

**TOWN OF FAIRFAX
STAFF REPORT**

TO: Mayor, and members of the Town Council

DATE: April 4, 2012

FROM: Michael Rock, Town Manager 
Jim Moore, Director of Planning & Building Services
Linda Neal, Senior Planner

SUBJECT: 62 Valley Road; Application # 11-29, Appeal of Design Review Board approval of a 2,696 square foot single-family residence; Assessor's Parcel Numbers 001-063-31, 003-191-01 and 003-191-02; Residential Single-family RS 6 Zone District; Rochelle Ereman and Charles and Sherrie Richardson, appellants; Frances Kibbe, owner; CEQA categorically exempt, § 15303(a)



62 VALLEY ROAD

AGENDA ITEM # 11

RECOMMENDATION

1. Open the public hearing.
2. Close the public hearing.
3. Motion to grant the Appeal of the approval by Design Review Board of Application 11-29 and Adopt of a Resolution of the Town Council of the Town of Fairfax that provides additional conditions of approval developed after meeting with the affected parties.

BACKGROUND

The Town Council held the first public hearing on this Appeal at their regularly scheduled meeting on March 7, 2012. The staff report for that hearing is attached as **Exhibit A**.

During that meeting, the Town Council members were able to illicit agreement between the Richardson's (two of the four Appellants) and the applicant: and staff was directed to facilitate a meeting between the remaining parties in order to determine if a resolution of the remaining issue could be reached.

DISCUSSION

Subsequent to the March 7, 2012 Town Council meeting, staff met with the remaining two Appellants and the Applicants on the relevant sites at 62 Valley Road and 51 Mountain View Road to observe the project site and views from the applicants' properties.

After those meetings, staff provided a draft Memorandum of Understanding (MOU) to all parties. That draft evolved, via email and/or telephone conversations (or messages), and was further refined in order to arrive at language that was satisfactory to all parties. The final MOU signed (or approved via email) by all parties is attached as **Exhibit B**.

The MOU, on behalf of the Applicant and all Appellants, requests that the Council add two conditions of approval to the project's design review approval, which conditions have been agreed to by all the parties: the first requires the Applicant to notify Appellants Charles and Sherrie Richardson of any tree removal applications that Applicant makes for three years from the date of the appeal hearing, and the second requires the Applicant take certain actions to preserve privacy of the property owned by Appellants Rochelle Ereman and Steve Fisch.

Staff believes that the additional conditions are appropriate measures to mitigate the effects of Applicant's project on neighboring properties as those effects were described at the March 7 hearing. Accordingly, Resolution No. 12-21 is attached as **Exhibit C**, which would grant the appeal and incorporate these two addition conditions of approval into the entitlements for the project.

ATTACHMENTS

- Exhibit A – March 7, 2012 Staff Report
- Exhibit B – Signed MOU(s) dated March 28, 2012
- Exhibit C – Resolution No. 12-21

