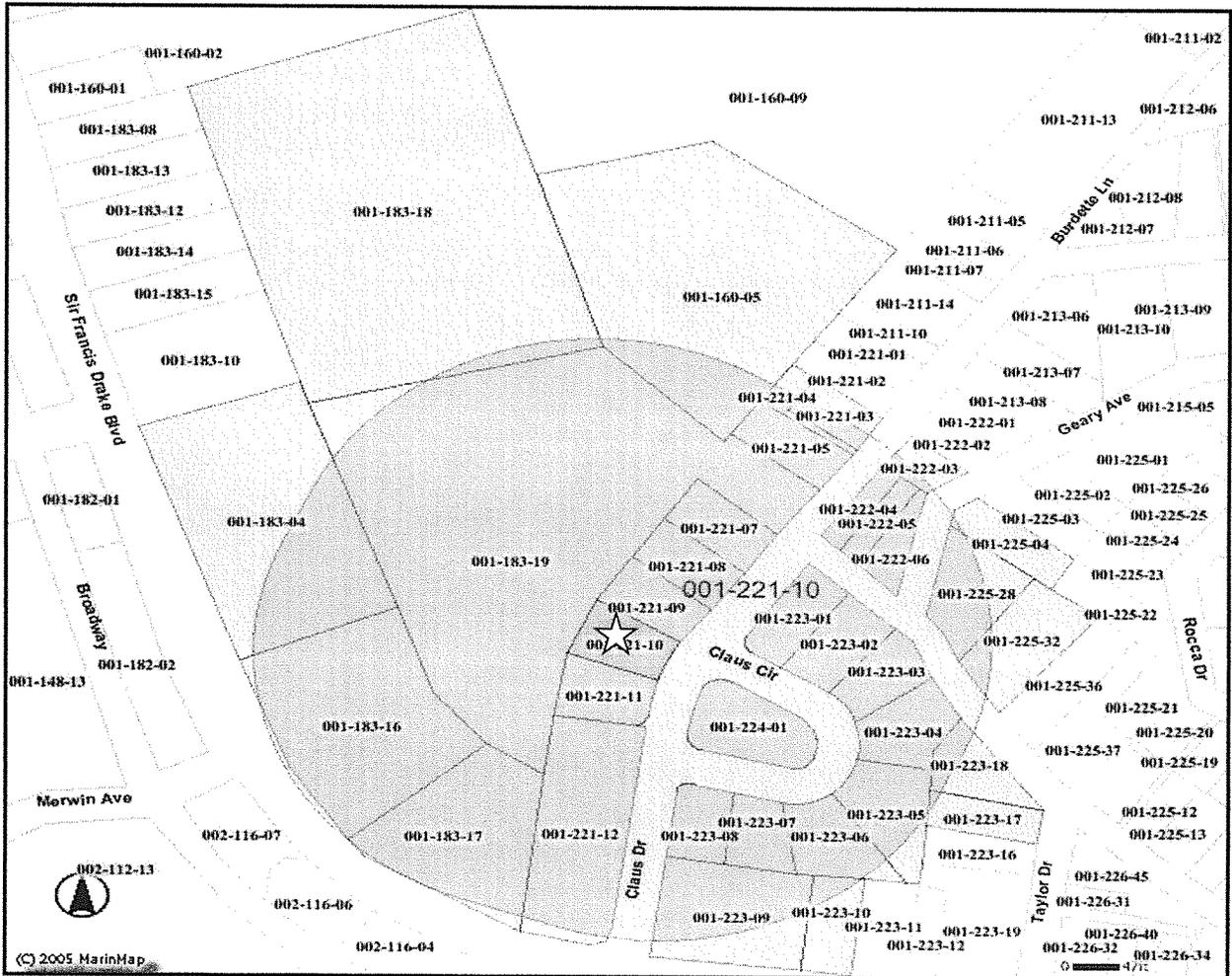


**TOWN OF FAIRFAX  
STAFF REPORT  
Department of Planning and Building Services**

**TO:** Fairfax Planning Commission  
**DATE:** December 18, 2014  
**FROM:** Jim Moore, Director of Planning and Building Services  
 Linda Neal, Principal Planner  
**LOCATION:** 23 Claus Drive; Assessor's Parcel No. 001-221-10  
**ZONING:** Residential Single-family RS 6 Zone District  
**PROJECT:** Accessory Structure  
**ACTION:** Use Permit; Application # 14-43  
**APPLICANT:** Kenneth Vincent  
**OWNER:** Linaya Forster  
**CEQA STATUS:** Categorically exempt, §15303(a)



**23 CLAU DRIVE**

**BACKGROUND**

The 6,000 square foot site is level and was created April 24, 1948 by the approval of the Taylor Tract Subdivision Map by the Fairfax Town Council. The site is developed with a 979 square foot, two bedroom, two bath single-family residence that was constructed in the later months of 1948.

**DISCUSSION**

The applicant is requesting a Use Permit to construct a 192 square foot accessory structure that will contain a ½ bath and will be used as an artist studio.

The residence and proposed studio comply with the regulations for the Residential Single-family RS 6 Zone District where the site is located as follows:

	Front Setback	Rear Setback	Combined Front/rear Setback	Side Setbacks	Combined Side Setbacks	FAR	Lot Coverage	Height
<b>Required/ Permitted</b>	6ft	12ft	25ft	5ft & 5ft	15ft	.40	.35	28.5ft, 2 stories
<b>Existing</b>	15.5	46.5	62 ft	7 ft & 9 ft	16 ft	.12	.24	16 ft, 1 story (house)
<b>Proposed</b>	15.5	10ft	25.5 ft	7 ft & 5 ft	12 ft	.15	.29	11 ft 6 inches, 1 story (studio)

The studio will require the approval of the following discretionary permits:

A Use Permit: The site is only 50 feet wide at the street. Town Code § 17.080.050(A) requires that a Use Permit be obtained prior to any physical improvement on a property failing to meet the minimum 60 foot width requirement. Therefore, the project requires a Use Permit.

