



TOWN OF FAIRFAX
STAFF REPORT
October 2, 2013

TO: Mayor and Town Council

FROM: Jim Moore, Director of Planning and Building Services
Linda Neal, Principal Planner

SUBJECT: Appeal of Planning Commission denial of a Setback Variance, application 13-23, 130 Wood Lane, to legalize an unpermitted carport within the required 5 foot setback

RECOMMENDATION

1. Open/close Public Hearing.
2. Move to deny the appeal and uphold the decision of the Planning Commission approving the Use Permit with the requirement that the appellant either remove the unpermitted carport or move it to a conforming location with a building permit.

DISCUSSION

The carport was built without permits. If staff had been contacted for a permit prior to construction, the carport could have been redesigned to comply with Zoning and Building Code requirements. For a further discussion of the project and required discretionary permits see the attached Planning Commission staff report dated August 15, 2013 and the attached meeting discussion in the minutes of the same date (Exhibits A and B).

FISCAL IMPACT

None.

ATTACHMENTS

- Exhibit A – Appeal form
Exhibit B - Planning Commission August 15, 2013 staff report
Exhibit C – August 15, 2013 Commission minutes



TOWN OF FAIRFAX

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

TOWN OF FAIRFAX

NOTICE OF APPEAL

AUG 26 2013

FOR STAFF USE

RECEIVED

Date: 8/26/13 Fee: \$500.00
Appl.# _____
Receipt# 1-40561
Recvd. By: S. Daler
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 JOHN LEIMER / SUZANNE QUENTIN
Mailing address 130 WOOD LN Zip: 94920 Day phone 415-672-2369
Property Address: 130 WOOD LN

I appeal the decision of: (list board, commission, or department and decision, for example: Planning Commission denial of variance) application # 13-23
SIDE SETBACK FOR CARPORT

The following are my reasons for appeal:

- ① HARM SHIP IN COST AND LOCATION TO MOVE CARPORT.
- ② STRUCTURAL ALIGNMENT WITH OTHER STRUCTURES ON PROPERTY
- ③ PLACES FOOTING INTO DRIVEWAY PATH

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 8 day of 25, 2013

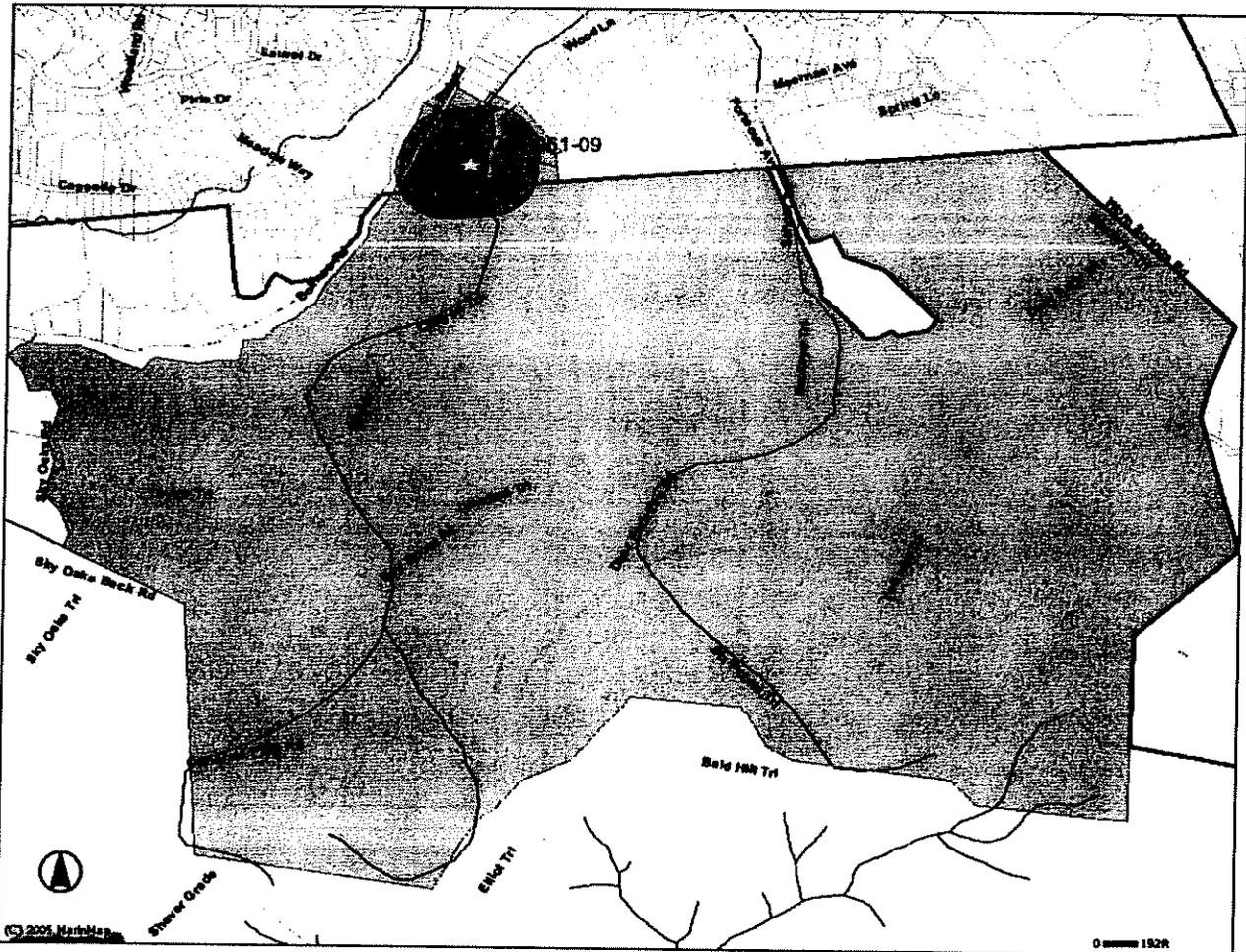
SIGNATURE OF APPELLANT: [Signature]

