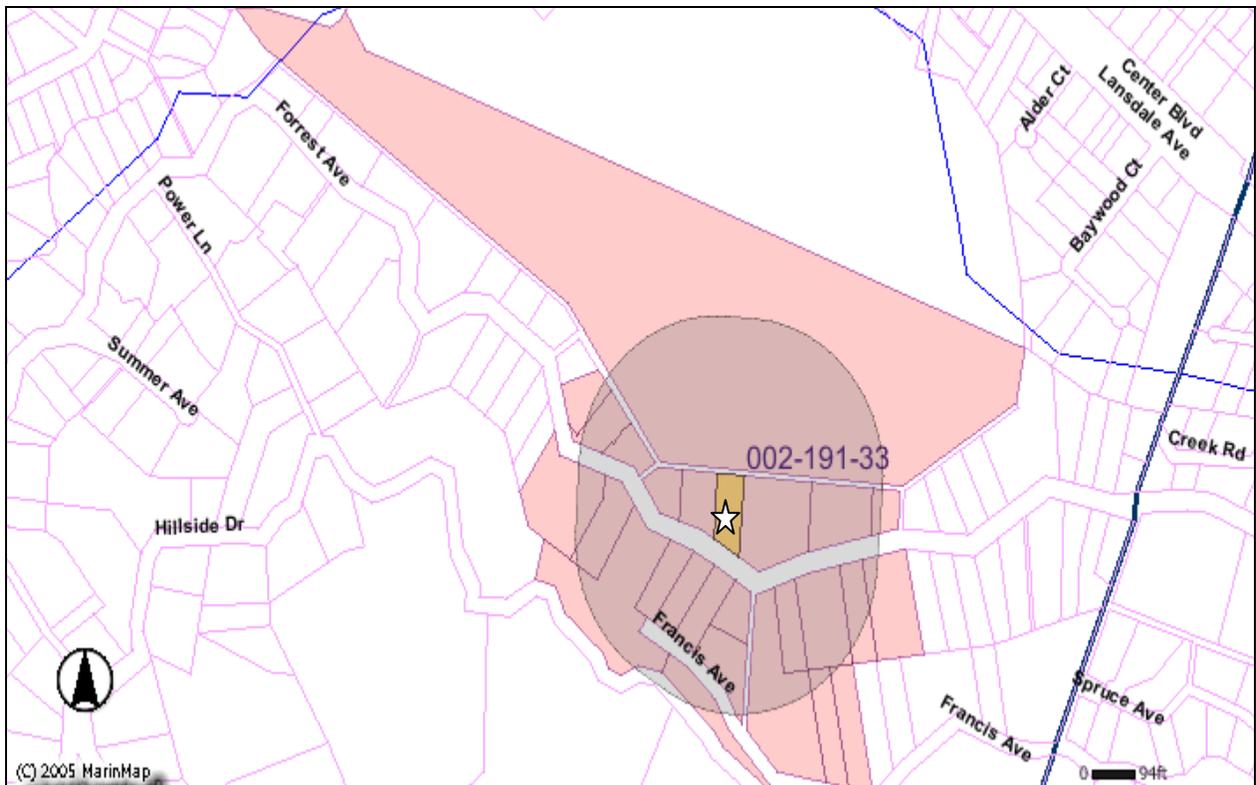


**TOWN OF FAIRFAX
STAFF REPORT
Department of Planning and Building Services**

TO: Fairfax Planning Commission
DATE: January 20, 2011
FROM: Linda Neal, Senior Planner
Jim Moore, Director of Planning and Building Services
LOCATION: 162 Forrest Avenue; Assessor's Parcel No. 002-191-33
PROJECT: Conversion of an accessory structure to an office and operation of a bed and breakfast establishment; Application # 10-36
ACTION: Use Permit; application # 10-36
APPLICANT: Susan McConneloug
OWNER: Susan and Michael McConneloug
CEQA STATUS: Categorically exempt, § 15303(e)



162 FORREST AVENUE

BACKGROUND

The 8,220 square foot site slopes down from Forrest Avenue at an average rate of 30%. The 1,963 square foot, two story residence was originally constructed in 1924 prior to the Town's incorporation. Building permits were issued to expand the residence in 1971 and again in 1975. A permit was issued to expand/rebuild the garage/parking deck structure to include a storage area underneath the parking in 1980. Sometime between 1980 and the present the storage area underneath the garage was converted into an office with a wood burning stove.

