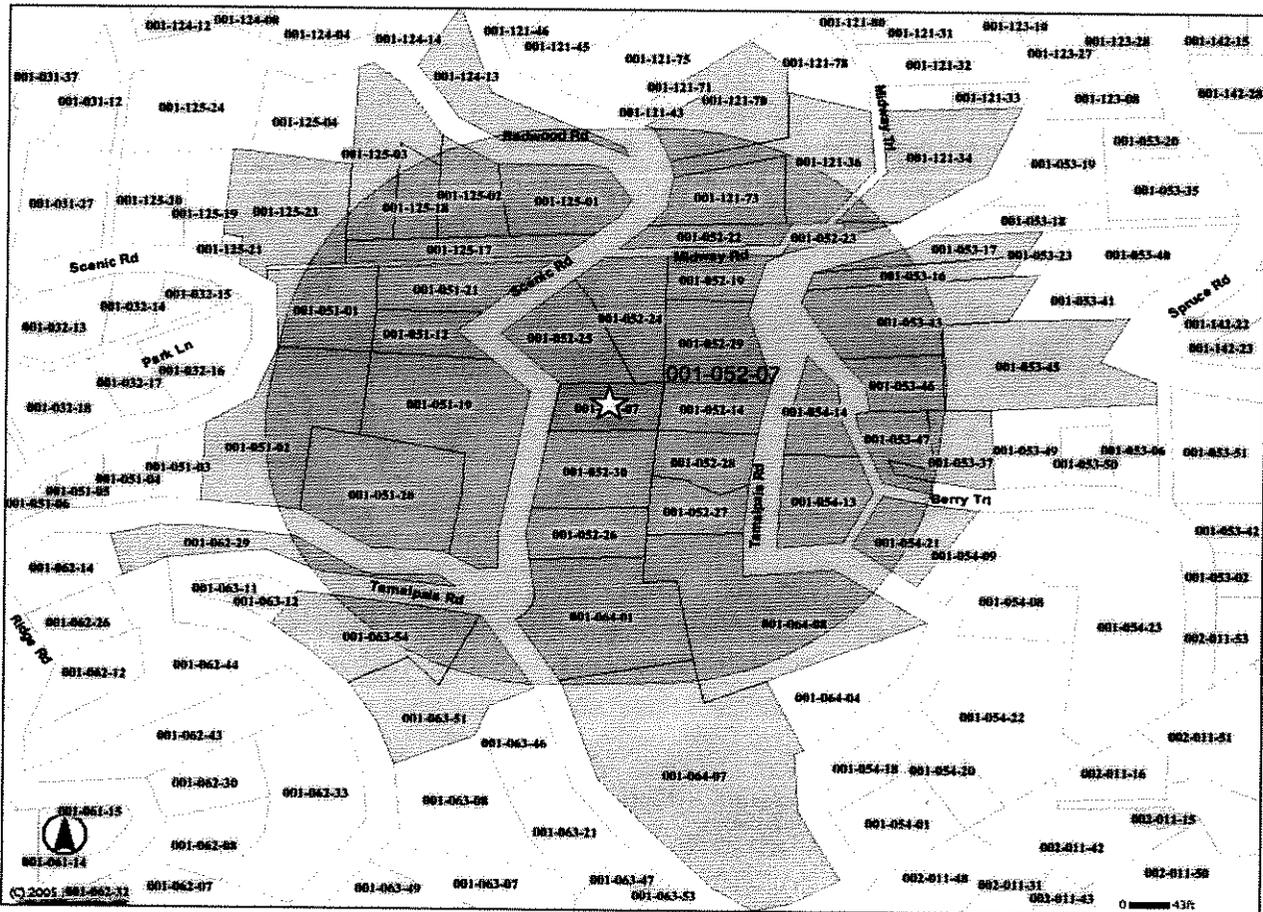


TOWN OF FAIRFAX STAFF REPORT

Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: February 21, 2013
FROM: Jim Moore, Director of Planning and Building Services
 Linda Neal, Senior Planner
LOCATION: 305 Scenic Road; Assessor's Parcel No. 001-052-07
PROJECT: Mechanical/equipment/storage area
ACTION: Modification of approved Hill Area Residential Development and Design Review permits and Height Variance; Application # 10-28
APPLICANT: Michael and Marjorie McLennan
OWNER: Same
CEQA STATUS: Categorically exempt section 15301(e)



