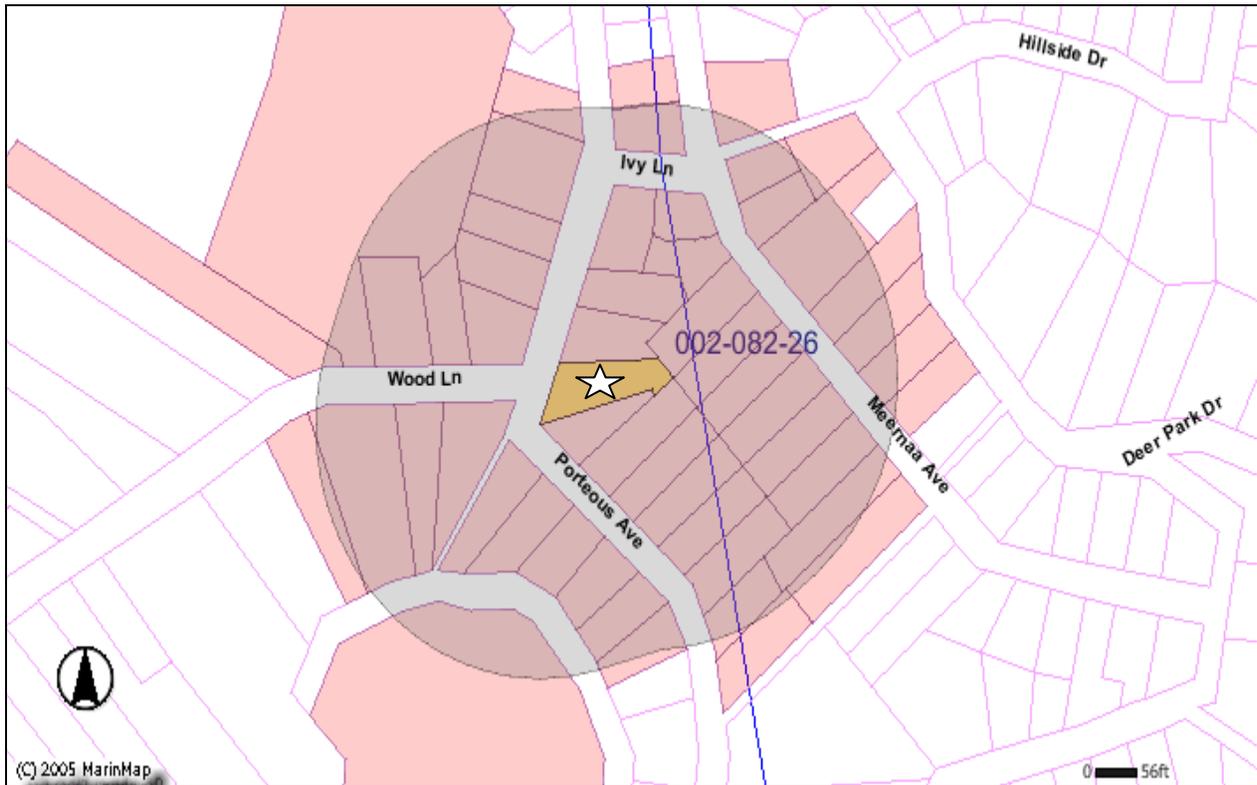


# TOWN OF FAIRFAX STAFF REPORT

## Department of Planning and Building Services

**TO:** Fairfax Planning Commission  
**DATE:** December 16, 2010  
**FROM:** Jim Moore, Director of Planning and Building Services  
Linda Neal, Senior Planner  
**LOCATION:** 77 Porteous Avenue; Assessor's Parcel No. 002-082-26  
**PROJECT:** Use of a storage structure for an office  
**ACTION:** Use Permit; Application # 10-32  
**APPLICANT:** Scott Hurd  
**OWNER(S):** Scott Hurd, Havva Yaser, Betty Slade and David Cole  
**CEQA STATUS:** Categorically exempt, § 15303(e)



## 77 PORTEOUS AVENUE

## BACKGROUND

The 7,190 square foot site is level and currently developed with a 1,078 square foot duplex, a 204 square foot accessory structure and a 248 square foot, single-car garage. The structure was constructed some time prior to 1950 as a single-family residence and was converted to a duplex in 1950. The garage was built in 1956. The records indicate that there has been an accessory storage structure on the site since as early as 1979.

