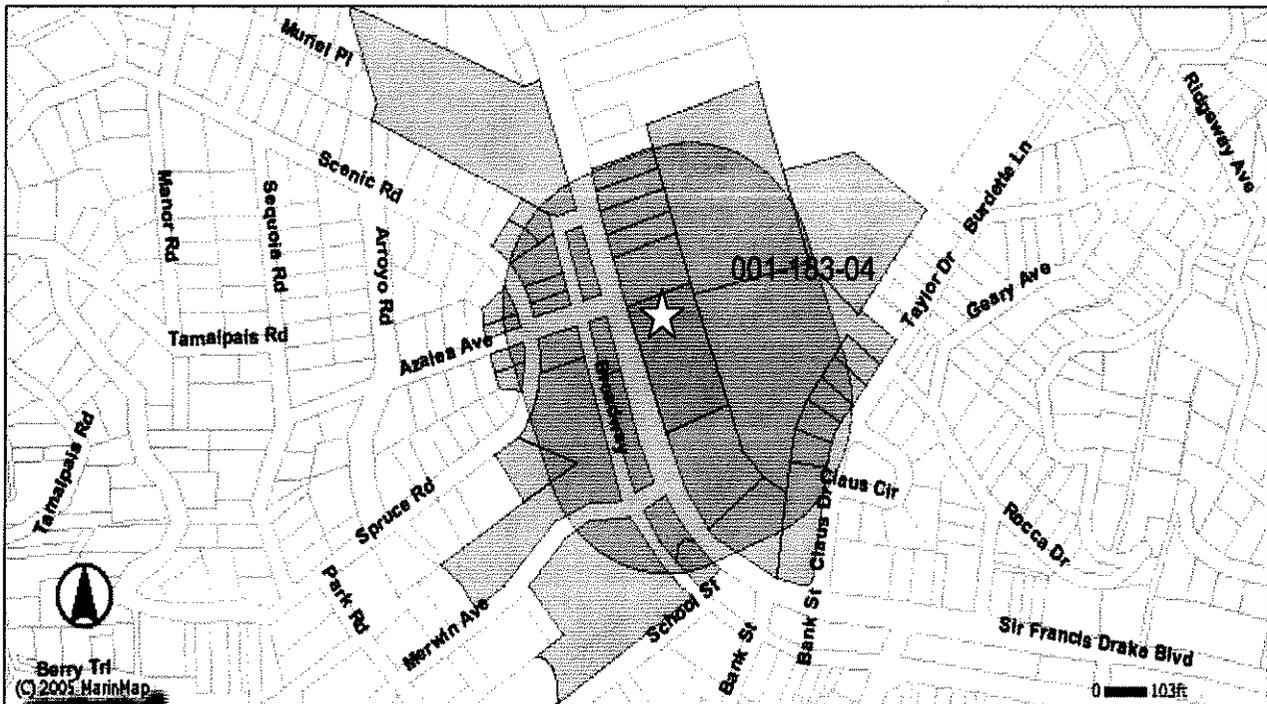


**TOWN OF FAIRFAX  
STAFF REPORT  
Department of Planning and Building Services**

**TO:** Planning Commission  
**DATE:** December 16, 2010  
**FROM:** James Moore, Director of Planning and Building Services  
**PROJECT:** Mixed Use Development; Residential/Commercial  
**ACTION:** Traffic Impact Permit, Conditional Use Permit for residential units on a second & third floor, Height Variance for a third floor, and a Parking Variance;  
Application # 08-39  
**APPLICANT:** Jeff Kroot, Architect  
**OWNER:** Naaim Karkabi  
**LOCATION:** 2050 Sir Francis Drake Boulevard; Assessor's Parcel Numbers 001-183-04 and 16  
**ZONING:** Highway Commercial CH Zone  
**CEQA STATUS:** Initial Study and Mitigated Negative Declaration



**2040 SIR FRANCIS DRAKE BOULEVARD**

## **PROJECT DESCRIPTION**

The project encompasses the construction of eight residential apartment units (one 1-bedroom unit and seven 2-bedroom units) totaling 7,918sf and 4,922sf of commercial space, including landscaping, parking lot improvements and other subsidiary improvements. The commercial spaces are located on the ground floor along with one accessible residential unit and there are 6 residential units located on the second floor with third floor bedrooms and open loft areas.

