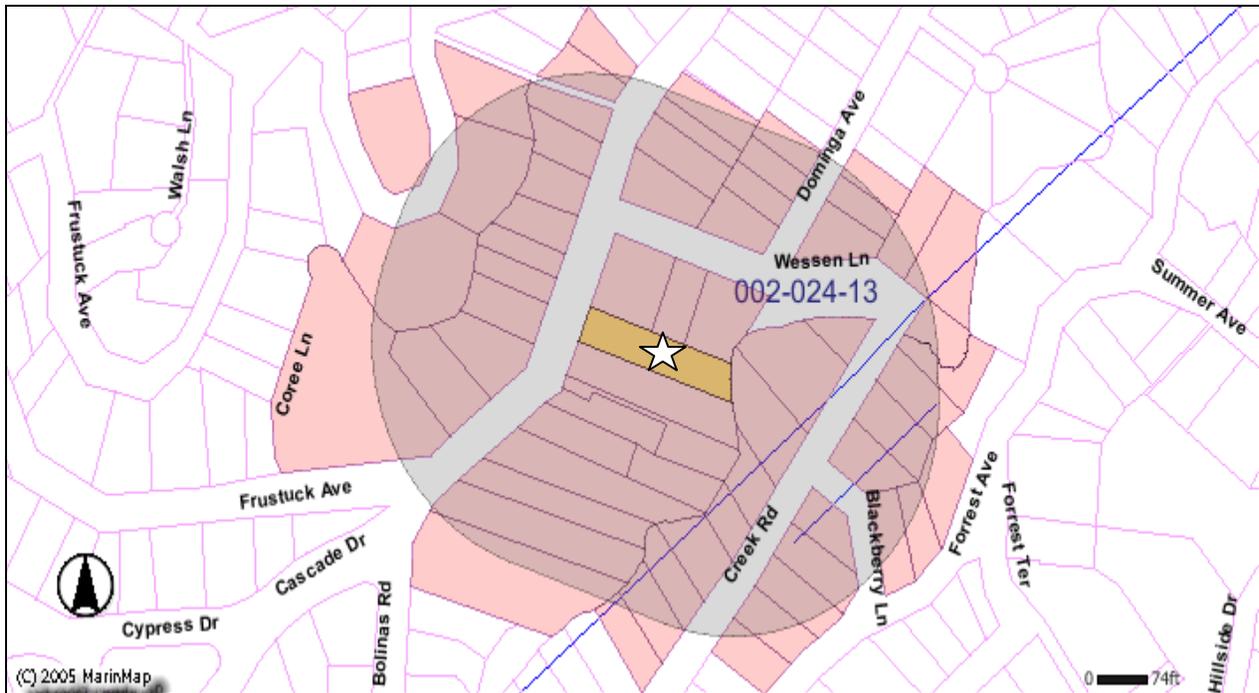


**TOWN OF FAIRFAX
STAFF REPORT
Department of Planning and Building Services**

TO: Fairfax Planning Commission
FROM: Jim Moore, Director of Planning and Building Services
Linda Neal, Senior Planner
DATE: August 19, 2010
SUBJECT: Construction of a storage shed
APPLICATION: Variance; application # 10-13
LOCATION: 263 Bolinas Road; Assessor's Parcel No. 002-024-13
APPLICANT: Rich Dowd
OWNER(S): Sandy Gartzman and Jack Judkins
CEQA: Categorically exempt, 15303(e) and 15305(a)



263 BOLINAS ROAD

BACKGROUND

This item was continued from the June 17, 2010 Planning Commission meeting in order for the applicant to make it clear on the drawings whether or not both the storage shed and the covered dog run structures were going to be removed from the required 20 foot creek setback.

Likewise, the Commission requested that the applicant's representative revise the proposed site plan to accurately reflect the application proposal (Exhibit A - see attached letter of action).

DISCUSSION

Since the June 17, 2010 meeting the applicants have redesigned the project to include two smaller 120 square foot sheds that will not be subject to the requirements of the Ross Valley Fire Department; and to relocate the southernmost shed so that it conforms to the minimum required 5 foot side yard setback (see revised August 2, 2010 site plan). The relocation of the shed has also eliminated staff's recommended condition that a survey staking of the side property line will be required prior to issuance of the building permit.

The applicants are now requesting a Use Permit and Creek Setback Variances in order to construct two sheds; with 30 square feet of the northernmost shed located within the required 20 foot creek setback. In addition, the revised plans include relocating and replacing the stairway that provides access to the portion of the property below the retaining wall for access/maintenance purposes.

Therefore, the owners are proposing to remove two structures that are seriously out of compliance with the creek setback; and they are proposing to construct two smaller structures both of which will be located west of the retaining wall (that needs to be replaced), further away from the creek channel. The proposed locations of the sheds also increases the side yard setback from 4 inches to 5 feet.

