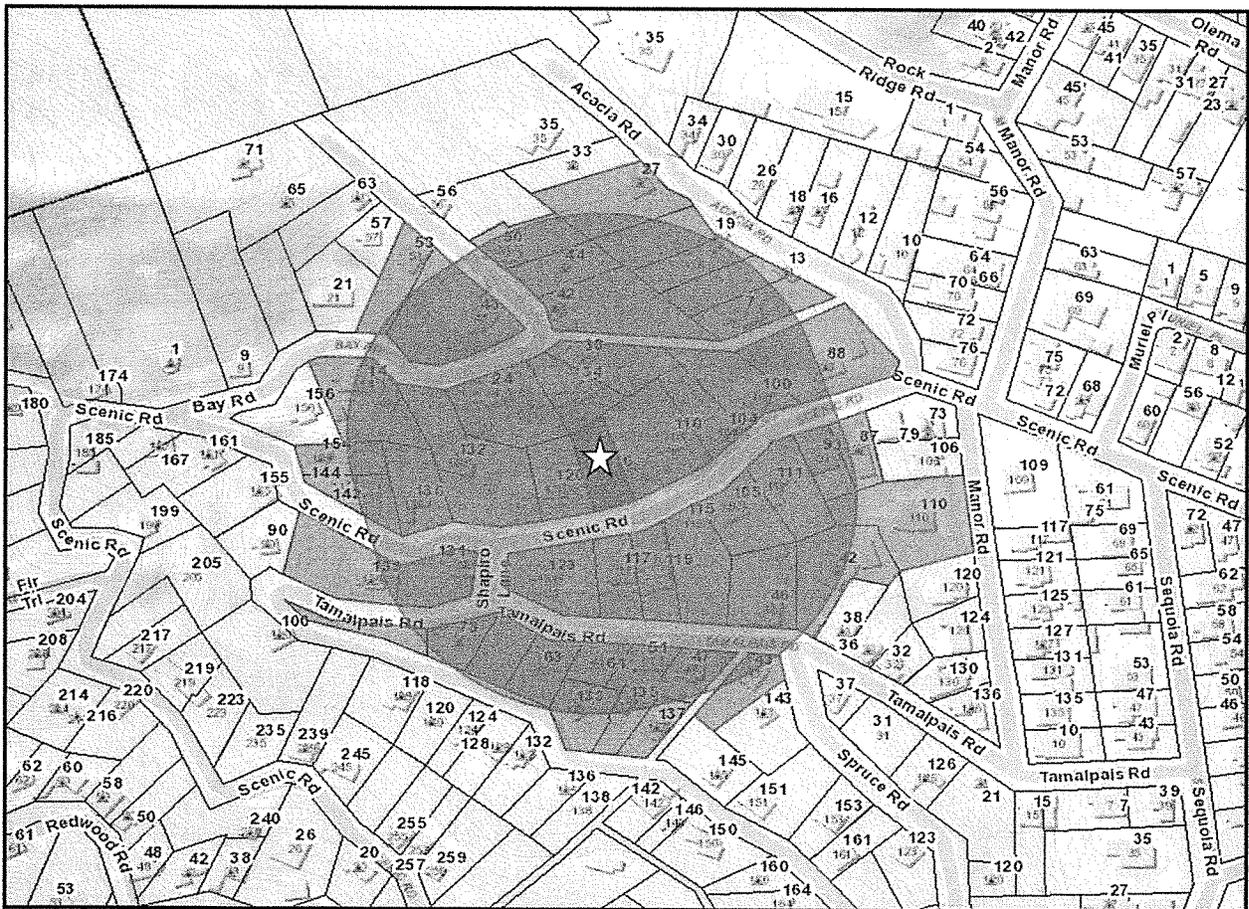


**TOWN OF FAIRFAX
STAFF REPORT**
Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: August 20, 2015
FROM: Jim Moore, Director of Planning and Building Services
 Linda Neal, Principal Planner
LOCATION: 69 Spruce Road; Assessor's Parcel No. 001-145-01
PROJECT: Creation of off street parking space
ACTION: Preferential Parking; Application # 15-09
ZONING: Residential Single-family RS 6 Zone District
APPLICANT: Wendy Oliveira, Farallon Co.
OWNER: Ellen De Martini
CEQA STATUS: Categorically exempt section 15301(4)



69 SRPUCE ROAD

BACKGROUND

This item was originally heard by the Commission on April 16, 2015. At that meeting the owner of 71 Spruce Road indicated to the Commission that she had not had time to review the project plans and she requested a continuance to give her time to have her engineer review the plans. She cited the proximity of the wall to the side of her house/property line, whether the depth of the excavation for the wall might compromise the stability/result in future settlement of her house and impacts of the wall on existing trees as her concerns. The Commission granted the neighbor's request continuing the project to the May 21, 2015 meeting (Attachment 2).

The applicant's had not had time to address the neighbor's concerns or respond to them by the May 21st meeting so the applicant and the Town agreed to a one time mutual continuance of the matter for ninety (90) days as permitted under the Permit Streamlining Act (ninety days was actually up on the 19th, yesterday (Attachment 3). The expiration of this time limit does not result in the project being approved but just allows the applicant to arrange to hold their own noticed public hearing if the Town is not acting in a timely fashion.

The applicant and the neighbor still have not resolved/addressed the areas of concern raised by the neighbor on April 16, 2015 (Attachment 4 – e-mails relating to project).

DISCUSSION

At this point, the Commission has three (3) options going forward as follows:

1. Conditional approval of the project subject to the applicant paying for and obtaining the Town Engineer's approval of the project design taking into account the neighbor's concerns; or
2. Project denial.; or
3. Project approval with only the original conditions of approval as contained in the attached May 21, 2015 staff report (Attachment 5).

Staff recommends the Commission take action using the first option including in the conditions of approval; a) peer review by the Town Engineer of the project building plans prior to issuance of the building permit with his time paid for by the applicant; and, b) requiring that the applicant hire an International Society of Arborist (ISA) certified arborist to review the health of any trees whose driplines will be disturbed by the construction to make recommendations for mitigation measures to protect the tree(s).

The downside to having the Town Engineer review and approve the project building plans is that he is very conservative and his review may result in additional engineering

costs and design changes for the applicant.

RECOMMENDATION

Move to approve application # 15-09 by adopting Resolution No. 15-29 setting forth findings and conditions of approval for the Preferential Parking Permit.

Note: Due to the lack of resolution on this matter between the applicant and neighbor, staff has prepared a Resolution for Commission action on this project in case the matter is appealed.

ATTACHMENTS

Attachment 1 – Resolution No. 15-29

Attachment 2 - April 30, 2015 Notice of Planning Commission Action

Attachment 3 – Permit Streamlining Act extension letter

Attachment 4 – e-mails

Attachment 5 - May 21, 2015 staff report and attachments

RESOLUTION NO. 15-29

A Resolution of the Fairfax Planning Commission Approving a Preferential Parking Permit for the Residence at 69 Spruce Road, Application #15-09

WHEREAS, the Town of Fairfax has received an application to construct parking space on a site currently without any formal parking and developed with a single family residence with the address of 69 Spruce Road, also designated Assessor's Parcel No. 001-145-01; and

WHEREAS, based on the plans and other documentary evidence in the record the Planning Commission has determined that the applicant has met the burden of proof required to support the findings necessary to approve the project with certain condition of approval listed below; and

WHEREAS, the Commission has made the following findings:

1. The owner will expend more than the required \$10,000 necessary to allow the space to qualify under the preferential parking Ordinance, Town Code Chapter 10.24.
2. The plans show that the space will be located within a portion of the Spruce Road right-of-way not being used by the general public in accordance with Town Code § 12.32.020.
3. Upon compliance with the conditions listed below the parking space will be able to be constructed without having negative impacts on the neighboring properties, general public or on vehicles or pedestrians using Spruce Road.

