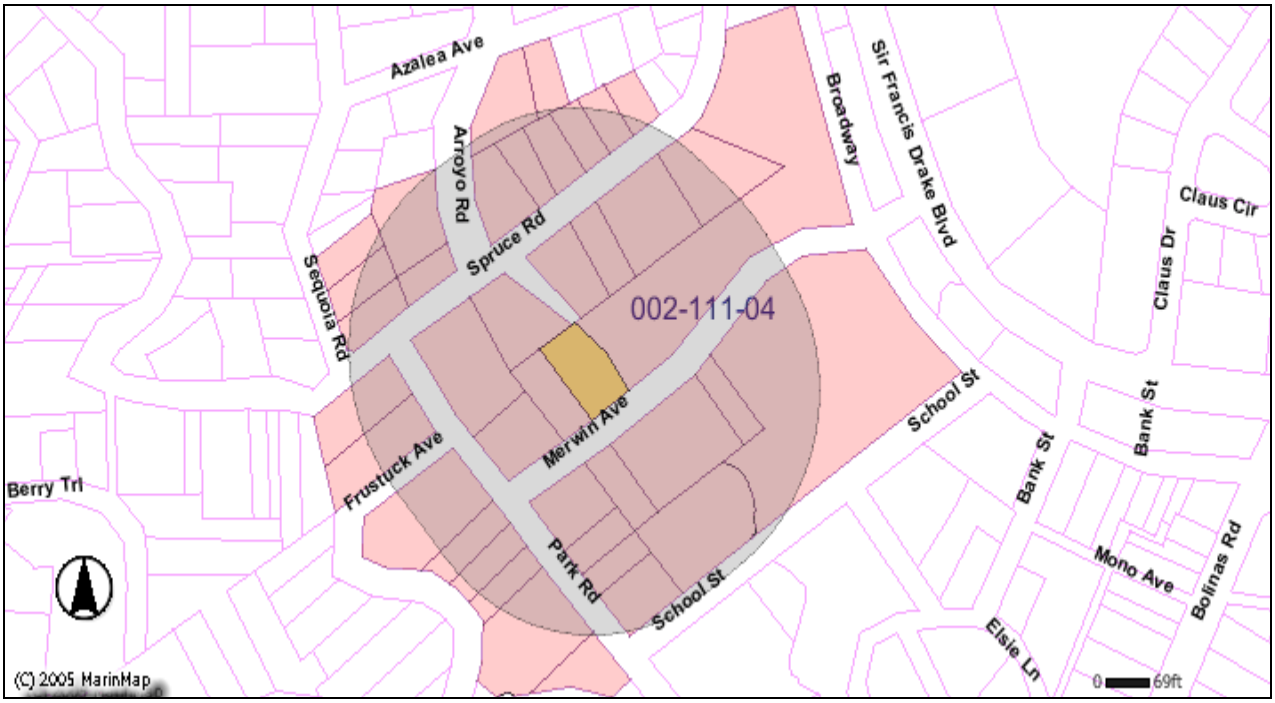
TOWN OF FAIRFAX
STAFF REPORT
Department of Planning and Building Services

TO:	Fairfax Planning Commission
DATE:	May 20, 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

This project was continued from the April 15, 2010 Commission meeting where the Commission directed the applicant to redesign the project indicating that the height, size and mass of the proposed structure is too great for the site and the addition is too close to the western side property line.

Staff met with the owner on May 6, 2010 to discuss the project and to review a preliminary plan for a revised addition. At the meeting staff presented the applicant with an envelope that staff felt would be acceptable for a revised plan. We looked at the minimum 5 foot side yard setbacks required for a typical Residential RS 6 Zone District and compared them to the 10 foot minimum side setbacks ***required*** for the RM Zone where the property is located. Staff felt that a compromise of a 7.5 foot side yard setback would be reasonable. We also advised the applicant that we could not supports decks in the required creek setback because the yard area could still be enjoyed and be fully utilized with the installation of a pervious patio eliminating unnecessary deck structures from the riparian corridor.

