



TOWN OF FAIRFAX

STAFF REPORT

December 2, 2015

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager *GT*
Jim Moore, Director of Planning and Building Services

SUBJECT: Adoption of a Resolution Granting the Appeal and Approving a Use Permit and Parking Variance for 15 Scenic Road (APN 001-146-03)

RECOMMENDATION

Adopt the resolution Granting the Appeal and Approving a Use Permit and Parking Variance for 15 Scenic Road (APN 001-146-03)

BACKGROUND

On August 20, 2015 the Planning Commission held a duly-noticed public hearing on a request from the owners for a Use Permit to convert the existing accessory structure into a 297-square foot guest bedroom with a full bathroom without kitchen facilities, and a Variance to expand the onsite parking within the side-yard setback thereby providing two additional parking spaces for a total of three (3) spaces. At that meeting the Planning Commission approved the Use Permit with the following conditions:

- (A) The applicant signing a "deed restriction" stating that the accessory structure will not be used as a second unit; and
- (B) That there could be only a half bath in the existing ancillary living space – to further ensure that the ancillary living space would not be used as a stand-alone second unit or for short term rentals (e.g., Airbnb).

The owners then appealed the half-bath restriction on the accessory structure that the Planning Commission granted a Use Permit for "ancillary living space" to the main structure.

On November 4, 2015, the Town Council held a duly-noticed public hearing on the appeal of the half-bath restriction. During the public hearing, the Council received the staff report and comments from the property owners and residents in the neighborhood. Based upon the information presented during the public hearing, the Council directed staff to return with a resolution granting the appeal with the additional condition that the deed restrictions include a restriction that the ancillary living space not be used for short term rentals. The appellants stated that the additional restriction was acceptable to them. While not a finding, the Council did want the staff report to indicate that there is ample on-street parking in the neighborhood.

The attached resolution, modelled on the Planning Commission's Resolution No. 15-28, makes the appropriate findings based on the Council's discussion and direction from the November public hearing. Also attached, as background, is the staff report, without attachments, from the November Council meeting.

FISCAL IMPACT

No cost to the Town

ATTACHMENTS

Resolution 15-__
November 4, 2015 Staff Report (without attachments)

AGENDA ITEM # 15

RESOLUTION NO. 15-__

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
GRANTING THE APPEAL AND APPROVING A USE PERMIT AND PARKING VARIANCE
FOR 15 SCENIC ROAD (APN 001-146-03)**

WHEREAS, on February 7, 2014, the Town completed a Residential Re-Sale Inspection Report for that real property located at 15 Scenic Road in Fairfax, California, Assessor's Parcel Number 001-146-03 (the "Property"), at which time it was determined that there was an unpermitted second unit with private bath and kitchen improvements within the main residence on the Property, and the sub-standard attic space of the main residence was being used as living space with a ladder that was not code compliant; and

WHEREAS, on May 12, 2014, the Town Engineer documented that the illegal second unit in the main residence had been abated through the removal of the unpermitted kitchen facilities and the attic space was no longer being used as living space; and

WHEREAS, the Property was subsequently sold on May 14, 2014, to Gwen Gordon and Antony Hoeber ("Owners"); and

WHEREAS, in October, 2014, the Town received new complaints of code violations at the Property; and

WHEREAS, on November 8, 2014, Town staff inspected the Property and determined that (1) an accessory structure at the rear of the Property was being improved as a living space, without the necessary permits and approvals, and (2) the portion of the main residence that had previously been illegally used as a second unit was still walled off from the main residence, but no kitchen improvements were present; and

WHEREAS, following the November 8, 2014, inspection of the Property, Town staff notified Owners that retention of the accessory structure in the rear portion of the Property, either as a detached second unit or a bedroom ancillary to the main residence, would require a use permit, per the Town Code; and

WHEREAS, on June 29, 2015, Owners submitted Application No. 15-27, seeking approval of a Use Permit to allow a bedroom and bathroom in the accessory structure situated on a property within the RD 5.5-7 Zone, and a Parking Variance to permit otherwise prohibited parking within the side yard setback; and

WHEREAS, planning staff determined that the approvals sought in Application No. 15-27 were exempt from further review and evaluation under the California Environmental Quality Act ("CEQA," codified at Public Resources Code Section 21000, *et seq.*, and as further governed by the CEQA Guidelines, found at 14 California Code of Resources Section 15000, *et seq.*) by virtue of 14 C.C.R. § 15303(a), which offers a categorical exemption for construction and location of, among other things, limited numbers of new, small facilities or structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure; and

WHEREAS, on August 20, 2015, the Planning Commission of the Town of Fairfax held a duly-noticed public meeting to consider the Use Permit and Parking Variance requested in Application No. 15-27; and

