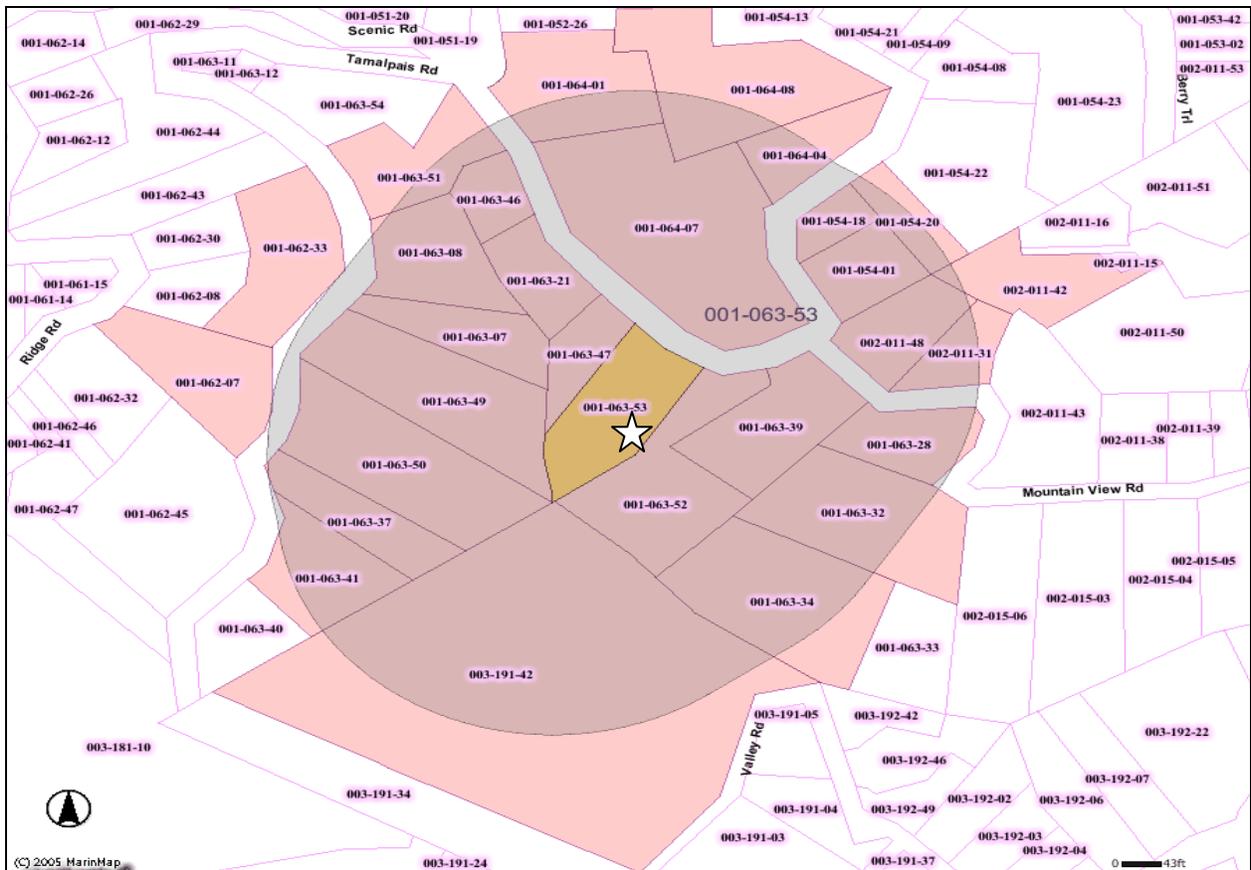


# TOWN OF FAIRFAX STAFF REPORT

## Department of Planning and Building Services

**TO:** Fairfax Planning Commission  
**DATE:** June 20, 2013  
**FROM:** Jim Moore, Director of Planning and Building Services  
 Linda Neal, Senior Planner  
**LOCATION:** 271 Tamalpais Road; Assessor's Parcel No. 001-063-53  
**PROJECT:** decks, trellises and planting beds  
**ACTION:** Use Permit; application # 13-13  
**ZONING:** Residential Single-family RS 6 Zone  
**APPLICANT:** Dominic Phillips  
**OWNER:** Dominic Phillips and James Gregory  
**CEQA STATUS:** Categorically exempt section(s) 15303(e)



271 TAMALPAIS ROAD

## BACKGROUND

The 19,888 square foot site slopes down from Tamalpais Road at an average rate of 39%. The site was originally developed with a single-family residence that was located on the eastern side property line and there is no record of when this structure was built. In 1997 a new 513 square foot garage with a storage area underneath was constructed after the Commission granted Setback Variances and an Encroachment permit for the structure. Then the old residence was demolished and a new 2,218 square foot residence was built in 2004 that was incorporated next to the existing garage. A Hill Area Residential Development Permit, Encroachment Permit and Side and Front Setback Variance were granted by the Commission for the project.