The site is located in Flood Zone X, an area with a 1% annual chance of flooding at depths of less than 1 foot.

Prior to the existing owner's purchase of the property the Building Official performed a Residential Resale Inspection of the property and determined that the accessory storage structure on the site has been converted into an office.

The applicant is also planning to demolish the existing duplex and one car garage to bring in a manufactured home. The site is over the minimum required 5,500 square feet to accommodate a single-family residence and it is over the required 60 feet in width so the residence does not require the approval of the Planning Commission [Town Code § 17.084.010(A) and § 17.084.050(A)]. It will have to be reviewed and approved by the Design Review Board as required by Town Code §17.020.030(A). Also, if the parking cannot be configured in a manner that allows the driveway to conform to the maximum 20 feet in width, an exception to the 20 foot width regulations will have to be granted by the Town Council for the expanded driveway accommodating three vehicles (Town Code § 12.12.030 and § 12.12.090).

## DISCUSSION

The Town Code 17.084.040 lists permitted accessory structure uses and they include cabanas, greenhouses, patios, tool sheds, play houses and garages. Detached offices/living space and baths are not listed as a permitted accessory structure use. However, Town Code § 17.084.030(H) allows the Planning Commission to grant use permits for accessory uses not listed in the code.

The Commission has granted other use permits to allow accessory structures to be used for living space and to include bathrooms as long as the structures are used by the residents of the main house and not rented out.

The applicants are proposing to use the accessory structure as an extension of the main residence and therefore, its use for living space will not change the single-family residential character of the property and will not negatively impact the neighborhood.

The structure maintains the required minimum 5 foot side yard setback and combined 15 foot side setback as well as the required 6 foot rear setback and the combined 25 foot front rear setback. The structure is also only one story and 14 feet in height which is one foot less than the 15 foot maximum height allowed for accessory structures [Town Code § 17.084.060(B)].

Other Department/Agency Requirements

Ross Valley Sanitary District

- The sewer lateral serving the detached structure will have to meet District standards.
- If not already installed, the District requires that the side sewer serving the existing structure be equipped with an appropriate backwater prevention device.
- After the project is approved, the owner or contractor should contact the District to arrange for a District Inspector to approve the existing installation (or approve the plans for the proposed installation) of the backwater prevention device(s) and make a record for the District's files.

#### Marin Municipal Water District

- The applicants must comply with the District's Water Conservation Ordinance 414.
- Should backflow protection be required, said protection shall be installed as a condition of water service.

#### Ross Valley Fire Department

- A fire protection sprinkler system shall be installed throughout the entire accessory structure unless this requirement is subsequently waived by the Ross Valley Fire Department. Plans for the system shall be prepared by an individual or firm licensed to design and/or design-build sprinkler systems.
- Prior to installing the system the applicants must obtain a permit from the Ross Valley Fire Department. The system must be installed before the building permit final inspection is done by the Building Official unless this condition is subsequently waived.
- The applicant shall obtain a Defensible Space/Vegetative Management permit prior to issuance of the building permit.
- The smoke detector(s) in the accessory structure shall be provided with AC power and be interconnected for simultaneous alarm.