WHEREAS, the Commission has approved the project subject to the applicant's compliance with the following conditions:

Recommended Conditions of Approval

1. Construction plans must be submitted for the project building permit that are prepared by a licensed Civil Engineer that show existing conditions such as the house location, trees, utilities, the street and the stairs. Layout dimensions, property lines, drainage, with elevations and all construction details shown.
2. Town Engineer review and approval of the plans, including any additional information or changes he requires necessary to ensure no negative impact to the neighboring home foundation at 71 Spruce. The applicant will be responsible for covering the costs for this review.
3. Prior to issuance of the building permit the applicant shall have a certified arborist review the condition of any trees whose drip lines are located within the area that will be disturbed by the construction. He/she will make recommendations on mitigation measures to put in place to ensure the continued health of the trees. If he/she deems

that any trees will need to be removed, the applicant and the owner of 71 Spruce will file a tree removal permit and agree upon a replacement tree(s) and location for planting. The applicant will pay for this report, the replacement tree(s) and installation of the trees. Failure of the applicant and neighbor to reach agreement on this matter, or failure of staff to help them reach agreement will result in the matter being scheduled for review and decision to resolve the matter by the Planning Commission.

4. The top of the retaining wall footing must be shown a minimum of 6 inches lower than the existing street pavement to minimize possible conflicts with future street work. The pavement over the footing in the parking area may be concrete or asphalt concrete. Concrete pavement must be separate from the wall footing so it can be removed if future street work requires removal.

5. The applicant shall comply with the conditions of the Fairfax Building Official, Public Works Director/Manager and Town Engineer.

6. The planting and irrigation plan for the area above the retaining wall shall be submitted with the building permit application. The plan shall be subject to review and approval by the Department of Planning and Building Services prior to issuance of the building permit.

7. This approval is limited to the development illustrated on the plans prepared by Vlad G. Iojica, Civil Engineer, pages C0.0 and C1.0 dated 11/17/14 and the property survey prepared by Robert J. Dains, dated 2/12/15. The front and side property lines shall be staked in the field by the surveyor prior to the start of construction and the surveyor shall submit a signed and stamped letter indicating that he has done so.

8. Prior to issuance of a building permit the applicant or his assigns shall submit a bond, cash deposit or letter of credit to the Town in an amount that will cover the cost of grading, weatherization and repair of possible roadway damage. The applicant shall submit contractor's estimates for any grading, site weatherization and improvement plans for approval by the Public Works Director. Upon approval of the contract costs, the applicant shall submit a cash deposit, letter of credit or bond equaling 100% of the estimated construction costs.

9. Prior to issuance of the building permit the applicant shall provide the Town with a video of the access streets to be used during construction. The Public Works Director shall make a decision prior to the project final, regarding street resurfacing and repair required as a result of damage and wear and tear from project vehicles.

9. Retaining elements shall be designed by a structural engineer certified as such in the state of California. Plans and calculations of the retaining elements shall be stamped and signed by the structural engineer and submitted to the satisfaction of the Town Engineer.

10. Submit 3 copies of the survey subject to review by the Town Engineer and the Public Works Director prior to issuance of the building permit.

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

a. The project engineer shall be on-site during the grading process and shall submit written certification to the Town staff that the grading has been completed as designed and recommended prior to installation of retaining forms.

b. Prior to the concrete form inspection by the building official, the project engineer shall field check the forms of the foundations and retaining elements and provide written certification to the Town staff that the work to this point has been completed in conformance with the approved building plans and recommendations. The building official shall field check the concrete forms prior to the pour.

c. 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 contractor.

d. Additionally, 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.

12. Prior to the project final inspection the following shall be completed:

a. The project engineer shall field check the completed project and submit written certification to the Town Staff that the retaining, grading and drainage elements have been installed in conformance with the approved building plans.

b. The Building Official shall field check the completed project to verify that the work has been installed as per approved plan.

c. The applicant shall submit a bond, letter of credit or a cash deposit to the Town in an amount that will cover the cost of landscaping and irrigation materials and installation. This amount will be kept for 18 months once the landscaping is installed to ensure the plant material has become established.

d. The Planning Department shall field check the completed project to verify that all planning commission conditions have been complied with including installation of landscaping and irrigation prior to the final inspection.

13. Excavation shall not occur between October 1st and April 1st. The Town Engineer has the authority to waive this condition depending upon the weather.

14. During construction developer and all employees, contractors and subcontractors must comply with all requirements set forth in Ordinance # 673 (Chapter 8.26 of the Town Code) "Storm Water Management and Discharge."

15. The applicant shall comply with Ordinance 656, An Ordinance of the Town of Fairfax Amending Section # 12.24.050 of the Fairfax Town Code relating to the "Issuance of Permit For Excavations In streets And Public Thoroughfares".

16. The applicant shall comply with the Town Noise Ordinance Chapter 8.16 of the Fairfax Town Code.

17. Any changes, modifications, additions or alterations made to the approved set of plans will require approval by the Town Engineer and the Director of Planning and Building Services. Changes that are not agreeable to either the applicant or the neighbor at 71 Spruce will be subject to a modification of this preferential parking permit by the Fairfax Planning Commission. Any construction based on job plans that have been altered without the benefit of an approved modification will result in the job being immediately stopped and red tagged.

18. A detailed grading and erosion control plan must be submitted to the Town Engineer for review and be approval prior to issuance of the building permit.

19. Pavement restoration may include local repairs and overlay (rather than slurry sealing) depending on damage incurred due to construction and water and sewer line relocation. The final decision regarding street resurfacing shall be rendered by the Department of Public Works based on pavement conditions near the completion of construction.

20. Any modification of these conditions approval must be approved by the Fairfax Planning Commission.

21. 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.

22. The applicant must sign, have his signature notarized and record a Revocable Encroachment Permit Document at the Marin County Recorder's Office prior to issuance of the building permit for the project.

23. Per the Ross Valley Fire Department, the parking space may not be posted for the sole use of the adjacent property owner.

Tree Removal

23. The applicant must obtain a tree removal permit from the Fairfax Tree Committee and a building permit for the project prior to removing any trees from the site or the surrounding area.

OTHER AGENCY/DEPARTMENT

Marin Municipal Water District and Ross Valley Sanitary District –

24. The Districts own and maintain water and sewer facilities located within the Scenic Road right-of-way. No construction shall encroach upon or encumber access to District facilities. These facilities must be located and marked on the project construction plans to determine conflicts and may need to be relocated.

Ross Valley Fire Department –

25. The proposed parking area must not encroach into the existing roadway bed. The requires 9 feet of width for a parking space must be clear of the existing street area and parked vehicles may not extend beyond the approved parking area at any time.

26. Per the Ross Valley Fire Department the parking space may not be posted for the sole use of 69 Spruce Road but must be available for use by the general public.

27. The Revocable Encroachment document shall include the condition that any remodeling, expansion or reconstruction of the dwelling that constitutes a 50% remodel will trigger the Fire Code requirement that the roadway in front of the residence be

widened to 20 feet (effectively removing the parking space and require either the provision of alternative parking or a Parking Variance).

Miscellaneous Conditions

28. 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.

NOW, THEREFORE BE IT RESOLVED, the Planning Commission of the Town of Fairfax hereby finds and determines as follows:

The approval of the Use Permit and construction of the addition to the residence can occur without causing significant impacts on neighboring residences and the environment and is in compliance with the 2010 to 2013 Fairfax General Plan and Fairfax Zoning Ordinance.