The smaller sheds will provide 240 square feet of storage area which is 162 square smaller than the existing 402 square foot shed. However, placing the two new storage sheds in the southeast corner of the yard maintains most of the usable outdoor space currently enjoyed by the owners - while improving setbacks and still meeting the owner's storage needs.

Use Permit

The site is only 50.1 feet wide while the Town Code requires a minimum parcel width in the RD 5.5-7 Zone of 60 feet [Town Code § 17.084.050(A)]. Town Code § 17.084.050 requires that a Use Permit be obtained prior to any physical improvement of a property failing to meet the minimum size or width requirements. Therefore, the Commission must grant a Use Permit to approve the proposed storage sheds.

The proposed sheds are typical of those found throughout Fairfax where homes often do not have adequate storage space within the residential structures. The sheds will be set at the rear of the site where they will not impact the architecture or character of the existing residence.

Variance

Town Code § 17.040.040(A) requires that structures maintain a setback from the top of the San Anselmo Creek bank of 20 feet or twice the depth of the bank whichever is greater.

The northernmost shed will encroach 4 feet into the 20 foot creek setback while the shed closest to the southern side property line will maintain the required setback. A Creek Setback Variance is required for the 30 square feet of the northern shed that encroaches 4 feet into the creek setback area [Town Code sections 17.040.040(A)].

As indicated in the attached staff report dated June 17, 2010 the owners are proposing to remove the two accessory structures that encroach into the creek setback now. The dog run maintains a creek setback of 8 feet while the storage shed maintains a 0 foot creek setback with portions of the structure projecting over the lower creek bank area. Roughly 496 square feet of the accessory structures are located in the creek setback. The removal of the structures is necessary to allow reconstruction of a failing retaining wall that supports the rear yard of the property.

OTHER AGENCIES COMMENTS

Building Department

The shed walls will no longer be located within 5 feet of the property so the requirement that they walls be one hour fire walls and not have any openings has been eliminated.

Ross Valley Fire Department

The sheds have been reduced in size so that they no longer require building permits. Since they do not require building permits they also are not subject to the requirements of the Ross Valley Fire Department.

Marin Municipal Water District

1. Any landscaping plans must comply with the District's Water Conservation Ordinance 414.
2. If backflow protection is not already provided a backflow prevention device shall be installed and shall be inspected and approved by the District prior to the project final inspection.

RECOMMENDATION

Move to approve application # 10-13 based on the following findings and subject to the following conditions:

Recommended Findings

1. 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 proposed storage sheds are typical of residential storage sheds found throughout Fairfax.
2. The proposed structures will maintain the required minimum 5 foot side yard setback and the dog run will also be removed as part of the project. 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.

3. The proposed storage sheds will not change the residential character of the neighborhood. Therefore, approval of the use permit is not contrary to Residential RD 5.5-7 Zoning.
4. Approval of the use permit will result in better development of the premises than would otherwise be the case because the project will include the removal of two non-conforming accessory structures that currently encroach 8 to 20 feet into the creek setback.
5. The variance will not constitute a grant of special privilege because the proposed structures will bring the property more into compliance with the required 20 foot creek setback and because the project includes the removal of two sizable structures that are currently located in the setback.
6. The strict application of this title would result in a hardship for the owners because they would have to locate one storage shed within the existing rear yard area that has been used as their private outdoor living space for many years.
7. 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 structures will maintain a greater setback from the neighboring duplex at 271 and 275 Bolinas Road that the existing shed and will comply with the minimum 5 foot side yard setback.

Recommended Conditions

1. Both the existing storage shed and the covered dog run shall be removed prior to the start of construction on the new shed.
2. If electricity is to be supplied to the shed it shall be limited to that necessary to illuminate the interior of the structures and to exterior safety lighting.
3. The applicant shall comply with all conditions and requirements of the Fairfax Building Official and the Marin Municipal Water District and shall demonstrate compliance prior to the project final inspection.
4. This approval is limited to the development illustrated on the plans by Rich Dowd, pages A1.00 and the August 2, 2010 revised site plan showing two storage sheds and the removal of the dog run.
5. 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 secure written approval from the Ross Valley Fire Authority noting the developments conformance with their recommendations prior to submittal of the building permit plans.

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

a. 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.

b. 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.

7. 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".

8. Any changes, modifications, additions or alterations made to the approved set of plans will require a modification of Application # 10-13. Any construction based on job plans that have been altered without the benefit of an approved modification of Application # 10-13 will result in the job being immediately stopped and red tagged.

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

10. 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, indemnify, 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.

ATTACHMENTS

Exhibit A - Letter of action regarding June 17, 2010 Commission meeting

Exhibit B – Applicant's supplemental information

Exhibit C – June 17, 2010 and July 15, 2010 staff reports