues regarding the fire sprinklers.

2. REASONS FOR THE WAIVER

A. SINCE THE STUDIO HAS BEEN USABLE AS AND IN FACT HAS BEEN "USED" AS RESIDENTIAL SPACE SINCE 1994, NO FIRE SPRINKLERS ARE REQUIRED

According to section 8.04.130 of the Fairfax Fire Code, the standard to be used in evaluating this appeal are that 1) "the provisions of the [Fire] Code do not apply" or that " 2) the true intent and meaning of the Code have been misconstrued or wrongly interpreted." In this case, the plain meaning of section 903.2 (10) has been wrongly interpreted as meaning that sprinklers are required if a legally permitted use of a building has changed.

But that is NOT what subsection 10 says. All it says is that sprinklers are required when there is "A change in the use of a structure that results in a higher fire or life safety exposure when the square footage of the area changing use is more than 50% of the square footage of the building." If the Town had meant to say that the sprinkler were required if there was a change in the legally permitted use of a structure, undoubtedly it would have said so. But the Town Code does not say that.

Neither the Code's general definition of "Use" nor section 903.2 defines "Use" to mean a use for which a permit must be issued. Both sections just refer to HOW a property is used. In this case, the Property has been used as living space since at least 1994. Installing the bathroom did not change the "use" of the building for purposes of section 903.2 (10)

B. EVEN IF SUBSECTION 10 APPLIES, LESS THAN 50% OF THE STUDIO HAS IN FACT CHANGED IN ITS USE

By its own terms, subsection 10 only applies "when the square footage of the areas changing use is more than 50% of the square footage of the building". In this case, less than 50% of the Studio

square footage changed "use" – the bathroom, closet and laundry use less than 100 square feet of the 400 square foot structure, i.e. less than 25% of Studio.

Accordingly, under the terms of subsection 10, it is not applicable to the Studio because less than 50% of the building was changed by installing the bathroom.

C. RESIDENTIAL USE OF THE STUDIO IS SAFER THAN USE OF THE STUDIO AS A WORKSHOP

For subsection (10) to apply, there must also be a finding that the new "use" creates greater fire or life safety risk. The Staff Report for the Use Permit describes the Studio as only being permitted as a "workshop / laundry room." The Fire Department then concluded that residential "use" created a greater risk. However, I would request that the Board consider the following:

If the Studio was used as a "workshop" it would risk introducing into a building with a GAS wall heater and pilot, flammable materials such as solvents, paints, wood shavings, plaster dust, and perhaps even tools that spark, all in the presence of natural gas.

As a residential structure, it is far less likely that a fire will be started inside of the Studio since residents will be using it frequently and therefore can observe what is going on in the building. Moreover, if there is a fire, it is more likely that it will be noticed sooner and action taken faster. In the meantime, the 4 exterior doors insure that one or more exits in this small building are readily accessible for escape by residents, thereby making the risk to life unlikely.

Indeed, since 1994 the Studio was in continuous use as my bedroom or that of my family and overnight guests without incident.

Understandably, fire sprinklers would be a reasonable and sensible precaution under other, common circumstances. For example:

- IF the Studio did not have adequate exits (it has 4 exterior doors); or
- IF the Studio had been converted from a non-residential building, such as a shed or garage (it was built as a residence and even rehabilitated and improved thereafter); or
- IF 9 Scenic were in a difficult to reach hillside area (it is on the "flats" less than a ½ mile from the Fire Department); or
- IF the Studio were a two story building; or
- IF the Studio had a hallway blockable by fire (there is no hallway); or
- IF the Studio was a Second Unit, i.e. had kitchen (Fairfax Code section 17.048.030 defines "Second Units" as one with a kitchen.)

None of these characteristics are applicable to the Studio. If they were, then the sprinklers would be a sensible and reasonable precaution to protect life and property. But under the unusual and probably unique circumstances of 9 Scenic, the disruption and costs cannot be justified under the

plain language of 903.2(10), i.e. even if there is a "change in use", that use does not result in a "higher fire or life safety exposure."

