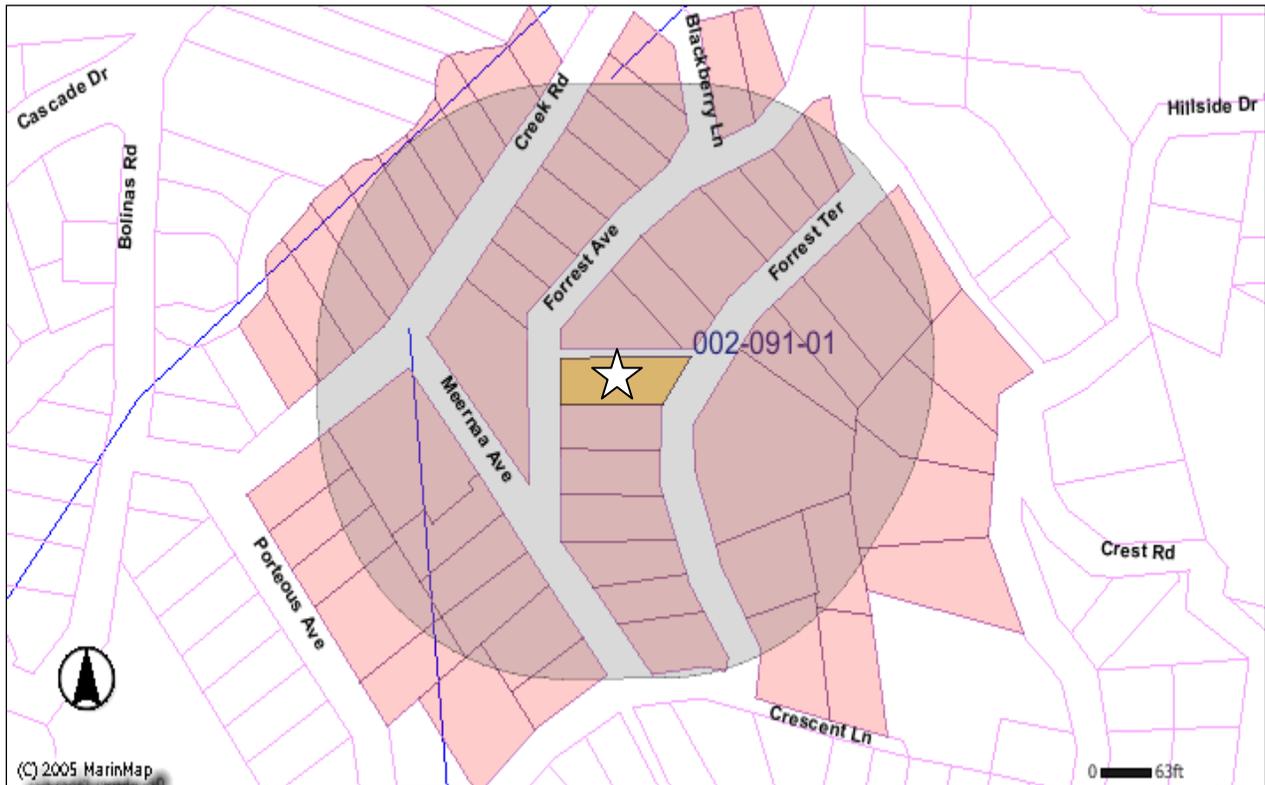


**TOWN OF FAIRFAX  
STAFF REPORT  
Department of Planning and Building Services**

**TO:** Fairfax Planning Commission  
**DATE:** February 16, 2012  
**FROM:** Jim Moore, Director of Planning and Building Services  
Linda Neal, Senior Planner  
**LOCATION PROJECT:** 40 Forrest Terrace; Assessor's Parcel No. 002-091-01  
**ACTION:** Legalization of unpermitted deck  
**APPLICANT:** 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 Terrace 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 Tax Assessor's records indicated the house was 1,066 square feet in size with 2 bedrooms and 1 bathroom. There was no record at the County of Marin or in the Town files 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. On May 19, 2011 the Planning Commission approved a Use Permit to legalize a master bedroom in the attic and a laundry room and bathroom in the basement.

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 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. 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.

At the May 19<sup>th</sup> Commission meeting the Commission continued the Variances for the side yard deck because the owners had only been living in the house for one week. The Commission wanted to give them time to determine whether or not they wanted to continue their application for Variance to try and retain the deck or whether they wanted to remove it (Exhibit A – minutes from the May 19, 2011 Planning Commission meeting).

## **DISCUSSION**

The applicants have decided to move forward with their request to legal the side yard deck described above. As indicated above, the decks appear to have been constructed up to the side property line but without a survey, it is impossible to verify that they do not cross the line and extend into the 10 foot public easement that runs alongside the property.

The project requires the approval of the following discretionary permits:

A Variance of the Minimum and the Combined Side Yard Setback: 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 Minimum and Combined Side Yard Setback Variances.

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. The recommendation includes the decks being removed so the property will be in compliance with the setback requirements.

There were no other Outside Agency or Town Department comments or requirements on the request to legalize the deck structure.

### RECOMMENDATION

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

#### Recommended Findings

1. 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 Un-permitted 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.

2. 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.
3. 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.
4. 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.

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 cross the property line and project into the public easement prior to issuance of the building permit for the project.

#### ATTACHMENTS

Development plans

Exhibit A – Minutes from the May 19, 2011 Planning Commission meeting