## **BACKGROUND**

This application was originally submitted on March 14, 2007.

Subsequent to the original application submittal, a Traffic Impact Study, Initial Study and Mitigated Negative Declaration were prepared.

On September 5, 2008, a letter was received from the applicant requesting continuance until date uncertain and waiving his rights under the permit streamlining act. [Please note: the Town's Zoning Ordinance does not have a "sunset" clause on continued applications.]

On March 16, 2009, a letter was received from applicant asking to continue processing of the application and asking to be placed on the next available planning Commission meeting.

On March 20, 2009 staff sends the applicant a letter advising that they need to address certain items before the project can be scheduled for a hearing (See Exhibit A).

On September 8, 2009, the project was noticed for public hearing before the Planning Commission. However, no story poles were erected, and the meeting continued.

On Dec. 22, 2009, the applicant requested continuance of his application because he had a conflict that made it impossible for him to attend a January 2010 Planning Commission meeting.

On August 25, 2010 the applicant requested to continue processing the application; and staff indicated the application on September 8<sup>th</sup> that the story poles (and on-site yellow notices) must be erected for no less than 30 days prior to the Planning Commission hearing.

On October 27, 2010 story poles were erected; and the applicant was notified that he would not be able to be on the November 18<sup>th</sup> agenda since the poles had not been up for the required 30 day period.

On November 8, 2010 staff informed the applicant that two critical story poles in the south-west corner depicting height were missing.

On November 15, 2010 the two missing story poles in the south-west corner were erected; thirty days prior to the December 16, 2010 Planning Commission hearing.

## **Noticing and CEQA Compliance**

The Initial Study and Proposed Mitigated Negative Declaration were circulated for a thirty (30) day public review period (August 12, 2008 through September 11, 2008), pursuant to Public Resources Code (CEQA) Section 21091(b). Written Comments were submitted to the Town of Fairfax Department of Planning and Building Services (Exhibit B).

Notice of the preparation and review period for the Mitigated Negative Declaration and Initial study was published in the Independent Journal on August 12, 2008 and was posted at the Marin County Clerks Office for thirty days. A copy of the draft document was also available for review at the Fairfax Branch of the Fairfax Library and at the Fairfax Town Hall.

Ten days prior to the September 18, 2008 Planning Commission meeting notices were sent to all property owners and tenants located within 300ft of the project site. The site was also posted with a description of the project and the meeting date and story poles depicting the mass of the proposed structures were erected 10 days prior to the hearing.

Copies of the plans, the Mitigated Negative Declaration and the Initial Study were sent to the following immediately adjacent property owner contacts thirty days prior to the hearing:

- Ethel Fong Trust
- Saint Rita School
- Manager, Bennett House

## **DISCUSSION**

### **General Plan**

The General Plan designation for the project site is Highway Commercial (CH) which is identified in the General Plan as being designed to "cater to automobile" traffic rather than to pedestrian traffic. The General Plan does not set forth any building intensity or residential density standards for the General Plan Highway Commercial (CH) designation.

Staff believes that there is an inherent conflict with siting residential units within the CH zone in that this zone caters to the automobile and not pedestrians. In addition, staff believes that the orientation of the site plan for this proposed project further exacerbates this inherent conflict by facing the building toward the parking lot and not towards the public street and sidewalk (i.e., streets are for people and parking lots are for cars).

Most of the Town's existing commercial spaces present storefronts immediately adjacent to the street. The proposed development sets the commercial spaces at a 90° angle to the roadway and does not strive to maintain the typical character of the Town's commercial development by presenting commercial storefronts immediately adjacent to the pedestrian sidewalks. The project also does not significantly enhance the immediate area. Therefore, the project does not comply with Goal 4.4.3 of the Fairfax General Plan Conservation Element.

The proposed project also maintains the view of the large expanse of parking lot and does not present a visually enhanced urban design toward Sir Francis Drake Boulevard. Therefore, the project does not comply with the above referenced scenic highway policy of the Scenic Highways Element.

