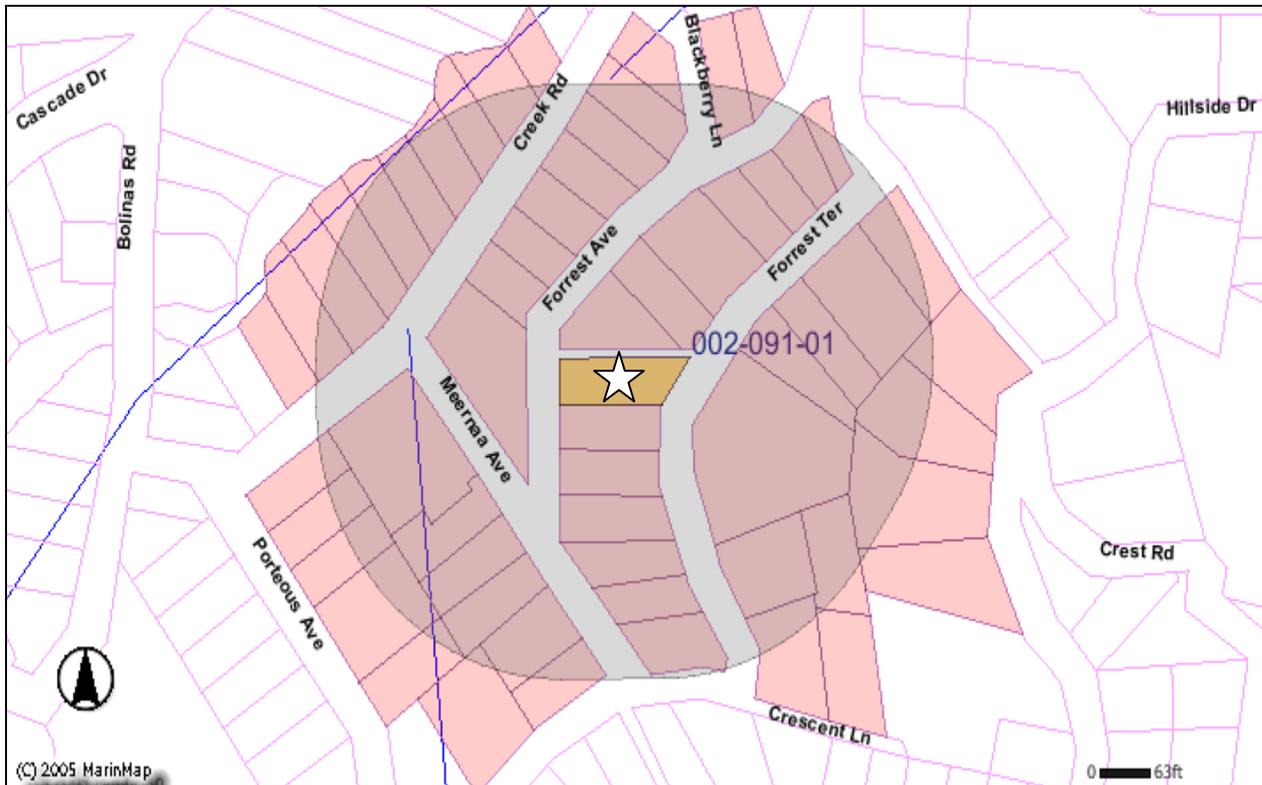


TOWN OF FAIRFAX STAFF REPORT

Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: September 20, 2012
FROM: Jim Moore, Director of Planning and Building Services
Linda Neal, Senior Planner
LOCATION: 40 Forrest Terrace; Assessor's Parcel No. 002-091-01
PROJECT: In ground spa
ACTION: Side Setback Variance; Application # 12-23
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%. The property is a street to street lot that runs from Forrest Terrace down to Forrest Avenue. The front access is from Forrest Terrace but there is also a rear access from Forrest Avenue where the garage is located. It is developed with a 1,813 square foot single-family residence that was constructed in 1909 and includes three bedrooms and two bathrooms. The Commission legalized an attic bedroom and a laundry and bathroom in the basement on May 19, 2011 (there were no records showing that either of these areas had been developed with permits). There is also a large, two level decks 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. The Commission denied a Variance request to legalize the deck and required that it be removed within 1 year on 2/12/12. At the February 12, 2012 meeting the owners indicated they only wanted to retain the deck as a staging area for one year and then were willing to remove it after that time.

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.

DISCUSSION

The applicants are now proposing to legalize a partially completed spa.

The project does not constitute a 50% remodel, did not require significant excavation and did not require the removal of any vegetation because the spa structure is located in an area of the site that was an abandoned garden.

