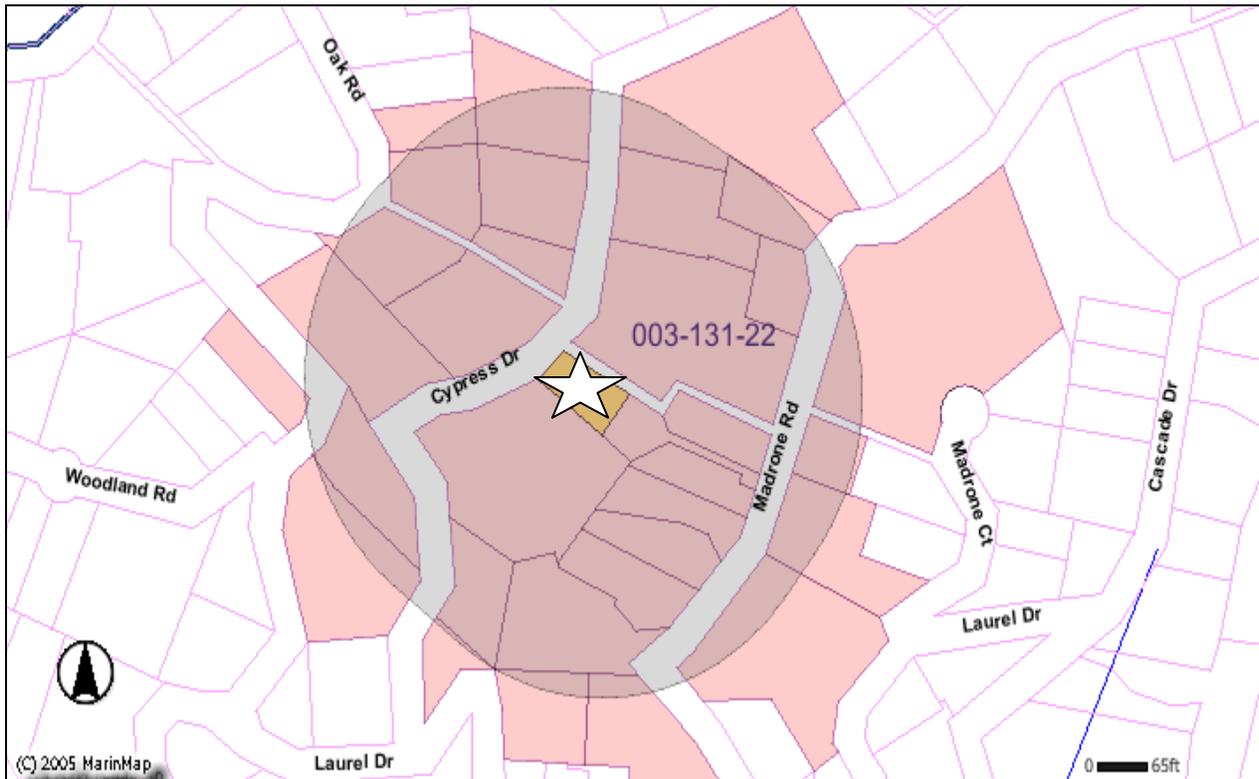


**TOWN OF FAIRFAX  
STAFF REPORT  
Department of Planning and Building Services**

**TO:** Fairfax Planning Commission  
**DATE:** January 19, 2012  
**FROM:** Jim Moore, Director of Planning and Building Services  
Linda Neal, Senior Planner  
**LOCATION** 339 Cypress Drive; Assessor's Parcel No. 003-131-32  
**ACTION:** Modification of Application # 10-25  
**ZONING:** Residential Single-family RS 6 Zone  
**APPLICANT:** Danny Rubenstein and Janet Di Giovanna  
**OWNER:** Same  
**CEQA STATUS:** Categorically exempt, § 15302, 15303(e) and 15305(b)



**339 CYPRESS DRIVE**

## **BACKGROUND**

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

A tree fell from the Cypress Drive public right-of-way during the 2005/2006 storm destabilizing the bank and undermining a portion of the roadbed.

## **DISCUSSION**

The Commission approved an encroachment permit and a retaining wall height variance to allow construction of a 50 foot long, 5 ½ foot high concrete retaining wall to replace the failing wall and to provide a trash receptacle area. The wall was topped by a 4 foot safety railing required by the building code that was to be constructed as depicted on page A1.0 of the project plans. The wall has been constructed and is not visible from the street.

The applicant would like to modify the approved plans to alter the design of the safety railing. The new proposal would still be four (4) feet in height to comply with the Building Code but it would have the design shown in the hand drawn on the 5th page of the project plans and would be made of redwood with horizontal steel panels.

The proposed railing will be built by Martin Taylor, an artist who specializes in working with wood and patina metal. The change will not have a negative visual impact on the overall project and will be visually superior to a standard Cal Trans style guardrail. Examples of the artist's work are available for viewing during office hours at Town Hall (8:30 AM to 5:00 PM Monday through Thursday, Town Hall is closed from noon to 1:00 PM for lunch).

### **Other Agency Comments/conditions:**

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

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

#### **Building Department**

If approved, the modified safety railing should be installed as soon as possible after the ten (10) day appeal period because the drop off as it exists now is a safety hazard.

## **RECOMMENDATION**

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

### Recommended Findings

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

### Recommended Conditions

1. All construction related vehicles including equipment delivery, cement trucks and construction materials shall be situated off the travel lane of the adjacent public right(s)-of-way at all times. This condition may be waived by the building official on a case by case basis with prior notification from the project sponsor.
2. Additionally, any proposed temporary closure of a public right-of-way shall require prior approval by the Fairfax Police Department and any necessary traffic control, signage or public notification shall be the responsibility of the applicant or his/her assigns. Any violation of this provision will result in a stop work order being placed on the property and issuance of a citation.
3. The roadways shall be kept clean and the site free of dust by watering down the site or sweeping the roadway daily, if necessary.
4. The developer and all employees, contractors and subcontractors must comply with all requirements set forth in Ordinance # 637 (Chapter 8.32 of the Town Code), "Urban Runoff Pollution Prevention".

5. Any changes, modifications, additions or alterations made to the approved set of plans will require a modification of Application # 10-25. Any construction based on job plans that have been altered without the benefit of an approved modification of Application # 10-25 will result in the job being immediately stopped and red tagged.

#### General Conditions

1. The applicant or owner shall defend, indemnify, and hold harmless the Town of Fairfax or its agents, officers, and employees from any claim, action, or proceeding against the Town of Fairfax or its agents, officers, or employees to attach, set aside, void, or annul an approval of the Planning Commission, Town Council, Planning Director, Design Review Board or any other department or agency of the Town concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or owner's duty to so defend, indemnify, and hold harmless shall be subject to the Town's promptly notifying the applicant or owner of any said claim, action, or proceeding and the Town's full cooperation in the applicant's or owner's defense of said claims, actions, or proceedings.

#### **ATTACHMENTS**

Exhibit A – applicant's previously approved plans and proposed modification plans