### **Zoning Ordinance**

#### **Use Permit**

The site is located in the Highway Commercial (CH) Zone. The purpose of the CH Zone District, Town Code § 17.096.010, is to allow a variety of service, retail and wholesale businesses with

long operating hours, diversity of building size and type and short term parking. Again, the highway commercial zone is designed to cater to automobile traffic rather than pedestrian traffic. The buildings are more dispersed than in the Central Commercial zone to allow greater vehicular access.

Town Code § 17.096.050(9) requires the Planning Commission to grant a conditional use permit for residential uses on the second floor in the CH zone, at a density to be determined by the Planning Commission.

Town Code § 17.096.060 allows the Planning Director to determine that a use not specifically listed, such as the accessible unit on the ground floor, is similar to another conditional use, such as the second story residential units that are permitted with a conditional use permit. This determination was been made. Therefore, all the residential units in the project require the approval of a Use Permit by the Planning Commission.

The project complies with the regulations set forth in the CH Highway Commercial Zone District as follows:

- There are no setback requirements in the CH Zone unless a property line of the project site abuts a residential zone (Town Code § 17.096.100). This being said, the fact that the project requires a use permit allows the Town to require any setback it sees fit to protect the property rights of the adjacent Bennett House project, St. Rita's School and the vacant parcel to the west.
- Floor Area Ratio regulations only apply to single-family residences (Town Code §17.008.020, Definition of Floor Area Ratio).
- The Lot Coverage regulation only applies to residentially zoned properties (Town Code § 17.040.010).
- Town Code § 17.096.090(A)(1) limits the height of buildings in the CH Zone to 28.5 feet in height and two stories. The proposed project is three stories and requires a height variance.

### **Height Variance**

The project does not comply with the two story height limit regulation set forth in Town Code § 17.096.090. The purpose of the Variance process is to allow exception to the strict limits of the height regulation where, by reason of exceptional narrowness, shallowness, unusual shape or exceptional topographic conditions, it would cause undue hardship for the applicant to comply with the regulations. There are no identified physical attributes of this large, wide, level lot that require the project to have three stories.

### **Parking Variance**

Usually variances of the covered parking requirement are granted when the covered parking structures block a significant view from the downtown area or from within a certain neighborhood. While some future design for a project on this site might warrant the granting of a variance of the covered parking requirement, there are no identifiable reasons why a variance is desirable for the Town and its citizens with this proposed design.

## **Grading**

Grading permits are required for projects with over 100 cubic yards of cut and/or fill. The applicant has indicated in his application that there will be approximately 75 feet of cut along the northern border of the property to provide for constructing a retaining wall that varies in height up to approximately six to seven feet. However, until staff receives engineered plans for the proposed retaining wall it will be difficult to determine the true extent of excavation that will be required - and whether or not this proposed project would require a grading permit. Note that the total grading/fill amount will include grading and refilling for supply lines.

## **Environmental Impacts**

### ***Traffic***

At their July 11, 2007 public hearing the Fairfax Town Council adopted Resolution No. 2500 setting forth the methodology to be used by the applicant's traffic consultant in preparing the project Traffic Impact Study (Exhibit D - Resolution No. 2500 and Crane Transportation peer review letter dated May 22, 2007).

The final Traffic Impact Study determined that there would be less than significant traffic impact resulting from this project if approved.

### ***Commercial Parking***

Town Code § 17.052.030(F) requires that retail and personal service stores provide three parking spaces for the first 500sf of gross floor area and one space for each additional 500sf thereafter. Town Code § 17.052.040 (C) allows 25% of the spaces to be compact parking stalls. Standard parking stalls are 9ft x 19ft in size while compact stalls are 8ft x 16ft [Town Code § 17.052.040

B)].

Town Code §17.096.110(B)(2) indicates that in the Highway Commercial (CH) Zone, for any structure or use for which no specific requirements are set forth in the Code, 1 parking space shall be provided for each 200sf, or fraction thereof, of gross floor area occupied by principal use.