DISCUSSION

The project has been redesigned to one story, decreasing the size of the addition from 1,231 square feet to 972 square feet including the removal of 112 square feet of the rear of the existing structure for an overall final square footage of 1,672 square feet. The project still includes a 220 square foot garage in compliance with the Town Code § 17.052.010(D) and provides the applicant with three bedrooms and two bathrooms. The original submittal included three bedrooms and 2 ½ baths; this submittal includes three bedrooms and 2 baths.

The residence and proposed addition have been revised to 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	13ft	25.5ft	5ft & 22.5ft	27.5ft	2.0	.22	16ft, 1 story

The following discretionary permits are required for the revised 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 allows 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 maintains a creek setback of 10feet.

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 25 feet 4 inches.

Side Setback Variance: Town Code § 17.088.070(B) requires a minimum side yard setback of 10 feet. The proposed revision maintains a minimum side-yard setback of 5 feet. Staff recommends the addition be as much in compliance with the required 10 foot setback as possible. The garage can maintain a 5 foot setback to provide the required garage width but the living space can be designed maintaining a minimum side setback of 7.5 feet while still allowing the applicants a substantial use of their property.

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.

While four (4) variances are still being requested the project has been decreased substantially in size and has been lowered in height from 26 feet 9 inches to 16 feet.

Staff acknowledges that the applicants have increased the side setback from the original 3 feet to 5 feet. However, the proposal still results in 215 square foot of living space being constructed within the minimum required 10 foot side yard setback.

Also, the new proposal still results in the neighboring property have a long 63 foot wall just 5 feet from the property line.

Complying with staff's recommended 7.5 foot setback will move the 63 feet of wall an additional 2.5 feet away from the neighboring property and will decrease the amount of living space being constructed out of compliance with the code from 215 square feet to 107.5 square feet.

As indicated to the owner in the May 6, 2010 meeting, staff is unable to support the deck structures in the creek setback due to the inability to make the finding that they will be unable to use or enjoy their yard unless the creek setback variance includes the decks.

RECOMMENDATION

1. Open the public hearing and take testimony.

2. Close the public hearing.

3. Move to approve application # 10-06 based on the following findings and subject to the following conditions:

Recommended Conditions:

1. The project plans be revised to include a 7.5 foot setback for the proposed living space, a 5 foot setback for the garage and removal of the two rear decks. The decks may be replaced with the minimum structure(s) required by the Building Code to allow for egress.

2. Prior to issuance of a building permit the applicant or his assigns shall:

a. Submit a construction plan to the Public Works Department which may include but is not limited to the following:

- Construction schedule (deliveries, worker hours, etc.)
- Notification to area residents

b. The applicant shall submit a bond to the Town in an amount that will cover the cost of grading, weatherization and repair of possible roadway damage. The applicant shall submit contractor's estimates for any grading, site weatherization and improvement plans for approval by the Building Official. Upon approval of the contract costs, the applicant shall submit a bond or letter of credit equaling 100% of the estimated construction costs.

c. The foundation and retaining elements shall be designed by a structural engineer certified as such in the State of California. Plans and calculations of the foundation and retaining elements shall be stamped and signed by the structural engineer.

d. The applicant shall secure written approval from the Ross Valley Fire Authority noting the developments conformance with their recommendations prior to submittal of the building permit plans.

3. During the construction process the following shall be required:

a. The engineer shall be on-site during the grading process (if there is any grading to be done) and shall submit written certification to the Town staff that the grading has been completed as recommended prior to installation of foundation and retaining forms and piers.

b. The structural engineer shall field check the forms of the foundations and retaining elements and provide written certification to the Town staff that the work to this point has been completed in conformance with their recommendations and the approved building plans prior to the concrete form inspection by the structural engineer. The Building Official shall field check the concrete forms prior to the pour.

c. All construction related vehicles including 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 project sponsor.

d. 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 applicant 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.