Staff finds no record of any permits for the three foundations that step down the hillside below the new residence parallel to the eastern side property line.

## DISCUSSION

The applicants are proposing to build stepped decks on top of the unpermitted foundations that will include raised planting beds and lattice screens at the edge of decks that will step down the hillside. The structure is considered a permitted accessory use per Town Code § 17.080.040(B). Accessory structures can be up to 15 feet in height per Town Code 17.080.060(B). The proposed accessory structure will be a maximum of 12 feet in height measured from the bottom of the existing foundation to the top of the privacy trellis which will also step down the hillside following the terrain and the un-permitted foundation.

The project complies with the Residential Single-family RS 6 Zone District regulations for sloped properties as follows:

	<b>Front Setback</b>	<b>Rear Setback</b>	<b>Combined Front/rear Setback</b>	<b>Side Setbacks</b>	<b>Combined Side Setbacks</b>	<b>FAR</b>	<b>Lot Coverage</b>	<b>Height</b>
<b>Required/ Permitted</b>	<b>6 ft</b>	<b>6 ft</b>	<b>35 ft</b>	<b>5 ft &amp; 5 ft</b>	<b>20 ft</b>	<b>.40</b>	<b>.35</b>	<b>35 ft, 3 stories</b>
<b>Existing</b>	<b>0 ft</b>	<b>100 ft</b>	<b>100 ft</b>	<b>0 ft &amp; 30 ft (house, variance approved 2004)</b>	<b>30 ft</b>	<b>.11</b>	<b>.11</b>	<b>30 ft, 3 stories</b>
<b>Proposed</b>	<b>0 ft</b>	<b>75 ft</b>	<b>75 ft</b>	<b>2 ft &amp; 30 ft (house), 5 ft &amp; 74 ft (deck/trellis/planter accessory structure)</b>	<b>30 ft (house), 79 ft (accessory structure)</b>	<b>.11</b>	<b>.11</b>	<b>30 ft, 3 stories</b>

Town Code § 17.080.070(B)(2) requires that structures maintain minimum side setbacks of 5 feet

from the property but combined the two side setbacks must a combined setback of 20 feet on sloped sites. Town Code § 17.044.070(A)(2) allows deck to encroach 2 feet into required setbacks. However, due to the close proximity of the houses at 267 and 271 Tamalpais Road and the orientation of 271 Tamalpais Road towards the rear yard of the residence at 267 Tamalpais Road, staff recommended that the applicant maintain a 5 foot setback.

The stepped lattice/planter/deck structure maintains in excess of the required 3 foot setback from the eastern side property line. The residence driveway which is the closest structure to the western side property line maintains a side setback of 20 feet so the proposed terrace improvements meets the required combined side setback of 20 feet.

The project complies with the required minimum front setback of 6 feet and rear setback of 12 feet and the combined front/rear setback of 35 feet [Town Code § 17.080.070(B)(1)].

The structure will also be only 12 feet height, less than the 15 foot height maximum allowed for accessory structures in Town Code § 17.080.060(B).

### **Required Discretionary Permit(s)**

#### **Use Permit:**

Town Code § 17.080.050(C) require that properties that do not meet the minimum size and width requirements must obtain a Use Permit prior to any use, occupancy or improvement. The site has a 39% slope and would have to be 31,000 square feet in size and 137 feet wide to comply with the Town Code. The site is only 19,888 square feet in size and 100 feet wide and therefore, the project requires the approval of a Use Permit.

The proposed structure will use permeable decking so it does not increase the lot coverage on the site nor does it count towards the Flood Area Ratio because it is not enclosed living space.

The project will be located on top of the existing abandoned foundation for the previous residence on the site so the disturbance to the site will be minimal and no trees will be removed to facilitate the construction.

Similar stepped decks and walled terraces exist throughout Fairfax in the hillside areas.

### **Other Agency Comments/Conditions (Exhibit B)**

Marin Municipal Water District (MMWD) has indicated that the property in general must comply with all indoor and outdoor requirements of District Code Title 13, Water Conservation. The landscaping plans for the deck shall be submitted and reviewed by MMWD prior to issuance of the building permit.

If backflow protection is required, it shall be installed as a condition of water service.

The Ross Valley Fire Department, Ross Valley Sanitary District, Fairfax Police Department and the Fairfax Building Official had no comments or concerns about the proposed project.

