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

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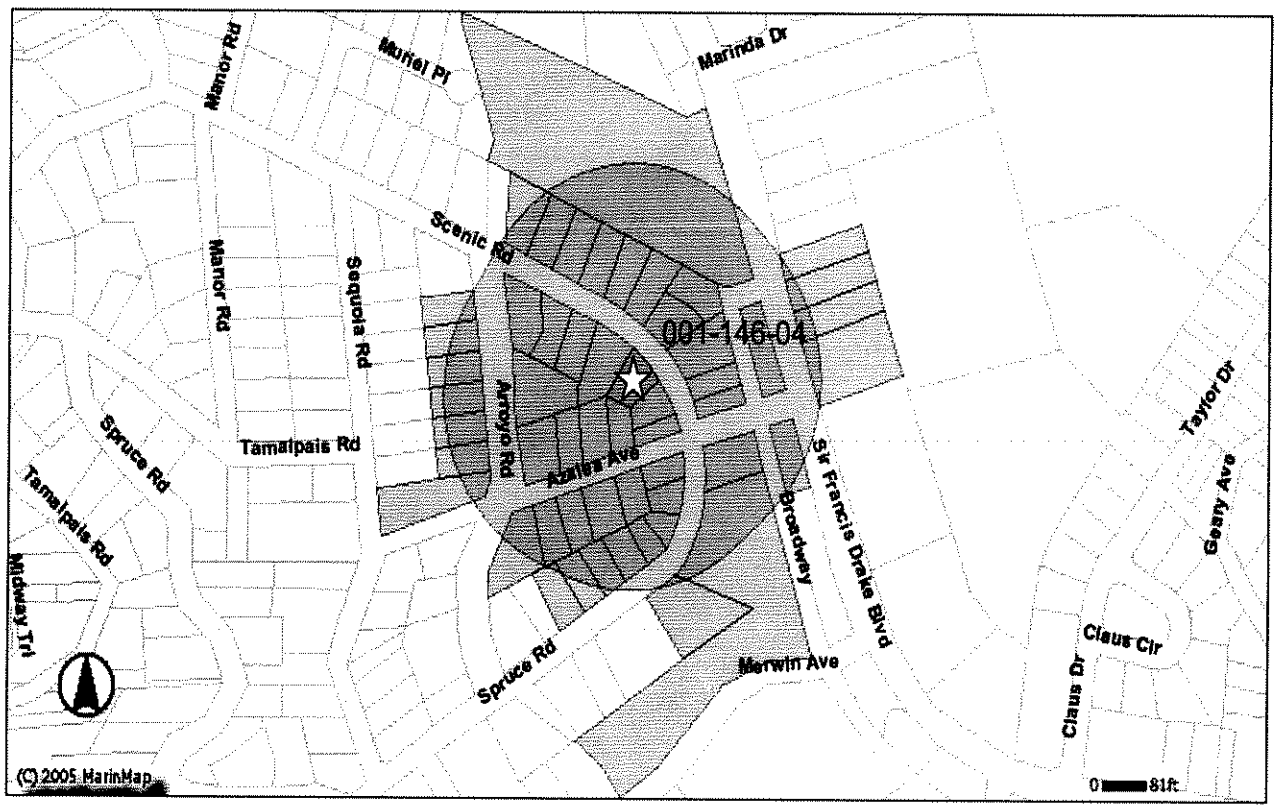
| **TO:** | Fairfax Planning Commission |
| **DATE:** | April 21, 2011 |
| **FROM:** | Jim Moore, Director of Planning and Building Services<br>Linda Neal, Senior Planner |
| **LOCATION:** | 9 Scenic Road; Assessor's Parcel No. 001-146-04 |
| **PROJECT:** | Conversion of workshop/laundry to living space |
| **ACTION:** | Use Permit; application # 10-30 |
| **APPLICANT:** | Dolores Cordell |
| **OWNER:** | Kenneth and Shawn De Mont |
| **CEQA STATUS:** | Categorically exempt, § 15303(e) |




# 9 SCENIC ROAD



*2011STAFFREP/9Scenic.pc.3_17_11/ln*

AGENDA ITEM # 3

## BACKGROUND

This item was continued off-calendar from the November 19, 2011 Commission meeting because the applicant wanted additional time to prepare and also appeal the Ross Valley Fire Department condition that a fire suppression system be installed in the accessory structure as a condition of its change of use from a workshop (a U occupancy per the Building Code) to living space (an R occupancy per the Building Code).

At the November meeting the Commission requested that the applicant provide a complete floor plan for the accessory living space which the applicant has provided and it is attached to the plans.

At the March 20, 2011 meeting of the Ross Valley Fire Board the Board denied the appeal and determined that the Fire Chief had properly applied the requirement for sprinklers which applied due to the change in the use of the building as determined by the Town of Fairfax.

The determination that the structure was not authorized for use as living space and was a workshop and/or artist studio was made by the Town of Fairfax staff in 1978 (Exhibit A). The fact the detached accessory structure was not approved for use as living space was reiterated again in 1994 prior to the purchase of the property by the applicant. The applicant had the opportunity to appeal that determination when the resale was issued on September 29, 2010 (Exhibit B).

The Town Attorney has advised that the appeal period for appealing the conversion from a U to an R Occupancy was the 10 days following staff's September 29, 2010 Resale.

At this point the Commission should conduct the public hearing, take action on the requested Use Permit, then the applicant can determine whether or not she want to appeal the decision to the Town Council for them to address the matter in a de novo hearing per Town Code § 17.036.060.

The project site is 3,575 square feet in size and is developed with a 1,341 square foot single-family residence and a 400 square detached structure that has been converted into living space that includes a full bathroom.

The previously existing residence on the site fell into disrepair in the 1970's. The Planning Commission approved variances and a use permit to allow the construction of a new residence on the site in December of 1978. A condition of the project approval was that the existing dilapidated residence be reduced in size to 400 square feet and be used as a workshop.

The applicant purchased the property in 1994 after receiving a resale report indicating that the accessory structure was a workshop/laundry room and was not to contain a bathroom. She constructed a bathroom in the structure and improved it for living space sometime between 1994 and 2010 when she went to sell the property. The Building

Official discovered the work without permits during the resale inspection on September 28, 2010.

The property has now been purchased by new owners and as a condition of the sale the previous owner submitted the use permit application along with the fees and required penalty

fees so that the new owners could go through the process to try and retain the accessory structure as living space.

DISCUSSION

Town Code 17.084.040 lists permitted accessory structure uses and they include cabanas, greenhouses, patios, tool sheds, play houses and garages. Detached bedroom/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.

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

The applicant must comply with the following fire code requirements:

- 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. The applicant can appeal any Commission action and this condition to the Town Council within 10 days.

- 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.

- 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.

RECOMMENDATION

1. Open the public hearing and take testimony.

2. Close the public hearing.

3. Move to approve application # 10-30 based on the following findings and subject to the following conditions:

Suggested Findings

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.

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.

The approval of the use permit and conversion of the accessory structure to living space with a bath will not change the single-family residential character of the property. 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.

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.

Suggested 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.

ATTACHMENTS

Exhibit A – minutes from the 12/21/78 Planning Commission meeting
Exhibit B – 10/26/94 Resale
Exhibit C – 9/29/10 Resale
Exhibit D – applicant's supplemental information
Exhibit E – Other Agency/Department memorandums

FAIRFAX PLANNING COMMISSION - REGULAR MEETING, DECEMBER 21, 1978

M/s Arnold, Silmar to recommend approval of a 25' pedestrian-equestrian easement on the portion of the fire road occurance on Church property; this easement is intended to become one segment in a proposed trail system as shown in Exibit "A".

AYES ALL

Item 7, Application for use permit for non-covered parking in front and side yards, and a use permit for a nonconforming front yard setback, 9 Scenic Rd., A.P. #1-146-04, Paul R. Lusczynski.

App for use permit for uncovered parking, & nonconforming front yard setback.

The applicant, Paul R. Lusczynski, was present.

The staff report for this item to be corrected to read: 24' (instead of) 25', last paragraph, first page.

Commissioner Baker was concerned about the small oak tree close to the property line. Mr. Lusczynski said the proposed house would not affect this oak tree.

The Commission reiterated to the applicant that the existing structure could not be used for residence, and the applicant said he understood.

Commissioner O'Donnell asked the applicant if the house was at all salvageable, and he replied that it was 80% salvageable. Commissioner Arnold suggested moving the proposed parking deck back so that a use permit wouldn't be needed. Mr. Lusczynski said moving the parking deck back would disturb the large oak tree behind it.

Commissioner Baker stated that it was hard for her to visualize that oak tree because it was not clearly drawn on the site plan. She said she had trouble responding to the application because she felt it was incomplete.

M/s Wilson, Arnold to recommend approval of a use permit for zero front yard and side yard setback with the condition that the present existing parking pad be removed to become part of the yard.

AYES: Arnold, Silmar and Wilson

NOES: O'Donnell, Eckles and Baker

Motion Denied.

M/s O'Donnell, Arnold to continue item to the next regular meeting, asking the applicant to bring a new site plan showing the precise location of trees, removal of the existing parking pad, a parking deck with 2 spaces, one covered, and a survey of the site.

