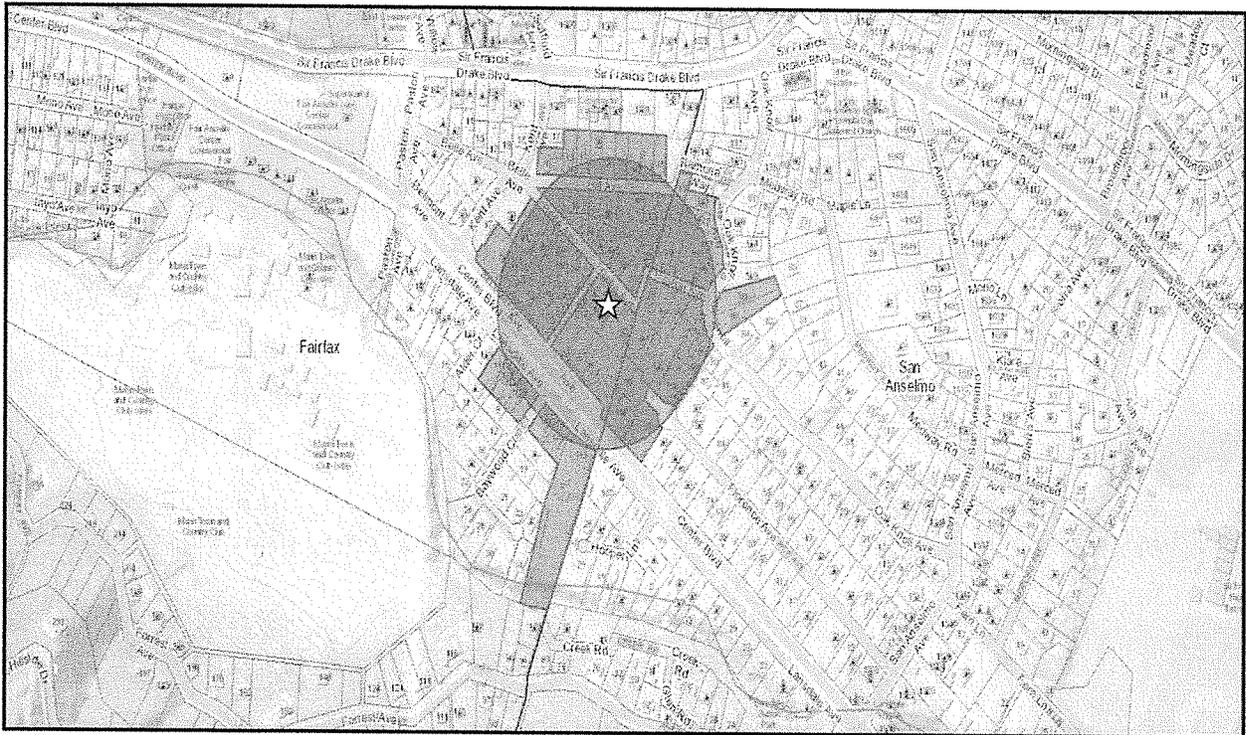


**TOWN OF FAIRFAX
STAFF REPORT
Department of Planning and Building Services**

TO: Fairfax Planning Commission
DATE: February 18, 2016
FROM: Jim Moore, Director of Planning and Building Services
Linda Neal, Principal Planner
LOCATION: 56 Belle Avenue; Assessor's Parcel No. 002-215-10
ZONING: Residential RD 5.5-7 Zone District
PROJECT: Single-family residence
ACTION: Use Permit and Variances; Application # 16-04
APPLICANT: Walter Connolly, Architect
OWNER: John Fitzpatrick
CEQA STATUS: Categorically exempt, § 15303(a) and 15305(a)



56 BELLE AVENUE

BACKGROUND

The 3,375-square-foot site is level and developed with a 1,048-square-foot residence containing 2 bedrooms and 1 bathroom and an attached 194-square-foot garage for 1 vehicle. The residence was constructed in 1929 prior to the Town's incorporation in 1931 and is suffering from deferred maintenance.

DISCUSSION

The applicant is proposing to demolish the existing residence to construct a 2-story, 1,507-square-foot residence containing 2 bedrooms, 2 bathrooms and an attached 193-square-foot garage for 1 vehicle. Two additional parking spaces would be provided in an expanded driveway at the front of the property.