## **RECOMMENDATION**

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to approve application # 13-13 based on the following findings and subject to the following conditions:

### **Recommended Findings**

1. The project will not result in the property being out of compliance with the Floor Area Ratio regulations or Lot Coverage Limitation and it is similar in location and design to other stepped decks and terraced yards found throughout Town. Therefore, the approval of the use permit shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.
2. The proposed accessory structure will meet the minimum 5 foot side yard setback as well as all the other required setbacks and is 12 feet in height in compliance with the height regulations in the RS 6 Zone District. 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 found in the 2010-2030 Fairfax General Plan or the Fairfax Zoning Ordinance.
4. Approval of the use permit and construction of a deck that complies with the setback regulations, incorporates privacy screening in the design and that is only 12 feet in height above grade will result in equal development of the premises than would otherwise be the case, and said approval does not negatively impact the public interest.

### **Recommended Conditions**

1. The Building Official shall verify the location of the side property line and the 5 foot side setback and may require that the location be verified by a surveyor if necessary prior to the start of construction.
2. Screening plants shall be planted along the inside of the screening trellis if acceptable to the

Ross Valley Fire Department.

3. This approval is limited to the development illustrated on the 4 pages of plans submitted to the Town and received May 7, 2013 by the applicant with the Use Permit application including the cover sheets that reads, "271 Tamalpais Road Terraced Planter Hardscape".

4. Prior to issuance of a building permit the applicant or his assigns shall:

a. Submit a construction plan to the Public Works Department which may include but is not limited to the following:

- Construction delivery routes approved by the Department of Public Works.
- Construction schedule (deliveries, worker hours, etc.)
- Notification to area residents
- Emergency access routes

b. Prepare, and file with the Public Works Director, a video of the roadway conditions on the construction delivery routes (routes must be approved by Public Works Director/ the Public Works Director can waive this requirement).

c. Submit a bond or letter of credit to the Town in an amount that will cover the cost of possible roadway damage. The applicant shall submit contractor's estimates for any grading, site weatherization and improvement plans for approval by the Building Official/Public Works Director. Upon approval of the contract costs, the applicant shall submit bond or letter of credit equaling 100% of the estimated construction costs. The Building Official/Public Works Director may also waive this requirement.

d. A letter shall be submitted by a licensed civil engineer indicating that the foundations the proposed structure will be built upon are adequate to support its weight. Any remedial work shall be designed by a structural engineer certified as such in the state of California. Plans and calculations of the foundation and retaining elements shall be stamped and signed by the structural engineer and submitted to the satisfaction of the Plan Check Engineer.

e. Prior to submittal of the building permit plans the applicant shall secure written approval from the Ross Valley Fire Authority noting the development's conformance with their recommendations and shall include a copy with the building permit submittal.

5. During the construction process the following shall be required:

a. All construction related vehicles including equipment delivery, cement trucks and construction materials shall be situated off the travel lane of the adjacent public right(s)-of-way at all times. This condition may be waived by the building official on a case by case basis with prior notification from the project sponsor.

b.. Any proposed temporary closure of a public right-of-way shall require prior approval by

the Fairfax Police Department and any necessary traffic control, signage or public notification shall be the responsibility of the applicant or his/her assigns. Any violation of this provision will result in a stop work order being placed on the property and issuance of a citation.

6. The Planning Department shall field check the completed project during the project final inspection to verify that all Planning Commission conditions have been complied with.

7. The roadways shall be kept clean and the site free of dust by watering down the site or sweeping the roadway daily, if necessary.

8. During construction the 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".

9. 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 Application # 13-13. Any construction based on job plans that have been altered without the benefit of an approved modification of Application # 13-13 will result in the job being immediately stopped and red tagged.

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

11. The applicant shall comply with any and all requirements of the Ross Valley Fire Department, the Ross Valley Sanitary District, the Marin Municipal Water District and the Fairfax Building Official .

12. The applicant or owner shall defend, indemnify, and hold harmless the Town of Fairfax or its agents, officers, and employees from any claim, action, or proceeding against the Town of Fairfax or its agents, officers, or employees to attach, set aside, void, or annul an approval of the Planning Commission, Town Council, Planning Director, Design Review Board or any other department or agency of the Town concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or owner's duty to so defend, indemnify, and hold harmless shall be subject to the Town's promptly notifying the applicant or owner of any said claim, action, or proceeding and the Town's full cooperation in the applicant's or owner's defense of said claims, actions, or proceedings.

13. All conditions of agencies with jurisdiction over the project must be complied with unless that agency waives one or more of them in writing to the Town.

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

1. All indoor and outdoor improvements shall comply with District Code Title 13, Water Conservation, as a condition of water service.

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

## **ATTACHMENTS**

Exhibit A - Applicant's supplemental information

Exhibit B – Other Agency and Department comments

Exhibit C – Letter from neighbors at 269 Tamalpais Road

