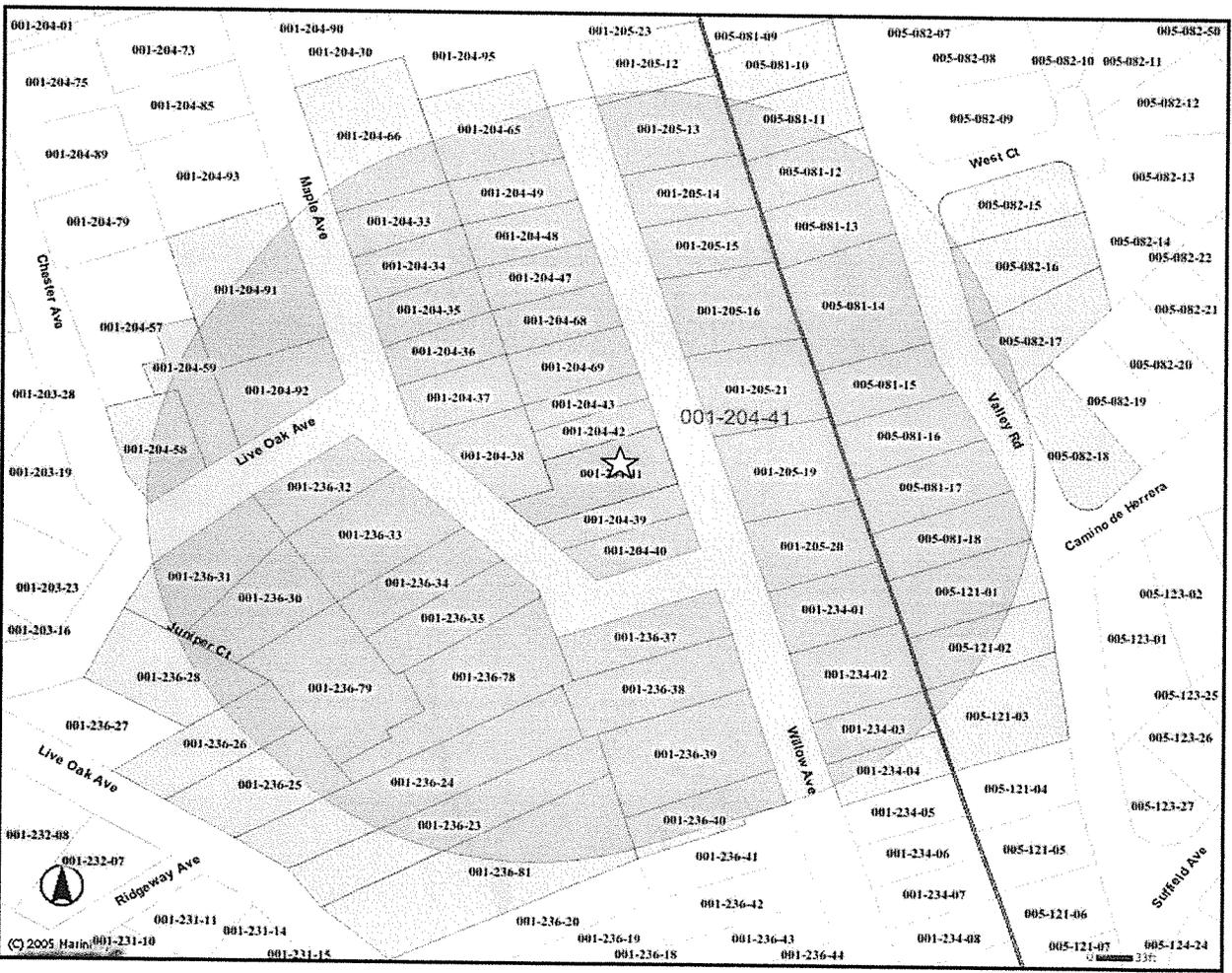


**TOWN OF FAIRFAX
STAFF REPORT**
Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: June 19, 2014
FROM: Jim Moore, Director of Planning and Building Services
 Linda Neal, Principal Planner
LOCATION: 73 Willow Avenue; Assessor's Parcel No. 001-204-41
PROJECT: Residential Second Living Unit
ACTION: Use Permit and Variances; Application # 14-24
APPLICANT: Maria Allis
OWNER: same
CEQA STATUS: Categorically exempt, § 15301(a), 15301(e)(1) and 15303(a)



73 WILLOW AVENUE

BACKGROUND

The 6,105 square foot site is relatively level with only a 2% slope. The property has two street frontages running from Willow Avenue through to Maple Avenue. The property is located in the Residential RD 5.5-7 Zone District which allows single-family residences on properties of 5,500 square feet or more and duplexes on lots of 7,000 square feet or more.

