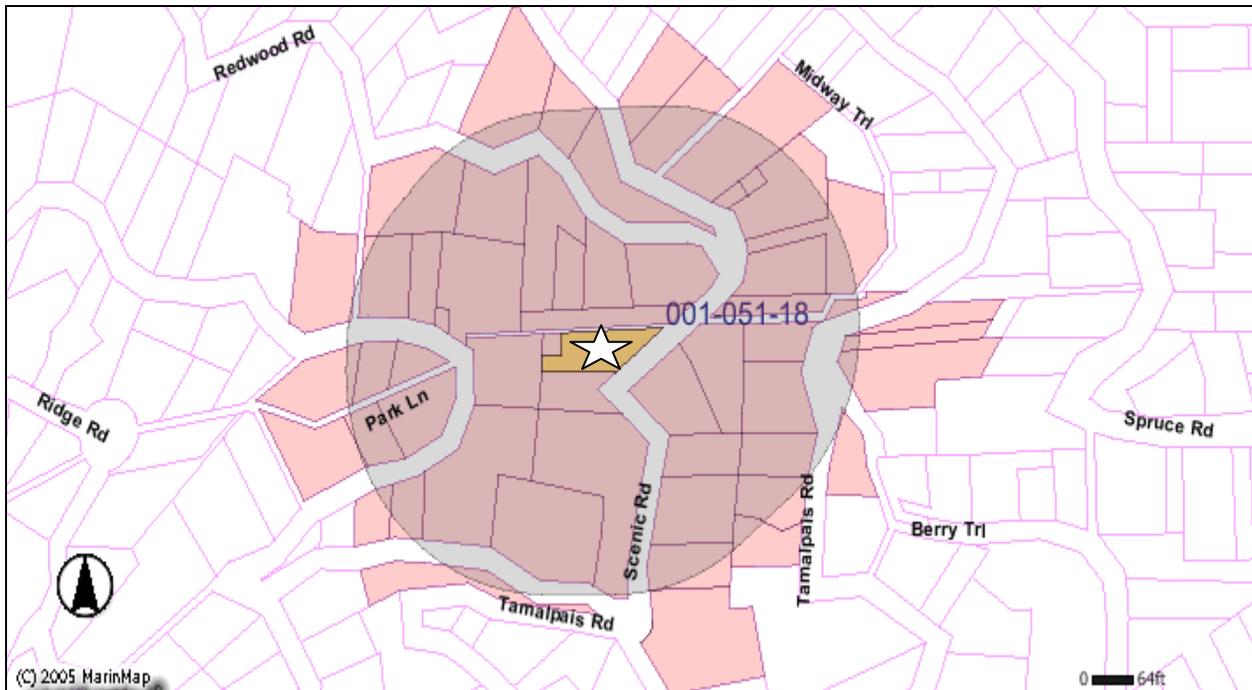


**TOWN OF FAIRFAX  
STAFF REPORT**  
**Department of Planning and Building Services**

**TO:** Planning Commission  
**FROM:** Jim Moore, Director of Planning and Building Services  
Linda Neal, Senior Planner  
**DATE:** August 19, 2010  
**APPLICATION:** Retaining wall; Application # 10-18  
**LOCATION:** 294 Scenic Road: Assessor's Parcel No. 001-051-18  
**ZONING:** Residential Single-family RS 6 Zone  
**APPLICANT:** Steven Bartley (owner)  
**OWNER:** Same  
**CEQA:** Categorically exempt, § 15303(e) and 15305(b)



**294 SCENIC ROAD**

**BACKGROUND**

The 7,000 square foot site slopes up steeply from scenic Road at an average rate of 78%. The existing 802 square foot residence was constructed in 1930. There are three storage sheds on the property of unknown construction dates although the records show that two of the sheds

predate at least 1993.

On October 15, 2009 the Planning Commission approved a Preferential Parking permit for the property to allow the construction of a 42 foot long, 12 foot high, retaining wall along the property frontage to create parking.

On May 12, 2010 the owners voluntarily merged the house site with a recently purchased, vacant Marin Municipal Water District Tank site at the rear of their property (see Exhibit B ).

## **DISCUSSION**

Town Code § 12.32.020 gives the Planning Commission the authority to grant encroachment permits for private structure in the public right-of-way if they are not being used for pedestrian or vehicular travel.

Currently existing along a portion of the property frontage is the 42 foot long, 12 foot high, concrete and steel I-beam retaining wall that was previously approved by the Commission. The wall construction created two off-street parking spaces. An older rock retaining wall, construction date unknown, exists to the south of the entry stairs. The owner is requesting an encroachment permit to construct a 4 foot high, 20 foot long, pressure treated wood retaining wall, two feet into the right-of-way, between the house and the existing rock wall to create a rose garden.

Construction will not require the removal of any mature trees, it will require the excavation of only 5 cubic yards of material and it will not result in a further narrowing of the available roadway area because there already is the existing rock wall located 10 feet into the Scenic Road right-of-way. Therefore, the impact of the structure on the right of way will be minimal.

The applicant will be required to sign and record a revocable encroachment permit indicating that the Town has the right to remove the wall from the public right-of-way if the area is required for the benefit of the general public in the future (Exhibit C).

## **Other Agency/Department Conditions**

There were no comments from other agencies or departments.

## **RECOMMENDATION**

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to approve application # 10-18 based on the following findings and subject to the following conditions:

### Findings

1. The wall will not exceed the 4 feet permitted by the Town Code along property frontages [Town Code § 17.044.080(B)].

2. The wall will be constructed behind an existing rock wall in an area of the Scenic Road right-of-way that is not currently being used by the general public.
3. The approval of the encroachment permit will be a taking of the public easement because the owner will be required to sign, notarize and record a revocable encroachment document at the Marin County Recorder's Office prior to issuance of the building permit.

### Conditions

The following shall be submitted prior to issuance of the building permit:

#### **Planning Commission and Planning Staff Conditions**

1. The owner must obtain a building permit prior to the start of construction.
2. A bond must be submitted to the Town in an amount that will cover the cost of grading, weatherization and repair of possible roadway damage. Contractor's estimates must be submitted 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.

During the construction process the following shall be required:

1. 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.
2. 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 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.
3. Excavation shall not occur between October 1st and April 15th. The Town Engineer has the authority to waive this condition depending upon the weather.
4. The roadways shall be kept clean and the site free of dust by watering down the site or sweeping the roadway daily, if necessary.
5. 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".
6. Any changes, modifications, additions or alterations made to the approved set of plans will require a modification of Application # 10-18. Any construction based on job plans that have been altered without the benefit of an approved modification of Application # 10-18 will result in the job being immediately stopped and red tagged.

Prior to Project Final Inspection:

1. Any damages to the roadways accessing the site resulting from construction activities shall be the responsibility of the property owner and shall be repaired as soon as possible (but no later than prior to the project final inspection).

#### General Conditions

1. 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.
2. A revocable encroachment permit must be recorded at the County Recorder's Office prior to issuance of the building permit.
7. 3. Construction may not begin before 8 AM nor continue past 8 PM Monday through Thursday and may not begin before 9 AM or continue past 8 PM on weekends or holidays.

#### ATTACHMENTS

- Exhibit A – Preferential Parking Ordinance, Town Code Chapter 10.24
- Exhibit B – Resolution No. 1863
- Exhibit C - Revocable Encroachment document