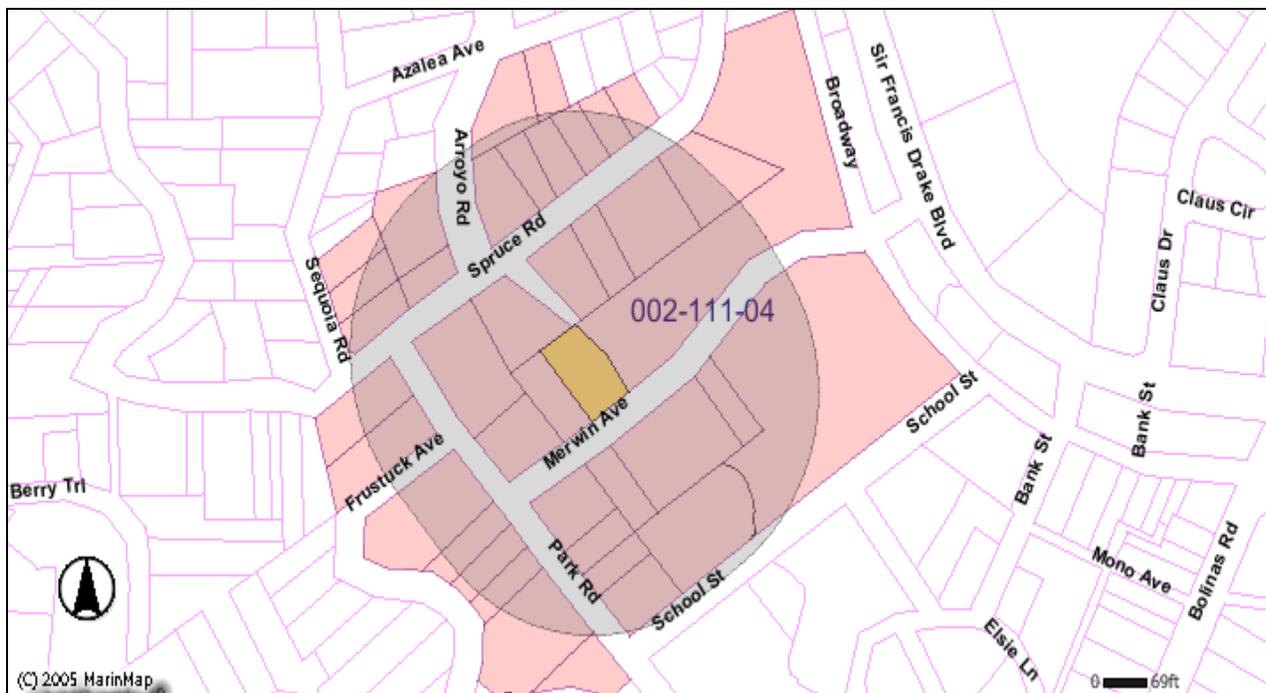


**TOWN OF FAIRFAX
STAFF REPORT**
Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: April 15, 2010
FROM: Jim Moore, Director of Planning and Building Services
Linda Neal, Senior Planner
LOCATION: 36 Merwin Avenue; Assessor's Parcel No. 002-111-04
ZONING: Multiple Family RM Zone District
PROJECT: Single-family residence addition
ACTION: Use Permit and Variances; Application # 10-06
APPLICANT: Rowan and Vikki Fennel
OWNER: Same
CEQA STATUS: Categorically exempt, § 15301(e)(2)



36 MERWIN AVENUE

BACKGROUND

The 8,343 square foot site is almost level in the area of the house but then it slopes down steeply including a portion of Fairfax Creek. The level area is roughly 6,321 square feet in size while the remaining 2,022 square feet is the creek and creek bank. This results in the site with a smaller buildable area than appears on paper.

The 812 square foot residence was constructed in 1913 and contains two bedrooms and one bathroom.

DISCUSSION

The applicants are proposing to remove the rear 107 square feet of the structure and then construct a 1,231 square foot addition that varies in height from one to two stories and from 16 feet to 26 feet. The project will result in a 2,150 square foot residence providing a one car garage, three bedrooms, child’s area, family room, living room, dining room, office, kitchen, 2 ½ baths and a sunroom.

Constraints on the site include the creek setback and other setback regulations as well as the maximum 28.5 foot height limit and the fact that the property is located within Flood Zone AE where living space floors need to be elevated above the flood water elevation (in Fairfax usually 2 to 3 feet).

The site is located within the Multiple Family Residential RM Zone. The developable envelope is restricted by not only the large setbacks in the RM Zone but also the creek setback. Town Code § 17.040.040(A) indicates that no structures shall be constructed closer to the top of the creekbank than 20 feet or two times the depth of the creek whichever is greater without a variance.