There are two ways that the required commercial parking can be calculated based on the Town Code and they are as follows:

<p>Method 1: The parking for the existing retail and service grocery store and bicycle sales/repair shop can be calculated separately from the new commercial space for which there is no specified use. Three (3) spaces are required for the first 500sf of the existing 20,556sf of commercial area and an additional 1 space is required for each additional 500sf for a total of 43 required spaces. One space is required for each 200ft of gross floor area for the proposed 4,922sf of unspecified commercial area for a total of 10 spaces. The combined requirement under this calculation for existing and the proposed new commercial space would equal a grand <u>total of 53 spaces.</u></p>
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Method 2: The assumption can be made that the use of the proposed commercial space will also be either retail/service or office uses. The parking requirement for all three of these uses is three spaces for the first 500sf and one space for each 500sf of gross floor area after that. Therefore, the 20,556sf of existing space added to the proposed 4,922sf of proposed space equals 25,478sf of commercial space divided by 200sf requires a total of 52 spaces.

With either method 1 or 2 above, the total of commercial spaces when added to the required 24 residential spaces (see below) is less than the 89 parking spaces that the application proposes to provide. Therefore, the project complies with the total "number" of parking spaces required by the Town Code.

### ***Residential Parking***

Town Code § 17.052.030 requires that two parking spaces be provided for every 1 and 2 bedroom residential units with an additional 1 guest space per unit. In this proposed project, the eight (8) residential units would require 24 parking spaces. The size of the required parking spaces for residential units is 9ft x 19ft (and there are no provisions for compact stalls).

Town Code § 17.052.010(D) requires that at least one off-street parking space for a residential unit must be covered. The applicant is requesting a Parking Variance to not provide "covered" parking for the proposed residential units.

Please note: Town Code § 17.096.130(C)(2) indicates that the off-street parking requirements for Conditional Uses may be varied by the terms of the of the Use Permit in accordance with the facts, findings and determinations governing approval of the Use Permit as set forth in Chapter 17.032, Use Permits, of the Town Code. Town Code § 17.052.020(A) goes on to allow parking and loading facility requirements to be altered by design review if particular circumstances justify an exception to the amount, dimensions and location of spaces.

The parking for the grocery store and the proposed development would be shared. Therefore, should the project be approved, the two parcels must either be merged, or a permanent reciprocal parking easement document must be recorded prior to issuance of a building permit to develop a new structure. Any easement document will have to be prepared by the applicant's attorney and be reviewed and approved by the Town Attorney at the applicant's expense.

### **Design Concerns**

Staff is concerned that the design and orientation of the structure with one long unbroken wall facing the vacant parcel to the north will present a monotonous exterior when and if the adjacent lot is graded and developed.

The proximity of the structure to the property line and the residential decks on the second floor may also limit the future development possibilities for the vacant site. Staff's concern about this was originally explained to the applicant in a preliminary review letter dated April 5, 2007 (Exhibit A - page 2, paragraph 4).

Saint Rita School indicated that they do not object to the project as long as their following concerns are addressed:

1. Additional landscape screening and fencing is requested between the structure and the school site.
2. Provide more light standards with a more decorative design that have a decreased wattage to meet only the minimum light levels. 12000 lumens are too bright.
3. Widen the access walkway from Sir Francis Drake Boulevard to the project in order to provide ease of circulation.

Use alternative plant material to include oak trees and more drought tolerant ground covers.

For a complete list of requests from St. Rita School see the attached letter dated September 2, 2009 (Exhibit E).

### **Other Agency and Department Requests**

#### **Ross Valley Fire Department**

- The building location on the property does not allow adequate access to the rescue windows. The third floor is not in compliance with the CFC Table 1019.2.
- As currently designed access is greater than 150 feet from where apparatus can set up operations. To allow proper access the walkway should continue completely around the structure.
- To ensure property ladder truck operations, overhead utility lines and vegetation that restricts parallel access shall be removed or reduced along one entire side of the building. ***Note that this requirement is in conflict with the requests for vegetation to screen the building made by St. Rita School. Relocation of the structure parallel to Sir Francis Drake Boulevard would eliminate this conflict.***

For a complete list of Ross Valley Fire Department comments see the attached memorandums dated December 6, 2010, August 25, 2008, January 30, 2008 and April 3, 2007 (Exhibit F).

