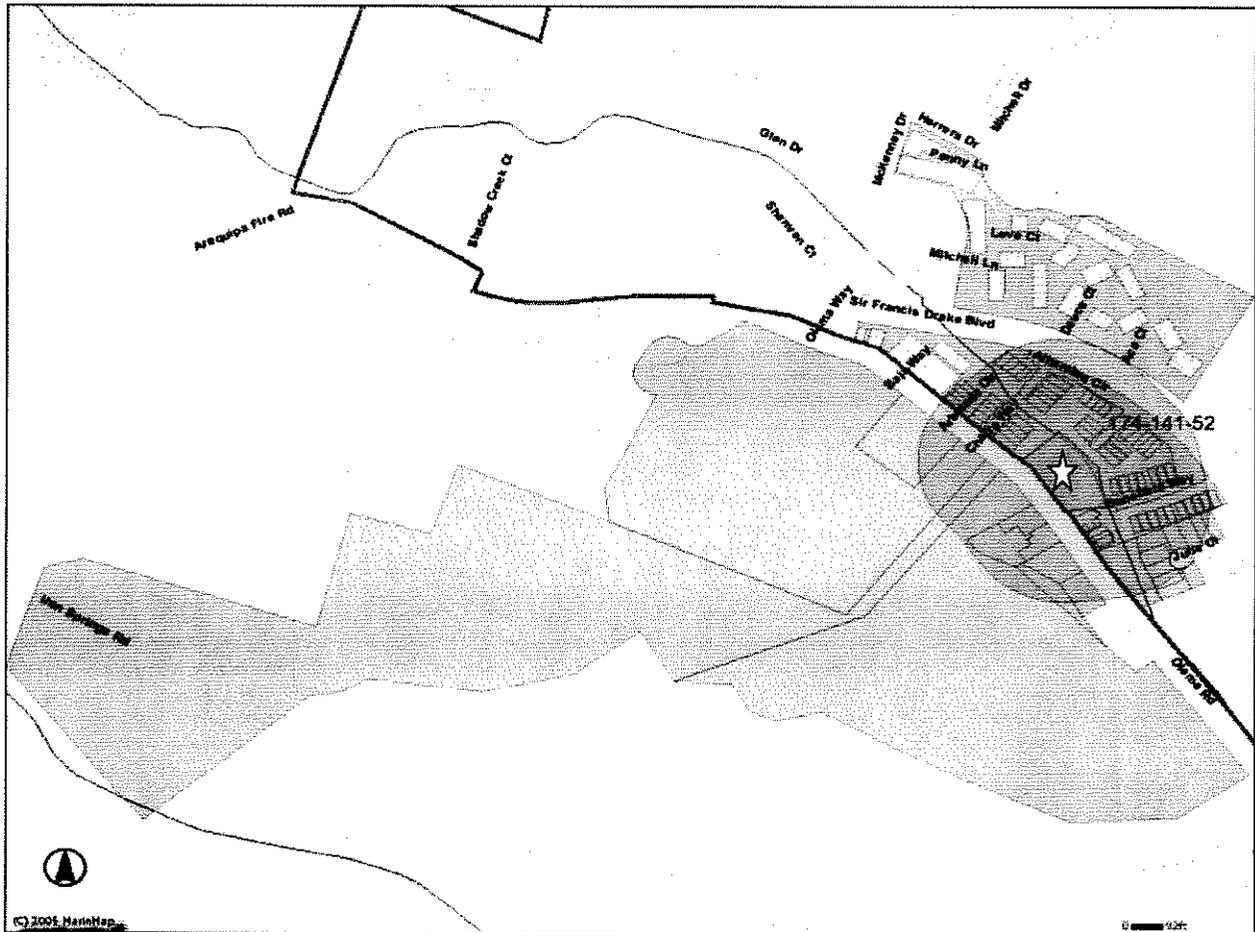


**TOWN OF FAIRFAX
STAFF REPORT**
Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: April 19, 2012
FROM: Jim Moore, Director of Planning and Building Services
Linda Neal, Senior Planner
LOCATION: 340 Olema Road; Assessor's Parcel No. 174-141-52
PROJECT: Fence within the Creek Setback
ACTION: Creek Setback Variance; Application # 12-06
APPLICANT: Brett Foley
OWNER: Same as above
CEQA STATUS: Categorically exempt section 15303(e)



340 OLEMA ROAD

BACKGROUND

The 41,600 square foot site slopes gently down to and extends across Fairfax Creek at an average rate of 3%. The creek channel is only a few feet deep along the entire rear of the property.

The 2,710 square foot residence was constructed in 1941 and is currently undergoing a major, permitted remodel. Also existing on the site is a pool, pool house, shed and a detached garage with a bedroom and bath. The project did not require any entitlements from the Planning Commission due to the large size of the lot, the conforming structures and plentiful on-site parking.

This property was a portion of a larger piece of land that was pre-zoned Planned Development District (PDD) and subdivided into condominium lots by the Town in September of 1971.

DISCUSSION

Town Code § 17.040.040 indicates that no buildings, accessory buildings, structures or swimming pools shall be constructed closer to the top of the stream bank of the Fairfax and San Anselmo Creeks than 20 feet or two times the average depth of the bank, whichever is greater, without the approval of a Variance.

The purpose of this setback is threefold; 1) to minimize the chances that structures will impede floodwaters that may crest above the top of the creek bank; 2) to ensure that wildlife has access to the riparian creek areas; and 3) to ensure that the creeks remain in as natural a state as possible.

Town Code § 17.008.020, Definitions, defines a "Structure" as follows:

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

In May of 2011 the Town received complaints that a fence was being constructed within the required 20 foot Creek Setback. The complaints came from adjacent property owners, including the Village West Homeowners Association and the Friends of Corte Madera Creek. The Building Official verified that a 6 foot tall fence, was being constructed within the required 20 foot Creek Setback.

Note: The Building Official also noted that a 6 foot fence was being constructed along the Olema Road front property line where the code limits fences to 4 feet in height. Subsequently, the owner provided survey evidence showing that the fence was located behind the 6 foot Front Yard Setback where fences can be 6 feet in height.

After meeting with the neighbors and the Friends of Corte Madera Creek, the applicant is proposing to relocate the fence that is under construction so that it maintains a setback of 11 feet from the top of the bank at its southern end, and an 18 foot setback to meet up with an existing chain link fence at its northern end. The existing chain link fence was installed by the previous owner and appears to comply with the 20 foot Creek Setback.

