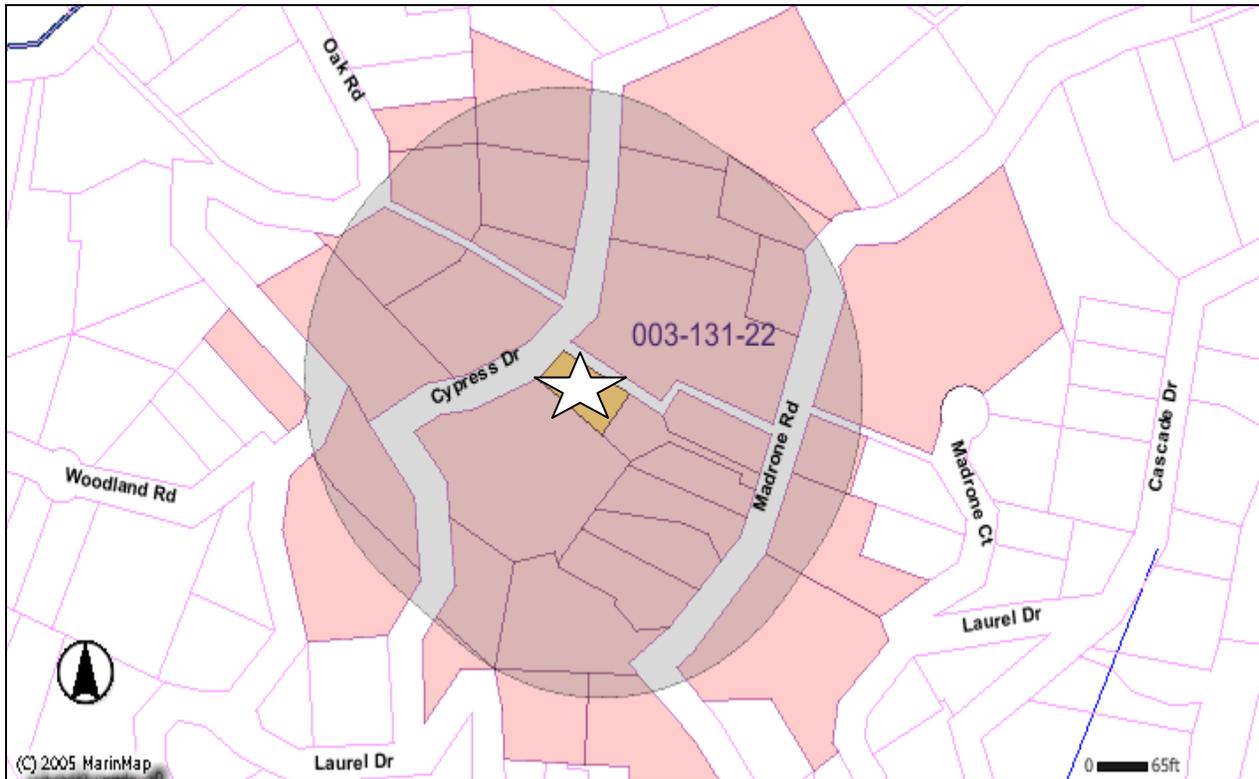


**TOWN OF FAIRFAX
STAFF REPORT
Department of Planning and Building Services**

TO: Fairfax Planning Commission
DATE: October 21, 2010
FROM: Jim Moore, Director of Planning and Building Services
Linda Neal, Senior Planner
LOCATION ACTION: 339 Cypress Drive; Assessor's Parcel No. 003-131-32
Encroachment Permit and Retaining Wall Height Variance; Application # 10-25
ZONING: Residential Single-family RS 6 Zone
APPLICANT: Scott Coutour, Architect
OWNER: Danny Rubenstein and Janet Di Giovanna,
CEQA STATUS: Categorically exempt, § 15302, 15303(e) and 15305(b)



339 CYPRESS DRIVE

BACKGROUND

This 42,699 square foot site slopes down from Cypress Drive and is developed with a 2,226 square foot single-family residence and 494 square foot garage. Most of the garage is located within the Cypress Drive right-of-way.