D. EVEN IF THE "USE" HAS CHANGED, THE APPLICABLE SUBSECTION OF 903.2 IS SUBSECTION (3), NOT SUBSECTION 10

Because of the unique history of the Studio, if any Code section applies, it should be Fairfax Fire Code section 903.2 (3), not (10). Subsection (3) states that sprinklers shall be installed:

3. In all building which have more than fifty percent (50%) floor area added OR any "substantial remodel"⁵ as defined in the Fire Code, within any 12 month period. **Exceptions may be granted by the Fire Chief when alternative means of protection are installed as approved by the Fire Chief. [Emphasis added.]**

It is clear that the "true intent and meaning" of the Code is to allow a waiver when "alternative means of protection are installed" because merely remodeling a "structure" should not necessarily trigger the disruptive and costly requirement for fire sprinklers. The Studio was in fact "substantially remodeled" in 1988 and the addition of a bathroom in 1994 affected less than 50% of the square footage of the building.

Interpreting 903.2 any other way leads to an odd result i.e., if I had ADDED an additional 200 square feet to the Studio, a waiver of the fire sprinkler requirement would have been available under subsection 3. But because I merely installed a bathroom in existing space, a waiver is not available because of subsection 10. Clearly it could not be the intent of the Code section to impose MORE restrictions on a citizen making a small modification to a structure than to a citizen who has increased or even doubled the size of a structure!

The Studio has the smoke alarms required by law. This has sufficed for the last 15 years. With that history in mind, it is clear that the alarms are and have been an "alternative means of protection" which have, in fact, been in effect "approved" by the Fire Chief. **Moreover, a wired**

⁵ "Substantial remodel" is defined in § 8.04.100 as follows:

"Substantial Remodel shall mean the renovation of any structure, which combined with any additions to the structure, affects a floor area which exceeds fifty percent of the existing floor area of the structure within any 12 month period. When any changes are made in the building, such as walls, columns, beams or girders, floor or ceiling joists and coverings, roof rafters, roof diaphragms, foundations, piles or retaining walls or similar components, the floor area of all rooms affected by such changes shall be included in computing floor areas for the purposes of applying this definition. This definition does not apply to the replacement and upgrading of residential roof coverings." [Emphasis added]

in fire alarm the Fire Chief has also required would easily meet the test of an 'alternative means of protection.'

E. THE NOTICE OF LIMITATIONS ON USE WERE NOT GIVEN AS INTENDED BY THE FAIRFAX RESALE REPORT

Although it may not be entirely relevant to this appeal, I do want to make the point that I was NOT inform by the Town that I could not install a bathroom in the Studio.

The Fairfax Code requires that a Resale Report be given to a purchaser of real property in the Town. § 15.08.010. The very purpose of the Reports is stated as follows:

INTENT. Pursuant to the provisions of Cal. Gov't Code §§ 38780 to and including 38785, it is the intent of the Council to assure that the grantee of a residential building within the town is furnished a report of matters of town record pertaining to the authorized use, occupancy and zoning classification of real property prior to sale or exchange. It is the further intent to protect the unwary buyer of residential property against undisclosed restrictions on the use of the property. [Emphasis added]

However, the Resale Report I received in 1994 did not comply with this "intent". Despite a boilerplate disclaimer on the first page, all that is stated in the Report under "zoning and uses" is the following (Exhibit 7- Resale Report – at page 8):

"Zoning and uses of property observed during on-site inspection. [Emphasis added]

...

"1. PRESENT USE: v single family residence

...

 v Accessory structures: Height 15 ft. or less

"Specify use: Workshop with gas heater and washer/dryer hook up. No bathroom."

Apparently the Town believes that the former inspector who underlining the word "no" somehow gave me notice that no bathroom was allowed. With all respect to the good Staff of Fairfax, I do feel I'm entitled to expect government officials to communicate with me in English, not squiggles!

At no point does the Resale Report state that a bathroom could not be installed in the Studio. The Resale Report does NOT say: "No bathroom allowed" or "No bathroom permitted" or "Bathroom cannot be installed." All it says is that under the "Present Use", the "Accessory Structure" has "no bath", which was a correct statement at the time.

An underline really should not be given the status of legal notice. If the Town intended to prohibit a bathroom from being installed, it could have easily said so in the Resale Report or

have recorded a deed restriction so that I would have received notice in my title report. Unfortunately, it didn't do so.

**F. REQUIRING FIRE SPINKLERS UNDER THESE CIRCUMSTANCE
WOULD BE UNDULY PUNITIVE**

Although I would have learned of the restriction if I had applied for a permit in 1995 – which was prior to the enactment of section 903.2 - the only penalty the Town Code sets forth for failure to obtain a permit is that the application fees for a Use Permit and for a building permit are tripled. I have paid the triple fees (of almost \$2,800) to apply for the Use Permit. Assuming the Use Permit is granted, I will have to pay triple fees for the permit to issue.