The property is located in the Residential RD 5.5-7 Zone district and the house, garage and spa comply with the regulations of that district as follows:

	Front setback (Forrest Terrace side)	Rear setback (Forrest Avenue side)	Front/rear setback	Side setbacks	Combined side setbacks	Floor area ratio	Lot coverage
Required/permitted	6 ft	12 ft	35 ft	5ft & 5ft	20 ft	.40	.35
Existing (including unpermitted spa)	8ft (to front of house)	3ft (to garage)	11 ft	3 ft & 9.5 ft (garage and spa)	12.5 ft	.30	.35

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 Combined 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 five (5) foot setback from one side property line, the distance between the structure and the opposite side property line must be 15 feet. The existing garage maintains a three (3) foot setback from the northern side property line and the spa and equipment maintain a 9 ½ foot setback from the southern side property line for a combined side yard setback of only 12 ½ feet. Therefore, legalization of the spa/equipment requires the approval of a Side Yard Setback Variance.

Use Permit

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)].

The proposed spa use is not unusual for a residential property in Fairfax. The plans indicate the structure is a wading pool, but with the two large heaters and the proposed two fifty (50) gallon propane tanks for heating, it is being constructed as and has the potential to be used as a spa. Spa's and their equipment can fit into a residential neighborhood as long as the equipment is located well away from adjacent residence and/or it is encased in some type of sound limiting/proofing enclosure.

The staff has received a letter from the adjacent neighbors indicating that both she and her tenant work at home and would the Commission to consider placing conditions on the project including; a) the pump shall be run from 2:00 am to 6:00 am only; and b) the spa equipment shall be fitted with a sound dampening enclosure(s).

Staff has included the above conditions requested by the neighbors as recommended conditions of the project approval.

The Ross Valley Fire Department will not approve the proposed two (2) fifty (50) gallon propane tanks to be the heating source for the spa. Therefore, the request by the neighbors that the tanks be secured in case of an earthquake is moot.

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.

The site is terraced but it does slope up steeply from Forrest Avenue to Forrest Terrace. It is also ten (10) feet narrower than the sixty (60) foot minimum width required for a level property. The spa itself exceeds the required minimum five (5) foot side setbacks and the combined twenty (20) foot side setback and it is only the location of the existing garage, three (3) feet from the northern side property line that results in the project requiring a variance of the combined twenty (20) foot setback.

Other Agency Comments/Requirements

Ross Valley Fire Department

The use of propane storage tanks is restricted in the Town Code for barbecues and mobile homes only (Exhibit B).

Marin Municipal Water District

- The owners must comply with MMWD's indoor and outdoor requirements of District code Title 13, Water Conservation as a condition of water service.
- 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 # 12-23 based on the following findings and subject to the following conditions:

Recommended Findings

1. The spa location exceeds the minimum side yard setback requirements, the front and rear setback requirements, floor area ratio (FAR) and the lot coverage limitation. 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. Hooking the spa up to permanent gas service and providing sound attenuation for the equipment will mitigate the impacts of the project on adjacent properties. 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.

The site is narrow and steps steeply up the hillside from Forrest Avenue to Forrest Terrace. These site features, in addition to the fact that the garage is located only three feet from the northern side property line, are the special circumstances applicable to the property that result in the strict application of the Zoning Ordinance depriving the applicant of privileges enjoyed by other property owners in the vicinity and under identical zone classification.

The variance or adjustment will not constitute a grant of special privilege because the spa complies with the minimum required setbacks and its sound impacts will be mitigated by the conditions of approval.

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 because mitigation measures have been incorporated into the project to minimize noise impacts on the neighbors eliminate fire hazards by requirement the provision of a permanent gas supply.

Recommended Conditions of Approval

1. This approval is limited to the spa being located as shown on the plans prepared by Harold Lezzeni, sheet number one, dated July 9, 2012 (the only modifications allowed include the elimination of the propane tanks and provision of a permanent gas supply line).

2. Prior to issuance of a building permit the applicant or his assigns shall secure written approval from the Ross Valley Fire Authority noting the developments conformance with their recommendations.
4. Prior to operating the spa the Building Official shall field check the completed project and perform an underground utility inspection to verify that the gas line installation and hook-up to the spa complies with the Building Code.
5. 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". The owners must comply with the same Ordinance No. 637 for the life of the spa and discharge spa water to the sewer system only.
6. 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 # 12-23. Any construction based on job plans that have been altered without the benefit of an approved modification of Use Permit 12-23 will result in the job being immediately stopped and red tagged.
7. The applicant or owner shall defend, indemnity, 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, indemnity, 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

Development plans

Exhibit A - Applicant's supplemental information

Exhibit B – Other agency/department conditions

Exhibit C – letter from owner of 399 Forrest Avenue