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 20th day of August 2015, by the following vote:

AYES:

NOES:

ABSENT:

Chair, Philip Green

Attest:

Jim Moore, Director of Planning and Building Services



TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
(415) 453-1584 / FAX (415) 453-1618

April 30, 2015

Wendy Olivera
Farrallon Company
P.O. Box 848
Novato, CA. 94948

NOTICE OF PLANNING COMMISSION ACTION

RE: 69 Spruce Road; Application # 15-09

Request for a Preferential Parking Permit to create a 32 foot long by 9 foot wide parking space by constructing a retaining wall that will reach up to 7 feet in height. Project will also include reconstruction of the residence access stairway. The entire project will take place within the Spruce Road right-of-way along the property frontage; Assessor's Parcel No. 001-145-01; Residential Single-family RS 6 Zone District; Wendy Oliveira, Farallon Company, applicant; Ellen De Martini, owner; CEQA categorically exempt, § 15301(4) and 15305(b).

Dear Ms. Olivera,

At its meeting on April 23, 2015, the Fairfax Planning Commission continued the above referenced application until the May 21, 2015 meeting after hearing testimony from the neighbor at 71 Spruce Road. The neighbor indicated she had not had time to review the plans and was asking for additional time to allow for her to have her own engineer review them. She cited the proximity of the wall to the side of her house/property line, whether the depth of the excavation for the wall might compromise the stability/result in future settlement of her house and impacts of the wall on existing trees as her concerns.

Staff recommends that you provide her with a set of the plans as soon as possible and meet with her and/or have your engineer meet with her engineer as soon as possible. We also recommend that you have a certified International Society of Arborists (ISA) prepare a report assessing any trees that have drip lines that intersect with the wall/entry construction. The report should address the existing health of the trees, potential impacts of the construction on the trees and mitigation measures that should be implemented during and after construction to ensure trees continued good health. The report should also indicate affected trees that should be removed and the reasons why they cannot be retained.

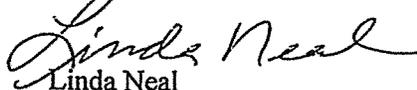
Any written agreement or other information indicating the neighbor's concerns have been addressed will need to be submitted by May 14th, 2015 in order for the matter to be scheduled for the May 21st, 2015 meeting.

ATTACHMENT 2

If you reach an impasse with the neighbor, advise staff is writing of the steps that have been taken to address her concerns. After receiving the document staff will discuss the matter with Jim Moore, the Director of Planning and Building Services, to determine what, if anything, the Town can do to move the project forward.

If you have any questions regarding the Planning Commission action please feel free to contact the Fairfax Planning Department.

Sincerely,



Linda Neal
Principal Planner

cc. Christopher and Tonia Stoski
71 Spruce Road
Fairfax, CA. 94930



TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
(415) 453-1584 / FAX (415) 453-1618

May 26, 2015

Ellen De Martini
1302 Gaspar Court
Rohnert Park, CA. 94928

Re: Extension of Time to Process Planning Application No. 15-09

Dear Ms. De Martini,

This letter follows the May 21st, 2015 Planning Commission meeting, where your project engineer, agreed upon your behalf, to an extension of review time regarding the status of your Planning Application No. 15-09 on file with the Town of Fairfax for a preferential parking permit at 69 Spruce Road in Fairfax. It is our understanding that you are amenable to extending the amount of time in which the Town has to process this application under the Permit Streamlining Act for an additional ninety (90) days. If this is correct, please indicate your agreement by signing below and returning a signed copy of this letter to the Town. If I am mistaken, please contact me at your earliest convenience so that we can process your application accordingly.

Sincerely,

Linda Neal
Principal Planner

I, Ellen De Martini, am the applicant with respect to Planning Application No. 15-09. By my signature below, I agree to a one-time, ninety (90) day extension of time for the Town of Fairfax to process said application. I understand that I am not required to consent to this extension, but I do so voluntarily.

Ellen De Martini

June 2, 2015
Date

Linda Neal

From: Linda Neal
Sent: Wednesday, June 10, 2015 2:08 PM
To: 'Tonia Stoski'
Subject: RE: 69 Spruce Road - proximity to 71 Spruce Road

It will be up to the Planning Commission.

The applicant has had a licensed engineer design a wall, and stamp the plans with his license stamp, certifying that the design complies with standard engineering practices for type of wall and improvement. Most engineers do not put their licenses in jeopardy designing projects that might negatively impact surrounding improvements. He is putting his license on the line certifying that the project will not cause negative impacts. When the project is heard in July, the Commission will take that into consideration when listening to your concerns. They will weigh all the information, the engineered designed plans, your comments (substantiated or unsubstantiated by a professional), and impacts to the general public of creating another parking spot that is supported by the Ross Valley Fire Department, etc., etc. and then they will vote. There are 7 of them. Some may feel that the applicant should have to pay to address your concerns, some may feel that having an engineer designed plan is assurance enough that the project will be constructed safely. Whatever the vote, if the project is approved, you will have the right to appeal to the Town Council if you aren't satisfied with the project design, and if the project is denied, the applicant can appeal to the Town Council.

I just wanted to make sure that in case you wanted to be proactive, and the applicant's don't address your concerns, you can get the Commission's attention if another engineer reviews the plans and reports and points out flaws in the design. When presented with conflicting engineering opinions, the Commission typically requires the project to undergo a third review by the Town Engineer to determine whether or not project modifications need to occur.

Linda Neal
Principal Planner

From: Tonia Stoski [mailto:tonia@nc2studio.com]
Sent: Wednesday, June 10, 2015 1:19 PM
To: Linda Neal
Subject: RE: 69 Spruce Road - proximity to 71 Spruce Road

Linda –

No worries about spelling! Thank you for confirming the schedule.

I think that we have reviewed and are comfortable with the engineering of the wall itself. However, I think it is reasonable to expect that we should get answers to all of the other questions. We are not refuting that the engineer knows how to design the retaining wall, we are just concerned that not all of the items were considered and are asking for response/additional information to make it clear.

In addition, I believe that the questions we are asking should not be my responsibility to hire anyone to provide feedback for their project... Please let me know if you have a different point of view of this.

Thanks,
Tonia



TONIA STOSKI SENIOR DESIGNER
1515 Vallejo Street San Francisco CA 94109
tel 415.749.6500 x290 fax 415.749.5266
tonia@nc2studio.com www.nc2studio.com

From: Linda Neal [<mailto:lneal@townoffairfax.org>]
Sent: Wednesday, June 10, 2015 1:03 PM
To: Tonia Stoski
Subject: FW: 69 Spruce Road - proximity to 71 Spruce Road

Hello Again,

I Apologize for Spelling your name incorrectly in my last e-mail....I am running ragged here at Town Hall. Anyway, the applicants for 69 Spruce Road have agreed to a continuance until the July 16h, 2015 Commission meeting so no-one has to show up for the June meeting.

Sincerely,

Linda Neal
Principal Planner

From: Linda Neal
Sent: Wednesday, June 10, 2015 9:45 AM
To: 'Tonia Stoski'
Subject: RE: 69 Spruce Road - proximity to 71 Spruce Road

Hi Tonya,

I apologize for not getting back to you about the Town's fence regulations. The Town does not regulate fence materials, only the maximum height that fence can be which is 6 feet. The Town has no authority to require the removal or screening of the existing chain link fence.

I also wanted to let you know that the engineered plans and reports are available for your engineer to review at Town Hall (and have been available as indicated in the original notice since April 10, 2015). The Commission will need to take action on this project soon and you will need to substantiate your engineering concerns by submitting a report from your own engineer suggesting reasons the project engineering is flawed and will compromise your property if you are dissatisfied with the project as designed. If the applicant looks into your claims, her engineer shares your concerns and is willing to redesign the project and address the concerns, the project will go forward with unanimous support.

If you are unable to reach a compromise that addresses your concerns, the project will still go forward and the Commission will be looking to you to provide unbiased confirmation from a professional that your concerns are valid.

Linda Neal
Principal Planner

From: Tonia Stoski [<mailto:tonia@nc2studio.com>]
Sent: Wednesday, June 10, 2015 8:59 AM
To: Jim Moore

Cc: Linda Neal

Subject: RE: 69 Spruce Road - proximity to 71 Spruce Road

Thank you!