305 SCENIC ROAD

BACKGROUND

The 6,410 square foot site is 55.89 feet wide and slopes down from Scenic Road at a rate of 57%. It was previously developed with a condemned 1,397 square foot residence that was constructed in 1920. There was also previously a one car garage on the property. A collapsing retaining wall holding up the public road in the area of the garage was replaced in 1986. The dilapidated garage was demolished in 2005 after the Town began receiving complaints from the neighbors. The site was presumably graded with a large retaining wall below the original structure in the 1920's when the site was first developed (Exhibit B – Site plan and topography of original cottage).

On October 21, 2010, the Commission approved a Hill Area Residential Development (HRD) permit, Encroachment Permit, Minimum Front Setback Variance and an Encroachment permit for a new 2,563 square foot, three story, 3-bedroom, 2 ½-bath, single-family residence with a 2-car carport and 3rd-guest parking space parallel to Scenic Road.

DISCUSSION

Directly below the previously existing cabin was a 7 foot 7 inch retaining wall and it appeared that the wall had been in that location and the site had been graded for many years, possibly since the original construction of the residence (exhibit B).

The originally approve project plans showed that the mechanical area beneath the residence would be minimally improved with an under floor area, 6 feet in height, with slab underneath the water heater and the furnace (see originally approved sheet A2.4, under floor plan and sheet A3.2, north elevation, under floor access door showing height of under floor area).

However, during construction, the Building Official discovered that the lower level under the three story residence had been increased in height from the approved 6 feet to 8 feet without approval – creating an informal fourth floor.

Town Code § 17.008.020, Definition of Story, indicates that a story is, "The portion of a building included between the surface of any floor and the surface of the next floor above it, or if there be no floor above it, then the space between the floor and the ceiling next above it. A basement shall be counted as a story for the purpose of height measurement if subdivided and used for dwelling or business purposes.

Town Code § 17.008.020, Definition of Basement, indicates that a basement is, "An area below the first floor with an exterior wall extending no more than three feet above the adjacent grade of any side wall. An interior area of any single-family dwelling or duplex that meets this definition shall not be considered floor area".

The Uniform Building Code indicates that the ceiling height for living space area in residential structures must be a minimum of 7 feet (California Building Code § R305.1).

1. The three definitions above resulted in the planning staff making the following determinations with regards to the lowest first level of the residence:
2. The area cannot be considered a basement because the exterior walls extend 7 feet above grade (see sheet A 3.12A of development plans).
3. The area cannot be considered under floor/un-improvable/uninhabitable area because the ceiling height is 8 feet and exceeds that required for living space (see sheet A 3.12B of development plans).
4. The area must be considered a fourth story.

Town Code § 17.080.060(A) limits residences located on sites that slope down from the street to 35 feet in height and three stories. Therefore, the applicant is requesting a modification of the originally approved Hill Area Residential Development (HRD) permit for the project and a Height Variance to have a 4 story residence.

Please note: The structure *does not exceed* the maximum 35 foot height limit, it just exceeds the permitted number of stories.

The applicant has indicated that while originally intending to just pour a slab for the mechanical equipment, after observing how ground water surfaces in areas below the house but within the foundation area, he determined that he would have to pour a slab and waterproof the entire under floor area to protect the new construction from damage. The project architect added that the area was already excavated under floor shelf area which was excavated a little further to simplify construction of the foundation system for the new house (Exhibit A).

The applicant has indicated that he has no intention of developing the area as living space.