The fence is designed to be constructed of redwood 4 by 4's with a 2 x 4 redwood top and bottom rails with green wire mesh panels in between. The open design of the fence addresses the concerns of the adjacent neighbors that the fence may exacerbate flooding of their properties across the creek which might occur if the fence were solid wood.

The applicant also proposes moving the fence further away from the top of the creek bank and the proposed location is staked in the field. As indicated above, the fence will maintain an 11 foot setback at its southern end in order to avoid several mature trees on the site and to allow the fence to follow a relatively straight line and will maintain an 18 foot setback at its northern end. The relocation will create a significant undisturbed buffer area along the creek which the applicant proposes to restore with native plants and trees (see the proposed planting plan dated March 26, 2012 attached to the property survey/site plan). The first phase of the planting plan will commence thirty (30) days after the completion of the fence if the fence is approved.

The applicants indicate they have experienced problems with trespassing and their pool creates an attractive nuisance for neighborhood children so the fence as proposed will allow them substantial use of their property while also maintaining security for the site (see attached exhibit A, applicant's supplemental information).

Other Agencies/Departments

No other agencies or departments had any concerns about the fence or its location (Exhibit

RECOMMENDATION

1. Move to approve Application # 12.06 for a Creek Setback Variance to allow a 6 foot open wire fence to be located 11 to 18 feet within the required 20 foot Creek Setback area based on the following findings and subject to the following conditions of approval:

Recommended Findings

1. The location of several mature trees on the site including native riparian species prohibits the applicant from locating the fence 20 feet from the top of the creek bank. The site also has a large expanse that backs up to a condominium project where public access to the creek is provided. This has made it difficult for the property owner to secure the site. These are the special circumstances applicable to the property that will deprive the

applicant of privileges enjoyed by other property owners in the vicinity and under identical zone classification.

2. The residence is located along a portion of the Fairfax Creek where development has been allowed to occur up to, and in some cases over, the creek bed. Therefore, the variance 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 because the owner would be unable to secure his property.
4. The fence has been designed with panels of open wiring to allow the free flow of flood waters and the project includes restoration of the adjacent creek bank with native riparian vegetation. Therefore, 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.
5. The project complies with the following goals contained the current 1976 General Plan which is in keeping with the goals in the 2010 to 2030 Fairfax General Plan adopted by the Town Council on April 4, 2012.

1976 General Plan

Goal 4.1.1: It is the policy of the Town of Fairfax to preserve the communities natural setting, wildlife and its habitat.

Goal 4.1.7: Stream courses and their adjacent environs shall be preserved to enhance water quality and maintain an area of high wildlife and aquatic diversity.

2010 to 2030 General Plan

Land Use Goal LU-1: Preserve scenic and natural resources

Land Use Goal LU-3: Restore natural habitats in Fairfax, including creeks and watercourses.

Open Space Goal OS-1: Protect and preserve open space lands and native biotic resources within the Fairfax Planning Area;

Open Space Goal OS-3: Preserve the sensory qualities of open space for recreational, cultural, educational and spiritual experiences.

Recommended Conditions

1. The fence shall not exceed 6 feet in height and shall be located 11 to 18 feet from the top of the creek bank per the submitted site plan and location flags on site.

2. Prior to pouring the concrete for the fence posts, the applicant shall arrange a time for the Building Official and Senior Planner to inspect the holes to verify the fence will maintain the approved setback.
3. Once the phase 1 of the planting plan has been installed the applicant shall have staff inspect the installation and shall provide the Town with a landscaping deposit in an amount to cover the cost of installation and the plant material. The amount shall be determined by staff's review and approval of a landscaping bid from the owner. The deposit will be held for 18 months to ensure that the plantings become established

ATTACHMENTS

Site plan, re-vegetation plan and the fence elevations

Exhibit A - Applicant's supplemental information

Exhibit B – Comments from other departments and outside agencies

Exhibit C – Town Hall Violation Letter

Exhibit D – Original complaint letters

FEB 27 2012

RECEIVED

Planning Commission
Bothin Rd
Fairfax, CA 94930

Dear Commissioners,

I wanted to include a brief history of how this setback variance has come before you. We purchased the home in September of 2010. The home has approximately 285' of creek frontage. There is an existing chainlink fence installed many years ago by the previous owner along approximately 200' of the creek lot line. The property also had wooden fencing along the south and west property lines that was literally falling down when we purchased the property. Homeless people would sneak into the property to sleep or shower in the out buildings and neighborhood kids would sneak in to play in the pool.

We decided to re-build the wooden fence this past spring 2011 after many attempts to patch the boards to keep our dogs and children safely inside the property. While doing so, we decided to connect a section of our property, which was not fenced in the past. After consulting the Town of Fairfax's Zoning ordinance 17.004.080, under the Exceptions and Modifications section, we understood this exception within the code to allow for fences to be built at the rear and side property lines, regardless of whether it was on a creek or not. So we went ahead and began construction of a fence within 6-10' of the top of creek bank. During construction we were visited by Mark Lockaby, Town of Fairfax Building Official. He told us the Town had received a complaint from a neighbor and that we were in fact in violation of the Town's Creek Setback Ordinance.

We have hired land use attorney Elizabeth Brekhaus, who has been in communication with the Town over this discrepancy in the ordinance (Town of Fairfax's Zoning ordinance 17.004.080). We considered appealing this issue directly to Fairfax Town Council and potentially Marin Superior Court, as we feel strongly that the Town's ordinance is unclear and misleading in this matter. Rather than going through a legal proceeding and costing our family and the Town of Fairfax additional money for litigation and in an attempt to be good neighbors, we decided to work with the Town Planning Department, our adjacent neighbors and Friends of Corte Madera Creek who have expressed concern with the current location of the fence. We proposed moving the fence back significantly from its current location, to be located within 11' from the top of the creek bank at its southerly location and 18' from the top of the bank at it's north location. The reason for this proposed location is we have a number of large trees that preclude running a fence at the 20' creek setback line. I have met with both the Friends of Corte Madera Creek and the HOA Board for Village West and discussed the new proposed location and both parties support the fence in this proposed location (see attached letters from each party).

EXHIBIT #

A

structures are built much further inside the creek setback and are improved and maintained (with or without the benefit of permit) continually without action from the Town.

List below your reasons why the variance will not materially affect the health or safety of persons residing or working in the neighborhood or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood.

Approving the creek variance will not affect adjacent properties as this fence will be see-through green wire mesh, not impeding the view through it or impeding water from passing through it. Approval of the height variance will actually make the neighborhood safer, protecting the dozens of children who live around the home from easily hopping over the fence and potentially drowning in the pool.