The original house was built in 1912 prior to the Town's incorporation in 1931.

Records show that there was a 1 car garage on the property prior to 1988 when the property was sold to the people who owned the site prior to the applicant. Then sometime between 1988 and 1991 when the property was purchased by the applicant at least a portion of the basement/garage area was converted to living space without the required permits. A permit was issued in 1991 to legalize the unpermitted electrical and sheet rock portions of the basement but the plans clearly showed that the 16 foot deep garage was to remain a garage and the rest of the basement area was only to be used as storage/workshop area (Exhibit B – approved building permit plans from 1991).

DISCUSSION

In the latter part of 2013, the Fairfax Building Official received a complaint that construction was occurring in the basement of the residence at 73 Willow Avenue and that the area was being converted into an accessory residential living unit. Staff wrote to the owner requesting a site inspection which occurred on December 10th, 2013. The inspection revealed that a portion of the one car garage and the remainder of the basement have been converted into an unpermitted residential second unit.

The owner has now applied for a Variance and a Use Permit to legalize the unit.

The 567 square foot, one bedroom unit is located in the basement and a portion the garage of the 1,134 square foot residence.

Town Code Chapter 17.048 regulates second units and the requirements include but are not limited to the following (staff comments are in bold, italicized font):

1. Either the primary unit or the second unit must be owner occupied. ***The owner lives in the main house.***
2. The unit may not be more than 700 square feet in size or 30% of the size of the main unit whichever is more restrictive and they are limited to studio or 1 bedroom units only. ***The 567 square foot unit is larger than the 340 square feet allowed by the Code (30% of the 1,134 square foot residence is 340 square feet). However, it is smaller than the permitted maximum 700***

square feet and only has one bedroom and a combined kitchen/living room area.

3. Second units may be attached to or located within the main unit or they can be detached in an accessory structure. **The second unit is contained within the basement.**
4. The site must be able to accommodate parking for the main residence as well as the second unit on the site and the second unit parking may not be in tandem with any of the parking for the main house. This requires the provision of four, on-site, 9 foot by 19 foot parking spaces. **The site accommodates two tandem parking spaces in the driveway off Maple Avenue, the applicant proposes formalizing a third space in the southern side yard setback and the required guest parking space is provided along the Willow Avenue property frontage within the right-of-way as permitted by Town Code § 17.052.030(A)(2).**
5. The second unit shall meet the setback, lot coverage, floor area ratio and height regulations for the zone district in which they are located or the Commission can grant exceptions (variances) the regulations. **The unit is located in a structure that was constructed prior to the Town's incorporation and adoption of setback regulations. No new construction is proposed and the unit is contained within the footprint of the original structure. The development will not result in the property being out of compliance with the FAR, height or lot coverage limitations.**
6. Construction and Fire Codes must be complied with. **Compliance with all other agency conditions is included as a condition of approval.**
7. The project site must meet the minimum size and width requirements for the property slope. **There are very few parcels in Town that comply with the minimum size and width requirements which were adopted in the 1970's and were much larger than the original size requirements. The Code allows the Commission to grant use permits for development and/or modification/improvements of these parcels and the applicant has filed the required discretionary application for an exception since the parcel is only 6,105 square feet in size and has an average width of 42 feet.**

Assembly Bill 1866 was passed to provide for the creation of second units and to limit local second unit ordinance provisions relating to unit size, parking, fees and other requirements so that they not be so "arbitrary, excessive or burdensome" so as to restrict homeowners from creating the units (Exhibit B – Government Code Section 65852.2, State Second Unit Law). The law required the Town to begin processing second unit applications ministerially as of July 1, 2003. The Town's response to this new legislation was to amend the second unit ordinance to allow the Director of Planning and Building Services to ministerially approve **second units that comply with**

all the regulations. Units that do not comply with all the requirements still are required to obtain Planning Commission approval. The argument could be made that the Town did not make a good faith effort to accommodate second units since one of the requirements is that any property proposing to accommodate a second unit must meet the minimum size and width requirements based on its slope. This requirement alone results in almost every owner of a residential site in Town having to go through a discretionary public hearing and obtain Commission approval for a residential second unit.