4. Excavation shall not occur between October 1st and April 15th. The Town Engineer has the

authority to waive this condition depending upon the weather.

5. The roadways shall be kept clean and the site free of dust by watering down the site or sweeping the roadway daily, if necessary.

6. During construction the developer and all employees, contractors and subcontractors must comply with all requirements set forth in Ordinance # 637 (Chapter 8.32 of the Town Code), "Urban Runoff Pollution Prevention".

7. Any changes, modifications, additions or alterations made to the approved building permit project plans will require a modification of Application # 10-06. Any construction based on job plans that have been altered without the benefit of an approved modification of Application # 10-06 will result in the job being immediately stopped and red tagged.

8. Any damages to the roadways accessing the site resulting from construction activities shall be the responsibility of the property owner.

9. The applicant or owner shall defend, indemnify, and hold harmless the Town of Fairfax or its agents, officers, and employees from any claim, action, or proceeding against the Town of Fairfax or its agents, officers, or employees to attach, set aside, void, or annul an approval of the Planning Commission, Town Council, Planning Director, Design Review Board or any other department or agency of the Town concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or owner's duty to so defend, indemnity, and hold harmless shall be subject to the Town's promptly notifying the applicant or owner of any said claim, action, or proceeding and the Town's full cooperation in the applicant's or owner's defense of said claims, actions, or proceedings.

10. A drainage report shall be submitted with the building permit application addressing how the additional drainage from the addition will be carried to the nearest storm drain or will be dispursed on site for review and approval by the Building Department.

11. Provide an engineering report with the building permit submittal specifically addressing the adequacy of the existing cement sack wall and other areas of the creek bank that crosses the site.

Recommended Findings

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 because the 50% remodel will result in a 1,672 square foot residence which is similar in size to other single-family residences in the neighborhood.

The development and use of the property as approved under the use permit with only one story and with a minimum side setback of 7.5 feet, 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.

Approval of the use permit is not contrary to those objectives, goals or standards pertinent to the particular case which are to maintain the neighbor’s privacy while also maintaining as much of the riparian corridor in an undeveloped state as possible.

Approval of the use permit with the revised proposal dated May 11, 2010, incorporating a 7.5

foot side setback and elimination of the decks in the creek setback will result in equal or better development of the premises than would otherwise be the case, and that said approval is in the public interest and for the protection or enhancement of the general health, safety or welfare of the community.

The location of the property adjacent to the creek and the irregular shape of the level buildable area of the site are the special circumstances applicable to the property that result in the strict application of the setbacks eliminating the owners ability to expand/improve the residence which is a privilege enjoyed by other owners in the neighborhood.

The variance or adjustment will not constitute a grant of special privilege because the design maintains as large a side yard setback as is possible from the neighboring developed property while also minimizing the impact on the riparian corridor that crosses the site.

The strict application of this title would result in excessive or unreasonable hardship because the applicant would be unable to expand/improve the 812 square foot summer cottage.

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 addition has been lowered from two stories to one story and 16 feet in height and will maintain a 7.5 foot setback from the western side property line.

The proposal provides the two parking spaces on site and the third guest space along the property frontage. Neither present nor anticipated future traffic volumes generated by the use of the site or the uses of sites in the vicinity reasonable require the replacement of the existing tandem parking that has existed on the site with side by side parking. Also, the proposal will bring the property into compliance with the covered parking requirement by including a one car garage.

Granting of the variance to allow two tandem parking spaces will not result in the parking or loading of vehicles on public streets in a manner as to interfere with the free flow of traffic on the streets because on-street parking is available along the property frontage.

Granting of the variance will not create a safety hazard or any other condition inconsistent with the objectives of this title.

ATTACHMENTS

Exhibit A – revised plans dated 5/11/10
Exhibit B – previous submittal dated 1/3010
Exhibit C – staff's site plan showing recommended building envelope
Exhibit D – 4/15/10 staff report and draft minutes