To increase the “penalty” by imposing an addition expenditure of as much as \$15,000 (possibly more if there are the almost certain “surprises”) would simply be punitive. That is not what the Fairfax Code requires and to impose such a condition and its excessive costs under the unique circumstances of this case seems neither fair nor reasonable.

CONCLUSION

The Studio at 9 Scenic was designed, built and used as a residence for decades prior to the building of a new main house. Its use is and remains residential, which includes the many residential upgrades approved in 1988.

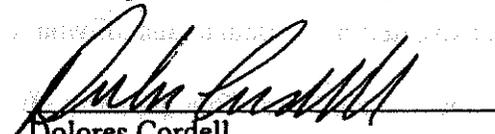
Given the location of the Property and structure of the Studio, there is no greater risk of fire or life safety than there has been for the decades the structure has been on the Property, both before and after its transformation into a Studio. In other words, under Code section 903.2 (10) there is no evidence that the continuing the use of the Studio for residential purposes will result in any greater risk to any person or property.

This is not a multi-story building or a fire trap. It is a 400 square foot building with 4 exterior doors. It is on the “flats”, close to the fire department and relatively distant from neighboring structures.

I therefore request that the Board find that there is no greater risk in continuing this use and therefore no built-in sprinklers are required under Code section 903.2. In the alternative, I would request that the Board find that section 903.2 (3) rather than section (10) is applicable and that the installation of a fire alarm – either free standing or wired in – is adequate under the circumstances.

Thank you very much for your public service, attention and patience in reviewing this matter.

February 24, 2011


Dolores Cordell

Statement of Peter Coyle

I, Peter Coyle, declare:

1. I have been a licensed general contractor in the State of California since 1991, license number 735345, and a principal of Coyle Brothers Construction Company, Inc., which works principally in Marin County, California. Address: 51 Sunview Avenue, San Anselmo, CA. Telephone: 415-454-1633. All of the facts below are within my personal knowledge.
2. During my years as a general contractor, I have worked on numerous projects involving the installation of automatic fire sprinklers, and am familiar with the problems which accompany their installation.
3. The actual installation of the fire sprinklers themselves is not necessarily a difficult task in most buildings. However, sprinkler installation also involves additional issues such as a) the size of the water line running from the street to the house; b) location of shut off valves; and c) hook up of the new sprinkler feed line to the structure in which the sprinklers are installed.
4. The installation of the fire sprinklers themselves is normally about \$3,000 in a building of less than 500 square feet. However, the cost of the other items involved in installation can be substantial and far more expensive than the installation of the sprinklers themselves, as well as being very disruptive to the land and buildings.
5. I am familiar with the property located at 9 Scenic Road, Fairfax, California, and have investigated the work and cost of what it would require to install sprinklers in the studio structure at the front of the property. Because of the geography involved, the exterior of the

property, the requirements of fire sprinkler installation companies, and the structure of the Studio itself, installation of fire sprinkler in the Studio would be very costly and disruptive.

6. I have worked with numerous fire sprinkler companies in Marin County and none of them will install a sprinkler line unless the line to the city water main is at least 1 1/4" in diameter. The Scenic line is 3/4" and would therefore have to be replaced. In addition, I am informed that the City of Fairfax charges \$4,000 in order to hook up such a new line.
7. After that, a new 1 1/4" water pipe for the sprinkler line would have to run from the "sidewalk" level water main shut off box in front of the property all the way to the front of the main house where the water main enters the house. The house is on a rise which is at least 60 feet from the water main shut off. Between the water main and the front of the house there is stone wall, well established ivy, and approximately 20 feet of decking. These would all have to be torn up to connect the sprinkler line with the front of the house. This requires substantial deck removal and digging a trench approximately 60 feet long through the entire front of the property.
8. At the point where the water line enters the main house, a valve would need to be installed to re-direct the line with the sprinkler system water into the Studio. This is because the code requires a set up preventing the sprinkler line from being turned off if water into the main house is shut off. It would also require that a valve be installed on the outside of the main house near the front door, on top of the existing deck.