EXHIBIT # A

FAIRFAX PLANNING COMMISSION - REGULAR MEETING, JANUARY 25, 1979

Item 2, Continuation of application for use permit for non-covered parking in front and side yard, and nonconforming front yard setback, 9 Scenic Road, A.P. #1-146-04, by Paul R. Lusczynski.

Cont. app.f use prmt fo noncovered parking & n conforming setback, 9 Scenic.

The applicant was not present.

Commissioner Arnold said that upon examing the site at 9 Scenic he discovered a garage on the rear of the property.

Commissioner O'Donnell said that he expected a survey to be included in the applicant's new submittals. Planning Technician Hammond explained that a survey had been included in the first submittals which was traced from the survey done by Arthur Lang.

Mr. Charles Grossman of 15 Scenic Road said that his objection to the project was that he beleived that the lot was too small to begin with. He said he felt the existing house is well situated but the addition would not look good. He also said a plum tree will have to be removed.

M/s Wilson, Arnold to continue the application to the next regular meeting when the applicant is present.

AYES ALL, Baker Absent

Item 3, Application for multiple use permits to convert a single family home into a duplex, 33 Park Rd., A.P. #2-101-03, by Jean B. McCabe.

App. for use prmts. for dup. 33 Park Rd.

The Commission was pleased with the building plans to convert the house into a duplex so that the real issue was the application for tandem parking.

Commissioner Wilson suggested that the applicant turn the area in front of the structure into four parking spaces and create a patio where tandem parking is proposed.

M/s Eckles, O'Donnell to recommend a use permit for a variance of Section 24.30, Ordinance. 352 to allow tandem parking at 33 Park Road.

AYES: Wilson, O'Donnell and Eckles

NOES: Arnold

ABSENT: Baker

FAIRFAX PLANNING COMMISSION, REGULAR MEETING, FEBRUARY 15, 1979.

Commissioners Present: John Arnold
Don O'Donnell
Wendy Baker, (ar. 8:25)
Lee Eckles, Chrmn.

Commissioners Absent: Adelaide Wilson

City Staff Present: Rebecca Hammond, Planning Technician.

Meeting called to order at 8:15 p.m.

Approval of Minutes

January 25, 1979

Approval of minutes

Page 1 - Commissioner O'Donnell requested "The Liquid Lense" in par. 1 be changed to "The Liquid Lens."

Page 2 - Commissioner Arnold requested that in par. 1 the words "a garage on the rear of the property" be deleted and replaced with "that a garage on an adjacent lot projected into the subject property."

M/s Arnold, Eckles to approve the corrected minutes of January 25.

AYES ALL, Baker, Wilson, absent

Item 1, Continuation of application for use permit for uncovered parking in front and side yard, and nonconforming front yard setback, 9 Scenic Road, A.P. #1-146-04, by Paul R. Lusczynski.

Cont. of App. for use permit for uncovered parking in front and side yard, nonconforming frnt yard setback, 9 Scenic, P. Lusczynski.

The applicant was present.

Chairman Eckles stated that the present application is as per the drawing dated 5 Jan. 1979.

At the Jan. 25 Planning Commission meeting three residents living contiguously to 9 Scenic were present who expressed an opposition to the project because it would result in considerably shorter distances between residences. The applicant did not arrive until after his neighbors left. Some concern was evident among the Commission with hearing the application without these neighbors present so the application was continued to the February 15 meeting.

At the February 15 meeting no one but the applicant showed up and again there was concern about hearing the application under these conditions.

FAIRFAX PLANNING COMMISSION, REGULAR MEETING, FEBRUARY 15, 1979.

Commissioner Arnold stated that those who came to the last meeting were aware that the item was to be heard again at this meeting and apparently chose not to come.

Motion Arnold to recommend use permits to allow 1) two uncovered parking spaces in the front and side yard setbacks and 2) to allow a 24' front and rear combined setback.

Motion died for lack of second.

Commissioner O'Donnell stated that he was concerned not about the uncovered parking, but the small amount of open space that would be left on the site.

Mr. Lusczynski stated that though the zoning ordinance requires that no more than 60% of the building site be covered by buildings, his plan with one covered space would cover only 50% of the site.

M/s Arnold, Baker to recommend approval of a use permit to allow a nonconforming front and rear yard setback at 9 Scenic Road.

AYES: Arnold, Baker, Eckles.

NOES: O'Donnell

ABSENT: Wilson

M/s Arnold, Baker to recommend approval of a use permit to allow parking in the front and side yard setbacks at 9 Scenic Road.

AYES: Arnold, Baker, Eckles.

NOES: O'Donnell

ABSENT: Wilson

Item 2, Continuation of the application for use permit for inadequate parking, Corbett's Antiques, 1621 Sir Francis Drake Blvd., A.P. #2-211-02, by Gustavo Kubichek.

Cont. of app. for inad. prk & ext. of lgl nonconforming use, Corbett' Antiques, 162 Sir Francis D

The applicant was present.

M/s Baker, Arnold to recommend approval of a use permit for extension of the legal nonconforming use at 1621 Sir Francis Drake Blvd.

AYES ALL, Wilson absent.

TOWN OF FAIRFAX
ACKNOWLEDGEMENT OF RECEIPT
OF RESALE INSPECTION

I acknowledge receipt of the resale inspection report for the property located at 9 Scenic Road, Fairfax

Check one: (Party responsible for performing required work)

___ BUYER X SELLER ___ BOTH PARTIES

Seller's new address: General Delivery
Nicasio, Ca. 94946

[redacted] Date: Nov. 2, 1994
BUYER'S SIGNATURE

Dolores Cordell (Print name)

EXHIBIT # B

# TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
(415) 453-1584/FAX (415) 453-1618

*Mayor*
Steven M. Vanni

*Council*
Susan Brandborg
Frank Egger
Sue Peterson
Doug Wilson

*Town Administrator*
Linda Christman

DATE: October 26, 1994

TO: Pat Oppenheim
c/o Coldwell Banker - Novato
901 Reichert Ave.
Novato, CA 94945

Re: 9 Scenic Road
Resale Inspection Report

Dear Ms. Oppenheim

Attached is the Resale Inspection which you requested for the above noted property address, and an acknowledgment card. The acknowledgment card should be completely filled out and returned to the Building Department at the time of the sale of the property. Most important is the information pertaining to the party responsible for performing the necessary work to bring the property up to health and safety code standards. These requirements must be completed within 30 days of the date of the sale of the property unless additions, repairs and or second units have been constructed without the benefit of permits. If work has been done without permits, the Planning and Building Services Department requires that the illegal improvements be legalized or removed prior to the close of escrow.

**THIS LETTER SHALL SERVE TO NOTIFY ANY PROSPECTIVE BUYER THAT NO STATEMENTS IN THIS REPORT SHALL AUTHORIZE THE USE OR OCCUPANCY OF ANY RESIDENTIAL BUILDING CONTRARY TO THE PROVISIONS OF ANY LAW OR ORDINANCE.**

**THE TOWN RESERVES THE RIGHT TO ENFORCE ALL OF ITS ORDINANCES AND REGULATIONS AND TO REQUIRE THE CORRECTION OF ANY UNSAFE OR ILLEGAL CONDITIONS EVEN THOUGH NOT DISCLOSED IN THE RESIDENTIAL RESALE INSPECTION REPORT.**

**THE SIGNING OF THE ATTACHED RESALE POSTCARD (INDICATING WHO WILL PERFORM ANY WORK REQUIRED IN THE RESALE) BY THE BUYER SHALL INDICATE THAT THE BUYER HAS READ AND UNDERSTANDS THE ABOVE DISCLAIMER. THIS RESALE IS NOT COMPLETE UNTIL THE RESALE POSTCARD IS SIGNED AND RETURNED TO THE TOWN OF FAIRFAX AND THE REPORT IS SIGNED OFF BY THE FAIRFAX BUILDING OFFICIAL ON PAGE 7.**

Please contact the Fairfax Building Official at 453-1585 after the work has been completed to arrange for a follow-up inspection or if you have any questions about the report.

Sincerely,

Linda Neal

Linda Neal
Senior Planner

# TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
(415) 453-1584/FAX (415) 453-1618

*Mayor*
Steven M. Vanni

*Council*
Susan Brandborg
Frank Egger
Sue Peterson
Doug Wilson

*Town Administrator*
Linda Christman

## REPORT OF RESIDENTIAL RESALE INSPECTION

FOR STAFF USE:

Business License Paid Yes

Inspection Date 10/20/94 Time 2:00

Fee $125 Receipt # 24028 By LD

**ADDRESS** 9 Scenic

**FEES** Fees are set by Resolution of the Town Council.

**PROCESSING** One copy of the report shall be mailed to the person designated on page 2 within 2 weeks of the date of inspection.