TONIA STOSKI SENIOR DESIGNER
1515 Vallejo Street San Francisco CA 94109
tel 415.749.6500 x290 fax 415.749.5266
tonia@nc2studio.com www.nc2studio.com

From: Jim Moore [<mailto:jmoore@townoffairfax.org>]
Sent: Wednesday, June 10, 2015 8:35 AM
To: Tonia Stoski
Cc: Linda Neal
Subject: RE: 69 Spruce Road - proximity to 71 Spruce Road

Hello Tonia,

Your email below is being forwarded to Linda Neal who is being cc'd in this email.

Jim

James M. Moore
Director of Planning & Building Services
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930
Phone: (415) 453-1584
Fax: (415) 453-1618

"Imperfection with grace - is better than perfection without grace"
(From Jaime Lerner, former Mayor of Curitiba and Governor of Parana, Brazil)

"The Life of the Land is Perpetuated in Righteousness"
(*Ua mau ke ea o ka aina i ka pono* has been the motto of Hawaii for over 160 years)

From: Tonia Stoski [<mailto:tonia@nc2studio.com>]
Sent: Tuesday, June 09, 2015 6:25 PM
To: viojica@via-eng.com; Jim Moore; faralloncompany@gmail.com
Cc: chris@stoskidigital.com; tonia@nc2studio.com
Subject: RE: 69 Spruce Road - proximity to 71 Spruce Road

All –

It has been over 3 weeks since I issued the e-mail below requesting information about the project at 69 Spruce Road. The next commission hearing is fast approaching and we have yet to hear back on any of the items noted.

I would like to reiterate, that we are very much in favor of the project proceeding, we just have some questions and concerns that we believe should be addressed before the permitting process is underway.

Please let us know when we will get the information.

TOWN of FAIRFAX: Jim and Linda –

If information is not received prior to the meeting, we request that the item be removed from the agenda, so that we are not required to attend the meeting to confirm that no information has been exchanged.

Linda I do not have contact information for you, if possible, please send a confirming e-mail that you received this message. I am still interested in hearing about the Town Ordinances as noted below as well.

Thanks,
Tonia



TONIA STOSKI SENIOR DESIGNER
1515 Vallejo Street San Francisco CA 94109
tel 415.749.6500 x290 fax 415.749.5266
tonia@nc2studio.com www.nc2studio.com

From: Tonia Stoski [<mailto:tonia@nc2studio.com>]
Sent: Monday, May 18, 2015 6:42 PM
To: 'vjojica@via-eng.com'; 'jmoore@townoffairfax.org'; 'faralloncompany@gmail.com'
Cc: chris@stoskidigital.com
Subject: RE: 69 Spruce Road - proximity to 71 Spruce Road

Vlad and Farallon Company –

As discussed at the meeting, we are in favor of this project as a whole. However, as our home is immediately adjacent and uphill from the proposed project, we do have very serious concerns that we feel have not yet been addressed. Since the Planner was not at the previous meeting, I am providing a copy of this correspondence to the Town of Fairfax, so that they are aware of our concerns.

Thank you for providing a copy of the drawings and calculations. It appears that some of the information that we discussed has not been addressed at this time and will cause us to raise our concerns again with the Town of Fairfax at the upcoming meeting.

1. When we reviewed the drawings, we asked about the following items:
 - What is the depth of the excavation needed to construct the wall and then back fill? I don't see this information on the plan.
 - The relationship of the end of the new wall closest to our property at 71 Spruce Road and our (E) stairs? There are no dimensions between the new and (E) structures.
 - Height of wall relationship to height of adjacent steps and at which step is end of wall closest to? You indicated that you would draw a section to show the relationship. I cannot find this drawing.
 - Proposed method of closing the gap between the end of the wall and the stair? The excavation will not only open more of the area below 71 Spruce (E) stair, but the proposed scope of work appears to leave an uneven gap that exposes a newly excavated face of the hill. This gap between the two appears that it will remain natural and have hillside water runoff. We have a concern that the new excavation with runoff may erode and ultimately undermine our stairs. In addition, it will cause ongoing runoff across 69 Spruce Road new parking area... in this neighborhood, runoff is usually accompanied by mud and rock

that washes down the hills and this may not be the intended end result of the new paving at this location.

- It should be noted in the drawings that adjacent (E) structures must be protected from damage during and resulting from construction.
 - How will the hillside be shored adjacent to our property during construction and how can we be assured that we will not experience settlement of home, due to changing the hillside profile? I have not seen where this is addressed.
2. I understand that this project is still in Design Review and that there is an additional process to complete the drawings. However, this is the time for affected parties to voice concerns and hopefully get feedback that addresses these concerns. As a neighbor, we are not part of the construction document or permitting process, so we need to understand that our concerns will be addressed before we see a construction crew on site, at which point it will be too late.
 - To date we have not heard any response from Farallon Company. PLEASE provide a plan for temporary shoring of the hill side at the time of excavation until such time as the wall AND compacted backfill are complete.
 3. Please confirm that the soil conditions have been studied and are known at this location. In our last conversation, it was stated that a soils report has not been done and that the assumed soil conditions are based on an assumption and visual surface inspection. We are most concerned about the section directly adjacent and downhill from our foundations.
 4. In regard to the large pine tree that is just uphill from the proposed wall, we are unsure that the statement about the drip line is accurate. Has it been measured? It seems that the tree drip line should be shown on the drawings and if it overlaps the excavation, it should be reviewed by an arborist to ensure that the tree will survive.
 5. A drawing to scale that verifies the slopes as indicated below would be very informational. My reason for asking for this is that it requires a closer look at the condition, in order to draw it... I have reviewed the drawings and found that some elements are unclear. For instance:
 - Sheet C0.0:
 1. There is not mention of protection of adjacent structures.
 2. There is not mention of how the new work transitions to existing structures and paving.
 3. Indicates that the Owner will provide necessary testing and inspections... I believe that the Contractor needs to be responsible for notification of the need for inspections including compaction and materials testing.
 4. Compaction Requirements although there is a schedule on this sheet, I do not see the specific types indicated in plan, section or detail. Please clarify.
 - Sheet C1.0:
 1. Plans do not show dimensions as noted in item #1 above.
 2. Elevation does not show adjacent (E) stairs and how the area below the stair will be treated.
 3. Wall Section indicates a 1:2 slope, but is not drawn as such and the height of the grades appear to be much steeper, but there are no dimensions to confirm this item.
 4. Planting Schedule is indicating some plant types, but there is not planting plan indicated.
 6. Please clarify what the current plan is? Is it proposed that the undefined or dimensioned space shown between 71 Spruce (E) stair and the new improvements is a natural and unfinished gap? When all planting is removed, how is soil proposed to be retained? Please provide some explanation as to what is planned for us to respond to.

ATTN: Mr. Jim Moore (This is the only e-mail contact information that was available for the Planning Department. Please forward this to the appropriate parties for this project.)

In addition I would like to add the following questions for the Town of Fairfax Planner:

1. We are concerned about the character of the new proposed wall in relation to the very tall chain link fence that is on the neighboring property.
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Thank you for your help in resolving these concerns as soon as possible, so as not to delay the project or cause undue tension.

Regards,
Tonia



TONIA STOSKI SENIOR DESIGNER
1515 Vallejo Street San Francisco CA 94109
tel 415.749.6500 x290 fax 415.749.5266
tonia@nc2studio.com www.nc2studio.com

From: Vlad Iojica [<mailto:vlad@via-eng.com>]
Sent: Wednesday, May 13, 2015 12:13 AM
To: 'Tonia Stoski'
Cc: faralloncompany@gmail.com
Subject: RE: 69 Spruce Road - proximity to 71 Spruce Road

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1. Per our conversation during the Town Planning Commission Meeting, I am attaching for your reference the engineering plans and structural calculations prepared for above mentioned project.
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T: (415) 774-6776
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From: Tonia Stoski [<mailto:tonia@nc2studio.com>]
Sent: Tuesday, May 12, 2015 12:28 PM
To: viojica@via-eng.com; faralloncompany@gmail.com
Subject: 69 Spruce Road - proximity to 71 Spruce Road

All –

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Linda Neal

From: Tonia Stoski <tonia@nc2studio.com>
Sent: Wednesday, June 10, 2015 8:59 AM
To: Jim Moore
Cc: Linda Neal
Subject: RE: 69 Spruce Road - proximity to 71 Spruce Road

Thank you!