The Town enacted a second unit amnesty program in 2009 which was extended in 2010 but which has now expired. The program was underutilized largely due to the expensive requirement for sprinkler systems and parking and the onerous public hearing process.

The fact that the existing residential second unit ordinance is onerous is evidenced by the fact that only two second units were processed and approved during the two year period from the end of 2007 through early 2010 when the Second Unit Amnesty Program was in effect. The Town has been charged by the state to provide affordable housing and the proposed unit will help the Town meet its affordable housing needs while providing a unit that complies in spirit with its adopted second unit ordinance and AB 1866.

In light of Assembly Bill 1866 and the adoption of the Town's own 2010 – 2040 General Plan which indicates the Town will consider ordinances encouraging second units, staff will be recommending the amendment of the Town's second unit ordinance and/or adoption of another amnesty ordinance to bring the Town regulations more into compliance with AB 1866 and the General Plan. We will be asking the citizens and the Commission and Town Council to consider:

- Eliminating the requirement that a parcel meet the minimum size and width requirements based on the slope. A substantial portion of all the parcels Town are substandard in size and/or width and subject to a public hearing process in order to make any modifications to their properties.
- Eliminating the need for the property survey to be recorded. Requiring a recorded survey can add anywhere from \$5,000 to \$10,000 to the cost of applying for a unit which is typically prohibitive for most owners (staff has verified these cost estimates with two different surveying companies). Staff plans to still require survey information to show that structures and parking are on private property but would make the requirement that the survey be recorded only when deemed necessary by staff (i.e. in the case of property line dispute).
- Eliminating the requirement that a parcel provide all the parking for the main unit and 1 space for the second unit if the unit is located on a property in the non "Wildlands Urban Interface (WUI) zone or with a slope of 30% or less adjacent to the WUI zone and that is within walking distance of public transportation.

- Increasing the unit size maximums and minimums to create more varieties of livable units.

Other amendments may also be proposed.

Discretionary Approvals

The legalization of the unit at 73 Willow Avenue requires the following exceptions to the Zoning Ordinance and Residential Second Unit Ordinance:

A Variance to the Second Unit Size Limits: Town Code § 17.048.040(B) limits second units to a maximum of 700 square feet or 30% of the size of the main unit, whichever is more restrictive. The house is 1,138 square feet in size so the unit is limited to the 340 square feet to be in compliance with the second unit ordinance. The unit is 567 square and requires an exception to the unit size limit because it exceeds the permitted 340 square feet by 227 square feet. It does not exceed the 700 square foot maximum unit size and provides a more adequately sized unit. As mentioned above, when the second unit ordinance is updated, staff will be recommending that the size maximum and minimum be increased. Right now the 320 square foot minimum results in units that are only slightly larger than a 1 car garage.

A Variance to allow the 2 parking spaces for the main residence to be in tandem and to allow the second unit parking in the required side yard setbacks: Town Code § 17.048.040(D) of the second unit ordinance requires that any property where a second unit is requested must provide the required parking for the main house **and the second unit** on the project site in compliance with the Town parking regulations. Due to the very irregular, pan shape of the parcel, with the narrow 25 foot wide handle, the two spaces for the main house are provided in tandem, in the main driveway and the second unit space is located within the required minimum and combined side yard setbacks. The third required guest parking space is provided along the property frontage, in the Willow Avenue right-of-way, as permitted in the code [Town Code §§ 17.052.030(A)(1)(c) and (A)(2)].