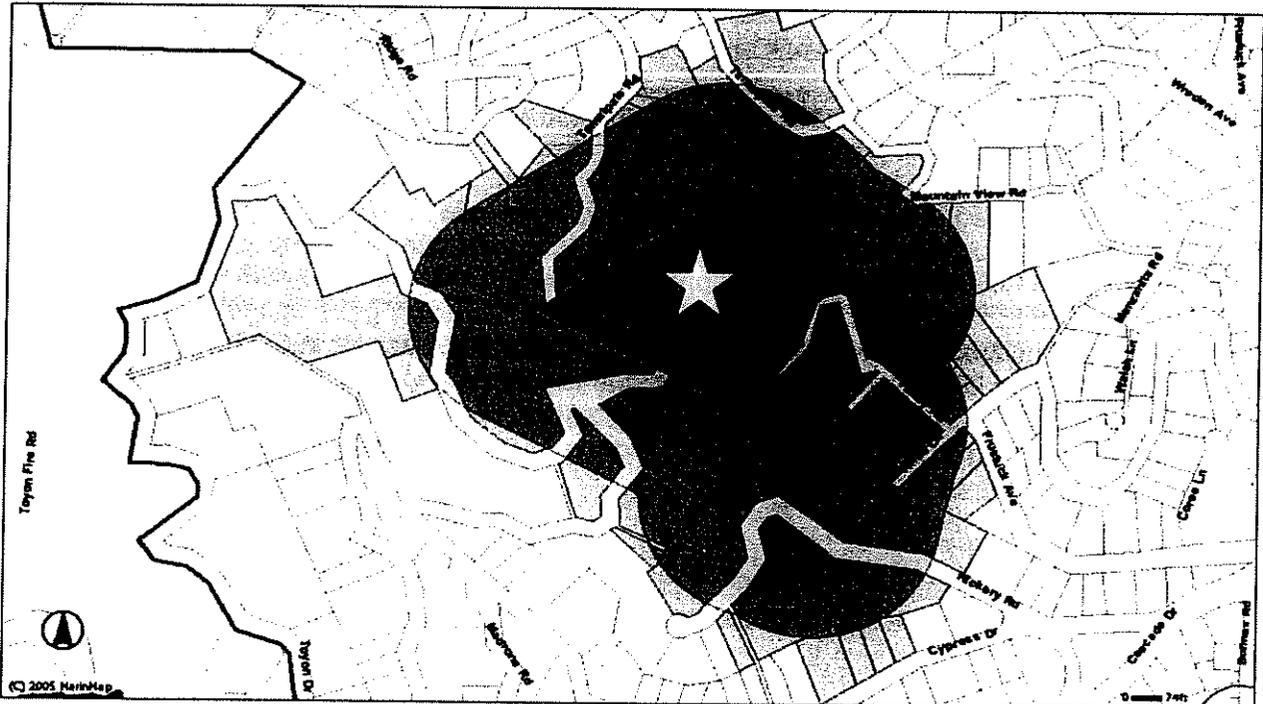
**TOWN OF FAIRFAX
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DATE: March 7, 2012

FROM: Michael Rock, Town Manager *MR*
Jim Moore, Director of Planning & Building Services
Linda Neal, Senior Planner

SUBJECT: 62 Valley Road; Application # 11-29, Appeal of Design Review Board approval of a 2,696 square foot single-family residence; Assessor's Parcel Numbers 001-063-31, 003-191-01 and 003-191-02; Residential Single-family RS 6 Zone District; Rochelle Ereman and Charles and Sherrie Richardson, appellants; Frances Kibbe, owner; CEQA categorically exempt, § 15303(a)



62 VALLEY ROAD

RECOMMENDATION

1. Open the public hearing.
2. Close the public hearing.
3. Motion to uphold the approval of the project by the Design Review Board.

BACKGROUND

On October 28, 2009 a fire tragically destroyed the Kibbe family home that had been on that site. Town records are limited regarding the original size of the home or the size of the home at the time of the fire; however an old site plan shows a residence of 774 square feet with a proposed addition of 404 square feet (date unknown); and there is also a record of two other additions over the years, a 192 square footage addition in 1962 and a 108 square foot addition in 1972 (all totaling an approximately 1,478 square foot single family home when the fire occurred that destroyed it).

County tax records indicate that the house was 1,964 square feet in size at the time of its destruction. Please note that the remnants of the damaged structure have yet to be demolished or removed from the site.

On March 2, 2011 the project Architect submitted a planning application with fees for a HRD permit and design review; along with a deposit for the Town's Civil Engineer's review. Subsequently, on June 20, 2011 after staff determined the amount of cut and fill, the project Architect submitted a planning application for a Grading permit. *↳ would exceed...*

Subsequently, the planning application and materials submitted went through a series of reviews by staff, outside agencies, and the Town's Civil Engineer for "completeness" and as of October 6, 2011 staff determined that the application had failed to provide the necessary information to satisfy code requirements to deem this application "complete". Under state law and the Town Code, an application must be complete before it is referred to the planning commission. On October 6, 2011 the applicant filed an appeal with the Town challenging staff's determination that the application was incomplete. The Town delayed scheduling the appeal before the Council during ongoing discussions about ways to resolve the appeal in the hope of resolving the completeness issues. Unfortunately, as staff was preparing for the appeal hearing that had been scheduled for December 7, 2011, it came to the Town's attention under Government Code section 65943, too much time had elapsed and the application was deemed complete by operation of law as of December 6, 2011.