## LEGAL REQUIREMENTS

1. *Pursuant to the provisions of Sections 38780 through 38785 of the Government Code of the State of California, it is the intent of the Council that the grantee of a residential building within the Town be furnished a report of matters of Town record pertaining to the authorized use, occupancy, and zoning classifications prior to sale or exchange. The report must be obtained by the seller and delivered to the buyer.*

2. *This report is valid for a period not to exceed six months from date of issue. Upon written request of the owner, prior to the expiration date, the Building Inspector may issue an endorsement to the report, extending the validity for one additional three month period and showing any change to the information on the original report. The fee for such endorsement shall be one-third the original filing fee. In cases where the Building Inspector makes a site visit prior to issuing an endorsement, a $10.00 fee may be charged.*

## INSPECTION PROCEDURE

*ACCURACY NOT WARRANTED - NO STATEMENTS IN THIS REPORT SHALL AUTHORIZE THE USE OR OCCUPANCY OF ANY RESIDENTIAL BUILDING CONTRARY TO THE PROVISIONS OF ANY LAW OR ORDINANCE.*

3. *Based upon its files, the Town will attempt to provide accurate information in the Residential Resale Inspection Report. Nevertheless, the Town will not warrant the accuracy of such information. The Town reserves the right to enforce all of its ordinances and regulations and to require the correction of any unsafe or illegal conditions even though not disclosed in the Residential Resale Inspection Report. No statements in the report authorize the use of occupancy of the property contrary to the provisions of any law or ordinance.*



*Printed on Recycled Paper*

*The entire building must be available for a complete and continuous inspection at the time for which the inspection is arranged. The Building Inspector will not inspect buildings which are occupied unless he is accompanied by either the owner or the owner's authorized agent. If neither the owner nor the owner's authorized agent appear at the scheduled time of the inspection, a $10.00 fee will also be charged.*

Property address 9 Scenic

Applicant's name Pat Oppenheim. ~~Steven Vermiccion~~ Day phone 899-8400

Person to receive report Pat Oppenheim

Mailing address Coldwell Banker 901 Reichert Ave Novato Zip 94945

Person to meet inspector Pat Oppenheim Day phone 899-8400

Owner's name, if different Steven Vermiccion General Delivery

Owner's address, if different 2 Dam Rd, Nicasio 94946

Type of Building

✓ Single family or condominium

_____ Duplex _____ Other

Number of bedrooms in each unit _____

I am the (____) Legal Owner, (X) Authorized Agent of the Legal Owner of the property at the address of subject building and hereby request that a physical inspection be made of the subject building and agree to furnish buyer with a copy of the final report.

Patricia A. Oppenheim
Signature

18 Oct. 1994
Date

Town of Fairfax Residential Resale Inspection Report
TOWN RECORD HISTORY OF BUILDING AND ZONING

The following represents the zoning and permitted uses of the property according to Town records. If no information is available in our file as of the date of this inspection, it will be indicated by N/A (not available).

1. Address 9 Scenic Road. Assessor's Parcel No. 1-146-04

2. Lot(s) 11 Block 4 Tract Fairfax Manor Zoning RD5.5-7

3. Present permitted use single family homes on lots of 5,500 sq ft. for property with less than a 10% slope / duplexes on lots of 7,000 sq ft.

4. Overlay zones —

5. Flood zone C; area of minimal flooding

6. Date constructed prior to 1947-48 - previous SFD demolished 1979. New home built 6/27/79.

7. Permitted use under previous ordinance residential

8. Required parking at time of construction none

9. 50% remodel date _____ Applicable zoning ordinance _____

10. Building permits:

Date 6/27/79 For demolition of single family home

Date 7/20/79 For construction of new home

Date 8/1/79 For electrical + plumbing for new single family home

Date 7/29/80 For repair of accessory building

Date 12/12/88 For new windows, doors, skylight

Date 12/15/88 For new gas heater

11. Encroachment permit: Date _____ For _____

12. Use permit: Date 2/15/79 For front + side setback variances for parking

13. Variance: Date _____ For _____

14. Other: Date _____ For _____

Date _____ For _____

Compiled by: R Heal
Planning and Building Services Staff

Town of Fairfax Residential Resale Inspection Report

**BUILDING CODE INSPECTION REPORT** The purpose of the following inspection is to identify any building deficiencies which are unsafe. It is not the purpose of this inspection to evaluate craftsmanship or require work done under old codes to be brought up to today's codes **unless a safety and/or permit problem(s) exists.** This report does not address termite damage; this problem must be analyzed by a private termite repair service.

This inspection is performed for general compliance to the Uniform Housing Code and does not imply or intend to imply any warranty to the subject structure. This inspection does not cover engineering for soils, geotechnical, drainage, foundation, structural, or any related areas. It is recommended that any party with concerns about these or any other items contact an architect or engineer licensed by the State of California for that specific area of concern.

**PHYSICAL INSPECTION**

___ No correction required.

✓ The corrections do not require permits from the Building Department.

___ Building and/or premises require corrections which must be completed within 30 days.

___ The following permit(s) must be obtained from the Building Department before corrections can be made

_____Building _____Electrical _____Plumbing _____Mechanical

_____a demolition permit is required to remove the illegal construction (remove the:

_____

_____(Other)_____

____ The corrections may require permits from the Planning Department. Contact the Planning Department for further information.

**CORRECTION(S) REQUIRED**
**Construction performed without permits**

____ Construction has been performed for which building permits were not obtained. Review must be made by the Planning and Building Departments, and then, if approved, permits may be issued.

**CIRCLED ITEMS ARE TO BE CORRECTED, WHEN CORRECTED AND REINSPECTED, THE BUILDING OFFICIAL WILL CHECK THEM OFF**

**Electrical**

_____1) All residences must be supplied by an electrical main, 100 amps minimum.

_____2) All residences must be provided with an exterior main service disconnect.

_____3) All exposed romex wiring must be protected from physical contact if it is located at 8 feet or less in height.

_____4) All splices must be within junction boxes.

_____5) All Edison-based fuses must be replaced with Type S fuses.

_____6) Electrical panel must be labeled.

_____7) (Other)_____

_____

**Gas Appliances**

_____1) The gas service to all appliances must be provided with an epoxy coated, flexible gas connector. Provide one for_____

_____2) All flues shall be maintained in good order and not leak at joints or couplings. Repair the flue for the:

_____

_____3) Provide a pressure relief valve (PSI) to the hot side of your water heater piping or to the appropriate provided connection.

_____4) The pressure relief valve needs a full diameter metallic overflow to the exterior of the building and down to within 6 inches from grade.

_____5) Provide an earthquake strap for your water heater.

_____6) (Other)_____

_____

**Plumbing**

_____1) Replace the worn "p" trap under the sink in the _____

_____

_____2) Provide an air gap separator for the dishwasher waste line.
_____3) Provide proper venting for the drain_____
_____4) Contact Environmental Health Dept. at (415)499-6907 regarding:

_____

**General**

✓ 1) **ALL STAIRWAYS** (interior and exterior) with four or more risers shall be provided with a handrail, 1-1/2" to 2" in cross sectional dimension, the shape shall provide an equivalent gripping surface and shall be placed 34 inches to 38 inches above the stair nosing. Ends shall be returned or shall terminate in newel posts or safety terminals.

_____2) All areas that have a 30" drop such as decks or landings shall be provided with a guardrail 36" in height with openings not greater than 4".

_____3) Provide smoke detectors to all sleeping areas.

_____4) The area around your pool or spa must be provided with a continuous, solid, non-climbable fence, 6' in height and all gates into the area must be self-closing and self-latching, with the latch no lower than 4' high.

_____5) Provide a spark arrestor for your chimney with screening, 1/2" openings maximum.

_____5A) Remove tree limbs within ten feet of chimney (if 24" or more in circumference, a tree permit must first be granted. contact Town Hall for tree cutting permit application.

_____6) Post your address in numerals at least three inches in height and in a contrasting color so that it is clearly visible from the street.

_____7) The required firewall must be provided and maintained between the garage and your dwelling. Repair holes in sheetrock and tape where necessary.

_____8) The door between your dwelling and your garage must be a 1-3/8" <u>solid wood door</u>, and be self-closing.

**Additional Requirements/Comments**

_____

_____

**Structural**

_____1) The foundation shows extensive cracking and distress. It is recommended that a licensed architect or engineer be employed to analyze the structure.

_____2) The fireplace chimney appears to be unreinforced masonry construction. It is recommended that a licensed architect or engineer be employed to analyze the structure.

_____3) (Other)_____

Town of Fairfax Residential Resale Inspection Report for 9 SCENIC AVE

PLEASE NOTE:

The circled corrections must be made within 30 days. Contact the Building Department to schedule a reinspection appointment for completed items to be checked off. There is no fee for the reinspection. However, should the items not be corrected at the scheduled second visit, or should the owner(s) or their representatives fail to be present on site, an additional $60.00 will be charged for the third visit to the property.

Date inspection made 10/24/94 — Building Official

Date corrections made 10/31/94 — Building Official

Zoning and uses of property observed during on site inspection.
Please note that all measurements are estimates.

1. PRESENT USE: ✓ single family residence ___ condominium
___ duplex ___ second unit
___ multiple residence ___ commercial
✓ accessory structures: height 15 ft. or less.

specify use: WORKSHOP WITH GAS HEATER AND WASHER/DRYER HOOK-UP
NO BATHROOM.