The residence and proposed addition comply with the regulations set forth in RM Zone as follows:

	Minimum front setback	Minimum rear setback	Combined front/rear setback	Minimum side setbacks	Combined side setbacks	FAR	Lot coverage	height
Required/ Permitted	10ft	10ft	40ft	10ft & 10ft	25ft	.40	.35	28.5ft and 2 stories
Existing	12.5ft	77ft	89.5ft	10.5ft & 22.5ft	22.5ft	.09	.10	20ft, 1 story
Proposed	12.5ft	25ft 4in	37ft 4in	3ft & 22.5ft	25.5ft	.25	.19	26ft 9in, 2 stories

The following discretionary permits are required for the project:

Use Permit: Town Code § 17.088.010 lists permitted uses in the RM Zone as multiple dwellings and apartments and dwellings at a density of not more than one living unit for 4,356

square of land area except by Use Permit which allows a density of one living unit for each 3,000 square feet of area.

Although single family residences are not listed as either a permitted or a conditional use in the RM Zone, Town Code §17.088.030(B) allows a duplex with a use permit and 17.088.030(H)(1) allows second units with a use permit. Town Code § 17.088.030(F) has historically been used by the Town to allow expansion and improvements to properties in the RM Zone that are developed with legal non-conforming single-family residences. It allow the Commission to grant use permits for other uses determined by the Commission to be of the same general character as the other uses listed in the conditional use section of the RM Zone Ordinance.

Creek Setback Variance: Most of the site is located within the required 20 foot creek setback and the proposed addition/deck encroaches up to 15 feet into the setback.

Combined Front/Rear Setback Variance: Town Code § 17.088.070(A) requires a combined front/rear setback of 40 feet while the proposed addition maintains a combined setback of 37 feet 4 inches.

Side Setback Variance: Town Code § 17.088.070(B) requires a minimum side yard setback of 10 feet. Eighteen feet of the addition, while only one story, maintains a 3 foot side yard setback and includes a rooftop garden/deck. Twenty-five feet six inches of the addition will be two stories in height and will maintain a side setback from the property at 36 Merwin Avenue of only 4 feet 2 inches. The remaining one story addition at the rear of the residence will be 7 feet long and it will also maintain a substandard 4 foot 2 inch side setback.

Parking Variance: The Town Code requires that projects that constitute 50% remodels must be brought into conformance with the parking regulations or a parking variance must be granted by the Planning Commission [Town Code §17.016.040(C)(2)]. The proposed project will increase the number of parking spaces to the required two, with the guest space on the street and will provide the one covered space required by code. However, the parking is proposed in tandem which is prohibited by Town Code §17.052.040(E) and requires a variance.

The owners have cited the fact that there are other residences in the neighborhood that have square footages exceeding 2,000 square feet. However, some of the ones cited include basement square footages for areas that are not living space (36 Merwin Avenue) and others are on sites that visually appear much larger because they do not include a creek bed and bank with such a severe slope (37 Spruce Road). Some of the addresses included in their list are for much smaller houses on larger lots (87 Park, 64 Park, 9 Arroyo Road). Visually the project creates too large a mass for what appear to be the boundaries of the property (the level area out of the creek). Further, the project does not maintain the minimum 5 foot side setback from the residence at 36 Merwin Avenue required in the Residential Single-family RS 6 Zone which allows the smallest side yard setback of all the Town's residential zones. The two story portion of the addition and the roof garden will impact the neighbor's property and will significantly impinge upon their privacy even though windows along this side of the building have been minimized according to the applicants.

The four (4) variances being requested to the Town's regulations are also an indication that the proposed project is out of scale with the project site and topography.

Alternative designs could include but are not limited to:

- Decreasing the square footage to that more in keeping with the apparent 6,321 square foot visual size of the property. Somewhere around 1,500 square feet.
- Raising the existing house up to create living space in combination with a small addition at the rear.
- Creation of detached separate living space in a structure at the rear of the property in conjunction with a smaller addition at the rear of the existing building.

RECOMMENDATION

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to continue the project and direct the applicant to explore other designs which include decreasing the visual mass of the structure and increasing the southern side setback.

ALTERNATIVE RECOMMENDATION

Deny the application based on the following findings:

1. The approval of the use permit will result in a 1,412 square foot addition that will be located not only within the required creek setback but that will also maintain a southern side setback of only 3 to 4 feet. This will constitute a grant of special privilege and contravene the doctrines of equity and equal treatment.
2. The proposed addition will result in new residential living space presenting a 50 foot long new wall area varying from one to two stories in height toward the property at 40 Merwin Avenue. Therefore, the development and use of property as proposed will cause excessive or unreasonable detriment to adjoining properties or premises, will 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. The proposed project does not even meet the minimum 5 foot side yard setback which is the smallest minimum side yard setback permitted by the current code in the residential areas throughout Fairfax. Therefore, approval of the use permit would be contrary to those objectives, goals or standards pertinent to the particular case and contained in the Town Zoning Ordinance.

ATTACHMENTS

Exhibit A – applicant’s supplemental information

Exhibit B – Agency comments