On January 19, 2012, the Planning Commission considered and approved the project based on the findings and subject to the conditions contained in attached Resolution Number 12-01 (Exhibit A attached). The minutes from the Planning Commission meeting are contained in Exhibit B.

On February 8, 2012, the Design Review Board approved the project subject to the following conditions:

1. This approval is limited to the development illustrated on the plans prepared by Jeff Kroot

dated February 2011, pages 1 through 4 and the Vegetative Management plan, based on the Record of survey by Lawrence Doyle dated January 2011, the engineering drawing by Lawrence Doyle, pages C-1 (dated 8/22/11), and pages C-2, C-3 and C-4 (dated 12/22/11) and discussed in the following project engineering reports and letters by Salem Howes Associates Inc., dated February 4, 2011 and June 16, 2011.

2. The applicant shall secure a tree cutting permit from the Town prior to removal of any on-site trees over 24 inches in circumference measured 24 inches from the ground. To further minimize impacts on trees and significant vegetation, the applicant shall submit plans for any utility installation (including sewer, water, drainage) which incorporates the services of a licensed arborist to prune and treat trees having roots 2 inches or more in diameter that are disturbed during the construction, excavation, or trenching operations. In particular, any cross country utility extensions shall minimize impacts on existing trees. Tree root protection measures may include meandering the line, check dams, rip rap, hand trenching, soil evaluation, and diversion dams. Any trimming of trees shall be supervised by a licensed arborist.

3. Prior to issuance of an occupancy permit the Planning Department shall field check the completed project to verify compliance with all design review and planning commission conditions.

4. Notwithstanding section # 17.38.050(A) of the Fairfax Zoning Ordinance, **any** changes, modifications, additions or alterations made to the approved set of plans will require a modification of Hill Area Residential Development Permit 11-29. **Any** construction based on job plans that have been altered without the benefit of an approved modification of Hill Area Residential Development Permit 11-29 will result in the job being immediately stopped and red tagged.

5. The applicant or owner shall defend, indemnify, and hold harmless the Town of Fairfax or its agents, officers, and employees from any claim, action, or proceeding against the Town of Fairfax or its agents, officers, or employees to attach, set aside, void, or annul an approval of the Planning Commission, Town Council, Planning Director, Design Review Board or any other department or agency of the Town concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or owner's duty to so defend, indemnify, and hold harmless shall be subject to the Town's promptly notifying the applicant or owner of any said claim, action, or proceeding and the Town's full cooperation in the applicant's or owner's defense of said claims, actions, or proceedings.

Also see attached Exhibit B which includes the February 8, 2012 design review minutes, the February 8, 2012 design review staff report and its attachments.

DISCUSSION

On January 25, 2012, an appeal was filed by Rochelle Eremann of 51 Mountain View Road, and Charles and Sherrie Richardson of 267 Tamalpais Road. The stated reason for the appeal is the maintenance of existing privacy. Their appeal is attached as Exhibit C.

Under Section 17.026.110 of the Town Code, an person aggrieved by an action of the Design

Review Board where the project also includes a Planning Commission approval may appeal to the Town Council. Under Section 17.026.120, "in considering the appeal, the Town Council shall determine whether the proposed design conforms to the applicable design review criteria and may approve or disapprove the proposed design or require the changes therein or impose reasonable conditions of approval as are, in its reasonable judgment, necessary to ensure conformity to the criteria.

ATTACHMENTS

- Exhibit A – Resolution No. 12-01, Findings and Conditions of Planning Commission approval
- Exhibit B – Minutes and staff report from the February 8, 2012 Design Review meeting
- Exhibit C – Appellant's appeal form and additional information

HAVE REQUESTED A
REDUCTION IN APPEAL FEE.