Declaration of Peter Coyle

Re: 9 Scenic Road, Fairfax

Ross Valley Fire Board Hearing: February 10, 2011

Page 3

9. Once the valve near the front of the house is installed, the sprinkler line would then need to enter the studio and be installed within the walls.
10. The problem with fire sprinkler installation in the 9 Scenic Studio is that the walls and ceiling are all wood paneled and the ceiling is vaulted so that there is no attic space. As a consequence, the wood walls would have to be torn out to do the installation. Replacement and repair of the walls will be far more difficult and expensive than simply replacing dry wall. The wood will have to be cut out, replaced with new cut wood, nailed in, patched and painted. As opposed to simple reinstalling dry wall, the entire wood panels & trims (some of which are 8 feet long) will have to be replaced. In a building the size of 9 Scenic at least 4 sprinkler heads would be required.
11. In short, the cost of installation of the sprinklers themselves is a small part of the cost of the project, although even that installation would be much more difficult and expensive than normal because of the wood paneling. The substantial costs are in connection with the hook up to the city line and running the new line to the main house and then to the Studio. The sprinkler company does not do that work; that is the work of a general contractor such as myself.
12. Based on the location and nature of the property and the issues that must be addressed, it is my opinion as an experienced general contractor that the cost of such a project would be at least \$11,000, not including the \$4,000 for the hook up to the city sewer line. However, in any construction project there can be "surprises" that result in higher than anticipated costs.

Declaration of Peter Coyle

Re: 9 Scenic Road, Fairfax

Ross Valley Fire Board Hearing: February 10, 2011

Page 4

13. In view of the fact that the Studio is only 400 square feet, has 4 exterior doors, and is no closer than 40 feet, approximately, to the buildings on neighboring properties, the cost versus benefit of these sprinklers is simply not justified.

I declare that the foregoing is true and correct to the best of my knowledge and that this declaration was executed on February __, 2011.



Peter Coyle



Ross Valley Fire
Department

777 San Anselmo Ave
San Anselmo, Ca 94960
Ph. 415-258-4686

FIRE DEPARTMENT PLAN REVIEW

PROJECT: Legalize Conversion
ADDRESS: 9 Scenic Ave
Fairfax, CA 94930

Page: 1 of 2
Date: 10/27/2010
Reviewed by: Rob Bastianon
(415) 258-4673

TYPE OF REVIEW: Planning
Bldg. Dept. #

E-mail: Rbastianon@rossvalleyfire.org
Fire Dept. # 10-0238

Date Stamp #
Review No. 1

Fire Department Standards can be found at: www.rossvalleyfire.org

Applicant*: Planning
Address: Fairfax
Fairfax, CA

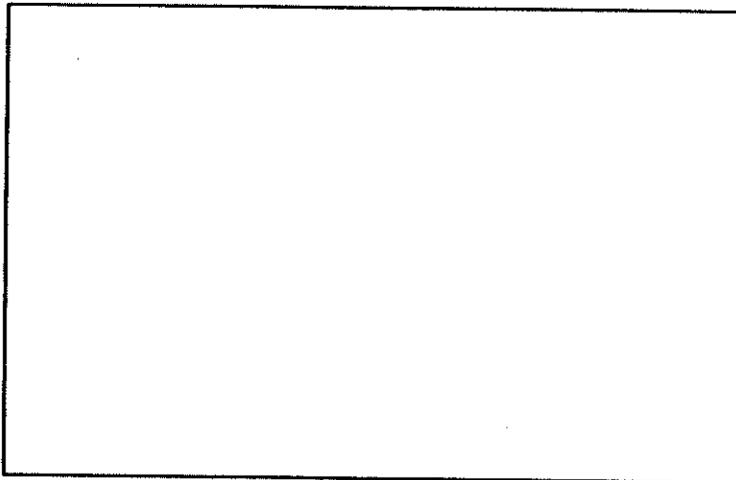
***Applicant is responsible for distributing these Plan Review comments to the Design Team.**

Occupancy Class: R-3	Fire Flow Req: 1000 GPM	Sprinklers Required: YES
Type of Construction: V-B	On-site Hyd. Req: NO	Fire Alarm Required: NO
Bldg Area: sf:	Turn-Around Req: NO	Permits Required: Sprinkler
Stories: 1	Fire Flow Test Required: NO	
Height: ft.	Wildland Urban Interface: NO	

The project listed above has been reviewed and determined to be:

- APPROVED (no modifications required)
- APPROVED AS NOTED (minor modifications required - review attached comments)
- NOT APPROVED AS SUBMITTED (revise per attached comments and resubmit)
- INCOMPLETE (provide additional information per attached comments and resubmit)

NOTE: Please review the comments and make corrections and/or add notes as required. Changes and/or additions shall be clouded and referenced by date on a legend. Approval of this plan does not approve any omission or deviation from the applicable regulations. Final approval is subject to field inspection. Approved plans shall be on site and available for review at all times.