The requirement for all the parking to be provided on site and for a property survey to show the parking is on site was the result of the excessive amount of time the staff was spending on reviewing and processing second unit applications where parking was proposed in the public right-of-way and applicants were trying to claim public property for their own use and that of their tenants. This is not the case with the parking proposed for this project. The three required spaces are entirely out of the right-of-way and although the second unit space is located in the side yard setback, the structure nearest it, at 71 Willow Avenue, is a garage. Therefore, the impacts of locating the second unit parking in the setback are minimal.

Parking is a problem throughout Fairfax due to many of the homes predating the automobile or having been built when a typical family had only 1 vehicle. Likewise, then

narrow widths of many town roadways in town contributes to the parking problems. The complaints received about the unit included, noise made by the tenants during parties and when their vehicles, which happened to be motorcycles, come and go from the site, smoking odors and the potential fire hazards made by illegal wiring. None of the complaints received at the time of this staff report involved parking issues.

Tenants come and go with differing lifestyles. The required findings for the approval or denial of second units are set forth in the Town Code and are not based on the behavior of tenants or their choice of vehicles. Therefore decision of whether or not to approve a unit should be based on whether a safe and affordable housing unit can be created with the physical improvements and required parking minimizing the impacts of the development on the neighborhood.

The project does not require Design Review approval because legalization of the unit will not require any exterior changes to the structure.

The 6,105 square foot size of the site enables the conversion of the basement to living space without increasing the FAR below the permitted .40. The conversion will increase the FAR from .18 to .27.

The 6,105 square foot site provides the required onsite parking for 3 vehicles with the 4th required guest space along the property frontage. The unit is within walking distance of the public library, local schools, downtown Fairfax and public transportation.

A Recorded Survey

The applicant is requesting relief from the recorded survey requirement of Town Code 17.048.040(D). The applicant has submitted boundary survey information prepared by Stephen J. Flatland, Land Surveyor, dated February, 2014. Staff has determined that the survey information provided is adequate to protect the property rights of the Town and neighboring property owners and to show the location of the parking and carport structure.

Variations in General

Town Code § 17.048.090(B) gives the Planning Commission the authority to grant exceptions (Variations) to the Residential Second Unit Ordinance based on site particulars and the second unit improvements themselves.

Other Agency/Department Comments/Conditions

Ross Valley Fire Department

1. A fire protection system shall be installed throughout the entire building which complies with the requirements of the National Fire Protection Association (NFPA) 13-D and local standards. A separate deferred permit shall be required

for this system. Plans and specifications for the system shall be submitted by an individual or firm licensed to design and/or design-build sprinkler systems.

2. All smoke detectors in the residence shall be provided with AC power and be interconnected for simultaneous alarm. Detector shall be located in each sleeping room, outside of sleeping rooms centrally located in the corridor and over the center of all stairways with a minimum of one detector per story of the occupied portion of the residence.
3. A Vegetative Management Plan designed in accordance with Ross Valley Fire Standard 220 is required for this project. A separate deferred permit shall be required for this plan. Please submit directly to the Fire Department for review.
4. Carbon monoxide alarms shall be provided.
5. Address numbers must be 4 inches tall and if not clearly visible from the street, additional numbers are required. The project is a substantial remodel so the numbers must be internally illuminated or illuminated by an adjacent light controlled by a photocell and switch off only by a breaker so it will remain illuminated all night. The numbers must be internally illuminated, placed next to a light or be reflective numbers.

Marin Municipal Water District

1. There has not been a water entitlement established for the proposed second living unit. Payment of a connection fee is required prior to granting (legalizing) water service to the second unit. Installation of a separate meter is optional because the unit is contained within the existing structure.
2. The applicant must comply with the District Code Title 13, Water Conservation, as a condition of water service.
3. Should backflow protection be required it shall be installed and inspected prior to the project final inspection.

Sanitary District

1. If not already installed, the District requires that the sided sewer be equipped with an appropriate backwater prevention device.
2. If the project is approved the applicant shall contact the District to arrange for a District Inspector to approve the existing installation or to approve plans for the proposed installation.

Fairfax Police, Public Works and Building Departments

The Fairfax Police Department and the Building Department had no comments on the project.