Explain why complying with the Town ordinance requirements will be a hardship for the owner.

Compliance of the town ordinance will be a hardship as we will not be able to utilize a large area of our lot. We loose a great deal of space (285' of creek frontage with a 20' setback eliminates the use of 5,700sf of our lot), over 14% of our lot. We would have additional financial hardship if we were to have to move more fencing than we are proposing. We have already experienced hardship with being singled out by the town for this supposed violation of the code, after we merely followed the town's Planning Code. It clearly states that a fence may be located along the front and rear property lines. There is nothing within that ordinance that excludes creek-side lots from the exception. The financial hardship has compounded with the cost of attorneys, engineers, architect, my own time, printing fees, postage and of course the variance fee itself, in processing this variance.

Variance – Addtl information required:

In order to approve...there is a special feature to the site...or that the variance is consistent with the treatment of other property in the neighborhood...strict enforcement would cause a hardship...that the project is in the general public interest

We believe that this project is in the general public interest as we have consulted both the HOA of Village West (representing many adjacent home owners) and the Friends OF Corte Madera Creek, those who are most vested in this particular issue, and they are both endorsing this proposed location of the fence. Although we have safety concerns about allowing people to walk on our property along the creek, we have not posted the property and have left adequate room for people to enjoy a stroll along the creek. Approval of this variance would be in line with the treatment of all of our adjacent neighboring properties. As you can see from the attached



Village West – The retaining wall and fence are located at the top of bank.



Village West – The building is located approx. 6' from the top of bank.



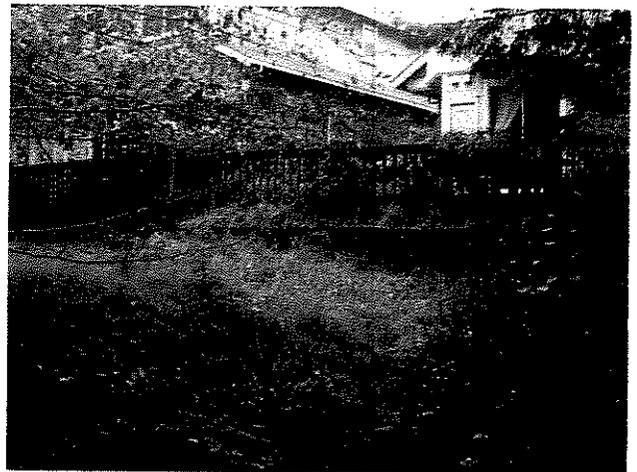
Village West – This building is located approx. 6' from the top of bank. This building is directly across creek from proposed fence.



Village West – Fence and buildings located 8-10' from the top of bank. Directly adjacent to the proposed fence.



Village West – Fence and buildings located 8-10' from the top of bank. Directly adjacent to the proposed fence.



June Ct. homes – Built 1998, retaining wall and fence built within 15' from top of bank.



Creekside Apartments – This building is literally on top of the creek with decks cantilevered over the creek.



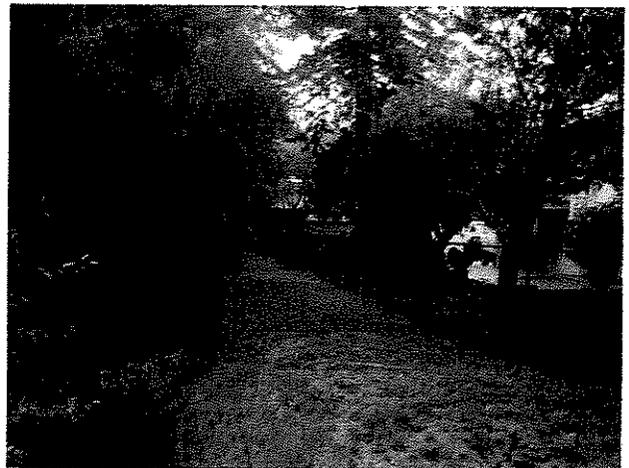
Creekside Apartments – This building is sited approx 12 feet from the top of bank.



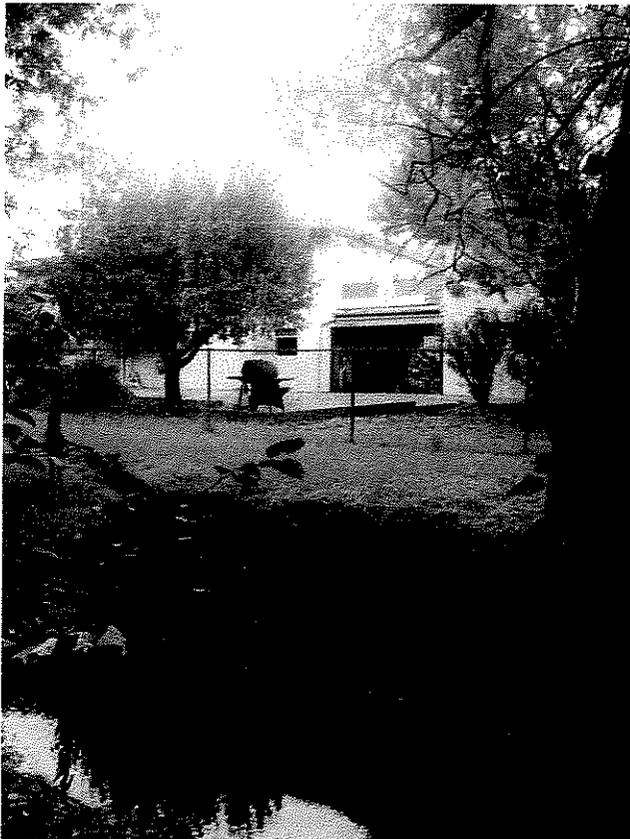
Creekside Apartments – This building corner is on the creek. You can see the decks (which are used for storage) are directly over the creek