In granting height variances for down sloping residential sites in Fairfax the Commission does run the risk of setting precedence for other similar undeveloped similar sites. Many of the hillside residential sites, developed and undeveloped, have slopes in excess of 75% that have the similar potential for the creation areas underneath the living area stories that could be improved in a similar manner or as living space (exhibit C – slope legend). In fact, this is a common location for both the Building and Planning staff to find illegally created living space.

If the original plans had showed this area in the original drawings, staff would have advised the applicant to relocate the mechanical, apply for a height variance or lower the height of the area below that required for living space (below 7 feet).

The Code regulations, which reflect the sentiments of the general community, indicate that Fairfax citizens do not want 4 story residences in their community. In fact, the processing of three story residences in the last 25 years have often been contentious.

However, the difference between this property and other developed properties are as follows:

1. The site was previously graded with a level area above the retaining wall for the first floor of the cottage to rest on; and
2. The original access stairways are being retained on the site with one of them still providing access to this lower story which now houses the mechanical equipment.
3. The area will remain unimproved and will house heater conduit pipes for the heating system. Also, the concrete slab and retaining walls that create the area will make it very difficult to install any plumbing in the lowest level. Therefore, there is little risk of the area being converted to living space.

Also, the Ross Valley Fire Department requires that under floor areas be enclosed so the area will remain enclosed even if the requested Variance is not approved; and

The fourth story does not add to the overall height of the house above grade (it is not an upper story).

OTHER AGENCY/DEPARTMENT COMMENTS

Building Official

The Building Official noted that it is common for these spaces created by the enclosure of underfloor areas which is required by the Fire Department, to later be improved as living space. He indicates that the project area complies with Building Code requirements (Exhibit C).

Ross Valley Fire Department

The Fire Department indicated that the project already meets or exceeds Fire Code Requirements.

Marin Municipal Waters District

All indoor and outdoor requirements of District Code Title 13 shall be complied with and backflow protection shall be provided in compliance as a condition of water service.

RECOMMENDATION

1. Open the public hearing and take public testimony.
2. Close the public hearing.
3. Move to approve the proposed modification of application # 10-28 based on the following findings and subject to the following condition of approval:

Recommended Findings

The site was previously developed with a residence and therefore has a 57% average slope and is already graded to include a retained shelf area where the fourth, lowest floor of the house will be located. The height of the upper living levels is fixed because of the access to the residence from the parking located at street level leaving the existing under floor area in its current configuration with a height of 8 feet. These are the special circumstances applicable to the property that warrant approval of a height variance.

The variance or adjustment will not constitute a grant of special privilege because the fourth story is not being used for living space, will remain unconditioned for use as a storage/mechanical room and was the result of the owner trying to facilitate the construction of the drilled pier and grade beam system for the house while also protecting the new residence from water damage.

The strict application of this title would result in excessive or unreasonable hardship because the owner would have to remove the floor slab which is an integral part of the foundation system in an area of the structure that has been enclosed per Ross Valley Department regulations and which is not improved to have the appearance of a fourth floor with windows.

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 the area is underneath the house and does not impact the overall height or mass of the structure.

Recommended Conditions

1. Prior to the project final the applicant must sign, notarize and record a deed restriction at the Marin County Recorder's Office indicating that the first floor may not be improved for living space; a) may not be conditioned; b) may not be sheet rocked or insulated; c) must have minimal electrical providing only an overhead light fixture for illumination and any electrical necessary for the mechanical equipment; and, d) may have no doors, windows or openings other than the access door and the openings for the heating system venting system.
2. The owner must sign, notarize and record a deed restriction stating the above at the Marin County Recorder's Office prior to the project final inspection.
3. The applicant must comply with all the original conditions of approval for Application # 10-28 unless a condition is waived in writing by another agency.