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From: Jim Moore [mailto:jmoore@townoffairfax.org]
Sent: Wednesday, June 10, 2015 8:35 AM
To: Tonia Stoski
Cc: Linda Neal
Subject: RE: 69 Spruce Road - proximity to 71 Spruce Road

Hello Tonia,

Your email below is being forwarded to Linda Neal who is being cc'd in this email.

Jim

James M. Moore
Director of Planning & Building Services
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930
Phone: (415) 453-1584
Fax: (415) 453-1618

"Imperfection with grace - is better than perfection without grace"
(From Jaime Lerner, former Mayor of Curitiba and Governor of Parana, Brazil)

"The Life of the Land is Perpetuated in Righteousness"
(Ua mau ke ea o ka aina i ka pono has been the motto of Hawaii for over 160 years)

From: Tonia Stoski [mailto:tonia@nc2studio.com]
Sent: Tuesday, June 09, 2015 6:25 PM
To: viojica@via-eng.com; Jim Moore; faralloncompany@gmail.com
Cc: chris@stoskidigital.com; tonia@nc2studio.com
Subject: RE: 69 Spruce Road - proximity to 71 Spruce Road

All –

It has been over 3 weeks since I issued the e-mail below requesting information about the project at 69 Spruce Road. The next commission hearing is fast approaching and we have yet to hear back on any of the items noted.

I would like to reiterate, that we are very much in favor of the project proceeding, we just have some questions and concerns that we believe should be addressed before the permitting process is underway.

Please let us know when we will get the information.

TOWN of FAIRFAX: Jim and Linda –

If information is not received prior to the meeting, we request that the item be removed from the agenda, so that we are not required to attend the meeting to confirm that no information has been exchanged.

Linda I do not have contact information for you, if possible, please send a confirming e-mail that you received this message. I am still interested in hearing about the Town Ordinances as noted below as well.

Thanks,
Tonia



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From: Tonia Stoski [mailto:tonia@nc2studio.com]
Sent: Monday, May 18, 2015 6:42 PM
To: 'vojica@via-eng.com'; 'jmoore@townoffairfax.org'; 'faralloncompany@gmail.com'
Cc: chris@stoskidigital.com
Subject: RE: 69 Spruce Road - proximity to 71 Spruce Road

Vlad and Farallon Company –

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From: Vlad Iojica [<mailto:vlad@via-eng.com>]
Sent: Wednesday, May 13, 2015 12:13 AM
To: 'Tonia Stoski'
Cc: faralloncompany@gmail.com
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Linda Neal

From: Kathy J. Delaney <kdelaney@rvsd.org>
Sent: Thursday, June 11, 2015 7:45 AM
To: Linda Neal
Cc: Randell Y. Ishii
Subject: RE: detached accessory buildings developed as second living units.

Hi Linda

The Sewer Permit fee would be approx \$2200 for a unit with one bathroom and kitchen sink/dishwasher. Approx \$2600 if you add a washing machine.

This assumes this unit will connect to the existing sewer lateral for the main home. If not, the new connection fee (pass thru cost to CMSA) would be an additional \$5665 as of July 1st. Our Sewer permit fee will most likely be adjusted upward by approx. 2.5% on or around Sept 1, 2015.

In addition there will be an annual sewer service charge for that dwelling unit of \$743 for fiscal yr 2015/16.

Pls feel free to give me a call if you need additional info or have questions.

Thank you,

Kathy DeLaney

Administrative Assistant

**Sanitary District No. 1 of Marin County
(Ross Valley Sanitary District)**

2960 Kerner Blvd, San Rafael, CA 94901

PH 415-259-2949 x206

FX 415-460-2149

From: Randell Y. Ishii
Sent: Wednesday, June 10, 2015 9:06 PM
To: Kathy J. Delaney
Subject: Fwd: detached accessory buildings developed as second living units.

Kathy,

Can you help me with this?

Sent from my iPhone

Begin forwarded message:

From: Linda Neal <lneal@townoffairfax.org>
Date: June 10, 2015 at 4:09:35 PM PDT
To: "Randell Y. Ishii" <rishii@rvsd.org>
Subject: detached accessory buildings developed as second living units.

Hi Randall,

Can you give me a rough idea of the range of the sewer hook-up fees that might be required for a studio or one bedroom second living unit, in a detached structure from the main residence? This is just for my own information so I have some idea of the costs.

Thanks

Linda Neal
Principal Planner

Linda Neal

To: Planning Commission
Subject: FW: 69 Spruce Road - proximity to 71 Spruce Road

From: Fernando Oliveira [mailto:faralloncompany@gmail.com]
Sent: Monday, May 18, 2015 7:01 PM
To: Linda Neal
Subject: Fwd: 69 Spruce Road - proximity to 71 Spruce Road

Dear Linda: Just got this. -Wendy

----- Forwarded message -----

From: Tonia Stoski <tonia@nc2studio.com>
Date: Mon, May 18, 2015 at 6:41 PM
Subject: RE: 69 Spruce Road - proximity to 71 Spruce Road
To: viojica@via-eng.com, jmoore@townoffairfax.org, faralloncompany@gmail.com
Cc: chris@stoskidigital.com

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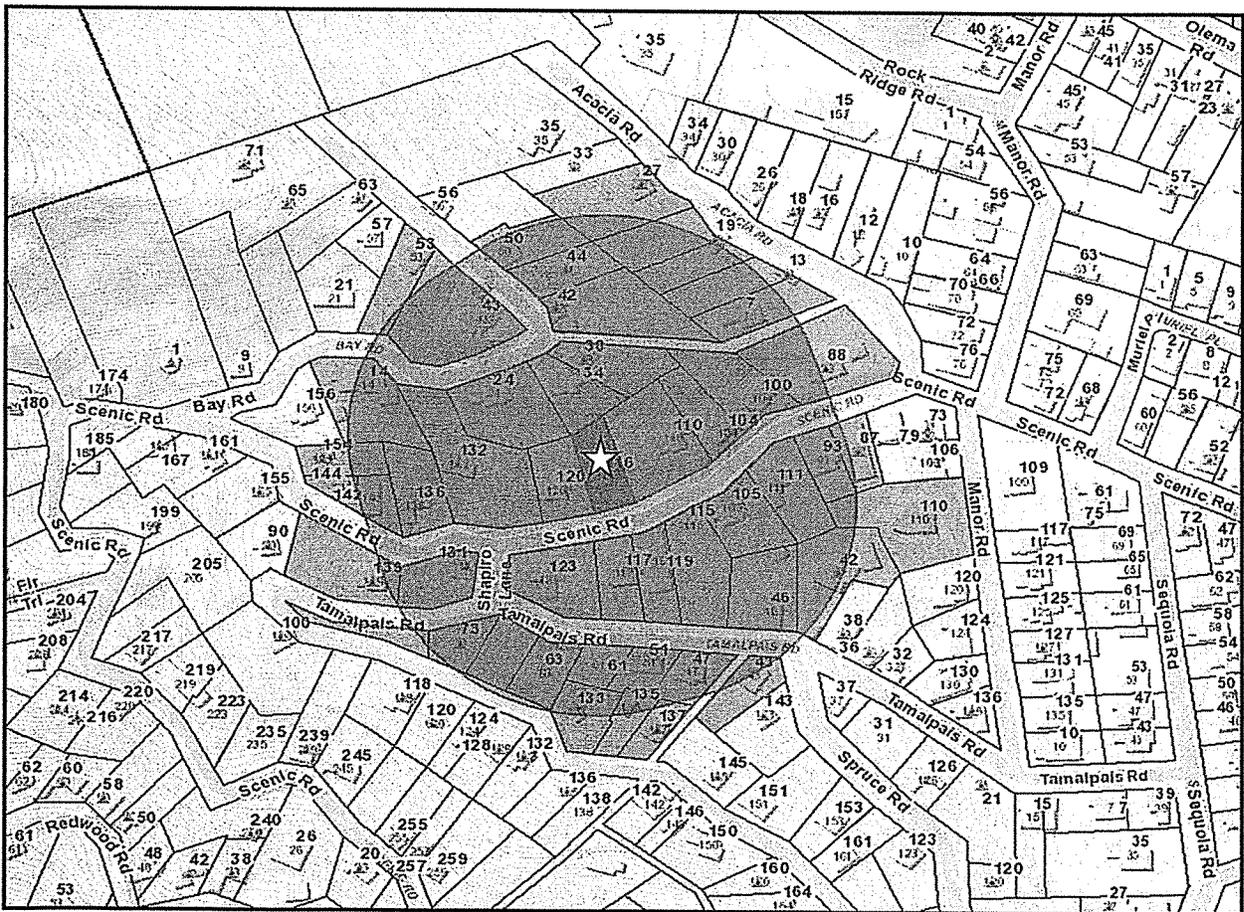
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Farallon Company
Fernando Oliveira