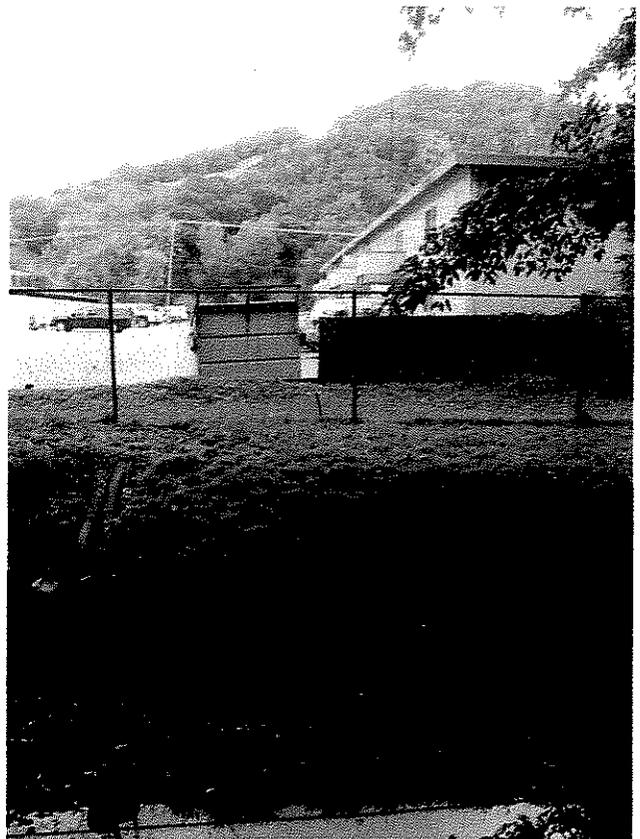
Lanai Apartments – There is a newer black chainlink and iron fence.



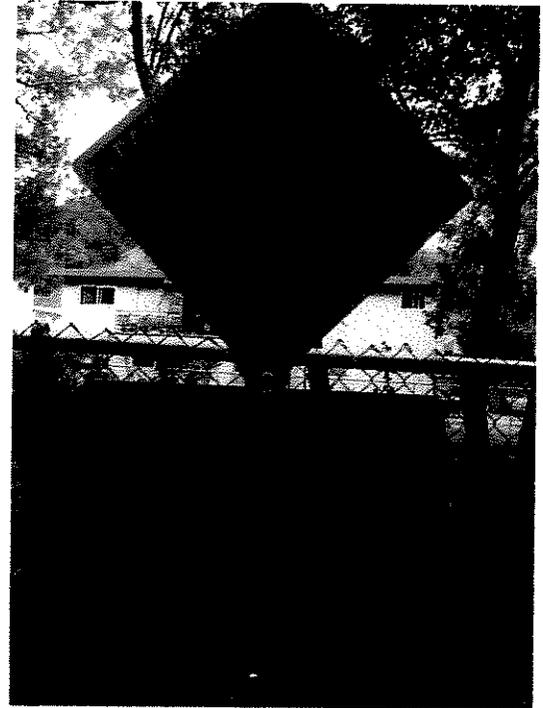
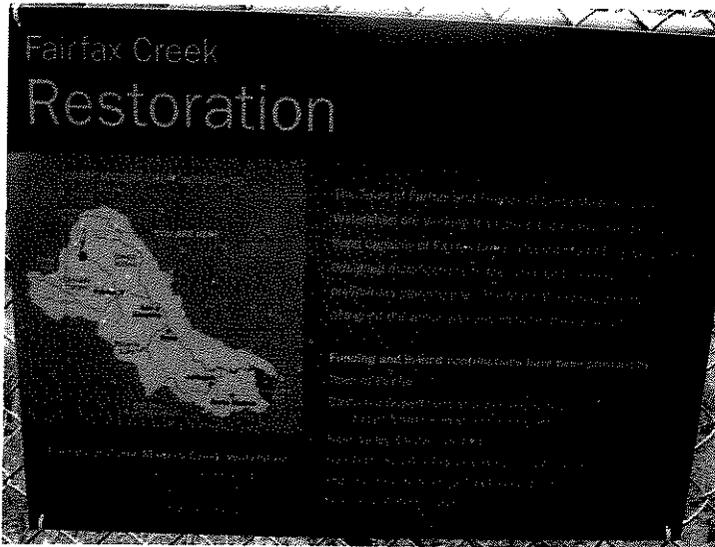
Lanai Apartments – You can see from this picture that the fence on average is 10', with areas as close as 3' from the top of bank.



Lanai Apartments – Improvements including fence, concrete and structure within creek setback.



Lanai Apartments – Storm water being discharged directly into creek.



Friends of Corte Madera Creek Project Restoration - Built 2003
 I was told by the Fairfax Planning Department that this project did not need a creek setback variance. I find it strange as this fence is within 5' from the top of the bank. The Lanai Apartments on the other side of creek has this same newer chainlink fence also located within the 20' setback.



255 Olema Rd. & 78 Westbrae Dr.: Rear Yard Fences –
 The rear fences for these homes (and many others along Westbrae Dr.) are located directly on the creek bank. Do any of these homes have variances for these fence locations?

340 Olema Rd.



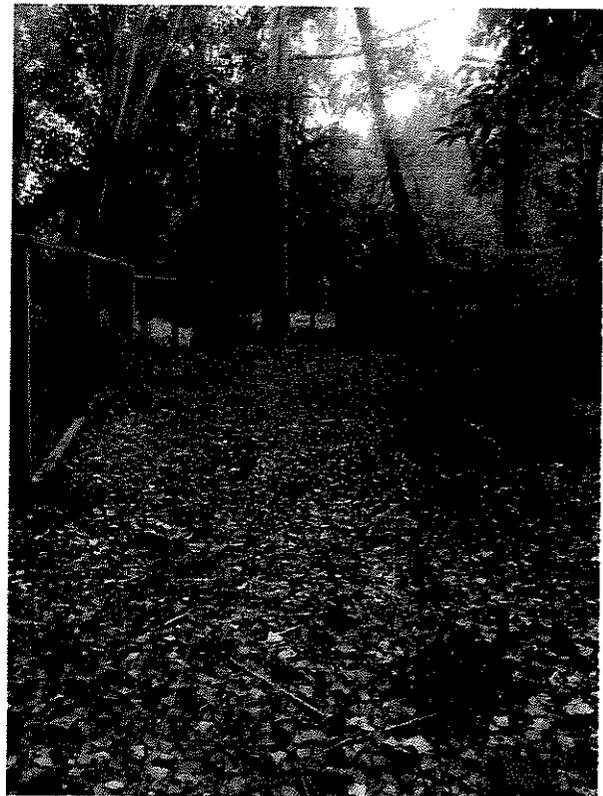
This is the large Willow Tree (45' wide) that is sited right on the 20' setback line.



Another angle of the tree showing the 20' setback line through the tree (orange ribbons on branches) and other large specimen trees on this same line.



Another angle showing the 20' setback through the Willow tree. The solid ribbon on left is the proposed location of the fence and the stakes to the right are the 20' setback line.