RECOMMENDATION

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to approve application # 14-24 based on the following findings and subject to the following conditions:

Recommended Findings

Use Permit

1. The approval of the use permit shall not constitute a grant of special privilege because the proposed second unit is a one bedroom resulting in a built in size constraints that limits the number of persons that can comfortably live in the unit and the amount of rent that can be charged for the space
2. The limited size and the fact that the property provides the required number of parking spaces results in the granting of the use permit not contravening the doctrines of equity and equal treatment.
3. 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.
4. The proposed second unit is in accordance with Policy H-5.1.2 of the General Plan which indicates that the Town shall allow for the construction of different housing types to increase the supply of low and moderate income housing. The site and unit comply with the intent of the Zoning Ordinance regulations for the Residential RS 6 Zone District and do not change the appearance of the single-family home site. Therefore, 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.
5. The modest size unit will provide a more affordable living unit that can provide housing for relatives of the property owner, or to persons with limited incomes

and/or to the Fairfax's workforce that might otherwise have to commute from out of Town to work here. Therefore, said approval is in the public interest and for the protection or enhancement of the general health, safety or welfare of the community

Variances

1. The pan shape of the parcel with the parking located in the narrow 25 foot wide handle portion of the lot is the special circumstance applicable to the property resulting in the parking being located within the side yard setback with the two spaces for the main unit in tandem in the existing driveway.
2. Other properties in the vicinity have parking within the side yard setback and in tandem and variances have been granted to allow these types of parking configurations to continue and to be created as long as the impacts to neighboring properties will not be significant. Therefore, the granting of this 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. Granting of the variance to allow the second unit space to be provided within the side yard setback and to allow the two parking spaces for the main house to be in tandem will not result in the parking or loading of vehicles on public streets in a manner as to interfere with the free flow of traffic on the streets.
4. Granting of the variance will not create a safety hazard or any other condition inconsistent with the objectives of the zoning ordinance.

Exception to the Second Unit Ordinance Requirement for a Recorded Survey

The staff has determined that the survey information provided accurately depicts the property lines and parking locations and a recorded copy of the survey is unnecessary.

Recommended Conditions

1. Prior to issuance of a building permit the applicant or his assigns shall provide evidence that they have complied with the conditions, and have been approved by the Ross Valley Fire Department, Marin Municipal Water District and the Ross Valley Sanitary District.
2. The use permit will not be in effect and the unit will not be legalized until the applicant has obtained a building permit and inspections for the kitchen, bathroom and bedroom conversions.
3. Any changes, modifications, additions or alterations made to the approved building permit project plans will require a modification of Application # 14-24. Any

construction based on job plans that have been altered without the benefit of an approved modification of Application # 14-24 will result in the use permit being scheduled for reconsideration at a future Planning Commission meeting.

4. The applicant and its heirs, successors, and assigns shall, at its sole cost and expense, defend with counsel selected by the Town, indemnify, protect, release, and hold harmless the Town of Fairfax and any agency or instrumentality thereof, including its agents, officers, commissions, and employees (the "Indemnitees") from any and all claims, actions, or proceedings arising out of or in any way relating to the processing and/or approval of the project as described herein, the purpose of which is to attack, set aside, void, or annul the approval of the project, and/or any environmental determination that accompanies it, by the Planning Commission, Town Council, Planning Director, Design Review Board or any other department or agency of the Town. This indemnification shall include, but not be limited to, suits, damages, judgments, costs, expenses, liens, levies, attorney fees or expert witness fees that may be asserted or incurred by any person or entity, including the applicant, third parties and the Indemnitees, arising out of or in connection with the approval of this project, whether or not there is concurrent, passive, or active negligence on the part of the Indemnitees. Nothing herein shall prohibit the Town from participating in the defense of any claim, action, or proceeding. The parties shall use best efforts, acting in good faith, to select mutually agreeable defense counsel. If the parties cannot reach agreement, the Town may select its own legal counsel and the applicant agrees to pay directly, or timely reimburse on a monthly basis, the Town for all such court costs, attorney fees, and time referenced herein, provided, however, that the applicant's duty in this regard shall be subject to the Town's promptly notifying the applicant of any said claim, action, or proceeding.
5. Conditions placed upon the project by outside agencies may be eliminated or amended with that agencies written notification to the Planning Department prior to issuance of the building permit.
6. The applicant shall maintain the premises in a neat and attractive manner at all times and such maintenance shall include, but not be limited to exterior building materials, signage, windows, the planters and planting beds, the ground, patio and pavement surfaces.
7. The applicant shall comply with all applicable local, county, state and federal laws and regulations. Local ordinances which must be complied with include but are not limited to, the Noise Ordinance, the Garbage and Rubbish Disposal Ordinance, the Stormwater Management and Discharge Control Program Ordinance and the Clean Indoor Air and Health Protection Ordinance.
9. Conditional Use Permits are revocable. Two complaints that the conditions of approval above are being violated, from persons living at different addresses, will result in the staff scheduling the Use Permit for a public hearing to revisit the Use and Conditions of approval.