General & Engineering Contractor, CSLB #827633
P. O. Box 848, Novato, CA 94948
Office #415-892-7760, FAX #415-892-6871
Mobile #415-716-4550

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

TO: Fairfax Planning Commission
DATE: May 21, 2015
FROM: Jim Moore, Director of Planning and Building Services
Linda Neal, Principal Planner
LOCATION: 69 Spruce Road; Assessor's Parcel No. 001-145-01
PROJECT: Creation of off street parking space
ACTION: Preferential Parking; Application # 15-09
ZONING: Residential Single-family RS 6 Zone District
APPLICANT: Wendy Oliveira, Farallon Co.
OWNER: Ellen De Martini
CEQA STATUS: Categorically exempt section 15301(4)



69 SRPUCE ROAD

BACKGROUND

The 7,400 square foot and 30 foot wide site slopes up from Spruce Road at an average rate of 57% and the front property line is set back from the edge of the paved road 15 to 17 feet. The 1,123 square foot, three bedroom, 1 bath, single-family residence was constructed in 1922 and has no formal parking. The wood framed house is located on the lower portion of the property and is accessed by a long series of steps leading up from Spruce Road.

This item was original scheduled for the April 16, 2015 Commission meeting. At that meeting the owner of the neighboring property at 71 Spruce Road indicated to the Commission that she had not had time to review the plans and was asking for additional time to allow her engineer review them. She cited the proximity of the wall to the side of her house/property line, whether the depth of the excavation for the wall might compromise the stability/result in future settlement of her house and impacts of the wall on existing trees as her concerns. The Commission continued the public hearing to the May 21st, 2015 meeting.

DISCUSSION

The project encompasses creation of a 9 ft x 20 ft parking area and relocated entry stairs. The improvements will be created by constructing a retaining wall that will vary in height as one travels west on Spruce Road from 7 feet in height to 4 feet in height. The parking and access stairway improvements are proposed entirely within the public right-of-way.

Normally this type of parking development would require the approval of an Encroachment Permit and a Retaining Wall Height Variance from the Planning Commission. However, in 1994, the Fairfax Town Council adopted Ordinance No. 636 establishing preferential parking privileges for persons creating vehicle parking spaces within the Town rights-of-way. The ordinance allows persons spending \$10,000 or more to create the parking to post the parking for their own private use as long as they maintain the parking in a safe and sanitary manner.

The applicant proposes planting a combination of Asian Star Jasmine, Creeping Rosemary, Creeping Fig Vine and Boston Ivy along the top of the wall which is expected to grow over the wall to minimize its visual impact.

Construction will require the removal of 70 cubic yards of material and 3 bay trees from the site.

The provision of parking along this section of Spruce Road where parking is scarce and parked vehicles often narrow the roadway travel path for emergency vehicles will be more beneficial to the general Public than the retention of the existing bank and bay trees.

Ross Valley Fire Department

The Ross Valley Fire Department has indicated that they will not support the posting of this space in the public easement for use only by the property owners and they would like included in the recorded Revocable Encroachment document the condition that any remodeling, expansion or reconstruction of the dwelling that constitutes a 50% remodel will trigger the Fire Code requirement that the roadway in front of the residence be widened to 20 feet (effectively removing the parking space).

RECOMMENDATION

Move to approve application # 15-09 after finding that creation of the proposed parking space is in the public interest as long as the following conditions of approval are met:

Recommended Conditions of Approval

1. Construction plans must be submitted for the project building permit that are prepared by a licensed Civil Engineer that show existing conditions such as the house location, trees, utilities, the street and the stairs. Layout dimensions, property lines, drainage, elevations and all construction details must be shown.
2. The top of the retaining wall footing must be shown a minimum of 6 inches lower than the existing street pavement to minimize possible conflicts with future street work. The pavement over the footing in the parking area may be concrete or asphalt concrete. Concrete pavement must be separate from the wall footing so it can be removed if future street work requires removal.
3. The applicant shall comply with the conditions of the Fairfax Building Official, Public Works Director/Manager and Town Engineer.
4. The planting and irrigation plan for the area above the retaining wall shall be submitted with the building permit application. The plan shall be subject to review and approval by the Department of Planning and Building Services prior to issuance of the building permit.
5. This approval is limited to the development illustrated on the plans prepared by Vlad G. Iojica, Civil Engineer, pages C0.0 and C1.0 dated 11/17/14 and the property survey prepared by Robert J. Dains, dated 2/12/15.
6. Prior to issuance of a building permit the applicant or his assigns shall submit a bond, cash deposit or letter of credit to the Town in an amount that will cover the cost of grading, weatherization and repair of possible roadway damage. The applicant shall submit contractor's estimates for any grading, site weatherization and improvement plans for approval by the Public Works Director. Upon approval of the contract costs, the applicant shall submit a cash deposit, letter of credit or bond equaling 100% of the estimated construction costs.

7. Prior to issuance of the building permit the applicant shall provide the Town with a video of the access streets to be used during construction. The Public Works Director shall make a decision prior to the project final, regarding street resurfacing and repair required as a result of damage and wear and tear from project vehicles.

8. Retaining elements shall be designed by a structural engineer certified as such in the state of California. Plans and calculations of the retaining elements shall be stamped and signed by the structural engineer and submitted to the satisfaction of the Town Engineer.

9. Submit 3 copies of the survey subject to review by the Town Engineer and the Public Works Director prior to issuance of the building permit.

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

a. The project engineer shall be on-site during the grading process and shall submit written certification to the Town staff that the grading has been completed as designed and recommended prior to installation of retaining forms.

b. Prior to the concrete form inspection by the building official, the project engineer shall field check the forms of the foundations and retaining elements and provide written certification to the Town staff that the work to this point has been completed in conformance with the approved building plans and recommendations. The building official shall field check the concrete forms prior to the pour.

c. 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 contractor.

d. Additionally, 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.

11. Prior to the project final inspection the following shall be completed:

a. The project engineer shall field check the completed project and submit written certification to the Town Staff that the retaining, grading and drainage elements have been installed in conformance with the approved building plans.

b. The Building Official shall field check the completed project to verify that the

work has been installed as per approved plan.

c. The applicant shall submit a bond, letter of credit or a cash deposit to the Town in an amount that will cover the cost of landscaping and irrigation materials and installation. This amount will be kept for 18 months once the landscaping is installed to ensure the plant material has become established.

d. The Planning Department shall field check the completed project to verify that all planning commission conditions have been complied with including installation of landscaping and irrigation prior to the final inspection.