The use of the area for an office with a wood burning stove was brought to the Town's attention via a code violation complaint received on May 6, 2010. The town advised the owner that the office and wood burning stove would either have to be abated or would have to be legalized in a letter dated May 20, 2010.

The applicant submitted a letter to the Town Council asking that the penalty fee for converting the storage area to an office without permits be waived, based on the financial difficulties she and her husband are currently facing due to the economy. The Town Manager agreed to waive the penalty fee but required the owner to pay the \$925.00 Use Permit application fee.

The operation of a bed and breakfast establishment from the residence was brought to staff's attention by neighbors prior to the December 16, 2010 meeting and resulted in a continuance of the matter to allow re-noticing.

DISCUSSION

The property is located within the Residential Single-family RS 6 Zone which restricts the use of property to a single-family dwelling on each lot along with permitted accessory uses such as garages and storage structures (Town Code sections 17.080.020 and 17.080.030).

Town Code 17.084.040 lists permitted accessory structure uses and they include cabanas, greenhouses, patios, tool sheds, play houses and garages.

Proposed Conditional Uses

Detached offices with half baths are not listed as a permitted accessory structure use.

Bed and breakfast establishments are also not listed as permitted uses in the residential single-family zone. Bed and breakfast establishments also do not meet the definition of a home occupation or profession as follows (Town Code Chapter 17.088):

Any use customarily conducted entirely within a dwelling and carried on exclusively by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof, and in connection with which there is no display, no stock in trade, no outside storage of equipment, and no commodity sold upon the premises. Such uses as barbershops, beauty parlors, tea rooms, tourist homes, animal hospitals and dancing schools shall not be deemed to be home occupations.

However, Town Code § 17.084.030(H) allows the Planning Commission to grant use permits for accessory uses and home occupation uses not listed in the code.

The Commission has granted other use permits to allow accessory structures to be used for living space, including offices and bathrooms as long as the structures are used by the residents of the main house and not rented out or used for home businesses that have clients/customers or employees visiting the site (Town Code § 17.008.020, Definition of Home Occupation or Profession).

The applicant's Use Permit application included a request to legalize the conversion of the storage area underneath the parking structure for a **home office** that has clients and a bookkeeper that occasionally have appointments/business meetings on the site. The owner provides fertility and nutrition consulting with an average of 3 to 4 couples visiting the office each month, usually on weekday afternoons or evenings. Occasionally a couple may meet with her on weekends. She also has a book keeper she employs who comes 2 hours each week on Wednesday mornings (Exhibit A – applicant's supplemental information).

The advertisements that staff has viewed on line for the bed and breakfast operation can be found on the Spirit Rock Off-site Accommodations website and in a website called Bed and Breakfast Exchange of Marin. Although there was no kitchen in the area used for the bed a breakfast when staff inspected the property on January 12, 2011, one of the on-line advertisements for the business shows a refrigerator and microwave in a closet. Based on the Town's definition of "kitchen" as follows the refrigerator and the microwave constitute a kitchen:

Town Code § 17.008.020, Kitchen, Any portion of a structure with any combination of the following: sink, other than that within a bathroom, food storage and preparation areas, refrigerator, stove, microwave oven, convection oven, cooking burners or similar appliances which may reasonably be used for the preparation of food.

The existence of a kitchen would allow the area currently rented as a bed and breakfast to be used as a residential second living unit.

Parking

Town Code § 17.052.030(A)(1) requires that single-family residences be provided with two off-street parking spaces with at least one of them covered and with a third guest parking space. The guest parking space can be located within the public right-of-way as long as an area of the required 9 foot by 19 foot dimension is available off the travel portion of the public roadway (Town Code § 17.052.030(A)(2)). If a standard sized space is not available along the property frontage and off the travel portion of the roadway, the third guest space must be located on the private property.