ATTACHMENTS

Exhibit A – applicant’s supplemental information

Exhibit B - floor plans for the basement area issued to the previous owner

Exhibit C- anonymous complaint letter

SUPPLEMENTAL QUESTIONNAIRE

VARIANCE

VARIANCE (S) REQUESTED:

_____ foot front yard variance to construct a _____ within _____ feet of the front property line.

_____ foot rear yard variance to construct a _____ within _____ feet of the rear property line.

_____ foot side yard variance to construct a _____ within _____ feet of the side property line.

_____ foot creek setback variance to construct a _____ within _____ feet of the top of the creek bank.

Other (fence height, building height, parking number or size, etc.) Number of off-street parking spaces - (one)

FINDINGS:

1. List below special circumstances applicable to the property, including size, shape, topography, location, or surroundings, to show why the variance should be granted; and why the granting of the variance will not be a granting of special privileges inconsistent with the limitations upon other properties in the vicinity and zone (you may attach a statement). There are three conforming off-street spaces in driveway already. To add another off-street space on Willow Ave it will remove at least one public parking space on the street where neighbors currently park. We ask to be excused from the requirement of a 4th off-street parking space which would decrease public parking available for the neighborhood. In addition, our property is very close to public transportation.

2. List below your reasons why the variance will not materially adversely 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 (you may attach a statement).

This variance will benefit the neighborhood by not removing currently existing street parking spaces for the neighborhood.

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

We do use public transportation. We do not need additional parking spaces. The hardship is the impact it will have on the neighborhood as explained above.

We will also have to remove a very old large walnut tree in order to put the off-street parking space. This tree measures 30 ft. diameter (circumference) 9x10'

Variance - Additional information required.

- Include a cross section through the proposed project depicting the project and the relationship of the proposal to existing features and improvements on adjacent properties.
- Lot coverage calculation including all structures and raised wooden decks.

In order to approve your project, the Planning Commission must make findings of fact which state that 1) there is a special feature of the site (such as size, shape or slope) which justifies an exception; 2) that the variance is consistent with the treatment of other property in the neighborhood; 3) that strict enforcement of the ordinance would cause a hardship; and 4) that the project is in the general public interest.

In the space below, please provide any information which you feel is relevant to these issues and which further explains your project.

The driveway does not accommodate the 5' set back ^{only} on one of the sides. Many properties in the neighborhood have similar situations (lots are narrow). We actually have one of the widest lots and one of the largest driveways (if not the largest) in the neighborhood. Allowing this parking to exist in its current condition will keep cars from having to be parked in the street, freeing street parking spaces for the neighborhood.



Use Permit Applications - Additional information required.

- A written description of the proposed use, major activities, hours of operation, number of employees on the premises during the busiest shift and when the busiest shift is expected and other information pertinent to the application.
- Floor plans must include location of any special equipment.
- Designate customer, employee and living areas.
- If different uses are included in this activity, for example storage, retail, living space, etc. Indicate square footage of each proposed use.

In order to approve your project, the Planning Commission must make findings of fact which state that the project will not have a negative impact on the general public welfare, conforms with the policies of the Town, does not create excessive physical or economic impacts on adjacent property and provides for equal treatment with similar properties in Town.

In the space below, please provide any information which you feel is relevant to these issues and which further explains your project.

Proposed use: Living space

No special equipment

All spaces are for living area ~~for~~ purpose only

Residents/owners of the property are the ones living in the home,

on the premises, therefore no new residents or vehicles will be added to the neighborhood.