12. Excavation shall not occur between October 1st and April 1st. The Town Engineer has the authority to waive this condition depending upon the weather.

13. During construction developer and all employees, contractors and subcontractors must comply with all requirements set forth in Ordinance # 673 (Chapter 8.26 of the Town Code) "Storm Water Management and Discharge."

14. The applicant shall comply with Ordinance 656, An Ordinance of the Town of Fairfax Amending Section # 12.24.050 of the Fairfax Town Code relating to the "Issuance of Permit For Excavations In streets And Public Thoroughfares".

15. The applicant shall comply with the Town Noise Ordinance Chapter 8.16 of the Fairfax Town Code.

16. 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 this preferential parking permit by the Fairfax Planning Commission. Any construction based on job plans that have been altered without the benefit of an approved modification will result in the job being immediately stopped and red tagged.

17. A detailed grading and erosion control plan must be submitted to the Town Engineer for review and be approval prior to issuance of the building permit.

18. Pavement restoration may include local repairs and overlay (rather than slurry sealing) depending on damage incurred due to construction and water and sewer line relocation. The final decision regarding street resurfacing shall be rendered by the Department of Public Works based on pavement conditions near the completion of construction.

19. Any modification of these conditions approval must be approved by the Fairfax Planning Commission.

20. 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.

21. The applicant must sign, have his signature notarized and record a Revocable Encroachment Permit Document at the Marin County Recorder's Office prior to issuance of the building permit for the project.

Tree Removal

22. The applicant must obtain a tree removal permit from the Fairfax Tree Committee and a building permit for the project prior to removing any trees from the site.

OTHER AGENCY/DEPARTMENT

Marin Municipal Water District and Ross Valley Sanitary District –

23. The District owns and maintain water and sewer facilities located within the Scenic Road right-of-way. No construction shall encroach upon or encumber access to District facilities. These facilities must be located and marked on the project construction plans to determine conflicts and may need to be relocated.

Ross Valley Fire Department –

24. The proposed parking area must not encroach into the existing roadway bed. The requires 9 feet of width for a parking space must be clear of the existing street area and parked vehicles may not extend beyond the approved parking area at any time.

25. Per the Ross Valley Fire Department the parking space may not be posted for the

sole use of 69 Spruce Road but must be available for use by the general public.

26. The Revocable Encroachment document shall include the condition that any remodeling, expansion or reconstruction of the dwelling that constitutes a 50% remodel will trigger the Fire Code requirement that the roadway in front of the residence be widened to 20 feet (effectively removing the parking space and requiring either the provision of alternative parking or a Parking Variance).

Miscellaneous Conditions

27. 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.

ATTACHMENTS

Exhibit A – Revocable Encroachment Permit

Exhibit B – e-mails and meeting memorandum between Ross Valley Fire and project engineer, Vlad Iojica, P.E.

RECORDING REQUESTED BY AND
AFTER RECORDING RETURN TO:

Town of Fairfax
Department of Public Works
142 Bolinas Road
Fairfax, CA 94930

_____ /

LICENSE AGREEMENT TO PERMIT

REVOCABLE ENCROACHMENT ON TOWN PROPERTY

This License Agreement is entered into on _____, between the Town of Fairfax, a municipal corporation, hereinafter referred to as "Licensor" and _____, of _____, Fairfax, CA, hereinafter referred to as "Licensee", and is made with reference to the following facts:

RECITALS

A. Licensee is the owner of the real property located at _____, Fairfax, California.

B. Adjacent to the _____ property line of said real property owned by Licensee, there exists a right-of-way owned by Licensor, which is owned by Licensor for roadway purposes.

C. Licensee desires to construct a certain development project on the real property and as part of that construction desires to include certain improvements, which will encroach upon, and be located in the above-referenced right-of-way owned by Licensor.

D. Licensor is agreeable to permitting said encroachment upon the terms and conditions expressed herein below.

AGREEMENT

In consideration of the foregoing, and subject to the terms and conditions set forth herein below, the parties agree as follows:

1. Grant Licensor hereby grants to Licensee, subject to the terms and conditions contained herein, the right to construct, maintain and install the following described improvements on the following described right-of-way owned by Licensor and shown on the diagram attached hereto as **Exhibit "A"**.

a. The improvements permitted to be constructed, maintained and installed by this License are described as follows: _____, as shown in **Exhibit "B"**.

b. The right-of-way and/or property owned by the Licensor permitted to be burdened by said improvements is described as follows: _____

_____, as shown in **Exhibit "A"**.

2. License Fee In consideration for the license herein granted, Licensee agrees to pay Licensor a one-time lump sum payment of \$ -0-, payable upon execution of this license.

3. Construction and Maintenance Expenses Licensee shall bear the cost and expense of constructing, reconstructing and maintaining the improvements described above. Licensee further agrees that all work upon or in connection with said improvements shall be done at such times and in such manner as is approved by Licensor and shall be done in accordance with plans and specifications approved by Licensor.

a. Licensee shall not modify or in any fashion change the improvements, once constructed, without the written permission of Licensor.

b. Licensee agrees to construct said improvements in a workmanlike fashion and to religiously maintain said improvements in a good and sound condition and in a condition that remains aesthetically and visually pleasing and acceptable to the Licensor. If Licensee fails to maintain said improvements in said condition, Licensee hereby grants to Licensor the right to either remove said improvements or to maintain them. If Licensor is required to remove and/or maintain said improvements, Licensee agrees to reimburse the Town for the cost thereof within 30 days after receipt of an invoice and, if such invoice is not so paid, the remaining balance shall accrue interest at the rate of 10% per year until paid. Furthermore, if said invoice is not paid, Licensee agrees to permit Licensor to impose a lien upon the real property described in **Exhibit "B"** without notice to Licensee.

4. Removal of Improvements Licensee expressly acknowledges that the improvements covered by this agreement are being allowed to be constructed in a public right-of-way and that, from time to time, said right-of-way will require improvement, relocation, destruction and/or removal. In the event of said events occurring, Licensee expressly consents to the Licensor removing and/or replacing said improvements, at the unfettered and complete discretion of Licensor, and Licensee further agrees to effect the removal and replacements at its cost within 60 days of receipt of written notice to do so from Licensor or, in the event that Licensee declines to effect said removal and/or replacement, Licensee grants to Licensor the right to remove and/or replace said improvements and the cost thereof shall be paid in accordance with the immediately preceding subparagraph.

a. Licensee hereby waives any/or all claims against Licensor for any and all damage or injury done to the real property described in **Exhibit "B"** and/or the structures located thereon caused as a result of the removal and/or replacement described in the immediately preceding paragraph and Licensee indemnifies and holds Licensor

harmless for any and all such damages or injuries, irrespective of the passive or active negligence of Licensor.

5. Indemnification and Hold Harmless

a. Licensee shall assume all risks of damage to the improvements and any appurtenances thereto and to any other property of Licensee or any property under the control of Licensee while upon or near Licensor's right-of-way described at paragraph 1(b).

b. Licensee further agrees to indemnify and save harmless Licensor, its officers, employees, agents, successors, and assigns, from any and all claims, liabilities, damages, failure to comply with any current or prospective laws, attorney's fees, for loss or damage to property and for injury to or death of any person arising out of the construction, maintenance, removal, replacement, rehabilitation, repair, or the location of the improvements or out of Licensee's activities on Licensor's right-of-way described hereinabove.

6. Insurance Licensee, at its sole cost, shall maintain property damage insurance in the amount of \$1 million combined single limit for bodily injury and property damage with insurers which are acceptable to Licensor, insuring against all liability of Licensee and its authorized representatives arising out of and in connection with Licensee's use or occupancy of the property.