This small strip provides circulation around the property otherwise inhibited by trees and a retaining wall.



Friends of Corte Madera Creek Watershed

P.O. Box 415 · Larkspur · California 94977

info@friendsofcortemaderacreek.org (415) 456-5052 www.friendsofcortemaderacreek.org

September 26, 2011

Brett Foley
340 Olema Road
Fairfax CA 94930

brettsfoley@gmail.com

Dear Brett,

Thank you for giving Friends of Corte Madera Creek Watershed an opportunity to look at the proposed new creek-side fence alignment at your home last week.

We are glad to learn that you have moved the proposed alignment considerably further from the creek than the position of the recently-installed fence, which, we understand, you will soon demolish. We note that the latest alignment is approximately 15 ½ feet from the top of the creek slope—still short of the town's 20-foot setback requirement—and that this position avoids the necessity of removing a large arroyo willow, and links the ends of two existing fences. We understand that the new fence will be of 2" x 4" wire mesh between redwood posts. We applaud your intention to revegetate the area between the creek and the proposed fence with native plants in a phased process.

Bearing in mind the above observations, we have no objection to your project, and look forward to seeing the transformation of the riparian area on your property.

Sincerely,

Charles Kennard
Vice president

cc James Moore, Town of Fairfax

Send Via Fax (415-453-1618)
(hard copy to follow by US mail)

February 17, 2012

James M. Moore (jmoore@townoffairfax.org)
Director of Planning & Building Services

Linda Neal
Senior Planner
142 Bolinas Road
Fairfax, CA 94930

Dear Mr. Moore and Ms. Neal,

I am writing in reference to a proposed variance for building a fence along the Fairfax Creek by Mr. Brett Foley, of 340 Olema Road, Fairfax.

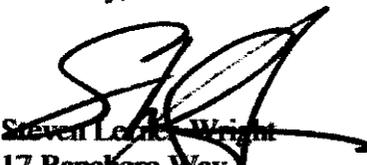
Mr. Foley and I have discussed the modifications he has proposed to his proposed variance. In addition, he made it clear to me that there had been a misunderstanding concerning his original proposal.

As a result, I am very satisfied with the modifications and proposed variance and withdraw my objection, which I submitted in writing to the Town during the summer of 2011.

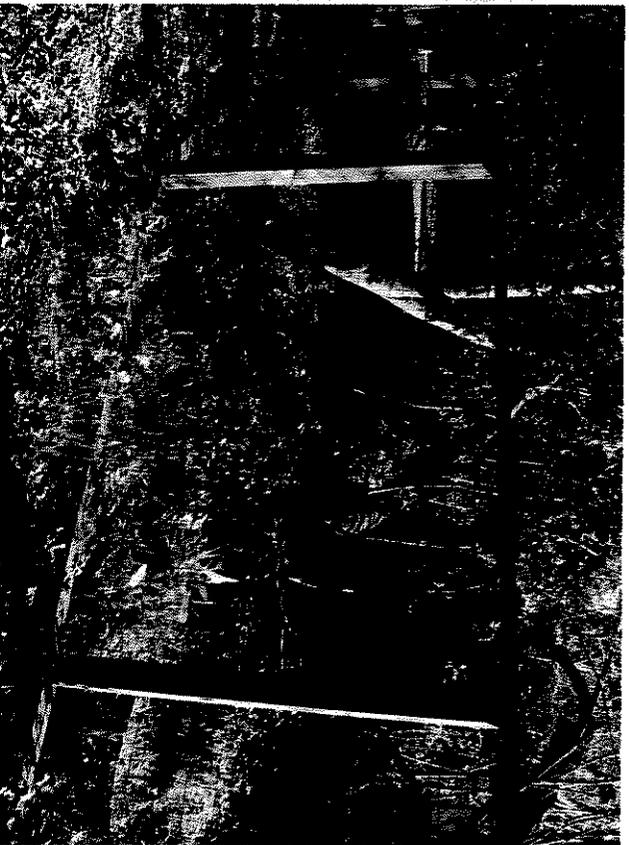
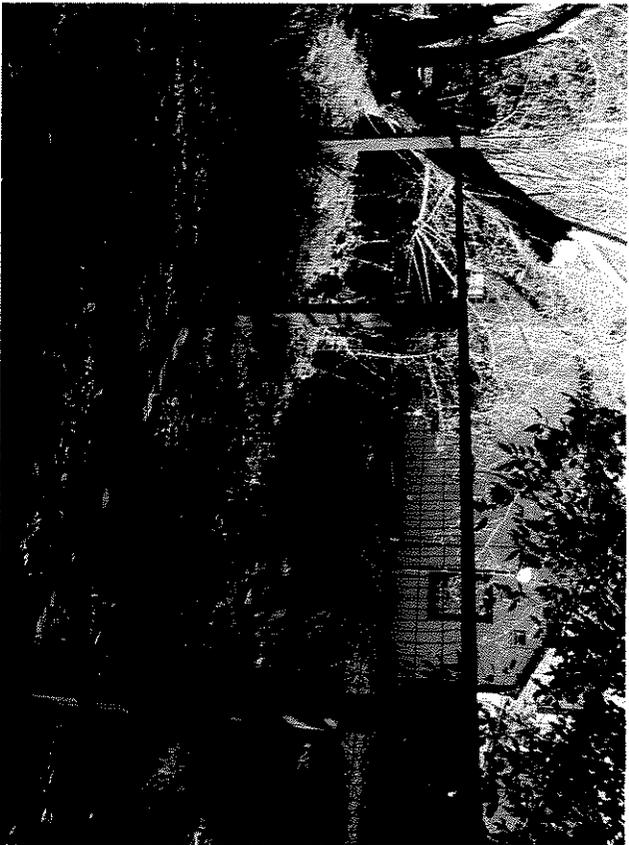
I support without reservation Mr. Foley's current proposal to create a fence along the west bank of the Fairfax Creek at 340 Olema Road, Fairfax.

Thanks for addressing this matter.

Sincerely,


Steven Leitch Wright
17 Banchemo Way
Fairfax, CA 94930

cc: Brett Foley



RECEIVED

MAR 08 2012

TOWN OF FAIRFAX
340 Olema Rd. – Fence Elevation pictures.



These pictures show how the fence will be constructed. The posts are Redwood 4x4. The top and bottom rails are Redwood 2x4. The mesh between is green. This is our existing fence that we are proposing to move.