#### MISCELLANEOUS

No Variances were found in the Town records for the wooden deck on the property that extends into the required minimum and combined side yard setbacks. The deck was constructed by the previous property owner. It is a common misconception by property owners and some contractors that if a deck is less than 30 inches in height and it does not need a building permit that it also does not need to comply with setback regulations. This is not the case and any deck/building that falls under the Town definition of a structure, whether it needs a permit or not, has to comply with setback requirements (Town Code § 17.008.020, Definition of Structure). The definition of a structure is as follows:

Anything constructed or erected, the use of which required a location on the ground or attached to something having a location on the ground, including, but without limiting the generality of the foregoing, advertising signs, billboards, backstops for tennis courts, fences, pergolas, radio and television towers, masts and aerials.

The deck must be modified to meet the required 3 foot minimum and 7 foot combined side yard setbacks or a setback variance will need to be applied for and be granted by the Planning Commission prior to issuance of the building permit legalize the accessory structure use conversion [Town Code §'s 17.084.070(A) (2) and 17.044.070(A) (2) and (B)].

It should be noted that the Commission is usually unable to make findings for variances for decks on level lots because the owners could install a permeable patio which can be located within setback because it is not a structure, and enjoy the outdoor areas of the yard. A raised wooden deck on flat lots is not essential to allowing the use of yard space the way they often are on sloped properties.

### RECOMMENDATION

Move to approve application # 10-32 based on the following recommended findings and subject to the following recommended conditions of approval:

#### **Recommended Findings**

1. The Commission has allowed other residential properties to be improved with accessory structures used for living space. 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.
2. The living space is created in an existing structure and will require only the legalization of the bathroom and other conversion improvements through the building permit process. The structure will only be used by residents of the main residence. 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 approval of the use permit and conversion of the accessory structure to living space with a half bath will not change the residential character of the property. Therefore, approval of the use permit is not contrary to those objectives, goals or standards pertinent to the particular case and contained or set forth in the Zoning Ordinance.
4. Approval of the use permit will result in equal development of the premises than would otherwise be the case because the structure will only be used by residents of the main house and will not be rented out or converted to a second living unit.

#### **Recommended Conditions**

1. The applicants shall obtain a building permit to legalize the work that has been done to install the bathroom and convert the workshop to living space.
2. Prior to issuance of the building permit the applicant shall sign, notarize and record at the Marin County Recorder's Office a deed restriction stating that the accessory structure is to be used by residents of the main house and shall not contain a kitchen.
3. The sewer lateral serving the detached structure will have to meet Sanitary District

standards.

4. If not already installed, the Sanitary District requires that the side sewer serving the existing structure be equipped with an appropriate backwater prevention device.
5. After the project is approved, the owner or contractor should contact the District to arrange for a Sanitary District Inspector to approve the existing installation (or approve the plans for the proposed installation) of the backwater prevention device(s) and make a record for the District's files.
6. The applicants must comply with Marin Municipal Water District's Water Conservation Ordinance 414.
7. Should backflow protection be required, said protection shall be installed as a condition of water service.
8. A fire protection sprinkler system shall be installed throughout the entire structure. Plans for the system shall be prepared by an individual or firm licensed to design and/or design-build sprinkler systems.
9. Prior to installing the system the applicants must obtain a permit from the Ross Valley Fire Department. The system must be installed before the building permit to legalize the conversion receives a final inspection by the Building Official.
10. The applicant shall obtain a Defensible Space/Vegetative Management permit prior to issuance of the building permit.
11. The smoke detector(s) in the accessory structure shall be provided with AC power and be interconnected for simultaneous alarm.
12. Prior to issuance of a building permit to legalize the work done to convert the storage structure to an office/half bath, the property owners shall; a) sign, notarize, and record a deed restriction at the Marin County Recorder's Office indicating that the accessory structure is not to be used as a separate living unit and shall not contain a kitchen or bathing facilities; and, b) shall either remove the portions of the deck from the required setbacks, or obtain a variance from the Planning Commission.

## ATTACHMENTS

Exhibit A – applicant's supplemental information

Exhibit B – Other Agency/Department memorandums

RECOMMENDATION

DISCUSSION

ATTACHMENTS