

SUPPLEMENT TO APPEAL
(October 27, 2015)

To: Town Council, Town of Fairfax
From: Gwen Gordon and Antony Hoeber, Applicants
Re: Appeal from Conditions of Use Permit for Bedroom and Bathroom at 15 Scenic Road, Fairfax

Supplement to Application No.: 15-27

Council Hrg Date: November 4, 2015

This is a Supplement to the above Appeal.

1. The Fairfax Zoning Code Allows for Use of the Property as a Boarding House and Lodging House

Applicants have discovered that the Zone in which the property is located – Residential RD 5.5-7 per the Staff Report of August 20, 2015 – allows for its use as a boarding house and a lodging house for up to five people. The permitted use indicates that the Town has already considered and approved a higher density use in that Zone than merely a single family or even second unit housing.

The Zoning Code states in relevant part:

§ 17.084.020 PRINCIPAL PERMITTED USES AND STRUCTURES.

Uses within the RD 5.5-7 zone shall be conducted entirely within a building and are restricted to the following:

- (A) A single-family dwelling on each building site;
- (B) A duplex on each building site having a minimum lot area of 7,000 square feet; and
- (C) *Boardinghouse or lodging house, not to exceed five guests.*

(Prior Code, § 17.44.020) (Ord. 352, passed - -1973) (Emphasis added.)

There does not appear to be any definition of “boarding house” in the Code, however, MacMillan’s on-line dictionary defines it as “a house in which people pay to live as guests with the family who owns it.” In other words: The renting of rooms in a residence.

The fact that a boarding house with 5 paying guests is permissible in the zone of 15 Scenic, is highly significant with respect to the Applicants’ petition for a bathroom that includes a shower in the proposed free-standing bedroom: If the property can be legally rented to up to five additional persons for an unlimited period of time, that means that the Town has already determined and enacted into law a Code that permits, and expects, a higher density and use in the RD 5.5-7 Zone than merely single family dwellings.

The Planning Commission was concerned that if the free-standing bedroom had a shower, a tenant could use a microwave to turn it into a second unit. Aside from the fact that this argument

would make every college dorm room in America a “second unit”, the fact is that the Zoning Code section 17.084.020 allows for an even *higher density* than even a second unit would create.

Given the permission granted for a boarding house by section 17.084.020, the property may be legally used for up to 5 guests, whether by the day, month or year. In view of the higher density use authorized and allow by section 17.084.020, the denial of a shower in the proposed free-standing bedroom on the ground of limiting density has no rational basis, since the owners could use 15 Scenic as a boarding house with five guests, presumably with cars and any other increase in town services.

2. Applicants Are Agreeable to a Deed Restriction Preventing “Air bnb” Use

The Applicants are sensible of the fact that one of the town’s concerns is the use of the free-standing bedroom as an Air bnb rental. This issue in particular was discussed by the Planning Commission. In mitigation, the Applicants suggest, and would be agreeable to, a deed restriction preventing the use of the bedroom as a short-term rental.

It is not the intent of the owners to use the free-standing bedroom as a hotel. What the owners wish is to have a stable, responsible, long-term tenant. Accordingly, the Applicants are agreeable an appropriate deed restriction The deed restriction would address any concerns of the Town about the cottage being used as a transient “hotel”, while allowing for the cottage to be used as desperately needed affordable housing in Marin.

3. Permitting the Inclusion of a Shower in the Cottage is “Just and Equitable”

The standard the Council is to apply to its analysis of this appeal is set forth in Fairfax Town Code § 17.036.060, which states that the Council has the discretion and authority to:

“...reverse or modify the action appealed as it deems just and equitable.” (Emphasis added.)

Allowing a shower in the free-standing bedroom is both “just and equitable” - not just for the owners, but also for renters seeking a affordable home in Marin County.

October ____, 2015

Gwen Gordon

Tony Hoeber

From: Gwen Gordon
Date: Sun, Nov 1, 2015 at 11:10 AM
Subject: Appeal supplement for 15 Scenic
To: bcoler@townoffairfax.org

Dear Barbara,

In September I emailed you an appeal brief regarding the cottage at 15 Scenic Rd. At the time we thought the Town Council was going to review our case at the October meeting. Since our case got postponed until November we had the opportunity to do more research. The brief you received from the town most recently reflects some of the research we did since the version I sent to you in September. This includes a list of four additional properties in Fairfax with at least 5 BR/4 BA. The facts that 1) there are multiple 5 BR/4 BA properties, and 2) there is a detached cottage with a full bathroom right next door at 9 Scenic, provide further proof that granting a permit for a free-standing bathroom in the detached structure at 15 Scenic is not a grant of "special privilege."

Since September we also studied the zoning code for our property and discovered that boarding and lodging houses are covered as principal permitted uses. This means that the property can be legally rented to up to five additional persons for an unlimited period of time. In other words the Town has already determined and enacted into law a Code that permits, and expects, a higher density and use in our zone than just single family dwellings.

Finally, because we are committed to making housing affordable in Fairfax we are ethically opposed to Airbnb and VRBO and would gladly agree to adding a deed restriction to that effect.

The attached Appeal supplement outlines each of these points. We appreciate your reviewing this additional information. Please let me know if you have any questions.

BTW: I cc:d Dolores Cordell and Terrence Bennett, the two attorneys who prepared these briefs on our behalf.

Best,

Gwen