WHEREAS, after reviewing the staff report, project plans, and supplemental information provided by Owners, as well as a report from Town staff, and having afforded the public the opportunity to speak, the Planning Commission approved Resolution No. 15-28, approving the Use Permit and Parking Variance, subject to multiple conditions; and

WHEREAS, in Resolution No. 15-28, the Planning Commission specifically permitted only the development of a half-bathroom (toilet and sink) in the accessory structure, denying Owner's request for a full bathroom; and

WHEREAS, Resolution No. 15-28 likewise required Owners to execute and record a deed restriction to ensure that the accessory structure would not be used as a second unit on the Property; and

WHEREAS, on August 31, 2015, Owners submitted a Notice of Appeal to the Town with regard to Resolution No. 15-28, challenging the condition of approval permitting only a half bathroom and requesting approval of a full bathroom; and

WHEREAS, the Town Council of the Town of Fairfax held a public hearing to consider the Owner's appeal on November 4, 2015, at which time any person interested in the matter was invited to appear and be heard on the matters set forth in the public hearing notice; and

WHEREAS, after reviewing the staff report, project plans, and supplemental information provided by Owners, as well as a report from Town staff, and having afforded the public the opportunity to speak, the Town Council granted Owner's Appeal, approving the Use Permit (allowing a full bathroom) and Parking Variance, subject to multiple conditions.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Fairfax as follows:

SECTION 1. The recitals set forth above are adopted as further findings of the Town Council.

SECTION 2. The Town Council has reviewed Application No. 15-27, as well as the record of proceedings regarding the same, and finds that the proposed project is categorically exempt from further CEQA review per 14 C.C.R. Section 15303(a), inasmuch as the project proposes the conversion of an accessory structure for use as a bedroom and full bath, and the use of a portion of the side yard setback area as a parking area on a lot within the RD 5.5-7 Zone, which project scope is well within the parameters of Section 15303(a), which exempts from further CEQA review the new construction or conversion of a single-family residence or second dwelling unit in a residential zone.

SECTION 3. Subject to Section 5 below, and in accordance with Town Code Section 17.032.060, the Town Council makes the following findings with regard to the Use Permit requested in Application No. 15-27:

- A. The conversion of the accessory structure to a bedroom and full bath will not change the single-family character of the site and therefore, 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.

- B. The accessory structure conversion and improvement of the parking will not extend closer to any neighboring structures than the existing accessory structure and parking. The accessory structure will not include kitchen facilities and will therefore not be available as a second unit. 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.
- C. 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 the 2010 to 2030 Fairfax General Plan or the Zoning Ordinance, Title 17 of the Fairfax Town Code, inasmuch as it merely adds a further bedroom and bathroom to the main residence on the Property.
- D. Approval of the use permit will result in equal or better development of the premises than would otherwise be the case, and allowing the Owners to improve the accessory structure is in the public interest and for the protection or enhancement of the general health, safety and welfare of the community.

SECTION 4. Subject to Section 5 below, and in accordance with Town Code Section 17.028.070, the Town Council makes the following findings with regard to the Parking Variance requested in Application No. 15-27:

- A. The narrow width and small size of the Property are the applicable special circumstances that result in the strict application of the parking setback regulation eliminating the ability of the Owners to improve and expand the available parking on the Property, depriving them of privileges enjoyed by other property owners in the vicinity and under identical zone classification.
- B. The variance or adjustment will not constitute a grant of special privilege because similar parking configurations exist throughout the Town and similar variances have been granted on other small lots to allow parking within the side setback. Therefore, the approval of this variance is consistent with the limitations upon other properties in the vicinity and under identical zone classification, and is consistent with the objectives of Title 17 of the Town Code.
- C. The strict application of all the setback regulations would prohibit the Owners from having the ability to improve and expand their parking to accommodate an expansion of the on-site living space.
- D. 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 because the limited approved use of the accessory structure as a further bedroom and bathroom helps ensure that the accessory structure will be used as part of the main house.