The project would comply with the regulations for the Residential RD 5.5-7 Zone where the property is located as follows:

	Front Setback	Rear Setback	Combined Front/rear Setback	Side Setbacks	Combined Side Setbacks	FAR	Lot Coverage	Height
Required/ Permitted	6 ft.	12 ft.	35 ft.	5 ft. & 5 ft.	20 ft.	.40	.35	28.5 ft., 2 stories
Existing	12.55 ft.	18.65 ft.	31 ft.	4.79 ft. & 7.81 ft.	12.6 ft.	.31	.40	15 ft., 1 story
Proposed	18 ft.	15 ft.	33 ft.	8 ft. & 5 ft.	13 ft.	.44	.36	23 ft., 2 stories

The project requires the approval of the following discretionary permits:

A Use Permit

Town Code§17.084.050 requires that a Use Permit be obtained for any physical improvement of a site failing to meet the minimum size and width requirements of the RD 5.5.-7 Zone District. The required minimum lot size is 5,500 square feet and the required minimum lot width is 60 feet in this zone. The project site is 3,375 square feet and 45-feet wide, therefore the project requires a Conditional Use Permit.

The purpose of the Conditional Use Permit process is to allow the proper integration into the Town of uses which may only be suitable if they are designed or laid out on the site in a particular manner.

Residences in the area vary in size from a 708-square-foot, 2-bedroom, 2-bath residence on a 2,548-square-foot site (59 Belle Avenue) to a 2,171-square-foot, 4-bedroom, 2-bath house on a 3,240-square-foot site (47 Belle Avenue). There are eight (8), 2-story residences throughout the immediate neighborhood (7 and 11 Coolidge, and 38, 40, 47, 48, 49, 51 and 58 Belle Avenue.).

There are other homes in the immediate neighborhood that are similar in size and height to the proposed 2-story, 1,700-square-foot residence, therefore the the expanded home would not be out of scale with the site or out of character with the neighborhood.

Combined Side Setback/Floor Area Ratio (FAR) and Lot Coverage and Variances

In 1973 the Town updated its Zoning Ordinance increasing the setbacks required for residential properties and limiting lot coverage to 35% [Town Code §§ 17.084.070(A)(1) and (2) and 17.040.010]. The ordinance rendered most of the residences in the developed residential neighborhoods non-conforming with respect to setbacks.

In 2002 the Town adopted the 0.40 Floor Area/Lot Size ratio.

Due to the small, 3,375-square-foot size of the site, it is difficult to design a residence that complies with the current regulations. The house has been designed to meet all the minimum and the combined front/rear setbacks but would require a variance to maintain a 13-foot combined side setback, instead of the required 15-foot, required combined side setback. The applicants are also seeking variances to maintain a lot coverage of .36, instead of the required .35 and a Floor Area Ratio of .44 instead of the required .40.

Town Code §§17.136.040(A) and (B) set forth two methods to obtain a variance to exceed the Floor Area Ratio (FAR) limitation. One allows the Commission to grant exceptions to the requirement to prevent or minimize inconsistencies with the floor area ratio of adjacent or neighboring properties provided the granting of such a variance would not be a grant of special privilege or be inconsistent with the General Plan or Zoning Ordinance. The Code limits the Commission to granting a maximum floor area ratio of no more than 10% (a FAR of .50).

The second method allows the Commission to grant a variance to the FAR requirement by granting "points" for a project that incorporates green building technologies and materials as long as the granted variance does not exceed the maximum floor area ratio by more than 10% (a FAR of .50).

Town Code §17.136.040(D) allows the Commission to apply both variances simultaneously as long as the FAR for a given property does not exceed the .40 FAR by more than 15 % points (a .55 FAR).

Four of the residences in the immediate neighborhood of 56 Belle Avenue have Floor

Area ratios that exceed the permitted .40 (7 Coolidge - .48 FAR, 53 Belle - .52 FAR, 47 Belle - .67 FAR, and 49 Belle - .45 FAR).

The applicant proposes to implement the following "green building technologies" into the project: (1) all materials from the demolished structure would be recycled; (2) the siding would be Hardie-plank; (2) all installed fixtures and appliances would be water and energy saving models; and (3) the interior and exterior paint would be low VOC.

The small size of the property, the number of homes in the neighborhood already exceeding the .40 FAR and the green building technologies that would be implemented in the demolition of the existing house and construction of the remodeled house warrant approval of the requested .44 FAR.

The applicant requests to exceed the .35 lot coverage by .01 and proposes to replace the concrete walkway and driveways with permeable pavers to meet the intent of the lot coverage limitation which is to increase the permeable areas of each site to encourage water infiltration.

A Parking Variance

The applicants are also seeking a variance to Town Code §§ 17.052.010(B) which prohibits the location of parking within the required side yard setback. The applicant proposes to locate one of the required three, on-site parking spaces within the required side-yard, maintaining only a 3-foot setback from the western side property line. Historically, parking was allowed in the side yard setback, and parking and parking structures can be found in the side setback throughout the Town. Both residences on either side of the project site have parking spaces in the side yard setback. Therefore, allowing this property to have a parking space in the side yard would not change the character of the neighborhood or have a significant negative impact on the neighbors or the neighborhood.