The final disposition of each use permit shall be in accordance with the facts of the particular case, and such facts must support the following determinations and findings before a use permit may be approved. Indicate how the findings below can be made:

- 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.

Similar units exist in many homes in the neighborhood

- The development and use of property, as approved under the use permit, shall not create a public nuisance, 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, any or all of which effects are substantially beyond that which might occur without approval or issuance of the use permit.

As previously stated, project will not lead to increase traffic or number of residents to the neighborhood.

- 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, development plan or other plan or policy, officially adopted by the town.

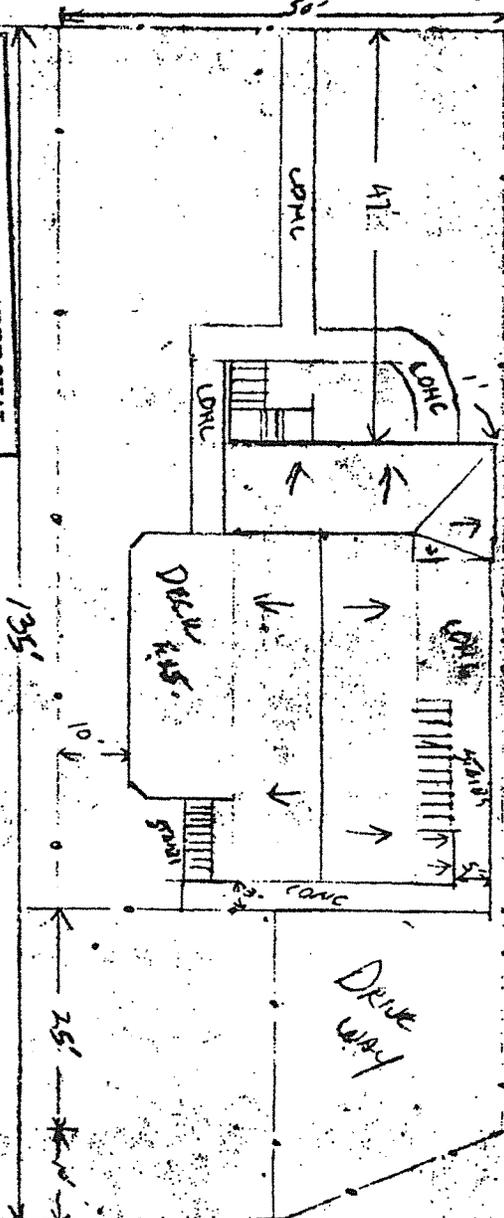
agreed

SEE SHEET #3

APPROVED
 BUILDING DEPT.
 BY: [Signature]
 DATE: 4-12-91

Permit #47729
 4-18-91

WILLOW AVE



PLANNING DEPT. APPROVAL
 By: K. Neal Date: 2/12/91
 Planning Applications: _____
 Conditions: As Marked As Attached None
 TOWN OF FAIRFAX, CA.