SECTION 5. The Town Council approves Application No. 15-27 subject to the permittee's compliance with the following conditions:

1. This approval is limited to the development illustrated on the plans prepared by Jay Sherlock, dated May 11, 2015, pages A-0.0, A-0.1, A-0.2, A-1.0, A-1.1 and A-1.2, and the parking as shown on the 2 pages of drawing prepared by the Owners and submitted to the Town on August 4, 2015, as an attachment to the plans.
2. Prior to issuance of a building permit to convert the structure to living space, the Owners shall sign, notarize and record a deed restriction indicating the accessory structure will only be used as an extension of the main house and shall contain no kitchen or kitchen facilities or improvements.
3. Prior to the building permit final inspection, the parking improvements shall be improved as depicted in the drawings submitted by the Owners and stamped 'received' by the Town on August 4, 2015.
4. The permittee shall prepare and submit with the building permit application 5 sets of plans showing how the storage shed will be modified to comply with California Building Code requirements for habitable space (2 sets for the Ross Valley Fire Department).
5. During the construction process all construction related vehicles including fixture/supply or equipment delivery, cement trucks and construction materials shall be situated off the travel lane of the adjacent public right(s)-of-way at all times. This condition may be waived by the building official on a case by case basis with prior notification from the permittee.
6. Additionally, any proposed temporary closure of a public right-of-way shall require prior approval by the Fairfax Police Department and any necessary traffic control, signage or public notification shall be the responsibility of the permittee or his/her assigns. Any violation of this provision will result in a stop work order being placed on the property and issuance of a citation.
7. The Building Official shall field check the completed project to verify compliance with the approved plans and building code requirements.
8. The Planning Department shall field check the completed project to verify that the construction reflects the plans approved by the Planning Commission and to verify that all planning commission conditions have been complied with.
9. The roadways shall be kept clean and the site free of dust by watering down the site if necessary. The roadways shall be kept free of dust, gravel and other construction materials by sweeping the roadway, daily, if necessary.
10. During construction permittee and all employees, contractors and subcontractors must comply with all requirements set forth in Chapter 8.26 of the Town Code, "Storm Water Management and Discharge Control Program."
11. 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 Use Permit No. 15-27. **Any** construction based on job plans that have been altered without the benefit of an approved modification of Use Permit 15-27 will result in the job being immediately stopped and red tagged.

12. The permittee and its heirs, successors, and assigns shall, at its sole cost and expense, defend with counsel selected by the Town, indemnify, protect, release, and hold harmless the Town of Fairfax and any agency or instrumentality thereof, including its agents, officers, commissions, and employees (the "Indemnitees") from any and all claims, actions, or proceedings arising out of or in any way relating to the processing and/or approval of the project as described herein, the purpose of which is to attack, set aside, void, or annul the approval of the project, and/or any environmental determination that accompanies it, by the Planning Commission, Town Council, Planning Director, Design Review Board or any other department or agency of the Town. This indemnification shall include, but not be limited to, suits, damages, judgments, costs, expenses, liens, levies, attorney fees or expert witness fees that may be asserted or incurred by any person or entity, including the permittee, third parties and the Indemnitees, arising out of or in connection with the approval of this project, whether or not there is concurrent, passive, or active negligence on the part of the Indemnitees. Nothing herein shall prohibit the Town from participating in the defense of any claim, action, or proceeding. The parties shall use best efforts, acting in good faith, to select mutually agreeable defense counsel. If the parties cannot reach agreement, the Town may select its own legal counsel and the permittee agrees to pay directly, or timely reimburse on a monthly basis, the Town for all such court costs, attorney fees, and time referenced herein, provided, however, that the permittee's duty in this regard shall be subject to the Town's promptly notifying the permittee of any said claim, action, or proceeding.
13. If the gate between the parking spaces is to be retained in the current location, it shall be electrified for easy opening.

Ross Valley Fire Department

1. A fire protection 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.
2. All smoke detectors in the residence shall be provided with AC power and be interconnected for simultaneous alarm. Detector 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.
3. Maintain an effective firebreak around the structure in compliance with Ross Valley Fire Protection Standard 220, Vegetation/Fuels Management Plan.
4. Carbon monoxide alarms shall be provided.
5. Address numbers must be 4 inches tall and if not clearly visible from the street, additional numbers are required. The project is a substantial remodel so the numbers must be internally illuminated or illuminated by an adjacent light controlled by a photocell and switch off only by a breaker so it will remain illuminated all night. The numbers must be internally illuminated, placed next to a light or be reflective numbers.

6. Permittee may propose alternate material or methods in accordance with Section 103.3 of the International Urban Wildland Interface Fire Code. All approved alternate requests and supporting documentation shall be included in the plan sets submitted for final approval.

Marin Municipal Water District

1. The permittee must comply with the District Code Title 13, Water Conservation, as a condition of water service.
2. Should backflow protection be required it shall be installed and inspected prior to the project final inspection.

Sanitary District

A sewer connection permit is required and the permittee must file an application with the District prior to issuance of the project building permit.

Miscellaneous Conditions

1. The permittee must comply with any all conditions listed above unless a specific agency waives their conditions in a written letter to the Department of Planning and Building Services.
2. In the event of any future review of the Use Permit or Parking Variance authorized herein, the conditions of approval imposed here by the Town Council may be revised, removed, or otherwise acted upon by the Planning Commission at a public hearing.