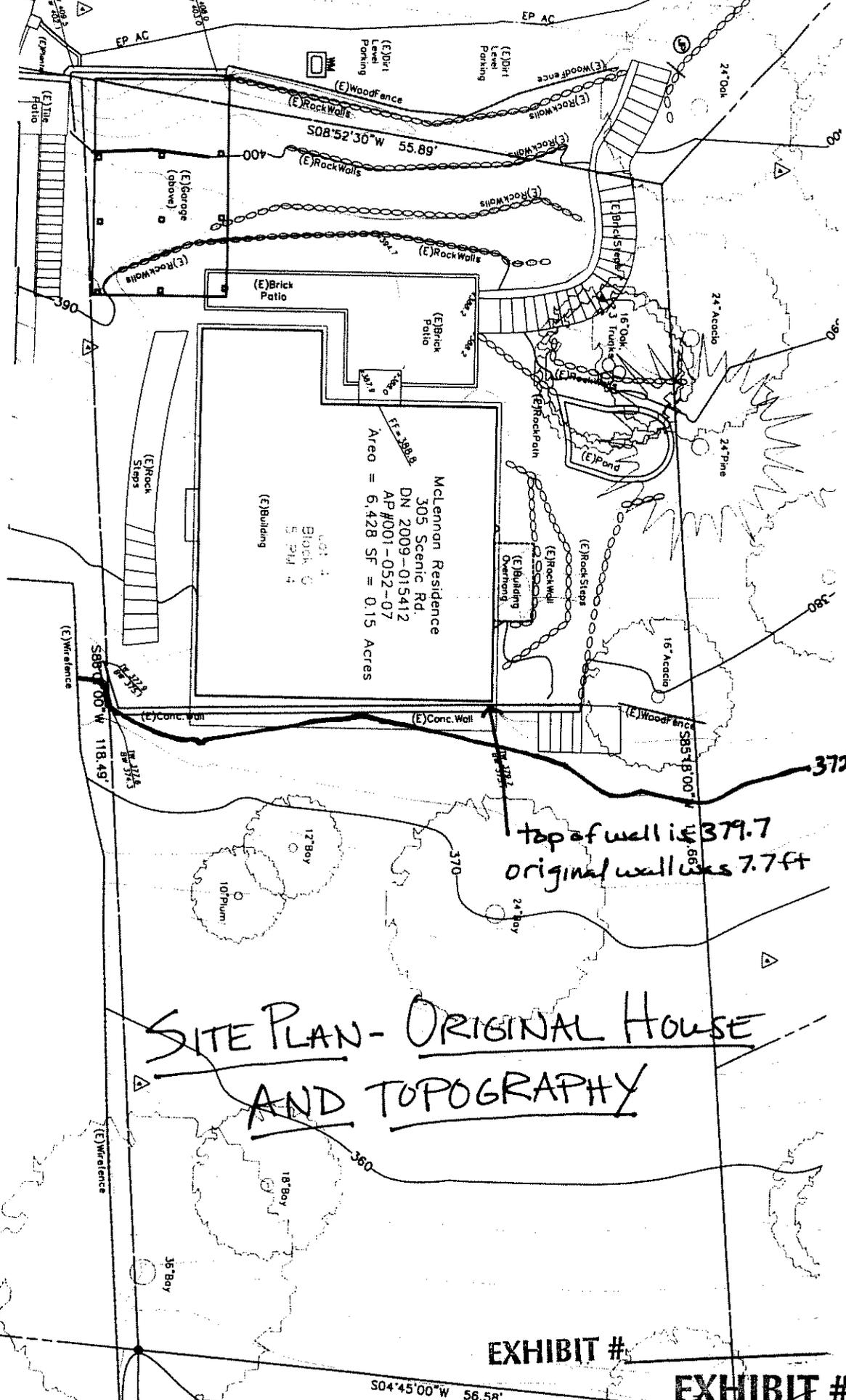
ATTACHMENTS

Exhibit A – applicant's supplemental information and Architect's statement

Exhibit B – topographic map showing footprint of cottage, stairway and retaining wall that previously existed on the site