(4/94)

**TOWN OF FAIRFAX
STAFF REPORT**

Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: August 15, 2013
FROM: Jim Moore, Director of Planning and Building Services
Linda Neal, Senior Planner
LOCATION: 130 Wood Lane; Assessor's Parcel No. 002-061-09
PROJECT: Unpermitted Carport
ACTION: Use Permit and Setback Variance; Application # 13-23
APPLICANT: John Leimer
OWNER: Suzanne Quentin
CEQA STATUS: Categorically exempt, § 15303(e)



130 WOOD LANE

BACKGROUND

The 16,524 square foot site slopes up from Wood Lane at an average rate of 35% although the house location at the front of the property is relatively level.

The original home was built in 1930 prior to the Town's incorporation in 1931. The Planning Commission approved the substandard side setback maintained by the house and a variance from the covered parking requirement to allow a 50% remodel and addition of the home in 1986.

DISCUSSION

The Building Official noted that a new carport was constructed on the property in required setbacks without the required discretionary planning approvals or a building permit in April of 2013. The Staff sent a letter to the owner advising her that the structure either had to be legalized or be removed on April 4, 2013.

The owner has applied for a Use Permit and Side Setback Variance to legalize the 234 square foot open carport in its current location where it has been constructed into the minimum required 5 foot western side setback and maintains less than a ½ foot setback.

The construction requires the approval of the following discretionary permits by the Planning Commission:

A Use Permit

Town Code § 17.080.050(C) requires that parcel with a 35% slope must be 27,000 square feet in size and 125 feet wide to meet the lot size and width requirements. If the site does not meet the size and width requirements, the same section of the Code requires that a Use Permit be obtained from the commission prior to any physical improvement. The site is only 16,524 square feet in size and 100 feet wide so legalization of the carport requires the approval of a Use Permit.

The Town Code requires that residential properties be provided with at least one covered parking space. The design of the carport is in keeping with the design of other covered parking structures in the neighborhood and throughout Fairfax and it does not change the single-family character of the site.

Variances to the Setback and Parking Regulations

Town Code 17.050.070(B)(2) requires that structures on properties with over a 10% slope maintain minimum side yard setbacks of five (5) feet.