Inspections required:

- Access/Water Supply prior to delivery of combustibles
- Defensible Space/Vegetation Management Plan
- Sprinkler Hydro/Final
- Final



Ross Valley Fire
Department

777 San Anselmo Ave
San Anselmo, Ca 94960
Ph. 415-258-4686

FIRE DEPARTMENT PLAN REVIEW

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E-mail: Rbastianon@rossvalleyfire.org

Bldg. Dept. #

Date Stamp #

Fire Dept. # 10-0238

Review No. 1

Fire Department Standards can be found at: www.rossvalleyfire.org

ITEM #	SHEET	COMMENTS	Corr. Made
1		<p>A fire protection sprinkler system shall be installed throughout the entire building which complies with the requirements of the National Fire Protection Association (NFPA) 13-D 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.</p> <p>Per Section 903.2 10. A change in use of a structure that results in a higher fire or life safety exposure when the square footage of the area changing use is more than 50% of the square footage of the building.</p>	
		<p>Submitter's Response: Correction has been completed. See Sheet _____ of <input type="checkbox"/>Plans <input type="checkbox"/>Calculations.</p>	
2		<p>All smoke detectors in the residence shall be provided with AC power and be interconnected for simultaneous alarm. Detectors shall be located in each sleeping room, outside of sleeping rooms centrally located in the corridor and over the center of all stairways with a minimum of one detector per story of the occupied portion of the residence.</p>	
		<p>Submitter's Response: Correction has been completed. See Sheet _____ of <input type="checkbox"/>Plans <input type="checkbox"/>Calculations.</p>	

**If re-submittal is required, all conditions listed above shall be included in revised drawings.
Fire and life safety systems may require a separate permit. Fire permits may be noted as deferred.**



ROSS VALLEY SANITARY DISTRICT

Serving the Greater Ross Valley Area for 110 Years

2960 Kerner Boulevard, San Rafael, Ca 94901

Ph: 415.259.2949 Fax: 415.460.2149

www.rvso.org

Brett N. Richards ~ General Manager

Directors: Marcia Johnson, President ~ Peter Wm Sullivan, M.D., Secretary ~ Patrick Guasco, Treasurer ~ Sue Brown ~ Pam Meigs.

October 25, 2010

TOWN OF FAIRFAX

OCT 28 2010

RECEIVED

Town of Fairfax
Dept of Planning and Building Services
142 Bolinas Road
Fairfax, CA 94930

Re: 9 Scenic Rd, Fairfax ; Assessor's Parcel No. 001-146-04

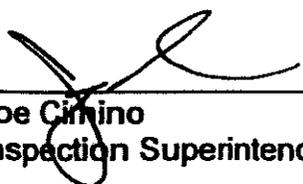
Dear Ms. Neal:

We are in receipt of your transmittal dated October 21, 2010 concerning the above-referenced project.

1. The sewer lateral serving the detached structure will have to meet District standards.
2. If not already installed, the District requires that the side sewer serving the existing structure be equipped with an appropriate backwater prevention device (e.g., Contra Costa valve, as warranted by the individual site conditions).
3. After the project is approved, the owner or contractor should contact the District to arrange for a District Inspector to approve the existing installation (or approve the plans for the proposed installation) of the backwater prevention device(s) and to make a record for the District's files.

Should you require additional information, please do not hesitate to contact this office.

Sincerely,



Joe Cimino
Inspection Superintendent



**MARIN MUNICIPAL
WATER DISTRICT**

TOWN OF FAIRFAX

NOV 01 2010

RECEIVED

220 Nellen Avenue Corte Madera CA 94025-1169
www.marinwater.org

October 26, 2010
Service No. 04806

Linda Neal
Town of Fairfax Planning Dept
142 Bolinas Rd
Fairfax Ca 94930

RE: WATER AVAILABILITY - Single Family Dwelling
Assessor's Parcel No.: 001-146-04
Location: 9 Scenic Rd., Fairfax

Dear Ms. Neal:

The above referenced parcel is currently being served. The purpose and intent of this service are to provide water to a single family dwelling. The proposed conversion of an existing detached workshop to living space will not impair the District's ability to continue service to this property, provided it is not plumbed and wired for a kitchen and/or considered a second living unit.