TOWN OF FAIRFAX

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

MEMORANDUM OF UNDERSTANDING

Date: March 28, 2012

To/Between: Frances Kibbe, 62 Valley Road, Fairfax, CA (Applicant)
Charles & Sherrie Richardson, 267 Tamalpais Road, Fairfax, CA, and
Rochelle Ereman & Steve Fish, 51 Mountain View Road, Fairfax, CA (collectively, the Appellants)

Subject: Appeal of Design Review Board Approval of Application #11-29; Filed on 2/18/12

The Appellants and the Applicant jointly request the Fairfax Town Council to resolve the Appeal by adopting the following additional conditions of approval on Application #11-29, which Applicant agrees to implement:

(1) Ms. Kibbe shall notify Mr. & Mrs. Richardson of any tree removal applications for removal of trees between their residences; i.e., on the north side of the new residence at 62 Valley Road, for a period of three years from the Appeal date of March 7, 2012 through March 7, 2015.

(2) Ms. Kibbe agrees to: (a) not remove any additional bay trees in the direct line-of-sight between her residence and the residence of Ms. Ereman and Mr. Fish, (b) incorporate a visual screen of the Applicant's choosing that is fixed in place and covers the northern windows in the living room to eliminate a direct line-of-sight from within the living room to the Ereman residence - until either (i) the bay trees grow to a point of providing a visual screen, or (ii) such time during construction when Applicant, Ms. Ereman and Mr. Fish agree that the existing bay trees already provide the necessary screening, and (c) eliminate the north-side second window from the left on the "bonus room" and the north-side second window from the left on the downstairs bedroom under the bonus room.

Agreed to by:

Sherrie Richardson

Date

Charles Richardson

Date

Rochelle Ereman

Date

Steve Fish

Date

Frances Kibbe

Frances Kibbe

Date

3/29/2012

EXHIBIT #

B



TOWN OF FAIRFAX

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

MEMORANDUM OF UNDERSTANDING

Date: March 28, 2012

To/Between: Frances Kibbe, 62 Valley Road, Fairfax, CA (Applicant)
Charles & Sherrie Richardson, 267 Tamalpais Road, Fairfax, CA, and
Rochelle Ereman & Steve Fish, 51 Mountain View Road, Fairfax, CA (collectively, the Appellants)

Subject: Appeal of Design Review Board Approval of Application #11-29; Filed on 2/18/12

The Appellants and the Applicant jointly request the Fairfax Town Council to resolve the Appeal by adopting the following additional conditions of approval on Application #11-29, which Applicant agrees to implement:

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(2) Ms. Kibbe agrees to: (a) not remove any additional bay trees in the direct line-of-sight between her residence and the residence of Ms. Ereman and Mr. Fish, (b) incorporate a visual screen of the Applicant's choosing that is fixed in place and covers the northern windows in the living room to eliminate a direct line-of-sight from within the living room to the Ereman residence - until either (i) the bay trees grow to a point of providing a visual screen, or (ii) such time during construction when Applicant, Ms. Ereman and Mr. Fish agree that the existing bay trees already provide the necessary screening, and (c) eliminate the north-side second window from the left on the "bonus room" and the north-side second window from the left on the downstairs bedroom under the bonus room.

Agreed to by:

Sherrie Richardson
Sherrie Richardson
Charles Richardson
Charles Richardson

3.29.12
Date

3.29.12
Date

Rochelle Ereman

Date

Steve Fish

Date

Frances Kibbe

Date

Jim Moore

From: Rochelle Ereman [rochellerose@mindspring.com]
Sent: Friday, March 30, 2012 7:55 AM
To: Jim Moore
Subject: Re: 62 Valley Road Appeal MOU Language

yes. long work days this week, no printer. will bring it by on the weekend or today, if possible.

On Mar 29, 2012, at 10:50 AM, Jim Moore wrote:

Hi Rochelle,

Glad to hear that: will you and Steve be signing a copy (so I can rest easy)?

Thanks,

Jim

James M. Moore
Director of Planning & Building Services
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930
Phone: (415) 453-1584
Fax: (415) 453-1618

"The Life of the Land is Perpetuated in Righteousness"

(*Ua mau ke ea o ka aina i ka pono* has been the motto of Hawaii for over 160 years)

From: Rochelle Ereman [mailto:rochellerose@mindspring.com]
Sent: Thursday, March 29, 2012 7:39 AM
To: Jim Moore
Subject: Re: 62 Valley Road Appeal MOU Language

yup, looks good.

