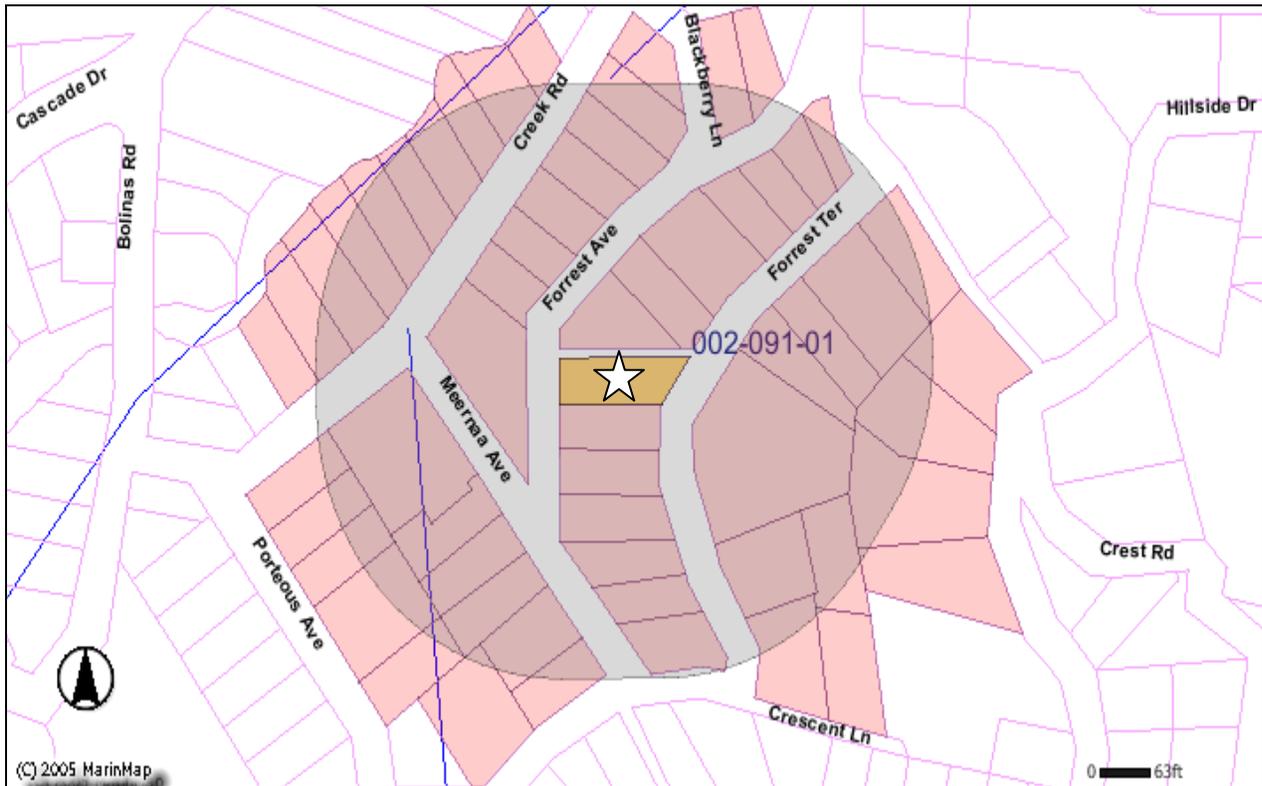


**TOWN OF FAIRFAX  
STAFF REPORT  
Department of Planning and Building Services**

**TO:** Fairfax Planning Commission  
**DATE:** January 19, 2012  
**FROM:** Jim Moore, Director of Planning & Building Services  
Linda Neal, Senior Planner  
**LOCATION** 40 Forrest Terrace; Assessor's Parcel No. 002-091-01  
**PROJECT:** Addition/remodel of an existing single-family residence  
**ACTION:** Use Permit and Side Setback Variance; Application # 11-04  
**APPLICANT:** Harold Lezzeni, Architect  
**OWNER:** Julian and Martha Pearl  
**CEQA STATUS:** Categorically exempt, 15301(e) and 15305(a)



**40 Forrest Terrace**

**BACKGROUND**

This 6,978 square foot, 50 foot wide, site slopes down from Forrest Avenue at an average rate of 31%. It is developed with a 1,816.50 square foot single-family residence that was constructed

in 1909 and includes three bedrooms and two bathrooms. Marin County records indicate that the residence is only 1,066 square feet in size and has only 2 bedrooms and 1 bathroom. There is no record at the County of Marin or in the Town records of permits issued to create the master bedroom in the attic or to create the laundry room and bathroom in the basement area of the residence. However, the Building Official has inspected the attic and researched historical information on craftsman style residences and has made the determination that the attic has always been improved and used as living space since the original construction of the home.

Also existing on the site is a two car garage which fronts on Forrest Avenue. There is no record of when the garage was built but a permit was issued to reconstruct the roof in 2001.