PETER B. BREKHUS
peterb@brekhus.com

ELIZABETH BREKHUS
elizabethb@brekhus.com

Brekhus
Law
Partners

ATTORNEYS AT LAW

1000 DRAKES LANDING ROAD
GREENBRAE, CA 94904-3027
FACSIMILE: (415) 461-7356
(415) 461-1001
www.brekhus.com

May 18, 2011

Jim Moore
Director of Planning
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930

Dear Mr. Moore,

We represent Brett Foley who resides at 340 Olema Road. Mr. Foley has been doing some work on his property, including building a fence along his side and back property lines. A fence already exists along most of the property line but Mr. Foley wants to extend the fence to keep his small children and pets inside the property and to prevent animals, including deer, from entering the property. His work on the fence, however, has been interrupted because apparently a neighbor complained to the Town about the fence and the Town's Building Inspector, Mark Lockaby, advised that Mr. Foley needed a permit and a variance to build the fence because his property borders the Fairfax Creek and the fence would be within 20 feet of the creek.

Mr. Foley consulted the Town's Municipal Code and believed he fit within the exception stated in Section 17.044.080(A) which states "A fence wall hedge or bulkhead maintained so as not to exceed six feet in height, may be located along rear and side lot lines...." He therefore went to the City Planning Department and spoke with Linda Neal, to ask why that exception would not apply to him. Ms. Neal did not have an answer for that but instead told him he had two choices: he could appeal the "decision" to Town Council and incur the \$980 filing fee for doing so, or he could apply for a variance, and pay the associated cost for a variance, and risk his project being denied. Mr. Foley feels that these options are not fair, and ignore the clear provisions of the Town Code which provide that fences being maintained at a height of 6 feet or less along rear and side lot lines are exempt from the permit process.

We note that under the Chapter on Definitions of the Town Code, a structure is defined to include a fence. Section 17.008.020. Under Section 17.040, the General Zone Regulations Chapter, Section 17.040.020 governs setbacks generally and Section 17.040.040 governs setbacks and structures adjacent to the Fairfax and San Anselmo creeks. Clearly Section 17.040.040 governs this property since the side and rear lot adjoin the Fairfax Creek. However, the Town Code contains Chapter 17.044, "Exceptions and Modifications," which, by its terms, provides that "[t]he general requirements and regulations set forth in this title shall be subject to the specific modifications and interpretations in this chapter." One such "modification and



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

FIRE DEPARTMENT PLAN REVIEW

PROJECT: Residence
ADDRESS: 340 Olema
Fairfax, CA 94930

Page: 1 of 2
Date: 03/06/2012
Reviewed by: Rob Bastianon
(415) 258-4673

TYPE OF REVIEW: Planning E-mail: Rbastianon@rossvalleyfire.org
Bldg. Dept. Fire Dept. # 12-0044 Review No. 1
Fire Department Standards can be found at: www.rossvalleyfire.org

Applicant*: Fairfax Planning
Address:

***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 :	Fire Lane Req: NO	Permits Required: Sprinkler
Stories:	Fire Flow Test Required: NO	
Height: +ft.	Wildland Urban Interface: YES	

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

- APPROVED** (no modifications required)
- APPROVED AS NOTED** (minor modifications required - review attached comments)
- NEEDS REVISION** (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.

ROSS VALLEY FIRE DEPT.
REVIEWED

DATE: 3/6/12

Inspections required:

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

EXHIBIT # **B**



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

FIRE DEPARTMENT PLAN REVIEW

PROJECT: Residence
ADDRESS: 340 Olema
Fairfax, CA 94930

Page: 2 of 2
Date: 03/06/2012
Reviewed by: Rob Bastianon
(415) 258-4673

TYPE OF REVIEW: Planning E-mail: Rbastianon@rossvalleyfire.org
Bldg. Dept. Fire Dept. # 12-0044 Review No. 1
Fire Department Standards can be found at: www.rossvalleyfire.org

ITEM #	SHEET	COMMENTS	Corr. Made
1		No additional Fire Code requirements for this project.	
		Submitter's Response: Correction has been completed. See Sheet _____ of <input type="checkbox"/> Plans <input type="checkbox"/> Calculations.	

*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.*

Attn: Stuart

**TOWN OF FAIRFAX
DEPARTMENT OF PLANNING AND BUILDING SERVICES**

142 Bolinas Road, Fairfax, California 94930
Phone (415) 453-1584 FAX (415) 453-1618

LETTER OF TRANSMITTAL

From: Fairfax Planning and Building Services Department

Date: March 2, 2012

- To: Town Engineer Fairfax Police Dept. Marin County Open Space Dist.
 Town Attorney Sanitary Dist. 1 Other – Building Official
 MMWD Public Works Dept. Friends of Corte Madera Creek
 Ross Valley Fire Marin County Health Dept.

Address and Parcel No: 340 Olema Road; Assessor's Parcel No. 174-141-52

Project Description: 6 foot fence located within the required creek setback which is 20 feet back from the top of the creek bank or twice the depth of the creek bank whichever is greater. The fence will be setback from 11 feet to 18 feet from the top of the creek bank. The applicant has indicated the fence will be "transparent" but has yet to provide the Town with materials details or fence elevations.

These plans are being transmitted for review either: a) prior to public hearings on discretionary permits before the Fairfax Design Review Board and Planning Commission; or, for review prior to issuance of a building permit. Please provide your comments on the completeness and adequacy of the submittal for your agencies reviewing purposes within 10 days.

1	Received 2/27/12	Site plan with highlighted fence location
1	undated	Letter from applicant

REMARKS NO CONCERNS. SB

Please respond by March 19, 2012. Thanks

If you have any questions please contact: Linda Neal, Senior Planner

**TOWN OF FAIRFAX
DEPARTMENT OF PLANNING AND BUILDING SERVICES**

142 Bolinas Road, Fairfax, California 94930
Phone (415) 453-1584 FAX (415) 453-1618

LETTER OF TRANSMITTAL

From: Fairfax Planning and Building Services Department

Date: March 2, 2012

To: Town Engineer Fairfax Police Dept. Marin County Open Space Dist.
 Town Attorney Sanitary Dist. 1 Other – Building Official
 MMWD Public Works Dept. Friends of Corte Madera Creek
 Ross Valley Fire Marin County Health Dept.

Address and Parcel No: 340 Olema Road; Assessor's Parcel No. 174-141-52

Project Description: 6 foot fence located within the required creek setback which is 20 feet back from the top of the creek bank or twice the depth of the creek bank whichever is greater. The fence will be setback from 11 feet to 18 feet from the top of the creek bank. The applicant has indicated the fence will be "transparent" but has yet to provide the Town with materials details or fence elevations.