Exhibit C – Mark Lockaby, Building Official, memorandum dated 2/12/13
Exhibit D – Other Agency/Department Comments

SCENIC RD.
(30'R/W)



McLennan Residence
 305 Scenic Rd.
 DN 2009-015412
 AP#001-052-07
 Area = 6.428 SF = 0.15 Acres

top of well is 379.7
 original well was 7.7ft

SITE PLAN - ORIGINAL HOUSE
AND TOPOGRAPHY

EXHIBIT #

EXHIBIT # **B**

S04°45'00"W 56.58'



TOWN OF FAIRFAX

142 Bolinas Road, Fairfax, California 94930

(415) 453-1584 / Fax (415) 453-1618

2-12-2013

Re: 305 Scenic under floor area

Situations like this occur quite often when there is perceived to be wasted space under structures on steep hillsides. Typically homeowners excavate out the areas without the benefit of engineering, retaining walls, or permits which severely de-stabilize the hillside, and structure. We usually catch them on resale inspections, and require remediation to rectify the un-stabilized slope. I am recommending approval of this application because; a) there is a high probability that future owners will use the improved area and the recommended conditions will ensure that it is not improved for living space; and b) the area complies with the building code requirements. However, the Commission should be aware that the overall area does exceed the amount of space required by the applicable codes for a furnace room.

Mark Lockaby
Building Official

EXHIBIT #

C



Ross Valley Fire Department
777 San Anselmo Avenue, San Anselmo, CA 94960

Roger Meagor
FIRE CHIEF

Memo

To: Linda Neal

From: Rob Bastianon, Fire Inspector *RB*

Date: 12/14/2012

Re: 305 Scenic, Fairfax

-
1. I have reviewed the plans for compliance with the Fire Code. Project meets or exceeds current Fire Code requirements. All original conditions of Fire Permit 11-0045 apply.

Committed to the protection of life, property, and environment.
SAN ANSELMO • FAIRFAX • SLEEPY HOLLOW

HEADQUARTERS: 777 San Anselmo Avenue, San Anselmo, CA 94960 TEL: (415) 258-4686 FAX: (415) 258-4689 www.rossvalleyfire.org

EXHIBIT # **D**



MARIN MUNICIPAL WATER DISTRICT

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

December 12, 2012
Service No. 04760

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

RECEIVED
DEC 13 2012
TOWN OF FAIRFAX

RE: **WATER AVAILABILITY** - Single Family Dwelling
Assessor's Parcel No.: 001-052-07
Location: 305 Scenic 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 proposed 392 square foot mechanical room addition to the residence currently under construction 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) 945-1531.

Sincerely,

Joseph Eischens
Engineering Technician

JE:mp

cc: Town of Fairfax Building Dept

Attn: Sergeant Stuart Baker

**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: December 4, 2012

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

Address and Parcel No: 305 Scenic Road; Assessor's Parcel No. 001-052-07

Project Description: Construction of a 392 square foot, fourth floor, mechanical room underneath a three story residence that is currently under construction. The area is improved with a concrete floor, has no windows but has a full sized access door and an 8 foot ceiling height. The project was previously approved with only three stories in 2010.

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	3/23/11	Development plans
1	11/29/12	Letter indicating why the 4 th story was necessary
1	10/2/12	Letter addressing the necessity of having 4 th story, 392 square foot utility/mechanical room
1	undated	Photos of 4 th floor area

REMARKS No PD CONCERNS. SR

Please respond by December 19, 2012. Thanks

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

Michael Douglas McLennan

General Contractor
License #632451

TOWN OF FAIRFAX

November 29, 2012

NOV 29 2012

RECEIVED

Planning Commission
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930

Regarding: Application for a variance on under floor area at 305 Scenic Road new house build.