Town Code 17.052.010(B) indicates that, "No off street parking spaces or garages, carport or other accessory structure for parking use, required or additional thereto, shall be located in a required side yard setback.

The southwestern corner of the carport almost touches the west side property line and 45 square feet of the corner encroaches into the required setback. Therefore, the project requires an exception to the above restrictions.

The purpose of the Variance process is to allow variation from the strict application of the Zoning Ordinance regulations, where, by exceptional narrowness, shallowness or unusual shape of a property, or by exceptional topographic condition of the site or other extraordinary condition of the property, the enforcement of the setback and parking restrictions would involve practical difficulties or cause undue hardship unnecessary to carry out the spirit of the Zoning Ordinance.

In order to approve the requested variances the Commission must be able to make the following legal findings with respect to the site and project:

1. Because of special circumstances applicable to the property, including size, shape, topography, location of surroundings, the strict application of this title will deprive the applicant of privileges enjoyed by other property owners in the vicinity and under identical zone classification.
2. The variance or adjustment will not constitute a grant of special privilege, is consistent with the limitations upon other properties in the vicinity and under identical zone classification, and is consistent with the objectives of this title.
3. The strict application of this title would result in excessive or unreasonable hardship.
4. The granting of the variance of adjustment will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated.

The front portion of the site is flat. There is a large level parking area at the front of the residence where the carport could have been constructed in compliance with the regulations. In fact, reorienting the front of the carport 6 feet to the east would have resulted in a conforming structure. Staff is unable to make the findings required to recommend approval of the structure in its current location.

Other Agency/Department Comments

Only the Building Official commented that the structure needs a building permit if approved by the Commission whether it is approved in its currently location or is relocated to conform.

RECOMMENDATION

1. Open the public hearing and take testimony.
2. Close the public hearing.

3. Move to approve the Use Permit but deny the required Setback and Parking regulation Variances based on the following findings and subject to the following conditions:

Suggested Findings For Approval of the Use Permit

The code requires that each residential property be provided with at least one (1) covered parking space and the design of the carport is similar to that of other covered parking structures found throughout the neighborhood and other residential areas in Fairfax. Therefore, approval of a use permit for a single-car parking structure on the site does not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.

The development and use of the carport, once it is relocated out of the required side setback where parking is prohibited by the Town Code, shall not cause excessive or unreasonable detriment to adjoining properties or premises.

Approval of the use permit to allow a covered space on the site will bring the property into compliance with the covered parking requirement found in Town Code § 17.052.010(D).

Approval of the use permit, with the carport and parking located out of the minimum five (5) foot side yard setback, will result in equal or better development of the premises than would otherwise be the case.

Suggested Findings for Denial of the Setback and Parking Variances

There are no special circumstances or features of the land area, such as size, shape or topography that make it impossible to locate a carport on the site in compliance with the regulations. A small shift to the east in the alignment of the carport with respect to the side property line will result in compliance.

The variance or adjustment will constitute a grant of special privilege because the site has several areas where a complying carport could be built.

Relocation of the carport to a conforming location is physically possible. Therefore, the strict application of this title to legalize the unpermitted carport will not result in an unreasonable hardship for the owner.

Recommended Condition of Approval

The carport shall be moved out of the required 5 foot side setback after a building permit is obtained for the structure in a conforming location.

ATTACHMENTS

- Exhibit A - Applicant's supplemental information
- Exhibit B – Other agency/department comments

PROJECT DESCRIPTION: RETROACTIVE PERMIT FOR
CARPORT BUILT W/IN SIDE SETBACK

GENERAL INFORMATION (if applicable):

Item	Existing	Proposed
Lot size	16,524	—
Size of structure(s) or commercial space (square feet)	2037	
Height and No. of stories	2 STORY	
Lot coverage		
No. of dwellings units	1	
Parking ¹ No. of spaces	3	
Size of spaces	19.6 x 10.0	

Amount of proposed excavation and fill	Excavation = /	Fill = /
--	----------------	----------

Estimated cost of construction \$ 4,000.00

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? NO

Signature of Property Owner

5-22-13

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

Signature of Applicant

5-22-13

Date

FLOOR AREA RATIO (FAR) AND LOT COVERAGE STATISTICS

The following information will be used to verify application FAR and lot coverage amounts.
Applications will not be considered complete until the following table is complete.