#### **Ross Valley Sanitary District**

- A sewer permit is required and may be issued by the District after the building permit is obtained and all appropriate fees have been paid.
- Installation of the private sewer lateral must meet District specifications and be inspected by a District inspector before it is covered.
- Evaluation of the downstream portion of the sewer main will need to be provided by the applicant to determine if there is adequate capacity in the present system to serve the proposed 8 living units and additional commercial area. The owner will be required to supply the Sanitary District with calculations of the additional flow. If it is determined that there is not enough capacity, the owner/applicant will be required at his cost to upsize the existing 6 inch sewer main (See Exhibit F).

## Marin Municipal Water District

The Water District has indicated that they can supply water to the proposed use subject to the following conditions:

- Complete a High Pressure Water Service Application.
- Submit a copy of the building permit.
- Pay required fees.
- Comply with the District rules in effect at the time service is requested which will include the installation of separate meters per use in the structure.
- Comply with the Districts Water Conservation Ordinance No. 414.
- Comply with the backflow prevention requirements.

## Fairfax Public Works Department

- The project will be required to include ADA ramps at crosswalks and include repair of the damaged curb, gutter and sidewalk along the property frontage.
- The applicant must provide significant landscaping and a bench on the private property as part of the project. The provision of landscaping/bench in the public right-of-way restricts the Town's ability to widen the public sidewalk without removing the proposed landscaping and leaving the frontage of the proposed building without landscape screening. The proposed project proposes landscaping in the public right-of-way in conflict with the recommendations of the Public Works Department.

The Commission should also note that the property owners have been utilizing the public right-of-way, and propose to continue using the public right-of-way, for parking benefitting their tenants. Prior to constructing a new building for the benefit of the property owners, the Town must consider getting significant landscaping and sidewalk improvements in return.

## Fairfax Police Department

The Police are concerned about the location and design of the structure located in the rear northeast corner of the site. The location will require the construction of a retaining wall reaching up to 6 ½ feet in height just 6 feet from the rear wall of the building. The second story decks cover this area and result in a tunnel effect. The police are concerned that this area will become attractive to vandals or create other attractive nuisances (see Exhibit F- memorandum from Sergeant Stewart Baker).

## Citizen Comments

Citizen comments that have been received in time for inclusion in the planning commission meeting packet are contained in Exhibit G.

## **RECOMMENDATION**

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to adopt attached Resolution No. 10-07 denying application # 08-39 based on the findings contained in that resolution.

## **ATTACHMENTS**

- Exhibit A – Staff letters to applicants dated 3/20/09, 4/22/08 and 4/5/07
- Exhibit B – Initial Study and Negative Declaration
- Exhibit C – 7/18/08 Traffic Study and response to Town peer review comments
- Exhibit D – Resolution No. 2500 of the Town Council setting the scope of the traffic study
- Exhibit E – 9/2/08 letter from Saint Rita School
- Exhibit F - Agency and Department memorandums
- Exhibit G – Citizen comments

**RESOLUTION NO. 10-07  
APPLICATION NO. 08-39**

**2040 Sir Francis Drake Boulevard; Assessor's Parcel Number 001-183-04**

A Resolution of the Fairfax Planning Commission Recommending that the Fairfax Town Council Deny a Use Permit, Parking Variance and Height Variance for a Proposed 12,840 Square Foot, Eight (8) dwelling unit, Mixed Use Residential/Commercial Development with a Total of 12,840 Square Feet

**WHEREAS**, the Town of Fairfax has received an application for 2040 Sir Francis drake Boulevard, Assessor's Parcel Number 001-183-04, to construct eight (8), one to 2 bedroom living units totaling 7,918 square feet, and 4,922sf of commercial space,; and

**WHEREAS**, the Planning Commission held a duly noticed Public Hearing on December 16, 2010 at which time all interested parties were given a full opportunity to be heard and to present evidence; and

**WHEREAS**, the applicant project has been reviewed and the planning commission has not been able to support the project and makes the following findings:

I. The proposed development is not consistent with the General Plan as follows:

**Policy 2.1.1: That Center Boulevard, Broadway, Bolinas Road and Sir Francis Drake Boulevard be declared scenic highways and that they represent a visual value in the planning area and should preserved as unified open space and urban features.**

The proposed project maintains the view of the large expanse of parking lot and does not present a visually enhanced urban design toward Sir Francis Drake Boulevard. Therefore, the project does not comply with the above referenced scenic highway policy of the Scenic Highways Element.

