

BACKGROUND

The 14,190 square foot site slopes down from Bay Road and has an average slope of 44%. This property was originally two separate parcels developed with two single-family residences under two different ownerships. The house at 44 Bay Road was in a state of disrepair so it was demolished in 1988.

The owners of the adjacent house at 50 Bay Road purchased the vacant parcel in 2013 and built a second driveway to the site including an on-site parking space not realizing that the construction required discretionary permits from the Town.

DISCUSSION

The Code does not allow the construction of accessory uses such as parking improvements, on unimproved parcels with no primary residential use. Therefore, in order for the staff to process the required discretionary permits for the parking improvements the owners needed to merge the two properties into one. Merging the sites also created a larger property closer in size to complying with the minimum lot size requirement based on slope.

The project require the approval of the following discretionary permits:

An Encroachment permit: Town Code §12.32.020 requires that the Planning Commission review and approve an encroachment permit for any structures located within the public right-of-way. Town Code § 12.32.010 gives the Commission to allow private owners to use areas of the public right-of-way, not being used by the public, for their private use.

The portion of the Bay Road right-of-way where the driveway is located is not currently being used by the general public. If approved, a condition of approval will be that the owners, sign, notarize and record a Revocable Encroachment Document at the Marin County Recorder's Office, before a retroactive building permit will be granted for the wall (Exhibit A – Revocable Encroachment Permit). The wall will require engineering and a building permit because it is carrying the load of a vehicle (walls 4 feet in height or less do not require building permits unless they are carrying a load).

Retaining walls can be located within the required 6 foot front setback as long as they are 4 feet or less in height and do not require the approval of a setback variance [Town Code 17.044.080(B)(1)]. Uncovered parking spaces also may be located within the front yard setback [Town Code 17.052.010(C)(2)].

The only other discretionary permit required for the driveway/parking improvement must be granted by the Town Council. Residential properties are limited to having only one driveway (Town Code § 12.12.050). If the project is approved by the Commission a variance to have a second driveway must be granted by the Town Council per Town Code § 12.12.090.

RECOMMENDATION

Move to approve application # 14-39 based on the following findings and subject to the following conditions:

Recommended Findings

The driveway and parking space provide a guest parking space for the property, bringing the site into compliance with the Town Parking Ordinance (Town Code Chapter 17.052).

The driveway/retaining wall approach are located in a portion of the public right-of-way not currently in use by the general public.

Recommended Conditions

1. The driveway approval shall be constructed in compliance with Marin County Driveway Approach Standards.
2. The applicants must obtain a building permit, including engineered wall plans, from the Building Department and perform any retroactive work necessary to bring the driveway and parking area into compliance with Building Codes before the improvements will be considered legal.
3. Prior to the Building Permit final inspection the applicant shall provide a copy of the recorded Revocable Encroachment Document to the Town.
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."

ATTACHMENTS

Exhibit A – Revocable Encroachment Document

**COMPLETE THIS INFORMATION:
RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO**

TOWN OF FAIRFAX

Department of Planning and Building Services
142 Bolinas Road
Fairfax, CA. 94930

This space for Recorder's Use Only

**TOWN OF FAIRFAX
REVOCABLE ENCROACHMENT PERMIT**

Owner: Michelle Kahn and David Glazier
Permit No. 14-39
Lot(s): 3, 4 and a portion of 5
Tract: Amended Map of Fairfax Manor
Address:

Date Issued:
Date Terminates:
Assessor's Parcel No. 001-112-04 and 05

The Town of Fairfax, a municipal corporation in the County of Marin, hereby authorizes and permits the owners of the above-described land (hereinafter referred to as "Permittees"), at their sole cost and expense, to encroach upon the adjoining street area owned by the Town of Fairfax for the specific purpose of erecting a retaining wall and driveway to access a parking pad.

The revocable Permit is granted subject to the following terms and conditions:

1. Permittees shall save and hold harmless the Town of Fairfax and its agents, officers and employees, from any loss, damage or injury of any kind or character whatsoever that may arise from anything done, or omitted to be done, by Permittees, their agents employees or contractors in connection with or in any way related to the matter authorized by this Permit.
2. The Permittees agree to install the encroaching **wall and driveway approach** in accordance with plans and specifications approved by the Planning Commission of the Town of Fairfax and Fairfax Building Department and further agrees to maintain the same at all times in good condition and repair, all at Permittees' sole cost and expense.
3. Anything herein to the contrary notwithstanding, this Permit shall be revocable without cause and at the pleasure of the Town Council of the Town of Fairfax. The decision to revoke this Permit may be exercised at any time by mailing or delivering to Permittees at the address hereinabove stated a notice of revocation and termination.
4. Within the time specified in said notice, Permittees shall, at their sole cost and expense, remove from the land of the Town of Fairfax the encroachment and all structures and facilities placed thereon or therein by Permittees; or upon default thereof, the Town of Fairfax may cause the same to be removed at the cost and expense of Permittees; and in such event Permittees, upon demand, shall forthwith pay such cost and expense to the Town of Fairfax.

5. The Permittees shall deliver this Permit to any successor in interest to the above-described land. The terms hereof shall be binding upon such successor to interest.
6. It is further understood that this Permit is given without any warranty expressed or implied.
7. This Permit shall be subject to all limitations and restrictions contained in all ordinances and regulations of the Town of Fairfax, including any future amendments thereto.
8. This Revocable Encroachment Permit, upon execution by the Permittees, shall be recorded in the office of the County Recorder of the County of Marin, State of California.

Issued by direction of the Planning Commission of the Town of Fairfax pursuant to action taken at its meeting of <date>.

 Jim Moore
 Director of Planning and Building Services

Date: _____

State of California)
 County of Marin)
 Town of Fairfax)
 (Gov't Code 40814 & Civil Code 1181)

On _____ before me, Michele Gardner, Fairfax Town clerk, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

 Michele Gardner, Town Clerk