All general liability insurance and property damage insurance shall insure performance by Licensee of the indemnity provisions of paragraph 6.

Each policy, or a certificate of the policy, shall be deposited with Licensor at the commencement of the term of this agreement, and on renewal of the policy not less than twenty (20) days before expiration of the term of the policy. Licensee shall provide evidence of said insurance, the certificate and endorsements in the forms attached hereto as **Exhibit "C"**.

Licensee shall make arrangements with the insurers that the insurers shall provide Licensor with notice of cancellation or termination of the insurance at least thirty (30) days in advance of cancellation or termination.

7. Term This agreement and the rights granted hereunder may be terminable by Licensor upon giving written notice to Licensee at least six (6) months prior to the termination.

a. Should Licensee, its successors and assigns, at any time abandon the use of the property described in **Exhibit "B"** or any part thereof, or fail at any time to use the same for the purpose for which development of said property was approved for a continuous period of six months, the rights and obligations hereby created shall cease to the extent of the use so abandoned and/or discontinued, and Licensor shall have the right to declare this license terminated to the extent of the use so abandoned or discontinued.

b. Upon termination of the rights and privileges hereby granted, Licensee, at its own cost and expense, agrees to remove said improvements for which this license is granted and to return the right-of-way to the condition it was in prior to the execution of this License. Should Licensee in such event fail, neglect, or refuse to remove said improvement or return the right-of-way to such condition, such removal and restoration may be performed by Licensor at the expense of Licensee, which expense, including any attorney's fees, Licensee agrees to pay upon demand and, if not so paid, said expenses shall be paid in accordance with paragraph 3(b), above.

8. Notices Any and all notices and demands required or permitted to be given hereunder, shall be in writing and shall be served either personally or by certified mail, return receipt requested, to the following addresses:

If to Licensor, to: Town of Fairfax
Attention: Public Works Director
 142 Bolinas Road
 Fairfax, CA 94930

If to Licensee, to: _____

 Fairfax, CA 94930

9. Waiver The waiver by Licensor of any breach or any term, covenant, or condition herein shall not be deemed to be a waiver of such term, covenant, condition or any subsequent breach of the same, or any other term, covenant or condition herein contained.

10. Authority of Parties Each individual executing this agreement in behalf of a corporation or other private entity shall represent and warrant that he/she is duly authorized to execute this agreement on behalf of the corporation and/or entity, in accordance with the duly adopted resolution of the Board of Directors of such corporation, and/or entity, a copy of said resolution shall be provided to Licensor, along with the executed original of this agreement.

11. Attorney's Fees In the event that either party is required to bring an action to enforce or interpret terms and conditions of this agreement, the prevailing party shall be entitled to payment of its attorney's fees, as well as expert witness fees.

12. Assigns and Successors This agreement shall inure to the benefit and be binding upon each party's assigns and successors, and it is the intent of the parties that this license and its terms and conditions shall run with the land and be binding upon all successors in interest to the real property described in **Exhibit "B"** attached hereto.

IN WITNESS WHEREOF, the undersigned have executed this agreement the day and year first written above.

TOWN OF FAIRFAX

Date: _____

By _____
Public Works Director

Date: _____

By _____

Date: _____

By _____

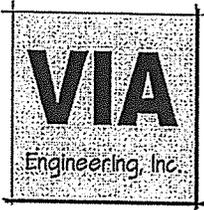
Date: 04/07'15

MEETING MEMORANDUM

Subject: Fire Department Plan Review Comments —69 Spruce Road, Fairfax, CA, APN: 001-145-01. (dated 04/01/2015)

Participants: Robert Bastianon, Fire Inspector
Ross Valley Fire Department

Vlad Iojica, Civil Engineer
ViA - Engineering, inc



Civil Engineering
Land Surveying

Dear Robert,

Following our morning meeting to discuss application review comments by Ross Valley Fire Department, and forwarded into our attention by Town of Fairfax, Planning Department, we prepared this Memo to summarize our discussion. Please review and let us know if anything is missing. We will consider this Memo as official if no response will be received within the following three working days.

As stated in the document submitted to the Town of Fairfax, and dated 04/01/15, of concern is the substandard street section (<20-ft) of Spruce Road, in conflict with the requirements of 2013 CFC, along the right-of-way corresponding to parcel in question (APN: 001-145-01). Under current conditions, pavement section along Spruce Rd varies in width, between 11' and 14', and with a vehicle parked, the available pavement section it is further reduced by an additional one to one and a half feet. Due to site configuration, and existing improvement on adjacent parcels along the alignment of the road, an extension of the pavement section to 20' it is not feasible.

The proposed improvements, in the right-of-way of Spruce Street will provide sufficient space for a car to be parked off the paved surface of the street.

From our conversation resulted that in order to mitigate the conflict between the provisions of the 2013 CFC and site specific conditions, the space created by constructing the retaining wall cannot be dedicated to serve only parcel in question, and in order to obtain Fire Department Approval for constructing proposed improvements, the plan needs to be revised by removing the "new parking" designation. Improvements created in the public right-of-way will be public, and that the owner of the parcel cannot claim the ownership of the improvements constructed in the public right-of-way. It has been noted that a similar situation is encountered at the front of the adjacent parcel to the west.

The approval will be provided on revised improvement plans, with no designation for parking in front of the proposed retaining wall. In addition the owner of the parcel to acknowledge that it will not own, once constructed, the proposed improvements, to be located in the public right-of-way.

Action Items:

VIA-Engineering to provide revised improvement plans for new retaining wall and access staircase.

Sincerely,

VIA-Engineering, Inc.

A handwritten signature in black ink, appearing to read "V. Iojica".

Vlad Iojica, P.E., QSD.
Civil Engineer

Cc: Ms. Ellen DeMartini, Owner
Linda Neal, Town of Fairfax,
Wendy Oliveira, Farallon Co.

Linda Neal

From: Robert Bastianon <rbastianon@rossvalleyfire.org>
Sent: Friday, April 10, 2015 9:32 AM
To: Vlad Iojica
Cc: Linda Neal; Fernando Oliveira
Subject: Re: 69 Spruce Road

Both.

On Thu, Apr 9, 2015 at 7:30 AM, Vlad Iojica <viojica@via-eng.com> wrote:
Hello Robert,

Will minimum 20-ft minimum width of pavement be required, for any future significant additions or remodels, be triggered by currently proposed improvements in the right-of-way of Spruce Rd, or it will independently apply as a condition on a remodel/addition on the property?

Thank you,
Vlad

-
Vlad Iojica, PE, QSD/P
Civil Engineer | Principal
VIA Engineering, Inc.
T: 415.774.6776
E: viojica@via-eng.com

From: Robert Bastianon <rbastianon@rossvalleyfire.org>
To: Vlad Iojica <viojica@via-eng.com>
Cc: Linda Neal <lneal@townoffairfax.org>; Fernando Oliveira <faralloncompany@gmail.com>
Sent: Wednesday, April 8, 2015 11:30 AM
Subject: Re: 69 Spruce Road

Hi Vlad, Please also note that any additions or significant remodels to the mentioned property or neighboring properties will require a minimum 20 foot wide road. This may impact future improvements in the area.

On Wed, Apr 8, 2015 at 8:21 AM, Vlad Iojica <viojica@via-eng.com> wrote:
Good Morning Robert,

Following our conversation yesterday morning, I prepared and attached here a memo letter for your review. Please let me know if anything is missing, or any questions.

Thank you,
Vlad

-
Vlad Iojica, PE, QSD/P
Civil Engineer | Principal
VIA Engineering, Inc.
T: 415.774.6776
E: viojica@via-eng.com

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Rob Bastianon
Fire Inspector
Ross Valley Fire Department.
777 San Anselmo Ave
San Anselmo, CA 94960
(415) 258-4686 office
(415) 258-4673 direct
(415) 258-4689 fax

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