2. Number of structures: TWO
3. Number of stories: TWO
4. PARKING: (a) Number of spaces: THREE.
(b) Number of covered spaces: Ø
(c) Size of spaces (visual, not surveyed) 10' X 20'
(d) Location of parking (visual, not surveyed):
___ On private property ___ In city right-of-way
✓ In front yard setback ✓ In side yard setback

5. Setbacks - approximate number of feet between structure and property line:

Front yard 12' Side yards 10' & 5'
Back yard 10' Creek setback_____ (as measured from edge of bank)

Property: Sloped ✓ [up/down]
Flat____

6. Fences and/or retaining walls:
Front: (fence / wall) height: 6'
Sides: (fence / wall) height: 8' & 6'
Rear: (fence / wall) height: 8'

**ZONING AND PLANNING INFORMATION**

1. Zoning:

___ Conforming (Means that the structures and uses are in accordance, without exception, to current zoning law.)

___ Conforming by use permit or variance (Means that the structure and use are in accordance with current zoning law with exception to that law as granted by use permit or variance.)

_____

_____ Expiration date:_____

X Legal, Non-conforming (Means that the structures and uses are in accordance with a previously adopted zoning ordinance, which is different from existing zoning law.)

Non-conforming features: parking; setbacks; lot size

X Illegal, Non-conforming (Means that the structure and/or uses are not in accordance with existing or prior zoning laws and must be corrected by abatement of the non-conformity.

Illegal, Nonconforming features: 8 ft. high fences on side & rear property lines

Required Zoning Action: fences must either be cut down to 6 ft in height or owners must obtain a fence height variance from the Fairfax Planning Commission

Parcels merged? NA

Report completed by: L. Leal Date: 10/24/94
Planning Staff

*THE LAW REQUIRES THAT, PRIOR TO THE CONSUMMATION OF THE SALE OR EXCHANGE OF PROPERTY, THE SELLER MUST DELIVER THIS REPORT TO THE BUYER(S), AND THE BUYER(S) MUST SIGN AND RETURN THE ATTACHED POSTCARD TO THE FAIRFAX TOWN HALL.* *This report will not be considered complete until 1) the postcard is signed and returned to the Town of Fairfax; and 2) the report is signed off by the Building Official on page 7.*

*DOC:resale.wp6 2/94*

**TOWN OF FAIRFAX**
BUILDING & PLANNING DIVISION
142 Bolinas Road, Fairfax, California 94930
(415) 453-1584 / Fax (415) 453-1618

September 29, 2010

Dolores Cordell
9 Scenic Road
Fairfax, CA. 94930

Re: 9 Scenic Road, **Fairfax, CA 94930**

Dear: Ms. Cordell,

Attached is the Resale Inspection Report and acknowledgement card, which you requested for the above referenced property. The acknowledgement card must be completed and returned to the building department at the time of sale of the property. Most important is the information pertaining to the party responsible for performing the necessary work to bring the property up to health and safety code requirements. These requirements must be completed within 30 days of the sale of the property unless otherwise specified by this department.

Please contact me at 453-1584 after the work has been completed to arrange for a follow-up inspection or if you have any questions about the report.

Sincerely

Building Inspector

**EXHIBIT #** C

## BUILDING CODE INSPECTION REPORT

The purpose of the following inspection is to identify any building deficiencies that are unsafe. It is not the purpose of this inspection to evaluate craftsmanship or require work done under old codes to be brought up to today's codes **unless a safety and/or permit problem(s) exists.** This report does not address termite damage; this problem must be analyzed by a private termite repair service.

This inspection is performed for general compliance to the Uniform Housing Code and does not imply or intend to imply any warranty to the subject structure. This inspection does not cover engineering for soils, geotechnical, drainage, foundation, structural, or any related areas. It is recommended that any party with concerns about these or any other items contact an architect or engineer licensed by the State of California for that specific area of concern.

**Building permits issued for: 9 Scenic Rd., Fairfax, CA 94930**

| | | | | | |
|---|---|---|---|---|---|
| Date: | **7/20/79** | Description: | **Single-family dwelling** | Number: | **1413** |
| Date: | **8/1/79** | Description: | **Electrical/plumbing – new sfd** | Number: | **1424** |
| Date: | **7/29/80** | Description: | **Accessory building** | Number: | **1762** |
| Date: | **12/12/88** | Description: | **Misc. insulation/repair** | Number: | **18929** |
| Date: | **12/15/88** | Description: | **New gas heater** | Number: | **8945** |
| Date: | **9/21/10** | Description: | **New furnace** | Number: | **10-243** |
| Date: | **9/21/10** | Description: | **Bathroom remodel** | Number: | **10-244** |
| Date: | | Description: | | Number: | |

## PHYSICAL INSPECTION OF PROPERTY

The physical inspection of the property is limited to visual site observation at the time of inspection. Please note that all measurements are estimates and this information is based on a limited investigation.

**Present Use**

| | | | | | | |
|---|---|---|---|---|---|---|
| Single Family | X | Stories: | 2 | Structures: | 2 | |
| Condominium | ☐ | | | | | |
| Duplex | ☐ | Parking Open: | 2 | Covered: | | |
| Second Unit | ☐ | | | | | |
| Multiple Residence | ☐ | Parking: | Private | | Public | |
| Commercial | ☐ | Spaces: | 2 | | ____ | |
| Accessory Structure | X | | | | | |
| | | Setbacks: | *Side* | *Front* | *Back* | |
| Accessory Use: ***room with bath*** | | | ____ | ____ | ____ | |
| | | | *Fencing* | *Front* | *Side* | *Rear* |
| | | | | ____ | ____ | ____ |

Additional Comments: ***Construction of the bathroom in the accessory structure was done without permits. The structure is currently approved for use as a workshop/laundry room only. Bathroom must be removed or must be legalized through issuance of a Use Permit and building permit from the Town. There will be penalty fees because the work was done without the required approvals/permits.***

X

PROJECT DESCRIPTION: FULL BATH & STORAGE AREA IN STUDIO.
NOTE: STUDIO WAS THE ORIGINAL HOUSE ON THE PROPERTY

GENERAL INFORMATION (if applicable):

| Item | Existing | Proposed |
|---|---|---|
| Lot size | 3,575 - PER ASSESSOR | N/A |
| Size of structure(s) or commercial space (square feet) | 1,344 + 400 | N/A |
| Height and No. of stories | 2 STORY MAIN - 1 STORY STUDIO | N/A |
| Lot coverage | 1168 | N/A |
| No. of dwellings units | 1 | N/A |
| Parking[1] No. of spaces | 3 | N/A |
| Size of spaces | 2 SPACES: 30' X 17'<br>1 SPACE: 17' X 8' | N/A |

| | | |
|---|---|---|
| Amount of proposed excavation and fill | Excavation = NONE | Fill = NONE |

Estimated cost of construction $5,000

Lot Coverage is defined as the land area covered by all buildings and improvements with a finished height above grade and all impervious surfaces except driveways.

[1]Minimum parking dimensions are 9' wide by 19' long by 7' high. Do not count parking spaces that do not meet the minimum standards.

Restrictions: Are there any deed restrictions, easements, etc. that affect the property, and, if so, what are they? NONE

Signature of Property Owner

Signature of Applicant

OCT 25, 2010
Date

OCT 25, 2010
Date

Planning Department staff is available by appointment between 8:30 a.m. and 12:00 noon and 1:00 p.m. and 5:00 p.m. Monday through Thursday at 142 Bolinas Road, Fairfax, CA. (415) 453-1584



EXHIBIT # D

## Use Permit Applications – Additional information required.

- A written description of the proposed use, major activities, hours of operation, number of employees on the premises during the busiest shift and when the busiest shift is expected and other information pertinent to the application.

- Floor plans must include location of any special equipment.

- Designate customer, employee and living areas.

- If different uses are included in this activity, for example storage, retail, living space, etc. Indicate square footage of each proposed use.

In order to approve your project, the Planning Commission must make findings of fact which state that the project will not have a negative impact on the general public welfare, conforms with the policies of the Town, does not create excessive physical of economic impacts on adjacent property and provides for equal treatment with similar properties in Town.

In the space below, please provide any information which you feel is relevant to these issues and which further explains your project.

THIS IS A USE PERMIT TO LEGALIZE A BATH ROOM INSTALLED IN 1995, IN AN EXISTING STRUCTURE ("STUDIO") THAT WAS PART OF THE ORIGINAL HOUSE ON THE LOT. AT THE TIME OF INSTALLATION THE "STUDIO" STRUCTURE ALREADY HAD A SOIL PIPE, WATER HEATER, HOT & COLD WATER LINES, AND A GAS HEATER & GAS LINE.

The final disposition of each use permit shall be in accordance with the facts of the particular case, and such facts must support the following determinations and findings before a use permit may be approved. Indicate how the findings below can be made:

- 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.

THERE ARE SEVERAL 2ND UNITS IN THE NEIGHBORHOOD: EG. 50 & 50½ SCENIC 25 + 25A SCENIC; 34 + 34A SCENIC; 16 SEQUOIA (3 UNITS); 27 SEQUOIA; 61 SCENIC / 75 SEQUOIA (?); 10 + 10A SCENIC; THE CORNER OF SCENIC & AZALEA HAS MULTIPLE UNITS ON 3 OF THE 4 CORNERS. THERE ARE OTHER 2ND AND MULTIPLE UNITS IN THE IMMEDIATE NEIGHBORHOOD, INCLUDING 9 SCENIC'S "BACK FENCE" NEIGHBOR.