On Mar 28, 2012, at 2:48 PM, Jim Moore wrote:

Hi Rochelle,

FYI: I used the exact language in the first line below in the revised (2) (b) in the revised MOU sent out earlier today.

Best,

Jim

James M. Moore

RESOLUTION NO. 12-21

**A RESOLUTION OF THE FAIRFAX TOWN COUNCIL
GRANTING THE APPEAL OF DESIGN REVIEW BOARD APPROVAL OF A 2,696
SQUARE FOOT SINGLE-FAMILY RESIDENCE AT 62 VALLEY ROAD;
APPLICATION # 11-29, APPEAL OF; ASSESSOR'S PARCEL NUMBERS 001-063-31,
003-191-01 AND 003-191-02 AND IMPOSING ADDITIONAL CONDITIONS ON THE
PROJECT**

WHEREAS, on January 19, 2012, the Planning Commission considered and approved the application of Frances Kibbe ("Applicant") for the construction of a 2,696 square foot home (the "Project") based on the findings and subject to certain conditions contained in Planning Commission Resolution Number 12-01; and

WHEREAS on February 8, 2012, the Design Review Board approved the Project by motion subject to certain additional conditions; and

WHEREAS, on February 21, 2012, an appeal was filed by Rochelle Eremann of 51 Mountain View Road, and Charles and Sherrie Richardson of 267 Tamalpais Road (together, the "Appellants"), which appeal was based on concerns about maintaining existing privacy for the Appellants' properties; and

WHEREAS, the Town Council held a duly noticed public hearing on March 7, 2012, 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 records of the Planning Commission and the Design Review Board related to Project; and

WHEREAS, after dialogue among the Applicant, the Appellants and the Town Council during the March 7 hearing, the Town Council continued the hearing until April 4 to permit staff to meet with the Applicant and the Appellants at the Project site to discuss options for resolving the concerns of Appellants; and

WHEREAS, the Applicant and the Appellants subsequently reached an understanding reflected in a memorandum of understanding dated on or about March 28, 2012 about mutually acceptable additional conditions of approval that would mitigate effects of the Project on the Appellants' privacy; and

WHEREAS, Town Council reopened the public hearing on April 4, 2012, 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 memorandum of understanding, and thereafter the Town Council determined to grant the appeal and adopt the recommended additional conditions of approval.

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 Town Council on this Project; and
2. In accordance with section 17.026.120 of the Town Code, additional conditions are necessary for the proposed design of the Project to conform to the applicable design review criteria as it relates to the privacy concerns of Appellants as described at the public hearing; and

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

1. The Council grants the appeal and imposes the following additional conditions of approval on the Project:
 - (a) Applicant shall notify Mr. & Mrs. Richardson of any tree removal applications for removal of trees between their residences; i.e., on the north side of the new residence at 62 Valley Road, for a period of three years from the public hearing date of March 7, 2012 through March 7, 2015; and
 - (b) (2) Applicant shall: (a) not remove any additional bay trees in the direct line-of-sight between her residence and the residence of Ms. Ereman and Mr. Fish, (b) incorporate a visual screen of the Applicant's choosing that is fixed in place and covers the northern windows in the living room to eliminate a direct line-of-sight from within the living room to the Ereman residence - until either (i) the bay trees grow to a point of providing a visual screen, or (ii) such time during construction when Applicant, Ms. Ereman and Mr. Fish agree that the existing bay trees already provide the necessary screening, and (c) eliminate the north-side second window from the left on the "bonus room" and the north-side second window from the left on the downstairs bedroom under the bonus room.

THE FOREGOING RESOLUTION was duly and regularly adopted by the Town Council of the Town of Fairfax, County of Marin, State of California, at a regular meeting thereof, held on the 4th day of April, 2012, by the following vote, to wit:

AYES:
NOES:
ABSENT:

PAM HARTWELL-HERRERO,
MAYOR

Attest:

Judy Anderson, Town Clerk