The owner has indicated that they have four (4) parking spaces at their disposal. However, two site visits have revealed that only two parking spaces are available on the parking deck/garage structure used by the residence and a portion of this structure is within the public right-of-way. The two other spaces the owner referenced are pull-outs, located entirely within the public right-of-way, parallel to Forrest Avenue which are for the use of the general public and not for the exclusive use of any one property in the neighborhood. The two on-street parking spaces to the east are located along the 150 Forrest Avenue property frontage and the two to the west are located along the 170 Forrest Avenue frontage.

The residence at 162 Forrest Avenue does not have the minimum parking required for a single-family residence and has no additional on-site parking to accommodate an office with regular clients and a book keeper, and a bed and breakfast establishment.

Also, when similar uses requiring clients/customers coming to the site have been applied for in the past neighbors have expressed the following concerns:

- Concerns about visitors monopolizing the on-street public parking.
- Concerns about strangers in the neighborhood.
- Concerns about persons not used to driving on narrow windy roads and not familiar with the area increasing the danger to pedestrians and pets.

The purpose of the use permit Section of the Code is to allow the proper integration into Fairfax of uses which may be suitable only in certain locations in Town or in a zone or only if the uses are designed or laid out on the site in a particular manner. In considering a conditional use permit application, the Commission shall give due regard to the nature and condition of all adjacent uses and structures and to all pertinent aspects of the public health, safety and general welfare [Town Code § 17.032.010(A) and (B)].

Office Use

Staff has received letters from neighbors expressing concern over the wood burning stove located in the office area beneath the garage. They have indicated that the almost constant burning of wood in the stove is compromising their health and their enjoyment of their homes and property (Exhibit B). They have requested that if approved, a condition of approval will be that gas heat or some other clean heat source be installed in the office and the wood stove be removed.

Both businesses being operated from the site bring clients/patrons to the site. These types of uses are in direct conflict with the types of home uses the Town Code seeks to encourage as demonstrated by the definition of a Home Occupation. A Home Occupation is customarily operated exclusively by the occupants, it is incidental and secondary to the use of the dwelling for dwelling purposes, it does not change the character of the dwelling and it does not result in persons coming to the site.

The applicant has indicated in her submitted written material that she does have another location to interview clients in San Francisco and she is able to meet with her book keeper occasionally off-site.

Operating two home businesses with clients will impact neighborhood parking because the site already does not provide the parking required for the single-family home use.

The owner also has an alternative means for obtaining additional income by sharing her home with a room-mate that could sign a long term lease, share her kitchen and become established in the neighborhood rather than operating a business that results in a rotating influx of strangers.

Granting use permits in the hillside areas of Town where streets are narrow and parking is at a premium must be done with careful consideration respecting the rights of the neighbors, many of whom purchased their homes because they are in neighborhoods where they were not expecting neighboring businesses to change the residential character of the area.

RECOMMENDATION

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to approve application # 10-36 approving the home office use of the area under the garage but denying the request for a bed and breakfast operation based on the following findings and subject to the following conditions:

Recommended Conditions:

1. The wood burning stove shall be removed from the office and be replaced with gas heat or some other clean form of heating after the owner obtains a building permit for the new system and for the improvements that were done without Town approval.
2. The owner shall meet with clients and her bookkeeper off-site.
3. The owner shall stop operating the bed and breakfast and shall remove the second kitchen from the lower level of the residence.

Suggested Findings

1. The Use Permit has been conditioned upon the removal of the wood burning stove, the elimination of the bed and breakfast operation and the operational changes to the fertility and nutritional consulting business to eliminate visitors to the site. 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.
2. The replacement of the wood burning stove with gas, electric or solar heating and eliminating the influx of visitors to the site will ensure that the use of the property as approved 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.
3. Approval of the use permit is not contrary to those objectives set forth in the Zoning Ordinance because it will result in one permitted home occupation that complies with the definition of a home occupation as stated in the Town Code.
4. Approval of the use permit will result in equal or better development of the premises than would otherwise be the case because the code violations will be eliminated. Elimination of the Building Code and Zoning Ordinance violations is in the public interest and for the protection or enhancement of the general health, safety or welfare of the community.

ATTACHMENTS

Exhibit A – Application’s supplemental information

Exhibit B – Letter from adjacent neighbors

Exhibit C – Web bed and breakfast information