Dear Planning Commission:

This cover letter is to accompany a submittal to the Planning Department through Linda Neal requesting approval of variance from drawn plans along with pertinent pages from original and revised plans. Included in the submittal are nine pages of drawn plans by Architect Onju Updegrave. Eight of those pages are from the original plans approved in 2011 showing title page, drawings for each floor, the topographical site drawing, and elevation drawings. The ninth page shows the 'as built' drawings that varied from the original plans. Also included is a letter dated 10/2/12 written to Senior Planner, Linda Neal, reviewing the situation.

This is a project undertaken with submittal of plans exactly three years ago. The property had a derelict house built in 1922 that had been abandoned for almost twenty years. The neighbors are happy to see something happen to remove this eyesore and have been very complimentary on the design and execution of what was stated at the Planning Commission review meeting as the first new house build in three years for Fairfax.

A couple of points addressing concerns as they pertain to town guidelines follow:

This house is being built on a very steep slope well in excess of 10% (actually 35% +). The town guidelines spell out a height limit of 35 feet from the natural grade for these sorts of lots, which we clearly meet. The steep grade of the lot left a considerable space under the bottom living floor originally drawn to be used for utilities such as furnace and water heater. My letter dated 10/2/12 reviews the process of protecting that space and utilities from potential water intrusion. I'm sure you are aware of the recent catastrophic flood and mud slide events in the last ten years for this hill.

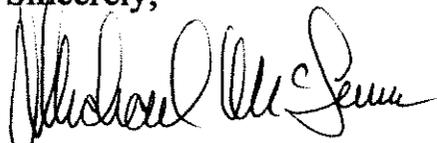
EXHIBIT #

A

The measures taken to protect the utility area by building code rules and town standards do not constitute a fourth story outside of section 17.080.060 rules. There are no plans to use this space for anything other than utilities and storage. That is the essence of the definition of a basement/under floor under section 17.008.020. There is no interior access to this space and there are no plumbing elements outside of those required for the furnace and water heater. Additionally, the definition of a story as outlined in the same code section states that 'A basement shall be counted as a story for the purpose of height measurements if subdivided and used for dwelling or business purposes'. This space will never be used as a dwelling or business. If it pleases the Town, I will certainly agree on a deed restriction to that effect.

The Town Planners have voiced concern, as their primary focus, that this space might be developed in the future as a separate living space. I have clearly spelled out the reasons those concerns are unfounded in conversation and through written communication. We did vary slightly from the cross section drawings showing an abbreviated subfloor. I believe those should be seen as reasonable in addressing the water concerns. The eight foot ceiling height we ended up with still left a nearly six foot retaining wall at the South East corner of the foundation below the basement floor level. The process of building a house on such a steep slope naturally leads to some field decisions to control costs, exercise care in water protection and meet engineering requirements. My closing statement in the 10/2/12 letter invites a positive stance to a project that can only lead to good things for the Town of Fairfax.

Sincerely,



Michael McLennan
Owner/Builder

List of attachments (ten copies each):

- Copy of ltr. to Planners dated 10/2/12 with pages from town guidelines
- Eight pages from original plan submittal showing under floor
- One revised page showing 'as built'

Michael Douglas McLennan

General Contractor
License #632451

October 2, 2012

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

0084

Dear Linda:

I have been wrestling with the question that came up a month or so ago regarding concerns on the lower utility area of this new house at 305 Scenic Road. Our last discussion including your associate James Moore, left me feeling perplexed on the proposed process. This note offers further clarification on the points discussed and a request for the town to see my actions as reasonable after review.