Compliance with the District's Water Conservation Ordinance 414 is a condition of water service. Plans shall be submitted, and reviewed to confirm compliance. The ordinance requires a landscape plan, an irrigation plan, and a grading plan for projects with grades over 10%. Any questions regarding this ordinance should be directed to the plan review program manager at (415) 945-1497. You can also find information about the ordinance online at www.marinwater.org.

Should backflow protection be required, said protection shall be installed as a condition of water service. Questions regarding backflow requirements should be directed to the Backflow Prevention Program Coordinator at (415) 945-1559.

If you have any questions regarding this matter, please contact me at (415) 945-1531.

Very truly yours,

Joseph Eischens
Engineering Technician
JE:dh

cc: Town of Fairfax Building Dept

2. The Town Engineer shall document with the applicant the existing condition of potentially impacted roads. He shall review the condition of those roads with the MMWD representative after construction to determine if any damage has occurred.
3. The applicants shall provide financial restitution or remediation for roadway damages caused by the construction to be agreed upon by the Town Engineer and the project engineer.

A roll call was taken:

AYES: Ramsay, Hamilton, Ketcham, Lacques, LaMotte
NO: O'Neil

Chair Ketcham read the appeal rights before announcing a 10-minute break.

3. 9 Scenic Road; Application # 10-30: Continued consideration of a request for a use permit to legalize the conversion of a detached workshop into living space with a full bathroom adjacent to a single-family residence; Assessor's Parcel No. 001-146-04; Residential RD 5.5-7 Zone District; Dolores Cordell, applicant/owner; CEQA categorically exempt, § 15303(e).

Senior Planner Neal presented the staff report. She discussed the reasons why the project had been continued, which related to the Fire Departments' requirements. She noted that a floor plan had been provided at the commissioners' request.

Ms. Neal discussed the use in relation to the Town Code and she noted that accessory buildings could not be used for residential purposes. However, she said that Use Permits has been issued previously on the condition that the permitted use would not include the renting of the space as a separate living unit. Ms. Neal discussed the reasons that staff supported the project, which were in the staff report.

In response to Commissioner Hall, Ms. Neal noted that the residence had been constructed before FAR (floor area ratio) regulations had been implemented.

Dolores Cordell, Applicant, discussed the structure, which she said had been used as living space when she purchased the house and that she then installed a bathroom. She discussed the sprinkler requirements and the denial of her appeal by the Fire Board.

In response to Chair Ketcham, Ms. Neal said that the Planning Commissioners did not have discretion over the Fire Department's requirements.

Staff and Chair Ketcham discussed what would be entailed if the application were denied by the commissioners. Planning Director Moore noted that the applicant could appeal whatever decision the commissioners made to the Town Council.

In response to Commissioner Ramsay, Ms. Cordell said that the new owners did not wish to join the accessory structure to the main residence, although it would negate the need to install sprinklers.

In response to Commissioner Lacques, Ms. Cordell said that she did not believe the use of the property had changed by the addition of a bathroom. Commissioner Lacques noted that they could not waive the Fire Department's requirements.

Chair Ketcham noted that the addition of a bathroom changed the use of the structure.

Chair Ketcham opened the public comment period.

The resident at 9 Scenic Road said that he supported the applicant.

Daryl Grossman, a neighbor, said that sprinklers were costly and not necessary for a very small space.

Ms. Dolores' partner said that they had lived in the accessory structure and that the addition of a bathroom had not changed its use.

Chair Ketcham closed the public comment period.

In response to Commissioner LaMotte, Ms. Neal said that former owners of the residence had been granted a permit to build a new house with the specific condition that a portion of the old house that remained could not be used as a residence. It could be used only as an accessory structure. She noted that the Planning Commissioner had the authority to reverse the decision.

Planning Director Moore discussed the change in use. He noted that the written record could not be changed and that he recommended the commissioners approve the project.

Planning Director Moore and Vice-Chair Hamilton discussed how changes could be made to the Code with regard to fire sprinklers. Chair Ketcham noted that there were benefits to having a fire sprinkler system.

Chair Hamilton and Ms. Neal discussed a deed restriction in relation to the accessory structure.

M/S, Lacques/Ramsay, Motion to approve Application # 10-30, a request for a use permit to legalize the conversion of a detached workshop into living space with a full bathroom adjacent to a single-family residence at 9 Scenic Avenue based on the findings and conditions in the staff report.