	Existing	Proposed
Footprint square footage for all structures		
Living space square footage	2037	
First floor	1500 APPROX	
Second floor	537 APPROX	
Third floor	—	
Total	2037	
Accessory structure square footages		
Sheds 3	60,96,60	
Pool houses		
Studios/offices		
Second units		
Miscellaneous (specify use)		
Total	216	
Square footage of impervious surfaces		
Walkways		
Patio		
Impervious decks		
Miscellaneous (specify use)		
Total		
Garage/carport square footages (specify type)	NEW CARPORT 250 APPROX	

* All square footage measurements must be the sum of all interior floor area measured from the exterior faces of the exterior walls for structures (Town Code § 17.008.020).

FLOOR AREA: Fairfax Town Code § 17.008.020, Definitions, defines "floor area" as the sum of all interior floor area measured from the exterior faces of the exterior walls. The "floor area" of any accessory structures on the same lot shall be included. The "floor area" of any garage in excess of 500sf in size for single-family residences and 800sf in size for duplexes shall also be included.

LOT COVERAGE: Fairfax Town Code § 17.008.020, Definitions, defines "lot coverage" as the percentage of the lot area that is occupied by the ground area of a building, any accessory building(s), as well as any impervious surface areas such as patios (other than driveways) adjacent to the building or accessory structure.

Variance - Additional information required.

- Include a cross section through the proposed project depicting the project and the relationship of the proposal to existing features and improvements on adjacent properties.
- Lot coverage calculation including all structures and raised wooden decks.

In order to approve your project, the Planning Commission must make findings of fact which state that 1) there is a special feature of the site (such as size, shape or slope) which justifies an exception; 2) that the variance is consistent with the treatment of other property in the neighborhood; 3) that strict enforcement of the ordinance would cause a hardship; and 4) that the project is in the general public interest.

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

THE ANGLED SHAPE OF OUR LOT DICTATED THE LAYOUT
OF THE CARPORT IN KEEPING SQUARE WITH OTHER
STRUCTURES. NEIGHBORS HAVE EXISTING SECOND
UNIT ON PROPERTY LINE NEXT TO OUR HOME, WITHIN
THE SIDE SETBACK. THE CARPORT ADDS BEAUTY TO
THE NEIGHBORHOOD

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.

NO OCCUPANCY, CAR PARKING ONLY FOR CLASSIC CAR

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.

NEIGHBORING PROPERTIES ALSO HAVE SETBACK INCURSIONS
AND ARE NOT AN ISSUE WITH US

- 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.

IT IS A COVERED PARKING THAT DOES NOT
INTERFERE WITH ANY PART OF NEIGHBORING PROPERTIES

- 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.

IT ADDS COVERED PARKING WHERE NONE EXISTED

ATTN: Sergeant Stuart Baker

TOWN OF FAIRFAX
DEPARTMENT OF PLANNING AND BUILDING SERVICES

142 Bolinas Road, Fairfax, California 94930
Phone (415) 453-1584 FAX (415) 453-1618

LETTER OF TRANSMITTAL

From: Fairfax Planning and Building Services Department

Date: May 28, 2013

- To: Town Engineer Fairfax Police Dept. Marin County Open Space Dist.
 Town Attorney Sanitary Dist. 1 Other – Building Official
 MMWD Public Works Dept. Marin County Environmental Health
 Ross Valley Fire Marin County Health Dept.

Address and Parcel No: 130 Wood Lane; Assessor's Parcel No. 002-061-09

Project Description: legalization of a 10 foot tall carport structure located within the required front and side yard setbacks.

These plans are being transmitted for review either: a) prior to public hearings on discretionary permits before the Fairfax Design Review Board and Planning Commission; or, for review prior to issuance of a building permit. Please provide your comments on the completeness and adequacy of the submittal for your agencies reviewing purposes within 10 days.