Design Review

Town Code § 17.020.030(A) requires a Design Review permit for new residences. In order to grant design review approval for a project, the Planning Commission must determine that the project complies with the Design Review Criteria set forth in Town Code §17.20.040(A) through (N).

The concrete Hardie-plank siding would run horizontally along the residence, be beveled and painted a greenish/brown color (Backwoods Region Aparatada, 459, 22o). The trim would be a shade of red (Bonaparte Bonaparte, CC-64, 12h) and the roof would be constructed of black asphalt shingles. The facial board would be white.

The street façade has been articulated by incorporating a small roof deck off the master bedroom sitting room, including a small front porch with an arched roof and using various window sizes and shapes.

The rear of the second floor has no windows to minimize the impact on the two story residence at the rear of the property.

A neighbor wrote a letter to the Town regarding the project. The letter states that the maple in the rear yard of the property is a significant tree not only for the project site but also for other yards that share property lines with the property because it provides shade in the summer and, being deciduous, lets sun through in the winter. Staff has included a condition of approval for the project, that requires the applicant to submit with their building permit application a certified arborist report documenting the existing health of the trees in the rear yard and setting forth mitigation measures to be implemented during and after construction to ensure that the continued health of all the trees potentially affected by the project.

The applicant plans to retain the existing landscaping but if any landscaping is installed, it would include all drought tolerant, native plants.

The project complies with the design review criteria set forth in the Town Code.

Other Agency/Department Comments/Conditions

Ross Valley Sanitary District

A sewer connection permit must be obtained from the Sanitary District and all District requirements must be met pertaining to the private side sewer lateral prior to the project final inspection.

Marin Municipal Water District

1. All indoor and outdoor requirements of District Code Title 13 – Water Conservation, is a condition of water service. Indoor plumbing fixtures must meet specific efficiency requirements. Landscaping plans shall be submitted and be reviewed and approved by the District. The Code requires submittal of a landscape plan, an irrigation plan and grading plans.
2. Should backflow protection be required, it shall be installed, inspected and approved by the District prior to the project final inspection.
3. On November 3, 2015, the District adopted Ordinance 429 requiring installation of gray water recycling systems for all projects undergoing substantial remodel that necessitates an enlarged water service.

Police/Building/Public Works

The Fairfax Police, Building and Public Works Departments had no comments on, or conditions for, the project.

RECOMMENDATION

1. Open the public hearing and take testimony after hearing the staff report and a presentation from the applicant.
2. Close the public hearing.
3. Move to approve application # 16-04 by adopting Resolution No. 16-02 which sets forth the findings and conditions for the project approval.

ATTACHMENTS

Attachment A – Resolution No. 16-02

RESOLUTION NO. 16-02

A Resolution of the Fairfax Planning Commission Approving a Use Permit, Design Review Permit and Variances to Construct a 1,700-Square-Foot Residence with Two Bedrooms and Two Bathrooms at 56 Belle Avenue

WHEREAS, the Town of Fairfax has received applications for a Use Permit, Variances and a Design Review permit to construct a 1,700-square-foot residence with 2-bedrooms, 2-bathrooms and a 193-square-foot garage for one car at 56 Belle Avenue; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on February 18, 2016 at which time all interested parties were given a full opportunity to be heard and to present evidence; and

WHEREAS, based on the plans and supplemental information provided by the applicant, the Planning Commission has determined that the applicant has met the burden of proof required to support the findings necessary for the project's requested discretionary Use Permit, Design Review permit and Variances as long as certain conditions, listed below, are met; and

WHEREAS, the Commission has made the following findings:

1. The proposed 1,700-square-foot residence is similar in size, mass, design and location on the site to other residential structures in the Fairfax Tract subdivision. 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 residence will maintain the required minimum setbacks and only minor exceptions to the Floor Area Ratio and Lot Coverage limitation. The structure will exceed the FAR by only .04 and the Lot Coverage by .01 and will maintain the footprint of the existing structure and not extend closer to any neighboring structures. The structure will reach a maximum of 23 feet in height, 6.5 feet less than the maximum permitted 28.5 foot height limit. Therefore, the development and use of the 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 pertinent to the particular case and contained or set forth in the 2010 to 2030 Fairfax General Plan and Zoning Ordinance, Title 17 of the Fairfax Town Code.