A roll call was taken:

AYES: O'Neil, Ramsay, Ketcham, Lacques, LaMotte, Hall

NO: Hamilton

Chair Ketcham read the appeal rights.

4. 720 Center Boulevard; Application # 11-09: Review of an Initial Study, Draft: Mitigated Negative Declaration, Use Permit for outdoor eating and a Traffic Impact permit for a project encompassing remodeling and a 196 square foot expansion of the existing commercial building to; 1) bring the structure into compliance with current Building Codes; 2) add exterior improvements and landscaping; and, 3) resurface the parking lot in order to open as a natural foods grocery store; Assessor's Parcel No. 002-131-12; Highway Commercial CH Zone District; Good Earth Natural Foods, applicant; John Fry, applicant's representative; LRG Capital Real Estate Partners, owners.

Commissioner LaMotte recused herself and left the meeting because she had a professional association with the application.

Consultant Kennings presented the staff report. He noted the project included an Initial Study, Draft Mitigated Negative Declaration, Traffic Impact Permit and a Use Permit for outdoor eating purposes for which there were findings in the staff report. Mr. Kennings said that an on-site deli would be included, which would increase the size of the operation. Furthermore, the access from parking to the structure would be improved.

Mr. Kennings discussed the roof design and other design features, including an outdoor seating area. He also discussed the colors, which consisted of greens and tans.

Mr. Kennings noted that the service utilities would be upgraded or replaced, the parking areas would be resurfaced and reconfigured with landscaping that would include the addition of trees and storm water run-off. He discussed parking spaces and parking lot lighting and he noted that there would be an electric car charging station.

Mr. Kennings went on to discuss the traffic report, which he said had been peer-reviewed by the Town's Traffic Consultant who had determined there would be no significant traffic problems and that those that might exist could be mitigated.

Vice-Chair Hamilton sought clarification from staff regarding materials that had been provided.

Chair Ketcham and Ms. Neal discussed the Traffic Impact Permit, which Ms. Neal said should be voted upon separately for reasons she explained, and the number of parking spaces. Ms. Neal confirmed that they had not received any comments from the public.

John Fry, applicant, discussed the project in more detail. He discussed the roof materials and colors, and he noted that the roof equipment would be hidden by a clerestory. He discussed building upgrades, and noted that there would be no grading. He addressed parking and the number of spaces, which he noted would be remarked. He said that they hoped to open in October 2011.

Mr. Fry discussed the design, and noted that seating, tables, and trees would be added and that the overall site would be improved to make all the building's sides inviting.



TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
(415) 453-1584 / FAX (415) 453-1618

NOTICE OF APPEAL

FOR STAFF USE

Date: 4-26-11 Fee: 945⁰⁰
Appl.# _____
Receipt# _____
Recvd. By: J. Anderson
Action: _____

The purpose of the appeal procedure is to provide recourse in case it is alleged that there is an error in any order, requirement, permit, decision or determination by any administrative official, advisory body or commission in the administration or enforcement of the City Ordinances. Any person aggrieved by the action of any administrative official, advisory board or commission in the administration or enforcement of any ordinance in the Town Code may make verified application to the Town Clerk in the manner prescribed by the Town Council within ten (10) days of action that is appealed.

FEE: Fees are set by resolution of the Town Council. See fee schedule for current application fees.

PLEASE PRINT

Appellant's name: DOLORES CORDELL
Mailing address: 3030 BRIDGEWAY
SUITE 111 Zip: 94965 Day phone: 415-289-0800
SAUSALITO, CA
Property Address: 9 SCENIC ROAD, FAIRFAX

I appeal the decision of: (list board, commission, or department and decision, for example: Planning Commission denial of variance) application # _____

SEE ATTACHMENT

The following are my reasons for appeal:

SEE ATTACHMENT

hereby declare that I have read the foregoing Notice of Appeal and know the contents thereof. I further declare under penalty of perjury that the information supplied by me is true and correct.