**Goal 4.4.3 The significance of Fairfax' central business district is recognized and measures should be taken to preserve the character and enhance the area.**

Most of the Town's commercial spaces present storefronts immediately adjacent to the street. The proposed development sets the commercial spaces a significant distance back from the roadway and does not strive to maintain this typical character of development nor does significantly enhance the immediate area. Therefore, the project does not comply with Goal 4.4.3 of the Fairfax General Plan Conservation Element.

**Policy 5.7.2, Environmental Safety Element, Measures such as adequate access, water facilities, vegetation, clearance around structures, building spacing, construction materials, refuse removal, etc. shall be considered in any development proposal.**

The location of the proposed development, close to the northern and western property lines does not meet the requirements of the Ross Valley Fire Department for emergency response access and therefore, the project does not comply with policy 5.7.2 of the General Plan Environmental Safety Element.

II. The proposed development is not consistent with the Fairfax Zoning Ordinance as follows:

1. The approval of the use permit will constitute a grant of special privilege and will contravene the doctrines of equity and equal treatment because the proposed development exceeds the two story height limit, does not comply with the accessibility requirements of the Ross Valley Fire Department and it does not visually enhance Sir Francis Drake Boulevard identified as a scenic highway in the Fairfax General Plan.
2. The development and use of property as approved under the use permit will cause unreasonable detriment to the adjoining northern property because it will present a two story façade with residential decks 7 feet from the northern property line. The proximity and height of the proposed development will significantly limit the future development options of the adjacent vacant parcel.
3. Approval of the use permit will not result in equal or better development of the premises than would otherwise be the case. There are other ways to design the project or orient it on the lot that would result in better development and use of the site.
4. The project does not comply with the two story height limit regulation set forth in Town Code § 17.096.090. The purpose of the Variance process is to allow exception to the strict limits of the height regulation where, by reason of exceptional narrowness, shallowness, unusual shape or exceptional topographic conditions, it would cause undue hardship for the applicant to comply with the regulations. There are no identified physical attributes of this large, wide, level lot that justify the project having three stories.
5. The variance will constitute a grant of special privilege because there are no other three story commercial structures in Town and there is no physical reason why a three story structure is necessary to allow the property owner use of his property.

6. The strict application of this title would not result in excessive or unreasonable hardship for the owner. The site already is developed with a large commercial building which provides a substantial use of the site.
7. The granting of the height variance for the proposed project will be detrimental to the public welfare because the project has not been designed to significantly enhance the street-scape of the site, the project merely maintains the existing view of an underutilized parking lot.
8. A mixed use development in the proposed location will negatively impact the adjacent vacant private property, school and multiunit residential development and it does not enhance Sir Francis Drake Boulevard which is identified as a scenic corridor in the Fairfax General Plan.

III. The project proposes to continue to make use of the public right-of-way to meet the sites private parking needs without providing any significant benefit to the Town's streetscape. Therefore, no significant public benefit is provided by the project as proposed.

**NOW, THEREFORE**, the Planning Commission of the Town of Fairfax does hereby resolve as follows:

**Section 1.** After careful consideration of the site plan, architectural drawings, plans and other exhibits submitted in connection with this matter, the Commission hereby denies the proposed project.

**PASSED AND ADOPTED** by the Town of Fairfax Planning Commission, State of California, this 16<sup>th</sup> day of December, 2010 by the following roll call vote:

AYES:  
NOES:  
ABSTAIN:

\_\_\_\_\_  
Chair, Planning Commission

**ATTEST:**

\_\_\_\_\_  
Jim Moore, Director of Planning and Building Services