4. Approval of the use permit will result in equal or better development of the premises than would otherwise be the case and the provision of 3 parking spaces will bring the property into compliance with the required number of on-site parking spaces. Therefore, the project is in the public interest and will enhance the general health, safety and welfare of the community.
5. The narrow, 45-foot width and small, 3,375-square-foot size of the site are the special circumstances applicable to the property that make complying with the Combined Site Setback, Side Setback Parking Prohibition, Lot Coverage and Floor Area Ratio being difficult. Granting Variances to allow encroachment into the side setback will allow the owner to construct a modest residence which is one of the privileges enjoyed by other property owners in the vicinity and under the Residential RS 6 Zone District.
6. The variance or adjustment will not constitute a grant of special privilege because similar parking configurations exist throughout the Town and structures with greater Floor Area and Lot Coverage ratios exist throughout the Fairfax Height neighborhood. Therefore, the approval of this variance is consistent with the limitations upon other properties in the vicinity and under identical zone classification, and is consistent with the objectives of this title.
7. The granting of the variances of adjustment will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated because the structure does not extend closer to the adjacent properties than the existing residence and the parking requirements have been met.

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

1. This approval is limited to the development illustrated on the plans prepared by Walter Connolly, Architect, stamped received on 12/10/15, Pages 1 and 2, and the revised parking plan received 12/17/15.
2. Prior to the building permit final inspection and/or issuance of the certificate of occupancy, the driveway shall be installed as shown on the plans.
3. During the construction process, all construction related vehicles including fixture/supply or equipment delivery, cement trucks and construction materials shall be situated off the travel lane of the adjacent public right(s)-of-way at all times. This condition may be waived by the building official on a case-by-case basis with prior notification from the project sponsor.
4. 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.

5. The Building Official shall field check the completed project to verify compliance with the approved plans and building code requirements.
6. The Planning Department shall field check the completed project to verify that the construction reflects the plans approved by the Planning Commission and to verify that all planning commission conditions have been complied with.
7. The roadways shall be kept clean and the site free of dust by watering down the site if necessary. The roadways shall be kept free of dust, gravel and other construction materials by sweeping the roadway, daily, if necessary.
8. During construction developer and all employees, including contractors and subcontractors must comply with all requirements set forth in Ordinance # 637 (Chapter 8.26 of the Town Code), "Storm Water Management and Discharge Control Program".
11. Any changes, modifications, additions or alterations made to the approved set of plans will require a modification of Application # 16-04. **Any** construction based on job plans that have been altered without the benefit of an approved modification of Application No. 16-04 will result in the job being immediately stopped and red tagged.
12. 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.

Ross Valley Fire Department

1. A fire protection system shall be installed throughout the entire building that complies with the requirements of the National Fire Protection Association (NFPA) 13-D and local standards. A separate deferred permit shall be required for this system. Plans and specifications for the system shall be submitted by an individual or firm licensed to design and/or design-build sprinkler systems.
2. All smoke detectors in the residence shall be provided with AC power and be interconnected for simultaneous alarm. Detectors shall be located in each sleeping room, outside of sleeping rooms centrally located in the corridor and over the center of all stairways with a minimum of one detector per story of the occupied portion of the residence.
3. Maintain an effective firebreak around the structure in compliance with Ross Valley Fire Protection Standard 220, Vegetation/Fuels Management Plan.
4. Carbon monoxide alarms shall be provided.
5. Address numbers must be 4 inches tall and if not clearly visible from the street, additional numbers are required. The project is a substantial remodel so the numbers must be internally illuminated or illuminated by an adjacent light controlled by a photocell and switch off only by a breaker so it will remain illuminated all night.
6. Applicant may propose alternate material or methods in accordance with Section 103.3 of the International Urban Wildland Interface Fire Code. All approved alternate requests and supporting documentation shall be included in the plan sets submitted for final approval.

Marin Municipal Water District

1. The applicant must comply with the District Code Title 13, Water Conservation, as a condition of water service.
2. Should backflow protection be required it shall be installed and inspected prior to the project final inspection.

Sanitary District

1. A sewer connection permit is required and the owner must file an application with the District prior to issuance of the project building permit.

Miscellaneous Conditions

1. The applicant must comply with any all conditions listed above unless a specific agency waives their conditions in a written letter to the Department of Planning and Building Services.
2. Planning Conditions acted upon by the Planning Commission may only be waived by the Commission at a future public hearing. ‘
3. The applicant shall comply with any and all conditions placed upon the project by the Building Official/Public Works Manager.
4. The applicant shall submit with the building permit application a certified arborist report documenting the existing health of the trees in the rear yard and setting forth mitigation measures to be implemented during and after construction to ensure all the trees continued good health. The mitigation measures are included as conditions of approval by the adoption of this Resolution No. 16-02.

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 Variances can occur without causing significant impacts on neighboring residences; and

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 18th, day of February, 2016, by the following vote:

AYES:
NOES:
ABSTAIN:

Chair, Laura Kehrlein

Attest:

Jim Moore, Director of Planning and Building Services