The issue came up when Mark noticed we had done more work than was on the plans to an area under the living space designated a utility area for the water heater and furnace. The area on the East side of the foundation matrix, shown on page A2.4, has a foundation grade beam supported on piers separating the crawl space to the West from the area with the furnace and water heater. With the prospect of the area's heavy water saturation and history of floods in the winter months, it was important to take every action possible to keep water from reaching the heating appliances. In order to protect from water intrusion, I took the reasonable step of installing drainage elements along the up side of line number 4. The nature of the fractured rock base in this area brought concerns water could go under any drainage, emerging on the other side causing serious damage to these valuable appliances. To guard against this possibility we covered the area with a concrete slab. The size of the area covered in slab is approximately 13' x 26'. If you consider how to effectively seal from potential ground water, the only margins that would work were the perimeter exterior foundation and the structural grade beam. If the area was reduced, water could intrude in to a smaller area not bordered by structural elements and cause damage. There was additional concern over the height of the utility space. A standard water heater, which is the type we plan to use, can not be placed in a low height space due to the need for an effective flue heat rise. Consideration for creating a concrete well for that appliance surrounded by grades above the bottom of the appliance would not make hydrologic sense and would violate rules against pooling gas recesses.

There is no plan to use this area other than for the appliances and some owner storage. The areas used for this purpose do not count on square footage using any parameter by building officials to my knowledge. It was pointed out that the town's primary concerns are for a prohibited second unit. I made the points that nothing of the sort is contemplated and, regardless, there are not plumbing drains or water lines below line #4 other than those serving the appliances. My thoughts on your proposal to force an involved process before the Planning Commission was one of not understanding why. Your initial proposed fee of over \$4,000 to bring it before the Commission after the town recently quadrupled its' fees was outrageous. The concession to reduce those to the old fee schedule is appreciated, but still hard to understand. There is no reason, in my opinion, to make a big deal of this minor change taken to prevent a serious potential future loss.

The potential resolve suggested by both of you would be to propose a 'deed restriction' for this property prohibiting a second unit. I am fine with this. However this building is designated a single family residence and will always be that by the conditions of approval already in place. To date I have paid well over \$10,000 in fees directly to the Town of Fairfax for this project. I believe the town needs to consider how difficult it is to finance a project such as this in these times. During this period of very high unemployment, I have employed an average of six people with full insurances including health care and several levels of payroll and income taxes. I would remind the town that we have taken a derelict property, which sat for twenty years occupied only by raccoons, replacing it with a thoughtfully designed and solidly built home that will result in a sizable property tax revenue increase and happy neighbors. There is and was no desire to do anything other than take reasonable steps to protect my investment. I appeal to your judgment to keep this project on budget and let this go.

Sincerely,

Mike McLennan

Linda Neal

From: Onju Updegrave [onju@onju.net]
Sent: Monday, February 04, 2013 10:20 PM
To: Linda Neal
Subject: Re: 305 Scenic Road
Attachments: A3.1.pdf

Hi Linda,

In response to your question about the 8' ceiling height in the underfloor area, it may be easiest to reference the original submittal sheet A3.1. I've attached this for your reference. The old house on the property had a dug out area in part of the south side of the building, which is diagramed in the dashed line in the section drawing. This was a very funky fungus infested portion of the building, and was non-habitable. When this portion of the building was demolished there was partial level area shelf under the house. Mike leveled out some the the uphill area of the remaining underfloor area to simplify the plan for the foundation, drainage, and concrete waterproofing slab under the building.

I hope that makes sense. Let me or Mike know if you would like us to come into review this with you further.

Onju

--

Onju Updegrave, Architect

onju@onju.net

www.onju.net

California:

110 Deer Hollow Road, San Anselmo, CA 94960

Ph CA: 415-457-7788

Fax: 415-457-7747

Colorado:

3445 Penrose Place, Suite 210 , Boulder, CO 80301

Ph CO: 303-339-0772

From: Linda Neal <lneal@townoffairfax.org>

Date: Friday, February 1, 2013 2:51 PM

To: Onju Updegrave <onju@onju.net>

Subject: 305 Scenic Road

Hi Onju,

I am having trouble figuring out how the ceiling heights got to be 8 feet at 305 Senic when they were not shown that way on the elevations or in the cross section through the house. Was the topographical survey information incorrect, was more grading done to construction the residence foundation resulting in an 8 foot high area, was the house raised up? Something must have changed or been incorrect to start with. Any light you can shine on how this occurred would be helpful.