Executed this 26 day of APRIL, 2011

SIGNATURE OF APPELLANT: _____

Dolores Cordell

(4/84)

ATTACHMENT

**To Notice of Appeal
Town of Fairfax**

Applicant: Dolores Cordell
Property Address: 9 Scenic Road, Fairfax, CA
Date: April 26, 2011

Decision appealed from: Planning Commission requirement for the installation of fire sprinklers as a condition of granting a use permit for a bathroom installed in the original house on the property in 1995. Application No. 10-30. Hearing date April 21, 2011

Reason for appeal: The sprinkler requirement is inappropriately applied to the property since the building at issue has not changed use. Moreover, it is unjust and inequitable to order the installation of sprinklers, at cost of at least \$15,000, in a 400 sq. ft. building on the flats less than .5 miles from the Fire Dept. A full brief will be submitted before the hearing.

Request for fee remission: In addition, I am requesting a full or partial remission of the \$945 filing fee for making this appeal. The Staff has already fully worked up this matter for the Planning Commission and thus little additional staff time will be required. In addition, in order to preserve my rights I must state that a fee of \$945 is a material impediment to an appeal to the Town Council and therefore is of questionable constitutional validity.

TOWN OF FAIRFAX

PUBLIC NOTICE REQUIREMENTS

FOR ALL LAND USE ENTITLEMENTS

Public notice is sent to property owners, residents and businesses for all land use entitlements including the following:

Zoning Change Amendments, Design Review, Variance, Use Permit, and Hill Area Development Permits. The area to be noticed is any parcel within 300 feet of the boundary line of the property that is the subject of the application.

When filing your application include a Notification Map and a Mailing List and Mailing Labels and stamps for property owners and residents to be notified as described below. The applicant is responsible for the accuracy of these materials. Erroneous information may require re-mailing or re-scheduling of the public hearing. When you file your application please sign and submit the attached affidavit stating that the required map, mailing list and labels have been prepared following these instructions.

The applicant prepares and provides the following:

1. A neighborhood notification map, mailing list and mailing labels
2. Postage stamps for each label
3. Completes the affidavit certifying the accuracy of the mailing list
4. Posts the site with an 11 inch x 17 inch Notice Form provided by the Planning Department.

If the approval of an application is delayed by unresponsiveness of an applicant, the address list and labels may have to be redone to ensure their accuracy.

Once Planning staff determines that an application is complete, they send a notice of completeness and provide the poster for the applicant. The poster is to be filled out by the applicant to describe the project. The poster is to be waterproofed and posted in a clearly visible location along the street frontage of the property at least 10 days prior to the public hearing.

The Planning Department provides the notices, reviews the mailing information provided by the applicant, and mails the notice.

Mailing List:

List the Assessor's Block and Lot Numbers for all lots within the Notification Map with the Names and Mailing Addresses of all the property owners and the Mailing Address for all residents and businesses. Include yourself and anyone else you wish notified. Please count the addresses and provide a stamp for each label.

Submit self-adhering Mailing Labels with this information, one name and address per label. For property owners, use the names. For residents and businesses, you may use either their name or "Occupant". Property Owners are those in the latest Assessors Tax Roll, available at the Marin County Assessor's Office

For Residents or Businesses you can get the number of dwellings or businesses on a lot from the property owner or building manager, or by counting the mail boxes, doorbells and any businesses. You may also use the reverse telephone directory at the library, use addresses shown on the mailbox, doorbell or reverse telephone directory, including any letter suffixes (134, 134A) or fractions (249, 249 1/2). If a doorbell or mailbox has a name but no separate street or apartment number, use that name for the mailing labels. There is usually a Resident anytime the Property Owner in the Townwide Tax Roll has a different mailing address.

In addition, a list of apartment/ multifamily renters is available on disk or in hard copy from the Planning Department. This list is an additional resource for creating the mailing list. Where the address of the owner differs from the location address of the property to be noticed, labels should be created for both owners and residents.

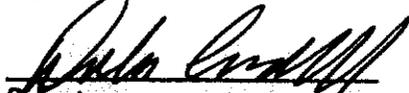
**Affidavit of Preparation of Notification Map,
Mailing List and Mailing Labels for Public
Notification for Land Use Public Hearing**

I, DOLORS CORDELL, do hereby declare as follows:
(print name)

1. I have prepared the Notification Map, Mailing List and Mailing Labels for Public Notification for in accordance with Planning Department guidelines. *PROVIDED WITH USE PERMIT APPLICATION. STAMPS PROVIDED FOR APPEAL, PER STAFF.*
2. I understand that I am responsible for the accuracy of this information, and that erroneous information may require re-scheduling the public hearing.
3. I have prepared these materials in good faith and to the best of my ability.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

EXECUTED ON THIS DAY, APRIL 26, 20011 in the Town of Fairfax, California.


Signature