A tree fell from the Cypress Drive public right-of-way during a storm and resulted in the existing retaining wall failing.

DISCUSSION

The applicants are proposing to construct a 50 foot long, 5 ½ foot high concrete retaining wall to replace the failing wall and to provide a trash receptacle area. The wall will be topped by a 4 foot safety railing required by the building code. The wall will not be visible from the street being below the road grade and only the 4 foot safety railing will be visible along the street frontage. The safety railing will be wood lattice with metal trim.

The project requires the approval of the following discretionary permits:

An Encroachment Permit:

Town Code § 12.32.010 allows the Planning Commission to grant approval for private improvements to encroach into the public roadway easements as long as they are maintained by the private property owner and are located in portions of the easements not being used by the general public. The proposed wall and trash receptacle encroach into the right of way a distance that ranges from 13 feet to 22 feet. However, it is located in an area where the hillside slopes down steeply from the Cypress roadbed and is currently unusable. Construction of the wall, backfilling it and paving it will create a level area, widening the usable area for emergency vehicles to park and /or pass other vehicles.

A Retaining Wall/Guard Rail Height Variance:

Town Code § 17.044.080(B) limits the height of fences along front property lines to 4 feet in height. The Town has historically measures the height of walls from the side with the lowest topographical elevation. Measures this way, the wall/safety railing will reach up to 9 ½ feet in height although only 4 feet will be visible to passersby on Cypress Drive.

The 9 ½ feet is the minimum height necessary to replace the failing wall and comply with the California Building safety railing requirement.

Other Agency Comments/conditions:

Ross Valley Fire Department

The expanded roadway area created by the construction of the wall may not be marked as private parking for the property owner. The roadway in this area does not meet the minimum standards to allow formal parking.

Marin Municipal Water District

The proposed construction may not encroach upon or encumber access to any water district facilities.

Compliance with the District's Water Conservation Ordinance no 414 is a condition of water service. Plans must be submitted and be reviewed for compliance on properties with more than a 10% slope.

Should backflow protection be required, said protection shall be installed as a condition of water service.

RECOMMENDATION

Move to approve application # 10-25 based on the following findings a subject to the following conditions:

Recommended Findings

1. The steep slope of the site is the special circumstance of the site that results in the replacement retaining wall/safety railing exceeding the permitted 4 foot height limit.
2. The fence height variance will not constitute a grant of special privilege because the side of the wall/safety railing visible from the street and to the public maintains the required 4 foot maximum height.
3. The strict application of this title would result in excessive or unreasonable hardship because the owner would be unable to repair/retain the frontage of his property without constructing a wall within the right-of-way that exceeds the permitted height.
4. The granting of the variance of adjustment will be beneficial to the public by providing a widened area of the roadway where emergency vehicles will be able to pass cars.
5. The wall is being proposed in an area that is not being used by the public because of the steep slope of the hillside.

Recommended 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.
3. 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.

During the construction process the following shall be required:

1. 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.
2. Prior to the concrete form inspection by the Building Official, 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. The Building Official shall field check the concrete forms prior to the pour.
3. 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.
4. 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.
5. Excavation shall not occur between October 1st and April 15th. The Town Engineer has the authority to waive this condition depending upon the weather.
6. The roadways shall be kept clean and the site free of dust by watering down the site or sweeping the roadway daily, if necessary.

7. 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 # 10-25. Any construction based on job plans that have been altered without the benefit of an approved modification of Application # 10-25 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.

Public Works Conditions

1. Submit a construction plan to the Public Works Department which may include but is not limited to the following:
 - A traffic control plan
 - Construction delivery routes approved by the Department of Public Works.
 - Construction schedule (deliveries, worker hours, etc.)
 - Notification to area residents
 - Emergency access routes
2. The applicant shall prepare, and file with the Public Works Director, a video of the roadway conditions on the construction delivery routes (routes must be approved by Public Works Director/ the Public Works Director can waive this requirement).
3. Prior to issuance of the Building permit the applicant shall complete and record a revocable encroachment permit at the Marin County Records Office.

ATTACHMENTS

Exhibit A – other Agency/Department comments/conditions