1	5/8/13	Preliminary development plans

REMARKS NO RD. CONCERNS. SB

Please respond by June 18, 2013. Thanks

If you have any questions please contact: Linda Neal, Senior Planner

Commissioner Kehrlein and Mr. Cirimele discussed the materials of the parking space surface.

M/s, Ketcham/Ezzet-Lofstrom, Motion to approve Application # 13-28, a fifty percent (50%) remodel of an existing 1,382 square foot single-family home increasing the number of bedrooms from two (2) to three (3) with no expansion beyond the footprint of the existing structure and the provision of a third on-site parking space at 19 Belle Avenue, with the added conditions that the surface of the third parking space must consist of permeable materials, that the fence must be removed prior to the final project inspection and that windows shall not be added to the west side of the structure.

AYES: All

Chair Hamilton announced the appeal rights.

7:25 p.m.

5. 130 Wood Lane; Application # 13-23

Request for a Use Permit and Side Setback Variance to legalize an unpermitted 247 square foot carport; Assessor's Parcel No. 002-061-09; Residential Single-family RS 6 Zone District; John Leimer, applicant; Suzanne Quentin, owner; CEQA categorically exempt, § 15303(e).

Senior Planner Neal presented the staff report. She noted that the project had been started without permits. Ms. Neal discussed the Use Permit and Side Setback Variance, which she said would be necessary based on the slope of the property and there being no covered parking.

Ms. Neal noted that the design would be in keeping with other such structures in the neighborhood and with the house. She discussed the findings that needed to be made in order to grant the Variance and the ways in which the parking structure could be changed to meet the setback requirements. Ms. Neal noted that, since the side yard setback could be met, staff could not make the findings to support the Variance.

In response to Commissioner Ketcham, Ms. Neal discussed parking restrictions/parking structure restrictions in the side yard setback.

John Leimer, owner, discussed the reasons why the carport had been built in its current location and he noted that his neighbors were supportive. He said that it would cost too much to move the carport.

Chair Hamilton opened and then closed the public comment period when no one came forward to speak.

Commissioner Ketcham discussed exceptions to the town rules that had been made in the past, but noted that it would be difficult to make the findings to support the project.

Commissioner Kehrlein said that residents should check with the town before beginning a building project. She said that she supported the Use Permit to build a carport on the property, but not the Side Setback Variance because the carport could be moved to an area of the property that met the setback requirements.

Commissioner Ezzet-Lofstrom said that she could also support the Use Permit but would not be able to support the Variance.

M/s, Ketcham/Kehrlein, Motion to partially approve Application # 13-23, the request for a Use Permit, but deny the Side Setback Variance to legalize an unpermitted 247 square foot carport at 130 Wood Lane.

AYES: All

Chair Hamilton read the appeal rights.

7.40 p.m.

6. 40 Forrest Terrace; Application # 13-25

Request for a Use Permit to construct a 216 square foot attic addition to a 1,841 square foot single-family residence; 002-091-01; Residential RD 5.5-7 Zone; Harold Lezzeni, Architect; Julian and Martha Pearl, owners; CEQA categorically exempt, § 15301(e)

Senior Planner Neal presented the staff report. She discussed the reasons that the project did not meet the 50% remodel requirements, but noted that the Use Permit would be necessary because the property did not meet the size and width requirements in order to allow the proposed expansion.

Ms. Neal discussed the two dormers. She said that the residence would be one of the largest in the neighborhood but that the lot was also one of the largest in the vicinity. Ms. Neal noted that the residence would still comply with the Floor Area Ratio (FAR) and lot coverage requirements. She said that staff could support the project for the reasons laid out in the staff report, with the recommended conditions of approval.

In response to Chair Hamilton, Ms. Neal discussed the FAR and the staging platform.

Commissioner Ketcham and Ms. Neal discussed the reasons why the residence had not met the 50% remodel requirements, despite numerous building permits having been issued.

Julian Pearl, owner, confirmed that the work consisted primarily of the dormers. He said that the stairwell was not part of the project.

Commissioner Ketcham and Planning Director Moore discussed the noise ordinance update in relation to an anonymous flyer concerning the project.