- The development and use of property, as approved under the use permit, shall not create a public nuisance, 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, any or all of which effects are substantially beyond that which might occur without approval or issuance of the use permit.

THE BATHROOM HAS BEEN IN USE WITHOUT INCIDENT SINCE 1995.

- 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 any master plan, development plan or other plan or policy, officially adopted by the town.

THE BATHROOM + STRUCTURE ARE CONSISTENT WITH THE USEAGE AND SIZE OF THE NEIGHBORHOOD AND ZONING.

March 2, 2011

**To:** **Planning Commission – Town of Fairfax**
**From:** **Dolores Cordell**
**Property:** **9 Scenic Road**
**Hrg. Date:** **March 17, 2011**
**Issue:** **Use Permit for Studio**

As requested, attached is a floor plan for the Studio structure at issue. This failed to copy as "Page 5 of 7" when I originally submitted the drawings for my application for a Use Permit in October 2010.

In addition, I wish to take this opportunity to correct a misconception about the Resale Report I received in 1994. I want to make it clear that I did not believe that the Report informed me that I could not install a bathroom in the Studio. The only reference to the Studio is on page 8 of the Report and it states in full:

**"<u>Zoning and uses</u> of property observed during on-site inspection. [Emphasis added]**

. . .

**"1. PRESENT USE:** **__v____ single family residence**

. . .

**___v___ Accessory structures: Height 15 ft. or less**

**"Specify use: Workshop with gas heater and washer/dryer hook up. <u>No</u> bathroom."**

I do not want the Commission to be left with the impression that the former inspector who underlining the word "no" somehow gave me notice that no bathroom was allowed. Merely underlining "no" simply did not express any such limitation. With all respect, I do feel I'm entitled to expect government officials to communicate with me in English, not squiggles!

At no point does the Resale Report state that a bathroom could not be installed in the Studio. The Resale Report does NOT say: "No bathroom allowed" or "No bathroom permitted" or "Bathroom cannot be installed." All it says is that under the "Present Use", the "Accessory Structure" has "no bath", which was a correct statement at the time.

Finally, as of today's date, the hearing before the Fire Board regarding the Fire Department's directive for the installation of fire sprinklers in the Studio is still pending. The matter will be heard on March 10, 2011, and I therefore anticipate having a decision prior to the March 17, 2011 hearing on the Use Permit.

Thank you for your time and attention to this matter.

Sincerely,

Dolores Cordell

Dolores Cordell

TOWN OF FAIRFAX
MAR 11 2011
RECEIVED

To: Planning Commission, Town of Fairfax
From: Dolores Cordell
Re: 9 Scenic Road, Fairfax, CA – Fire sprinklers in Studio
Hearing: March 17, 2011
[Submission date: March 11, 2011]

SUPPLEMENTAL STATEMENT

**ISSSUE**: This Supplemental Statement is addressed to the issue of installation of fire sprinklers in the Studio at 9 Scenic Road. The installation of the sprinklers was made a part of the Staff Report following a directive of the Ross Valley Fire Chief for installation as a condition of granting a Use Permit for the use of the Studio as living space.

**FIRE BOARD HEARING:** On March 10, 2011, my appeal of the Fire Chief's directive was heard before the Ross Valley Fire Board. (This Planning Commission hearing on the Use Permit was continued pending the Fire Board hearing.) The appeal requested that the Board find that the installation of sprinklers in the 400 square foot detached Studio should be waived.

At the hearing the Board was informed by legal counsel that it was not within the Board's legal jurisdiction to grant such a waiver since that would require making a determination as to whether or not there was a "change in use" of the Studio from a "workshop" to residential use such that the code would require the sprinklers. Thus, for purposes of the Board hearing, the only information on "use" from the Town of Fairfax was that contained in the Fairfax Staff Report.

Based on that Staff determination, the Board upheld the Fire Chief's decision by a slim margin: only 2 Board members voted to uphold the installation requirement, 1 opposed the installation, and 1 abstained. Since the Board could NOT make the determination regarding whether there has been a "change in use" of the Studio, it was agreed that the decision on this point – and hence whether sprinklers were required – was reserved to the Fairfax Planning Commission, and ultimate the Town Council

**NO CHANGE IN USE:** As will be discussed in the attached, there has not been a FACTUAL change in the use of the Studio – the Studio was built as the original residence on the property and used as a residence for over 50 years. It was extensively rehabbed in the 1980's, with all of the necessary Town permits, and has been used as residential space without complaint or incident for the last 15 years.

**ATTACHMENTS:** Attached is a copy of my statement to the Fire Board regarding the unique history and use of the Studio, together with the Statement of Peter Coyle, a general contractor, regarding the excessive cost and destruction that would attend the installation of the sprinklers in this small building – at least **$11,000 plus $4,000 for a new water line hook up with the Town water main, i.e. $15,000 for sprinklers in a 400 square foot building.**

The Fire Board hearing was only held last night (March 10) and only then did the issue of usage become clear. Since the Planning Commission hearing is imminent, I would request that the

Commissioners consider the attached and the information contained in it even though not all of it will be necessary to the Commission's decision at this point.

In the interests of saving paper and bulk, I have not included most of the Exhibits referenced in the attached Statement since those are already in the materials provided to the Commissioners. However, I have included photographs of the exterior and interior of the Studio (the Commission already has photos of the bathroom and closet at issue.)

**FAIRNESS & DISCRETION:** I am aware that the Fire Chief felt constrained by his mandate and local ordinances in his decision making. The Fire board review of the Chief's decision was likewise constrained by the scope of its mandate. Nonetheless, the dissenting opinion of Fire Board member and Fairfax Town Council member Lou Tremaine points to the central issue: The limits of statutory language here leads to unfairness.

Accordingly, the role of the Planning Commission and the scope of its mandate are quite different and its discretion to achieve a fair result here is not constrained by the Fire Board review.

Thank you for your time, attention and community service in considering these matters.

Dolores Cordell

# APPEAL BEFORE THE ROSS VALLEY FIRE BOARD

RE: 9 SCENIC ROAD, FAIRFAX, CA
Appeal from Denial of Waiver re Installation of Fire Sprinklers

Appellant: Dolores Cordell
Date of Hearing: March 10, 2011

The history, details and legal issues regarding this appeal are lengthy. However, in view of the costs involved, I believe I need to cover all of the facts and issues in order to preserve my legal rights. Accordingly, please forgive the length of this statement.

## SUMMARY OF FACTS & ISSUES

This appeal is a request for a waiver from an order of the Ross Valley Fire Department that built-in fire sprinklers be installed in a 400 square foot building ("**Studio**") at 9 Scenic Road on the "flats" of Fairfax ("**Property**") as a condition of granting a Use Permit for residential occupancy of the Studio due to the 1995 installation of a bathroom without permit.

The Fire Department's basis for the order is that Section 903.2 (10) of the Fairfax Code requires the installation of sprinklers in any building where the "use" of "more than 50%" of its square footage is changed to a "use" with a higher fire or life safety risk. However, as will be made clear, there has been **no change in the factual or legal residential use of the Studio as defined by the Fairfax Code itself.** As a consequence, section 903.2(10) has been incorrectly applied to this situation.

The following points should be strongly noted, all of which will be explained further, below:

1) **Fairfax Code's Definition of "Use": The only definition of "use" in the Fairfax Code is found in its Definitions in section 17.008.020. The definition of "use" is not defined as "legally permitted use" or an "authorized use". All the Code defines as a "use" is :**

   **(1) (a) Any purpose for which a building or other structure or tract of land may be designed, arranged, intended, maintained or occupied; or (b) Any activity, occupation, business or operation carried on, or intended to be carried on, in a building or other structure or on a tract of land. (2) To *USE* means to convert to one's service.[1]" [Emphasis added.]**

2) **Studio History: The Studio was built and used as a residence for over 50 years. Thus, the Studio has a long history of residential "use."**

3) **Studio's Residential Amenities in 1994: When I purchased the Property in 1994, the Studio had the following residential amenities:**

---

[1] This is the only definition of "Use" I have found in the Fairfax Code.