The proposed studio will contain only a half bathroom and will be 192 square feet size which is about the size of a one car garage. Another Use Permit for a similar accessory structure was previously granted in the Claus neighborhood at 35 Claus Drive, allowing a 217 square foot office/bedroom and ½ bath (approved by Commission 3/16/06).

The additional 192 square feet of living space will not result in the living space square footage of the site exceeding the total square footages found on property throughout the neighborhood. Properties on similar sized sites have homes that vary in size from a 983 square foot on a 5,100 square foot site (31 Claus Drive) to a 1,672 square foot house on a 5,400 square foot site. The project site is 6,000 square feet in size and will

provide 1,171 square feet of living space if the project is approved and the studio structure is built and will not be out of character with the surrounding neighborhood.

A Combined Side Yard Setback Variance: Town Code § 17.080.070(A)(2) requires that the site structures maintain a combined side setback of 15 feet. The house currently maintains a combined side setback of 16 feet. Construction of the studio in its proposed location lowers the combined setback to 12 feet, 3 feet below the required 15 foot combined setback.

In order to approve an exception to the combined side setback regulations staff must be able to find that the code cannot be complied with because of some physical characteristic of the site such as slope, narrowness, etc. Although this site is narrow at the front it widens at the rear and staff is unable to find that it cannot be relocated to a conforming area of the site. Therefore, the owner has agreed to relocate the studio 3 feet further from the southern side property line eliminating the need for a Variance (Exhibit A – e-mail from owner agreeing to relocation). Relocation of the shed 3 feet to the north has been included as a condition of project approval.

### **Other Agency/Department Conditions/Comments**

#### Ross Valley Fire Department

1. The studio shall be provided with a fire suppression system that complies with the National Fire Protection Association (NFPA) standard 13-D.
2. A fire break shall be maintained around the building that complies Ross Valley Fire Department Standard 220, Vegetation/Fuels Management.
3. The main house and studio shall be provided with smoke and carbon monoxide alarms in compliance with the Building Code.
4. Address numbers shall be at least 4 inches tall, placed in a visible location and be either internally illuminated or be out of reflective numbers or placed next to an light source so they are visible at night.
5. The applicant *may* proposed alternative materials for the studio in accordance with Town Code § 8.06.011(103.3) in lieu of installing a fire sprinkler system. The proposed alternative materials are subject to review and approval by the Fire Inspector and the Fairfax Building Official.

#### Marin Municipal Water District

Indoor plumbing fixtures must meet efficient requirement and landscaping plans mu comply with District Code Title 13, Water Conservation.

Should backflow protection be required is shall be installed as a condition of water

service and be inspected and approved by a District Inspector.

Ross Valley Sanitary District

A new sewer connection is required and a sewer connection permit is required from the District. The fee for the permit will depend on the number of fixtures proposed in the new building.

The owner will either need to demonstrate to a District inspector that the existing side sewer is of a sufficient size and is in good repair to accommodate the new structure and existing house, or the side sewer will need to be replaced and then be inspected and approved by the District Inspector prior to the project final inspection and occupancy.

Fairfax Police Department, Building Department and Public Works Department

The Fairfax Police, Building and Public Works Department did not comment on the project.

## **RECOMMENDATION**

Motion to approve a Use Permit for application # 14-43 based on the following findings and subject to the following conditions:

1. The studio conforms to all the required setbacks, it will be less than the maximum permitted 15 foot height accessory structures and it complies with the Floor Area Ratio and Lot Coverage Regulations. It will be used only by residents of the main house and it is similar in size to other accessory structures built for use as living space in the neighborhood. 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 studio will maintain an 8 foot setback from the closest side property line, exceeding the minimum required 5 foot side setback by 3 feet. This results in a separation between the studio and the closest neighboring structure of over 13 feet . 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 in the Fairfax General Plan and Residential Single-family RS 6 Zone.
4. Approval of the use permit will result in equal or better development of the premises than would otherwise be the case.

## Recommended Conditions

1. The applicant shall obtain a building permit prior to the start of construction.
2. Prior to issuance of the building permit the applicant shall sign, notarize and record a deed restriction document indicating that the structure is approved for use by the residents of 23 Claus Drive only and that the structure shall not contain a kitchen or bathing facilities.
3. Notwithstanding section # 17.38.050(A) of the Fairfax Zoning Ordinance, **any** changes, modifications, additions or alterations made to the approved set of plans will require a modification of Application # 14-43. **Any** construction based on job plans that have been altered without the benefit of an approved modification Use Permit 14-43 will result in the job being immediately stopped and red tagged.
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. The applicant must comply with all outside agency conditions unless a specific agency waives their conditions in a written letter to the Department of Planning and Building Services.

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### **ATTACHMENTS**

Exhibit A – e-mail from property owner dated 12/9/14

## Linda Neal

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**From:** Linaya Forster <linayaforster@aol.com>  
**Sent:** Tuesday, December 09, 2014 11:05 AM  
**To:** Linda Neal  
**Subject:** Setback side yard 23 Claus Dr.

Hi Linda,

I am in agreement to comply with the additional 3' side yard setback that we discussed.

If you need anything more from me please let me know.

Thank you!

Linaya Forster