There is also a large, two level deck located along the northern side of the residence immediately adjacent the veranda that was constructed up to the northern side property line. A hot tub was installed on the lower portion of the deck off of the first living level of the residence. There is no record of permits ever being granted for these improvements. A 10 foot wide public easement runs between the site and the neighboring site at 387 Forrest Avenue.

## **DISCUSSION**

The applicants are now proposing to legalize the 199.5 square foot portion of the basement that has been converted into living space (a laundry room and bathroom). The applicant's are also proposing to legalize the decks along the northern side of the structure that appear to have been built up to the property line.

The project does not constitute a 50% remodel, will not require significant excavation and will not require the removal of any vegetation because the new construction will not extend beyond the footprint of the existing structure.

The project requires the approval of the following discretionary permits:

**A Use Permit:** Town Code § 17.084.050 requires that a Use Permit be obtained prior to any use, occupancy or physical improvement of or on a building site failing to meet the minimum size or width requirements based on slope. This site has an average slope of 31 % and in order to meet the minimum size and width requirements based on this slope the parcel would have to be 23,000 square feet in size and 113 feet wide in order to comply with this regulation. The site is only 6,978 square feet in size and 50 feet wide and therefore, the project requires the approval of a Use Permit.

**A Side Yard Setback Variance:** Town Code § 17.084.070(B)(2) requires that all structures maintain a combined setback from the side property lines of 20 feet with a minimum setback from either side of 5 feet. For example, if a residence on a slope maintains a 5 foot setback from 1 side property line, the distance between the structure and the opposite side property line must be 15 feet. The existing residence and unpermitted attached deck maintain a combined side yard setback of only 4 feet 6 inches because the deck is built entirely within the required setback up to the northern side property line and the southern side of the residence maintains only a 4 foot 6 inch setback from the southern side property line. Therefore, legalization of the deck requires the approval of a Side Yard Setback Variance.

The purpose of the Use Permit process is to allow the proper integration into Fairfax of uses which may be suitable only in certain locations in the Town or in a zone or only if the uses are

designed or laid out on the site in a particular manner [Town Code § 17.032.010(A)].

Historic information provided to staff by the architect and an inspection of the construction techniques used for the attic roof, floors, the chimney (which runs through the improved attic space), and stairway indicate that this attic was probably used as a large living area since the original construction of the building in 1909. Staff was unable to determine why the Marin County Tax Assessor never included the attic space as living space in their estimates. Based on the site inspection staff has made the determination that the living space of the residence is only being increased by 199.5 square feet to include the laundry room and bathroom/sauna area on the lower floor resulting in a 1,862 square foot residence.

A search of the Marin County Tax Assessor's Records showed that residences in the Deer Park Subdivision neighborhood, on similar sized and sloped lots, range in size from 800 square feet to 2,200 square feet in size. Therefore, the proposed project will not result in a residence that is out of character with existing development in the neighborhood.

The addition will not extend beyond the footprint of the existing residence, will not require a significant amount of excavation and will not require the removal of vegetation. Therefore, the project will not have a significant impact on neighboring properties or the general public.

#### Side Setback Variance

The purpose of the Variance process is to allow variation from the strict application of the setback regulations when there is some physical property of a site such as exceptional narrowness, shallowness or unusual shape, exceptional topographic conditions or other extraordinary conditions that make compliance with the setback requirements a hardship.

In order to approve a variance the Commission must be able to make the following required legal findings:

1. Because of special circumstances applicable to the property, including size, shape, topography, location of surroundings, the strict application of this title will deprive the applicant of privileges enjoyed by other property owners in the vicinity and under identical zone classification.
2. The variance or adjustment will not constitute a grant of special privilege, is consistent with the limitations upon other properties in the vicinity and under identical zone classification, and is consistent with the objectives of this title.
3. The strict application of this title would result in excessive or unreasonable hardship.
4. The granting of the variance of adjustment will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated.

In the past the Commission has only granted setback variances for exterior decks when sites are so steep that there is no level and usable outdoor space to serve as outdoor living area. The site is terraced at the rear of the structure and has a large level front yard area that is screened from the view of passers-by and vehicles on Forrest Terrace. There also a large veranda area. Staff is unable to find any exceptional condition of the site that requires the side decks to be constructed up to the property line and we are therefore unable to make findings for

approval of the requested minimum and combined side setbacks. Therefore, staff's recommendation includes the decks being removed so the property will be in compliance with the setback requirements.

### **Other Agency Comments/Requirements**

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

The project is not a 50% remodel so a sprinkler system is not required by the Fire Code.

Prior to issuance of the building permit the applicant shall submit a Vegetative Management VMP and have it approved prior to issuance of the building permit for the project.

Provide address numbers in compliance with the Fire Department regulations.

Install interconnected smoke detectors provided with AC power 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 residence.