- **Gas wall heater (fully functioning)**
- **Hot water heater (in the Studio basement – fully functioning)**
- **Washer/dryer hook up (in use)**
- **French doors to the front of the Studio (double-paned insulated)**
- **Three other exterior doors, 1 front, 2 in back (2 double-paned insulated)**
- **Five skylights**
- **Six exterior windows (double-paned insulated)**
- **Wired-in ceiling fan with wall switch (fully functioning)**
- **Electrical switches and outlets (fully functioning)**
- **Finished interior walls, ceiling and floor**
- **Front exterior deck of approximately 60 square feet, with two sets of exit stairs**
- **Sound wood shingle roof (replaced with Class A composition in 2003)**

4) **<u>Less Than 50% Change in Use</u>: The bathroom uses less than 25% of the square footage of the Studio, and therefore does not constitute a "change in use" of more than 50% of the building. Thus, subsection 10 of Fire Code 903.2 does NOT apply.**

5) **<u>Costs & Destruction of Installation:</u> Installing fire sprinklers would result in[2]:**
   - **Tearing up the city street to hook a new 1 ¼ " pipe to the water main**
   - **Tearing up 60 feet of the front of the Property, including going through a field stone retaining wall, several feet of planting, and 20 feet or more of decking. In addition there is a well-established coastal oak in the path of the work.**
   - **Tearing out paneled walls in the Studio, all resulting in:**
   - **Construction and installation costs which could easily exceed $11,000, plus**
   - **A $4,000 fee to hook up the new 1 ¼ " pipe to the water main**
   - **Finally, as all home owners know, few construction projects are without costly "surprises."**

6) **<u>Residential Use is Safer:</u> Even if Section 903.2(10) is applicable, that section only requires that sprinklers be installed "when there is a change in the use of the structure <u>that results in a higher fire or life safety exposure."</u> Emphasis added.] In fact, using the Studio as living space is SAFER than using it as a "workshop."**

7) **<u>No Precedent</u>: Because the Property and Studio have an unusual and unique history, structure and location, granting of a fire sprinkler waiver under the conditions and circumstances presented here would NOT set a precedent for waivers in future cases.**

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[2] See Statement of Peter Coyle, general contractor. Mr. Coyle will be present at the hearing to answer questions.

Since the "use" of the Studio – as defined by the Fairfax Code – has been residential for decades, the mere installation of a bathroom – which affects less than 25% of the Studio's square footage - should not require tearing up the Property, the streets or the building to install a sprinkler system whose utility will be at best marginal in this small residential building with 4 exterior doors.

## THE FACTS

### A. Property Location

This is a very accessible property, centrally located on the "flats" of Fairfax, less than ½ mile from the Fire Department (.41 miles). The Studio is a 20' X 20' structure, with 4 exterior doors. In 2003 a Class A "Presidential" fire retardant roof was installed on both the Studio and the main house and in 2004 the electrical panel was upgraded, both with permits. **Exhibit 1.** (All Exhibits are from the Fairfax building department files unless otherwise noted.)

The Studio is a considerable distance from the buildings on neighboring Properties: On the East side, the closest building from the Studio on neighboring property is approximately **41 feet away;** on the West side, the closest building on neighboring property is approximately **50 feet away**; on the South side, the closest such building is approximately **58 feet away**. The front of the Property faces Scenic Road on the north. (See plot map prepared by me– **Exhibit 2.**)

### B. Property History

Contrary to common situations in Use Permit applications, it is undisputed that the Studio at issue **was designed and maintained** as the residence at 9 Scenic Road, Fairfax ("Property") for at least 50 years. In 1979-80, a new main house was built and the original residence was then truncated to a 20 X 20 foot structure and completely renovated, turning it into what is now the Studio. [3]

In 1988, the Town issued permits for the remodeling and renovating of the Studio by the installation of clearly residential amenities [**Exhibit 3**]:

- Replacement of windows and doors with insulated glass
- Adding skylights
- Insulating the ceiling
- Covering the ceiling with tongue and groove pine
- Installation of a gas heater

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[3] Based on photos in the Fairfax files, substantial work was performed on what became the Studio, including a new foundation where the residence was truncated.

Apparently the Studio already had the washer/dryer hook-up, hot water heater, front deck, electrical outlets and switches, etc. set forth above.

In other words, when I purchased the Property in 1994, the Studio had a full complement of residential amenities, i.e. in all respects **by 1994 the Studio was fully useable as living space**. Clearly, from the front of the building, it presented as living space. [**Exhibit 4** – my photo of the front of the Studio.] All the Studio required was a bathroom to make it more comfortable and convenient. This was not a shed or garage converted to living space. This was a fully functional residential building. Anyone looking at it would assume that it could be used as such, and I did use it as my bedroom from the time I moved in 1994.

### C. Installation of Studio Bathroom in 1995

Due to the clear livability of the Studio, in 1995 I installed a lovely bathroom and closet the. [See enclosed color photos of Studio bath, closet, and living area - **Exhibit 5**], and moved the washer/dryer hook up to a corner of the building to form a separate laundry room. These changes impacted less than 25% of the total building. Enclosed is a copy of the floor plan for the Studio showing the layout of the Studio, including the bath, closet and washer/dryer area **[Exhibit 6.]** The bathroom itself is open to the ceiling and for the most part the Studio remains an open room with minimal interior walls.

Please note that no new sewer line was required for the Studio bath. The plumber who did the installation of the toilet informed me that the "soil pipe" needed for the toilet was *already in place*. In other words, everything was in place as one would expect in a residential building, including the waste removal pipe and all of the other amenities one would expect in a living space, e.g. windows, doors, hot water, heater, electricity, etc.

### D. Application for Use Permit

In September of 2010 I was informed by the Town of Fairfax that I should have applied for a Use Permit. My fault was in not applying for a building permit for the bathroom in 1995, and I confess to not having done so. (See section 2 E regarding this issue.) However, in connection with my sale of the Property to Ken & Shaun DeMont late 2010, I did apply for the permit and it was then that I was informed that I would first have to apply for a Use Permit because the Studio was not supposed to be living space.[4]

It should be noted again that while the Town is requiring a "Use Permit" the Fairfax Code does NOT define "use" as a use which requires a permit. Accordingly, the meaning of the term "use" as in "Use Permit" is NOT the same meaning as the definition of "use" applicable to section 903.2 (10). As set forth above, "use" is only defined by the Code in terms of how the property

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[4] Although the DeMonts are now the owners of the Property, I am contractually obligated to obtain a permit for the bathroom in the Studio.

is **in fact** used. More significantly, **section 903.2 (10) does NOT refer to a legally permitted use as the basis for requiring sprinklers**. It only refers to a change in "use", i.e. the **factual** use of the property as defined by the Code in its section on Definitions.

The application for the Use Permit was filed in October 2010, and is currently awaiting a conclusion of all proceedings involving the fire sprinkler system. The Fairfax Staff Report supports the granting of the Use Permit. However, as part of the conditions for granting it, the Staff is of course including the Fire Department's report which states that a built in sprinkler systems and alarm system is required by Section 903.2 (10) on the grounds that more than 50% of the building use is being changed, i.e. the Studio itself would now be declared "living space." [Town of Fairfax Staff Report dated November 18, 2010]

The hearing on the Use Permit has been continued pending the resolution of the issues regarding the fire sprinklers.

## 2. REASONS FOR THE WAIVER

### A. SINCE THE STUDIO HAS BEEN USABLE AS AND IN FACT HAS BEEN "USED" AS RESIDENTIAL SPACE SINCE 1994, NO FIRE SPRINKLERS ARE REQUIRED

According to section 8.04.130 of the Fairfax Fire Code, the standard to be used in evaluating this appeal are that 1) "the provisions of the [Fire] Code do not apply" or that " 2) the true intent and meaning of the Code have been misconstrued or wrongly interpreted." In this case, the plain meaning of section 903.2 (10) has been wrongly interpreted as meaning that sprinklers are required if a **legally permitted use** of a building has changed.

But that is NOT what subsection 10 says. All it says is that sprinklers are required when there is "A change in the **use** of a structure that results in a higher fire or life safety exposure when the square footage of the area changing **use** is more than 50% of the square footage of the building." If the Town had meant to say that the sprinkler were required if there was a change in the **legally permitted use** of a structure, undoubtedly it would have said so. But the Town Code does not say that.

Neither the Code's general definition of "Use" nor section 903.2 defines "Use" to mean a use for which a **permit** must be issued. Both sections just refer to HOW a property is used. In this case, the Property has been used as living space since at least 1994. Installing the bathroom did not change the "use" of the building for purposes of section 903.2 (10)

### B. EVEN IF SUBSECTION 10 APPLIES, LESS THAN 50% OF THE STUDIO HAS IN FACT CHANGED IN ITS USE

By its own terms, subsection 10 only applies "when the square footage of the areas changing use is more than 50% of the square footage of the building". In this case, less than 50% of the Studio

square footage changed "use" – the bathroom, closet and laundry use less than 100 square feet of the 400 square foot structure, i.e. less than 25% of Studio.

Accordingly, under the terms of subsection 10, it is not applicable to the Studio because less than 50% of the building was changed by installing the bathroom.

### C. RESIDENTIAL USE OF THE STUDIO IS SAFER THAN USE OF THE STUIDIO AS A WORKSHOP

For subsection (10) to apply, there must also be a finding that the new "use" creates greater fire or life safety risk. The Staff Report for the Use Permit describes the Studio as only being permitted as a "workshop / laundry room." The Fire Department then concluded that residential "use" created a greater risk. However, I would request that the Board consider the following:

> **If the Studio was used as a "workshop" it would risk introducing into a building with a GAS wall heater and pilot, flammable materials such as solvents, paints, wood shavings, plaster dust, and perhaps even tools that spark, all in the presence of natural gas.**

As a residential structure, it is far less likely that a fire will be started inside of the Studio since residents will be using it frequently and therefore can observe what is going on in the building. Moreover, if there is a fire, it is more likely that it will be noticed sooner and action taken faster. In the meantime, the 4 exterior doors insure that one or more exits in this small building are readily accessible for escape by residents, thereby making the risk to life unlikely.