These plans are being transmitted for review either: a) prior to public hearings on discretionary permits before the Fairfax Design Review Board and Planning Commission; or, for review prior to issuance of a building permit. Please provide your comments on the completeness and adequacy of the submittal for your agencies reviewing purposes within 10 days.

1	Received 2/27/12	Site plan with highlighted fence location
1	undated	Letter from applicant

REMARKS NO COMMENTS AT THIS TIME

Please respond by March 19, 2012. Thanks

If you have any questions please contact: Linda Neal, Senior Planner



ROSS VALLEY SANITARY DISTRICT
2960 Kerner Blvd
San Rafael, CA 94901
(415) 259-2949 ~ rvsd.org

March 9, 2012

March 16, 2012

Linda Neal, Senior Planner
Dept of Planning and Building Services
142 Bolinas Road
Fairfax, CA 94930

RECEIVED

MAR 21 2012

TOWN OF FAIRFAX

SUBJECT: 340 OLEMA ROAD, FAIRFAX; APN 174-141-52

Dear Ms. Neal:

We are in receipt of your transmittal dated March 2, 2012, concerning the above-referenced project. This project has no impact on the public sanitary sewer. Therefore, Sanitary District No. 1 has no objection to this project.

If you need further information regarding this matter, please contact the office.

Sincerely,

Randell Y. Ishii, M.S., P.E.
District Engineer

RYI/rji



MARIN MUNICIPAL WATER DISTRICT

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

March 14, 2012
Service No. 23842

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

RECEIVED
MAR 16 2012
TOWN OF FAIRFAX

RE: WATER AVAILABILITY - Single Family Dwelling
Assessor's Parcel No.: 174-141-52
Location: 340 Olema 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 six foot fence relocation will not impair the District's ability to continue service to this property.

Compliance with all indoor and outdoor requirements of District Code Title 13 – Water Conservation is a condition of water service. Indoor plumbing fixtures must meet specific efficiency requirements. Landscape plans shall be submitted, and reviewed to confirm compliance. The Code requires a landscape plan, an irrigation plan, and a grading plan. Any questions regarding District Code Title 13 – Water Conservation should be directed to the Water Conservation Department at (415) 945-1497. You can also find information about the District's water conservation requirements 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) 945-1532.

Sincerely,

Jose Sotelo
Engineering Technician Supervisor-
Development Services

JS:mp

cc: Town of Fairfax Building Dept



TOWN OF FAIRFAX

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

August 16, 2011

Certified Mail # 7010 1060 0002 4879 2397
Copy also sent First Class Mail

Brett S. Foley
340 Olema Road
Fairfax, CA. 94930

NOTICE OF ZONING VIOLATION

Re: 340 Olema Road; creek setback violation; Town Code § 17.040.040

Dear Mr. Foley,

This letter shall constitute written verification that a fence height violation exists on the property you own at 340 Olema Road. You have erected a 6 foot tall fence within the required creek setback from the top of the Fairfax Creek. This was verified by a site inspection by the Fairfax Building Official on May 16, 2011.

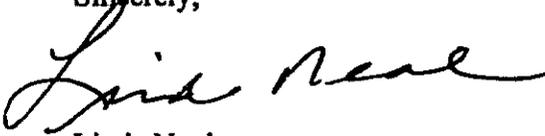
Town Code §17.008.020 defines a structure as, "Anything constructed or erected, the use of which required a location on the ground or attached to something having a location on the ground, including, but without limiting the generality of the foregoing, advertising signs, billboards, backstops for tennis courts, fences, pergolas, radio and television towers, masts and aerals". Town Code § 17.040.040 goes on to prohibit the location of structures anywhere within 20 feet of the top of the Fairfax and San Anselmo Creeks, or twice the depth of the creek whichever is greater. 340 Olema Road is located immediately adjacent to the Fairfax Creek. Therefore, the rear fence should be set back at least 20 feet from the top of the creek bank.

The fence must be relocated out of the creek setback within thirty (30) days, by September 15, 2011; or, a complete Creek Setback Variance application must be received including a site plan that identifies the location of the creek setback, the location of all structures on the site, the location of adjacent buildings on neighboring properties, the location of the fence and fence elevations including the materials used for the fence and the required fence height fee, including penalties, of \$1,383.00.

Failure to accomplish one of the above actions by September 15, 2011, will result in the Town issuing you an Administrative Citation. The fine for a first violation of the Town Municipal Code is one hundred dollars (\$100.00). The fines for a second and third violation citation are two hundred (\$200.00) and five hundred dollars (\$500.00) respectively.

If you have any questions regarding this matter please feel free to contact the Department of Planning and Building Services.

Sincerely,

A handwritten signature in cursive script that reads "Linda Neal".

Linda Neal
Senior Planner

cc. Mark Lockaby, Building Official and Code Enforcement Officer

2



TOWN OF FAIRFAX

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

June 7, 2011

Elizabeth Brekhus
Brekhus Law Partners
1000 Drakes Landing Road
Greenbrae, CA. 94904-3027

Re: 340 Olema Road; 6 foot fence

Dear Ms. Brekhus,

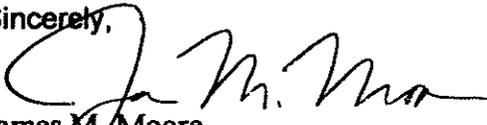
Thank-you for your letter dated May 18, 2011 on behalf of your client, Brett Foley, setting forth your rationale for why the Town incorrectly stopped Mr. Foley's fence project. The Town's staff position is as follows:

Six foot fences are allowed on rear property lines unless the rear property line is within the Fairfax Creek setback area. Town Code § 17.008.020, defines a structure as anything constructed or erected, the use of which required a location on the ground or attached to something having a location on the ground, including but not limiting the generality of the foregoing, advertising signs, billboards, backstops for tennis courts, fences, pergolas, radio and television towers, masts and aerials. Then section 17.040.040, General Regulations; Setbacks; Structures Adjacent to Fairfax and San Anselmo Creeks, applies and requires a setback of 20 feet or twice the depth of the bank whichever is greater.

Mr. Foley has constructed a fence within the required 20 foot creek setback. In order to maintain the fence in its current location he needs to apply for and be granted a Variance by the Fairfax Planning Commission (Town Code section 17.040.040 and Chapter 17.028, Variances). The intent of the Fairfax General Plan Conservation Element is clear. Policy 4.1.7 indicates that stream courses and their adjacent environs shall be preserved to enhance water quality and maintain and area of high wildlife and aquatic diversity.