The forgoing Resolution was duly passed and adopted at a regular meeting of the Town Council of the Town of Fairfax held in said Town on the 2nd day of December 2015 by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor

Attest:

Michele Gardner, Town Clerk



TOWN OF FAIRFAX

STAFF REPORT

November 4, 2015

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager 
Jim Moore, Director of Planning and Building Services

SUBJECT: Appeal of Planning Commission action approving a Use Permit for a detached accessory structure at 15 Scenic Road to be improved as living space with a half bathroom

RECOMMENDATION

1. Open/close Public Hearing.
2. Deny the appeal and uphold the decision of the Planning Commission or continue the matter to the December 2, 2015 meeting and direct staff to prepare a resolution for approval of the appeal including making the appropriate findings.

BACKGROUND

Town records and the County's Tax Assessor's records indicate that the primary structure at 15 Scenic Road was constructed in 1907 and that at some point in time there was a single-car garage – which is no longer there.

On February 7, 2014 a Residential Re-Sale Inspection Report on 15 Scenic Road was completed by Town staff for the previous owner. The Re-Sale Inspection revealed that there was:

- (a) An unpermitted (e.g., illegal) second unit with a private bath and kitchen improvements within the main structure - walled-off from the rest of the house; and
- (b) That sub-standard attic space was being used as living space with a non-code compliant ladder.

The Report stipulated that (per code) ***"All kitchen improvements must be removed and the kitchen supply lines must be removed back to their point of origin. Attic may not be used for living space/ladder to space is not code compliant"***. On May 12, 2014 the Town's Building Official signed notes on the original Report saying that the illegal second unit had been "abated" by the removal of the kitchen improvements – and that the attic space was no longer being used as living space. The property was subsequently sold on May 14, 2014 to the current owners.

In October of 2014 Town staff received a code violation complaint alleging that a neighbor had ***"noticed many workers installing plumbing and building units at 15 Scenic Road for rentals. Please take a look as parking is not ample on this road"***. The property was then inspected by Town staff on November 8, 2014 revealing that:

- (1) An accessory structure at the rear of the property was being improved as living space; and
- (2) A portion of the main house that had previously been an unpermitted second unit was still walled-off from the rest of the house - although it contained no kitchen improvements (e.g., only a bedroom and bathroom – with an outside entrance).

Staff then advised the new owners that retention of the accessory structure as either a detached second unit or a bedroom as ancillary living space to the main house - would require a Use Permit. The new owners then determined that the utility hook-up fees for sewer and water utility services were prohibitively expensive and

decided to only apply for a Use Permit from the Planning Commission to legitimate the accessory structure as “ancillary living space” to the main house.

On August 20, 2015 the Planning Commission held a duly noticed public hearing on a request from the owners for a Use Permit to convert the existing “storage building” into a 297 square foot guest bedroom with a full bathroom without kitchen facilities, and a Variance to expand the onsite parking within the side-yard setback thereby providing one additional parking space for a total of three (3) spaces. At that meeting the Planning Commission approved the Use Permit with the following conditions:

- (A) The applicant sign a “deed restriction” stating that the accessory structure will not be used as a second unit; and
- (B) That there could be only a half bath in the accessory structure – to further insure that the ancillary living space would not be used as a stand-alone second unit or for short term rentals (e.g., Airbnb).

DISCUSSION

The owners are now appealing the half-bath restriction on the accessory structure that the Planning Commission granted a Use Permit for as “ancillary living space” to the main structure. It should be noted that the owners can apply for a Use Permit to convert the accessory structure into a detached second unit.

There are 4 other homes in the immediate neighborhood with 4 bedrooms and 3 bathrooms and only 1 home with 5 bedrooms and 4 full bathrooms, which is what 15 Scenic will have if the Council allows them to have a full bathroom in the accessory structure. On all of these properties the bedrooms and bathrooms are contained within the dwelling (Attachment B – map and table of neighborhood homes).

One of the Commissioners noted that if the owners need another bedroom with access to a full bathroom, they can convert the bedroom in the main house that is currently used as home office back to a bedroom - and use the accessory structure as an office with a ½ bath (please see attached project plans). In the past, the Commission has approved full bath in accessory structures, but the existing homes were small homes: 2 or 3 bedrooms with 1 or 2 bathrooms, not homes with 4 bedrooms and 3 full bathrooms. One option for the Council to consider is to approve the full bath with the deed restriction.

FISCAL IMPACT

No cost to the Town

ATTACHMENTS

Attachment A: Appeal

Attachment B: Map showing locations of larger houses in the neighborhood and a table of neighborhood house sizes

Attachment C: Table showing accessory structures approved from 2005-2015

Attachment D: Project Plans