Indeed, since 1994 the Studio was in continuous use as my bedroom or that of my family and overnight guests without incident.

Understandably, fire sprinklers **would be** a reasonable and sensible precaution under other, common circumstances. For example:

- IF the Studio did not have adequate exits (it has 4 exterior doors); or
- IF the Studio had been converted from a non-residential building, such as a shed or garage (it was built as a residence and even rehabilitated and improved thereafter); or
- IF 9 Scenic were in a difficult to reach hillside area (it is on the "flats" less than a ½ mile from the Fire Department); or
- IF the Studio were a two story building; or
- IF the Studio had a hallway blockable by fire (there is no hallway); or
- IF the Studio was a Second Unit, i.e. had kitchen (Fairfax Code section 17.048.030 defines "Second Units" as one with a kitchen.)

None of these characteristics are applicable to the Studio. If they were, then the sprinklers would be a sensible and reasonable precaution to protect life and property. But under the unusual and probably unique circumstances of 9 Scenic, the disruption and costs cannot be justified under the

plain language of 903.2(10), i.e. even if there is a "change in use", that use does not result in a "higher fire or life safety exposure."

### D. EVEN IF THE "USE" HAS CHANGED, THE APPLICABLE SUBSECTION OF 903.2 IS SUBSECTION (3), NOT SUBSECTION 10

Because of the unique history of the Studio, if any Code section applies, it should be Fairfax Fire Code section 903.2 (3), not (10). Subsection (3) states that sprinklers shall be installed:

> 3. In all building which have more than fifty percent (50%) floor area added OR any "substantial remodel"[5] as defined in the Fire Code, within any 12 month period. **Exceptions may be granted by the Fire Chief when alternative means of protection are installed as approved by the Fire Chief.** [Emphasis added.]

It is clear that the "true intent and meaning" of the Code is to allow a waiver when "alternative means of protection are installed" because merely remodeling a "structure" should not necessarily trigger the disruptive and costly requirement for fire sprinklers. The Studio was in fact "substantially remodeled" in 1988 and the addition of a bathroom in 1994 affected less than 50% of the square footage of the building.

Interpreting 903.2 any other way leads to an odd result i.e., if I had ADDED an additional 200 square feet to the Studio, a waiver of the fire sprinkler requirement would have been available under subsection 3. But because I merely installed a bathroom in existing space, a waiver is not available because of subsection 10. Clearly it could not be the intent of the Code section to impose MORE restrictions on a citizen making a small modification to a structure than to a citizen who has increased or even doubled the size of a structure!

The Studio has the smoke alarms required by law. This has sufficed for the last 15 years. With that history in mind, it is clear that the alarms are and have been an "alternative means of protection" which have, in fact, been in effect "approved" by the Fire Chief. **Moreover, a wired**

---

[5] "Substantial remodel" is defined in § 8.04.100 as follows:

> "Substantial Remodel shall mean the **renovation** of any structure, which combined with any additions to the structure, **affects a floor area which exceeds fifty percent of the existing floor area** of the structure within any 12 month period. When any changes are made in the building, such as walls, columns, beams or girders, floor or ceiling joists and coverings, roof rafters, roof diaphragms, foundations, piles or retaining walls or similar components, the floor area of all rooms affected by such changes shall be included in computing floor areas for the purposes of applying this definition. This definition does not apply to the replacement and upgrading of residential roof coverings." [Emphasis added]

**in fire alarm the Fire Chief has also required would easily meet the test of an 'alternative means of protection."**

### E. THE NOTICE OF LIMITATIONS ON USE WERE NOT GIVEN AS INTENDED BY THE FAIRFAX RESALE REPORT

Although it may not be entirely relevant to this appeal, I do want to make the point that I was NOT inform by the Town that I could not install a bathroom in the Studio.

The Fairfax Code requires that a Resale Report be given to a purchaser of real property in the Town. § 15.08.010. The very purpose of the Reports is stated as follows:

> **INTENT.** Pursuant to the provisions of Cal. Gov't Code §§ 38780 to and including 38785, it is the intent of the Council to assure that the grantee of a residential building within the town is furnished a report of matters of town record pertaining to the **authorized use**, occupancy and zoning classification of real property prior to sale or exchange. It is the further intent **to protect the unwary buyer of residential property against undisclosed restrictions on the use of the property**. [Emphasis added]

However, the Resale Report I received in 1994 did not comply with this "intent". Despite a boilerplate disclaimer on the first page, all that is stated in the Report under "zoning and uses" is the following (**Exhibit 7**- Resale Report – at page 8):

> "**Zoning and uses of property observed during on-site inspection. [Emphasis added]**
>
> . . .
>
> **"1. PRESENT USE: __v____ single family residence**
>
> . . .
>
> **___v___ Accessory structures: Height 15 ft. or less**
>
> **"Specify use: Workshop with gas heater and washer/dryer hook up. No bathroom."**

Apparently the Town believes that the former inspector who underlining the word "no" somehow gave me notice that no bathroom was allowed. With all respect to the good Staff of Fairfax, I do feel I'm entitled to expect government officials to communicate with me in English, not squiggles!

At no point does the Resale Report state that a bathroom could not be installed in the Studio. The Resale Report does NOT say: "No bathroom allowed" or "No bathroom permitted" or "Bathroom cannot be installed." All it says is that under the "Present Use", the "Accessory Structure" has "no bath", which was a correct statement at the time.

An underline really should not be given the status of legal notice. If the Town intended to prohibit a bathroom from being installed, it could have easily said so in the Resale Report or

have recorded a deed restriction so that I would have received notice in my title report. Unfortunately, it didn't do so.

### F. REQUIRING FIRE SPINKLERS UNDER THESE CIRCUMSTANCE WOULD BE UNDULY PUNITIVE

Although I would have learned of the restriction if I had applied for a permit in 1995 – which was prior to the enactment of section 903.2 - the only penalty the Town Code sets forth for failure to obtain a permit is that the application fees for a Use Permit and for a building permit are tripled. I have paid the triple fees (of almost $2,800) to apply for the Use Permit. Assuming the Use Permit is granted, I will have to pay triple fees for the permit to issue.

To increase the "penalty" by imposing an addition expenditure of as much as **$15,000** (possibly more if there are the almost certain "surprises") would simply be punitive. That is not what the Fairfax Code requires and to impose such a condition and its excessive costs under the unique circumstances of this case seems neither fair nor reasonable.

## CONCLUSION

The Studio at 9 Scenic was designed, built and used as a residence for decades prior to the building of a new main house. Its use is and remains residential, which includes the many residential upgrades approved in 1988.

Given the location of the Property and structure of the Studio, there is no greater risk of fire or life safety than there has been for the decades the structure has been on the Property, both before and after its transformation into a Studio. In other words, under Code section 903.2 (10) there is no evidence that the **continuing the use** of the Studio for residential purposes will result in any greater risk to any person or property.

This is not a multi-story building or a fire trap. It is a 400 square foot building with 4 exterior doors. It is on the "flats", close to the fire department and relatively distant from neighboring structures.

I therefore request that the Board find that there is no greater risk in continuing this use and therefore no built-in sprinklers are required under Code section 903.2. In the alternative, I would request that the Board find that section 903.2 (3) rather than section (10) is applicable and that the installation of a fire alarm – either free standing or wired in – is adequate under the circumstances.

Thank you very much for your public service, attention and patience in reviewing this matter.

February 24, 2011

Dolores Cordell

Statement of Peter Coyle

I, Peter Coyle, declare:

1. I have been a licensed general contractor in the State of California since 1991, license number 735345, and a principal of Coyle Brothers Construction Company, Inc., which works principally in Marin County, California. Address: 51 Sunview Avenue, San Anselmo, CA. Telephone: 415-454-1633. All of the facts below are within my personal knowledge.
2. During my years as a general contractor, I have worked on numerous projects involving the installation of automatic fire sprinklers, and am familiar with the problems which accompany their installation.
3. The actual installation of the fire sprinklers themselves is not necessarily a difficult task in most buildings. However, sprinkler installation also involves additional issues such as a) the size of the water line running from the street to the house; b) location of shut off valves; and c) hook up of the new sprinkler feed line to the structure in which the sprinklers are installed.
4. The installation of the fire sprinklers themselves is normally about $3,000 in a building of less than 500 square feet. However, the cost of the other items involved in installation can be substantial and far more expensive than the installation of the sprinklers themselves, as well as being very disruptive to the land and buildings.
5. I am familiar with the property located at 9 Scenic Road, Fairfax, California, and have investigated the work and cost of what it would require to install sprinklers in the studio structure at the front of the property. Because of the geography involved, the exterior of the

property, the requirements of fire sprinkler installation companies, and the structure of the Studio itself, installation of fire sprinkler in the Studio would be very costly and disruptive.