copy 3 Plot Plan 73 WILLOW AVE
 Lot 78A 78B

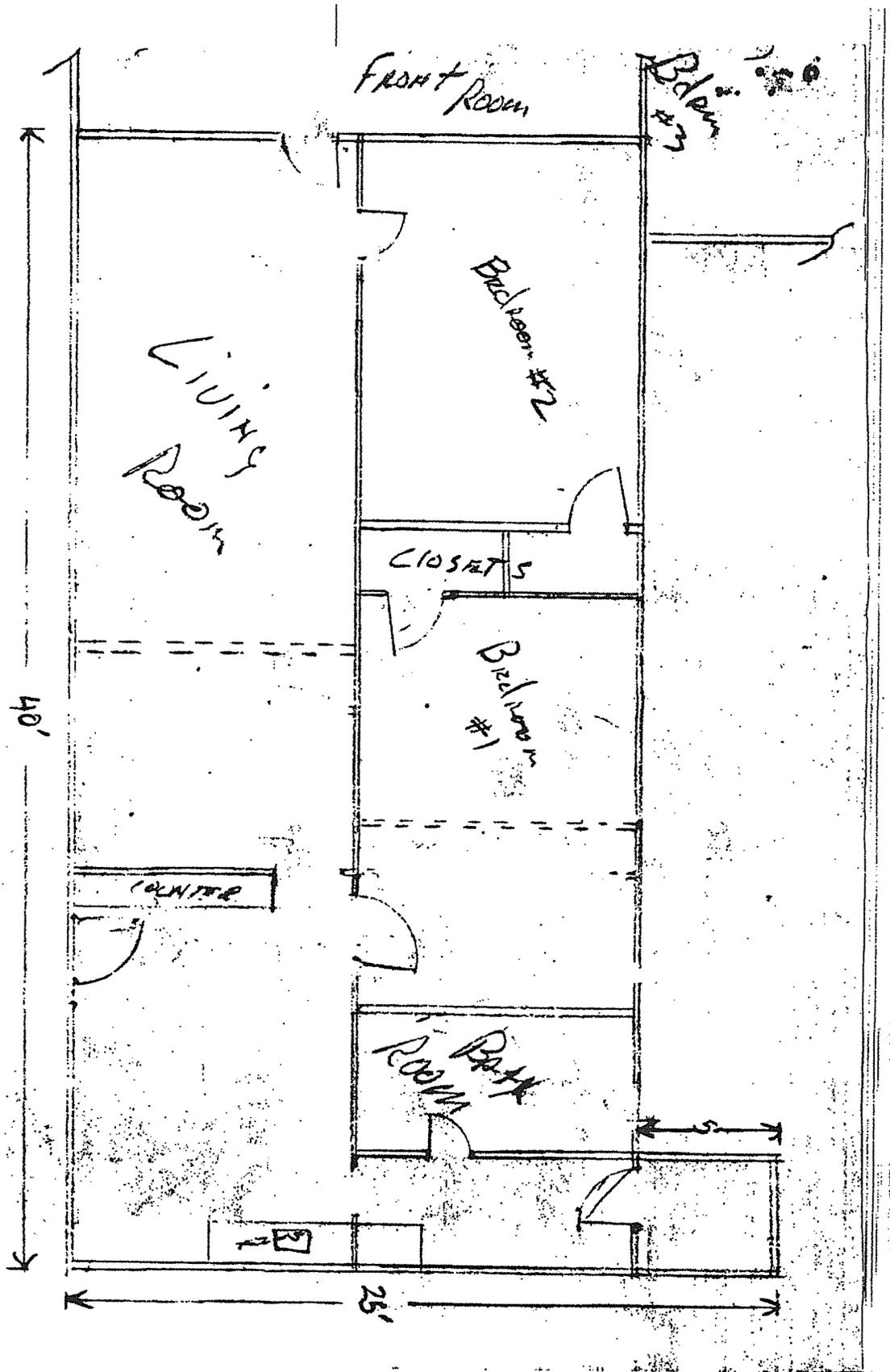
FILE PLANS

1"=16'

#1

EXHIBIT # **B**

FLOOR PLAN 1/4" = 1'



#2

Dear Rob Bastianon and Tom McInerney,

Let me begin this letter by telling you I am a living witness to the 1991 Oakland Hills Fire that devastated the lives of so many as you know. I want to bring to your attention an illegal rental unit that was added a few months ago. It has been added below a partially dilapidated 1918 house at 73 Willow Avenue in Fairfax.

There are two young adults living in this unit who have performed the illegal work.

There are no egress-able windows, the ceiling height is below the standard requirement and not to code, no one hour protection between house and unit and no sprinkler system. To name only a few. The house has been red tagged because they have not pulled a permit for anything. They continue to live in this unit and will drag the permit and fine process out as long as they can. My concern, is this is a very congested neighborhood with the houses very close to one another.

The owners believe they are "entitled" to do what they wish with their own property. Not recognizing responsibility for neighborhood impact social or financial repercussion of this illegal unit.

Please can you look into this potentially dangerous and very illegal situation?

It is not fair when most other home owners are responsible by pulling the required permits, and go through the proper building process and code requirements (even though they may not want to) which cost time and money, these are accountable and good citizens to our communities.

I sincerely thank you

RECEIVED

JAN 06 2014

ROSS VALLEY
FIRE DEPT

EXHIBIT #

C