A Variance application can be obtained at Town Hall, 142 Bolinas Road, Fairfax. If you have any questions, please feel free to contact the staff.

Sincerely,



James M. Moore
Planning Director

CC: Mark Lockaby, Building Official
Linda Neal, Senior Planner

Village West Home Owners Association, Inc.
c/o Massingham & Associates Management, Inc.
1855 Gateway Boulevard, Suite 300 - Concord, CA 94520
925.405.4900 Phone / 925.405.4747 Fax
dawnb@massingham.com

June 7, 2011

Town of Fairfax
142 Bolinas Rd.
Fairfax, CA 94930

REF: Fence at 340 Olema Road, Fairfax, CA 94930

To Whom It May Concern:

The 340 Olema Road Property lies across the creek from Village West. Homeowners at Village West have noticed that the planned installation of a solid wood fence at the rear of the 340 Olema Road property is fewer than 20 feet from the creek. If you permit the fence to be built this close to the creek, it could contribute to flooding at Village West. If the creek were to overflow, the solid fence could force the water onto Village West property.

The Village West Home Owners Association would like to make sure that the Town of Fairfax enforces the 20-foot rule.

Thank you for your prompt attention to this matter.

Sincerely,



Dawn Blount on behalf of:
The Board of Directors
Village West Home Owners Association

cc: Board of Directors
340 Olema Road

EXHIBIT # D



Friends of Corte Madera Creek Watershed

P.O. Box 415 · Larkspur · California 94977

info@friendsofcortemaderacreek.org (415) 456-5052 www.friendsofcortemaderacreek.org

May 27, 2011

James Moore
Director of Planning
Town of Fairfax
jmoore@townoffairfax.org

Re: 340 Olema Road creekside

Dear Mr. Moore,

In response to a neighbor's concern, I recently had a look (from across the creek) at the new fence under construction at 340 Olema Road. All the 4 x 4 posts were installed.

Friends of Corte Madera Creek Watershed has three issues with the fence alignment:

- The fence is much too close to the top of the creek bank to allow the creek corridor to function properly as wildlife habitat with its associated native plants. The closest post is approximately 2 ft from the creek bank, while the average distance is about 4 ft. Town regulations stipulate 20 ft as the setback for any "structure" – presumably including fencing.
- One reason setbacks are a common policy is so that creeks have enough space to adjust their position laterally. If a homeowner builds a fence close to the creek, he or she is more likely to want to defend the property with armoring at a later date.
- If the fence is of any construction other than chainlink, it will impede floodwaters from spreading out, thus leading to erosion of the creek bed and banks. The constriction would also increase flooding of the property on the north side of the creek.

We can see no reason for the owner of 340 Olema Road, a large lot, to be granted a variance to build a fence closer to the creek than the pre-existing fence. We urge the Town not to grant a variance in this case.

We are also concerned that what appears to be a drainage sump, covered by gravel, may be too close to the creek. It could concentrate water in the soil at the edge of the creek and cause the bank to fail at that point. Has the sump been approved by a soils engineer?

Thank you for your attention to these points.

Sincerely,

Charles Kennard
Vice-president

Steven & Anne Lerner-Wright
17 Banchemo Way
Fairfax, CA 94930

May 24, 2011

Ms. Linda Neal
Senior Planner
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930

Subject: 340 Olema Road, Fence Under Construction Along Fairfax Creek

Dear Ms. Neal:

I write as a concerned residence who lives along the Fairfax Creek.

My residence is on the east side of Fairfax Creek. Our home is about 150 feet from the creek's bank. A residence on the opposite side of the creek (the west side) at 340 Olema Road has begun construction of a solid 6 foot high fence on the edge of the creek. My estimate is that the fence posts, which have already been sunk are about 5 feet from the west bank of the creek.

I understand the zoning requirements are that a property owner may not build a fence any closer than 20 feet from the creek.

I also understand the owner of 340 Olema has been ordered to stop work on the fence. However, the owner has informed one of my neighbors that he has hired an attorney and has begun the process for requesting a variance of the 20 foot zoning requirement.

I respectfully request that a variance to this rule not be granted in the instance of this fence.

I have lived at my current residence 13 years. The flood of five years ago was very significant, resulting in 8 inches of water inside my home and 12 to 16 inches of water inside my detached garage. I am confident a flood will occur again in the future. The area we live in is zoned as a Flood Zone B area. History demonstrates that when the very heavy rains come down in our area, which is akin to a watershed in that it is heavily forested, that flooding is inevitable in this area along Fairfax Creek.

A solid 6 foot fence only a few feet from the creek bank will only exacerbate the effect of flooding on my street. The water moves swiftly when it is at an only modest level – and it moves very aggressively when at flood stage. During the last flood water was spilling over the creek bank into my street, the homes of my neighbors and my home. In the residential complex where I live, which is called Village West, approximately 20 of the 60 homes were flooded.

Page 2
Linda Neal

The fence proposed for 340 Olema, if constructed according to the proposed variance, will serve as a barrier during flooding and will effectively ricochet flood waters into my complex and our homes.

In fact, as I look at the proposed fence line, I see it serving as a barrier that will redirect flood waters directly into two of the homes that are located closest to the east bank of Fairfax Creek.

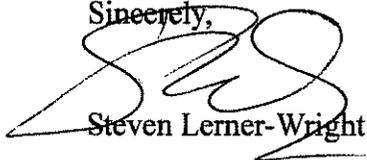
Given the proven impacts of the greenhouse gas effects and that fact that winter storms in our region appear to be increasing in their intensity, we should all of us be thoughtful about constructing edifices that will exacerbate the effects of sudden, intense rainfalls. We must plan for the future as well as the present. The culvert down the road that was removed 3 years ago had been approved in the 1960s or 1970s. Time demonstrated that allowing it to be built then only exacerbated flooding for the neighborhood starting in the 1980s.

Thus, I urge the town planners to deny the variance request, which I anticipate will be submitted shortly.

In addition, I might add that permitting the owner of 340 Olema to build a solid 6 foot fence even 20 feet from the creek may pose a problem – and the town should consider whether a fence that allows free flow of water through or over fence boards isn't more appropriate for current and future needs. That is, a low-profile chain link fence (which was the former fence) or a low-profile split-rail fence, may be more appropriate for this situation.

Thank you for considering this request. Please feel free to contact me if you have questions or need additional information.

Sincerely,



Steven Lerner-Wright