#### **Marin Municipal Water District**

The owners must comply with MMWD's Water Conservation Ordinance 414.

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

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

If not already installed, the District requires that the side sewer be equipped with an appropriate backwater prevention device.

After the project is approved the owner/contractor should contact the District to arrange for a District Inspector to approve the existing installation of the backwater prevention device(s) and to make a record for the District files.

### **RECOMMENDATION**

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to approve application # 11-04 based on the following Use Permit findings and subject to the following conditions:

#### **Recommended Findings**

1. The legalization of the attic and basement living spaces will result in a three bedroom, 2 bathroom, 1,862 square foot single-family residence which is similar in size to other single-family residences in the area on similar sized and sloped properties. Therefore, 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 proposed project will not include expansion beyond the footprint of the existing residence and will include removal of the un-permitted side deck constructed in the required side yard setback. 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. 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, or other plan or policy, officially adopted by the City.
4. Removal of the side decks will restore the northern side of the craftsman style residence to its original condition. Therefore, approval of the use permit subject to removal of the unpermitted decks will result in equal or better development of the premises than would otherwise be the case, and said approval is in the public interest and for the protection or enhancement of the general health, safety or welfare of the community.
5. The site has level terraced areas that can be used for outdoor living space purposes, a large level front yard area below and well screened from the Forrest Terrace right-of-way and a large open veranda along the northern side of the residence. Therefore, the site has many outdoor areas that can be used for outdoor living spaces. There are no special circumstances applicable to the property that would warrant an exception to allow construction of a deck up to the property line and entirely within the required 15 foot side yard setback.
6. The granting of a variance to allow the un-permitted deck would be a grant of special privilege and is not consistent with setbacks maintained by most of the other properties in the vicinity.
7. The strict application of the combined side yard setback regulations will not result in excessive or unreasonable hardship because the site has several large usable and level outdoor living spaces for the residents to enjoy, more than most other hillside properties in the neighborhood, even after removal of the unpermitted deck.

### **Recommended Conditions of Approval**

1. This approval is limited to the development illustrated on the plans prepared by Harold Lezzeni, pages A-1 through A-7 revised 2/22/11.
2. Prior to issuance of a building permit the applicant or his assigns shall:
  - a. Submit a construction plan to the Public Works Department which may include but is not limited to the following:
    - Construction delivery routes approved by the Department of Public Works.
    - Construction schedule (deliveries, worker hours, etc.)
    - Notification to area residents

- Emergency access routes
- b. The applicant shall prepare, and file with the Public Works Director, a video of the roadway conditions on the construction delivery routes (routes must be approved by Public Works Director/ the Public Works Director can waive this requirement).
  - c. Submit a bond to the Town in an amount that will cover the cost of grading, weatherization and repair of possible roadway damage. Upon approval of the contract costs, the applicant shall submit a cash deposit or letter of credit equaling 100% of the estimated construction costs and confirm the contractor's estimate.
  - d. The applicant shall submit a cash deposit to the Town in an amount that will cover the cost of landscaping and irrigation materials and installation prior to issuance of a building permit. The amount shall be retained for 18 months after issuance of the Certificate of Occupancy.
  - e. Prior to submittal of the building permit plans the applicant shall secure written approval from the Ross Valley Fire Authority noting the developments conformance with their recommendations.
3. During the construction process the following shall be required:
    - a. 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.
    - b. 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.
  4. Prior to issuance of an occupancy permit the following shall be completed:
    - a. The Planning Department shall field check the completed project to verify that all Planning Commission conditions have been complied with including removal of the deck along the northern side of the property.
  5. Excavation shall not occur between October 1st and April 15st. The Town Engineer has the authority to waive this condition depending upon the weather.
  6. The roadways shall be kept clean and the site free of dust by watering down the site or sweeping the roadway daily, if necessary.
  7. During construction developer and all employees, contractors and subcontractors must comply with all requirements set forth in Ordinance # 637 (Chapter 8.32 of the Town Code), "Urban Runoff Pollution Prevention".
  8. Notwithstanding section # 17.072.050 of the Fairfax Zoning Ordinance, any changes,

modifications, additions or alterations made to the approved set of plans will require a modification of Use Permit # 11-04. Any construction based on job plans that have been altered without the benefit of an approved modification of Use Permit 11-04 will result in the job being immediately stopped and red tagged.

9. Any damages to the roadways accessing the site resulting from construction activities shall be the responsibility of the property owner.

10. 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.

11. The unpermitted decks along the northern side of the residence must be removed prior to issuance of a building permit for the laundry room/bathroom addition.

Note: If the Commission votes to approve the requested setback variance they should make legally defensible findings for approval and make the approval subject to the owner providing a property survey by a licensed land surveyor including the deck location and verifying that the deck does not project into the public easement prior to issuance of the building permit for the project.

## **ATTACHMENTS**

Development plans

Exhibit A - Applicant's supplemental information

Exhibit B – Other agency/department conditions