6. I have worked with numerous fire sprinkler companies in Marin County and none of them will install a sprinkler line unless the line to the city water main is at least 1 1/4" in diameter. The Scenic line is ¾" and would therefore have to be replaced. In addition, I am informed that the City of Fairfax charges $4,000 in order to hook up such a new line.
7. After that, a new **1 ¼"** water pipe for the sprinkler line would have to run from the "sidewalk" level water main shut off box in front of the property all the way to the front of the main house where the water main enters the house. The house is on a rise which is at least 60 feet from the water main shut off. Between the water main and the front of the house there is stone wall, well established ivy, and approximately 20 feet of decking. These would all have to be torn up to connect the sprinkler line with the front of the house. This requires substantial deck removal and digging a trench approximately 60 feet long through the entire front of the property.
8. At the point where the water line enters the main house, a valve would need to be installed to re-direct the line with the sprinkler system water into the Studio. This is because the code requires a set up preventing the sprinkler line from being turned off if water into the main house is shut off. It would also require that a valve be installed on the outside of the main house near the front door, on top of the existing deck.

9. Once the valve near the front of the house is installed, the sprinkler line would then need to enter the studio and be installed within the walls.
10. The problem with fire sprinkler installation in the 9 Scenic Studio is that the walls and ceiling are all wood paneled and the ceiling is vaulted so that there is no attic space. As a consequence, the wood walls would have to be torn out to do the installation. Replacement and repair of the walls will be far more difficult and expensive than simply replacing dry wall. The wood will have to be cut out, replaced with new cut wood, nailed in, patched and painted. As opposed to simple reinstalling dry wall, the entire wood panels & trims (some of which are 8 feet long) will have to be replaced. In a building the size of 9 Scenic at least 4 sprinkler heads would be required.
11. In short, the cost of installation of the sprinklers themselves is a small part of the cost of the project, although even that installation would be much more difficult and expensive than normal because of the wood paneling. The substantial costs are in connection with the hook up to the city line and running the new line to the main house and then to the Studio. The sprinkler company does not do that work; that is the work of a general contractor such as myself.
12. Based on the location and nature of the property and the issues that must be addressed, it is my opinion as an experienced general contractor that the cost of such a project would be at least $11,000, not including the $4,000 for the hook up to the city sewer line. However, in any construction project there can be "surprises" that result in higher than anticipated costs.

13. In view of the fact that the Studio is only 400 square feet, has 4 exterior doors, and is no closer than 40 feet, approximately, to the buildings on neighboring properties, the cost versus benefit of these sprinklers is simply not justified.

I declare that the foregoing is true and correct to the best of my knowledge and that this declaration was executed on February __, 2011.

Peter Coyle

Ross Valley Fire Department
777 San Anselmo Ave
San Anselmo, Ca 94960
Ph. 415-258-4686

# FIRE DEPARTMENT PLAN REVIEW

PROJECT: Legalize Conversion
ADDRESS: 9 Scenic Ave
Fairfax, CA 94930


Date: 10/27/2010
Reviewed by: Rob Bastianon
(415) 258-4673
E-mail: Rbastianon@rossvalleyfire.org

TYPE OF REVIEW: Planning
Bldg. Dept. #
Date Stamp #
Review No. 1
Fire Dept. # 10-0238

*Fire Department Standards can be found at: **www.rossvalleyfire.org***

Applicant*: Planning
Address: Fairfax
Fairfax, CA

***Applicant is responsible for distributing these Plan Review comments to the Design Team.***

| | | |
|---|---|---|
| Occupancy Class: **R-3** | Fire Flow Req: **1000** GPM | Sprinklers Required: **YES** |
| Type of Construction: **V-B** | On-site Hyd. Req: **NO** | Fire Alarm Required: **NO** |
| Bldg Area: sf: | Turn-Around Req: **NO** | Permits Required: **Sprinkler** |
| Stories: 1 | Fire Flow Test Required: **NO** | |
| Height: ft. | Wildland Urban Interface: **NO** | |

**The project listed above has been reviewed and determined to be:**

( ) **APPROVED** (no modifications required)
( ) **APPROVED AS NOTED** (minor modifications required - review attached comments)
( ) **NOT APPROVED AS SUBMITTED** (revise per attached comments and resubmit)
( ) **INCOMPLETE** (provide additional information per attached comments and resubmit)

**NOTE:** *Please review the comments and make corrections and/or add notes as required. Changes and/or additions shall be clouded and referenced by date on a legend. Approval of this plan does not approve any omission or deviation from the applicable regulations. Final approval is subject to field inspection. Approved plans shall be on site and available for review at all times.*

**Inspections required:**

**( ) Access/Water Supply prior to delivery of combustibles**
**( X ) Defensible Space/Vegetation Management Plan**
**( X ) Sprinkler Hydro/Final**
**( X ) Final**

**EXHIBIT # E**

Ross Valley Fire Department
777 San Anselmo Ave
San Anselmo, Ca 94960
Ph. 415-258-4686

# FIRE DEPARTMENT PLAN REVIEW

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Date: 10/27/2010
Reviewed by: Rob Bastianon
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TYPE OF REVIEW: Planning
Bldg. Dept. # Date Stamp #
Review No. 1
Fire Dept. # 10-0238

*Fire Department Standards can be found at: **www.rossvalleyfire.org***

| ITEM # | SHEET | COMMENTS | Corr. Made |
|---|---|---|---|
| 1 | | A fire protection sprinkler system shall be installed throughout the entire building which complies with the requirements of the National Fire Protection Association (NFPA) 13-D and local standards. A separate deferred permit shall be required for this system. Plans and specifications for the system shall be submitted by an individual or firm licensed to design and /or design-build sprinkler systems.<br><br>**Per Section 903.2 10. A change in use of a structure that results in a higher fire or life safety exposure when the square footage of the area changing use is more than 50% of the square footage of the building.** | |
| | | Submitter's Response:<br>Correction has been completed. See Sheet ____ of ☐Plans ☐Calculations. | |
| 2 | | All smoke detectors in the residence shall be provided with AC power and be interconnected for simultaneous alarm. Detectors shall be located in each sleeping room, outside of sleeping rooms centrally located in the corridor and over the center of all stairways with a minimum of one detector per story of the occupied portion of the residence. | |
| | | Submitter's Response:<br>Correction has been completed. See Sheet ____ of ☐Plans ☐Calculations. | |

*If re-submittal is required, all conditions listed above shall be included in revised drawings.*
*Fire and life safety systems may require a separate permit. Fire permits may be noted as deferred.*

# ROSS VALLEY SANITARY DISTRICT

*Serving the Greater Ross Valley Area for 110 Years*

2960 Kerner Boulevard, San Rafael, Ca 94901

Ph: 415.259.2949 Fax: 415.460.2149

WWW.RVSD.ORG

Brett N. Richards ~ General Manager



**Directors:** Marcia Johnson, President ~Peter Wm Sullivan, M.D., Secretary ~Patrick Guasco, Treasurer ~ Sue Brown ~ Pam Meigs.


October 25, 2010


TOWN OF FAIRFAX

OCT 28 2010

RECEIVED


Town of Fairfax
Dept of Planning and Building Services
142 Bolinas Road
Fairfax, CA 94930

**Re: 9 Scenic Rd, Fairfax ; Assessor's Parcel No. 001-146-04**

Dear Ms. Neal:

We are in receipt of your transmittal dated October 21, 2010 concerning the above-referenced project.

1. The sewer lateral serving the detached structure will have to meet District standards.

2. If not already installed, the District requires that the side sewer serving the existing structure be equipped with an appropriate backwater prevention device (e.g., Contra Costa valve, as warranted by the individual site conditions).

3. 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 to make a record for the District's files.

Should you require additional information, please do not hesitate to contact this office.

Sincerely,

Joe Cimino
Inspection Superintendent

TOWN OF FAIRFAX
NOV 01 2010
RECEIVED

# MARIN MUNICIPAL WATER DISTRICT

220 Nellen Avenue Corte Madera CA 94925-1169
www.marinwater.org

October 26, 2010
Service No. 04806

Linda Neal
Town of Fairfax Planning Dept
142 Bolinas Rd
Fairfax Ca 94930

**RE:** **WATER AVAILABILITY** - Single Family Dwelling
Assessor's Parcel No.: 001-146-04
Location: 9 Scenic Rd., Fairfax

Dear Ms. Neal:

The above referenced parcel is currently being served. The purpose and intent of this service are to provide water to a single family dwelling. The proposed conversion of an existing detached workshop to living space will not impair the District's ability to continue service to this property, provided it is not plumbed and wired for a kitchen and/or considered a second living unit.

Compliance with the District's Water Conservation Ordinance 414 is a condition of water service. Plans shall be submitted, and reviewed to confirm compliance. The ordinance requires a landscape plan, an irrigation plan, and a grading plan for projects with grades over 10%. Any questions regarding this ordinance should be directed to the plan review program manager at (415) 945-1497. You can also find information about the ordinance online at www.marinwater.org.

Should backflow protection be required, said protection shall be installed as a condition of water service. Questions regarding backflow requirements should be directed to the Backflow Prevention Program Coordinator at (415) 945-1559.

If you have any questions regarding this matter, please contact me at (415) 945-1531.

Very truly yours,

Joseph Eischens
Engineering Technician
JE:dh

cc: Town of Fairfax Building Dept

recycled
recyclable