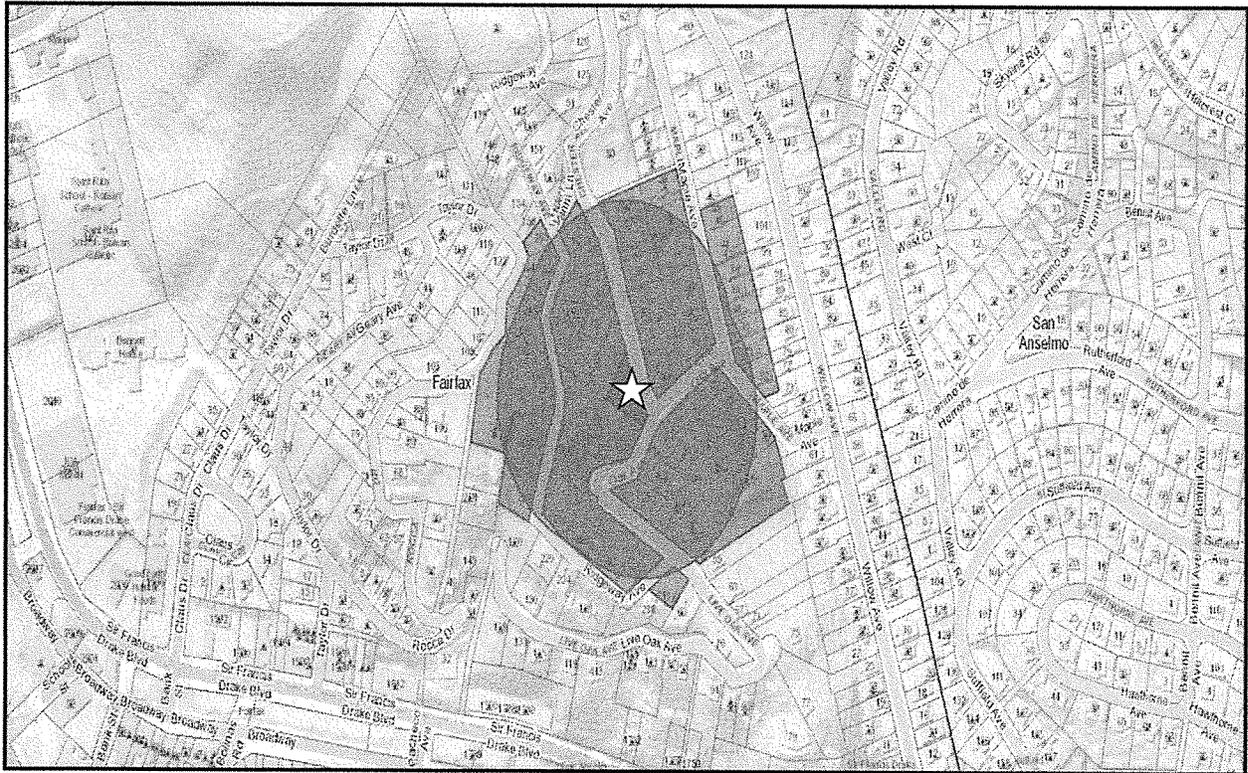


**TOWN OF FAIRFAX
STAFF REPORT
Department of Planning and Building Services**

TO: Fairfax Planning Commission
DATE: February 17, 2016
FROM: Jim Moore, Director of Planning and Building Services
Linda Neal, Principal Planner
LOCATION: 9 Chester Avenue; Assessor's Parcel No. 001-203-19
PROJECT: Art Studio/Storage Shed
ACTION: Use Permit and Front/Rear Setback Variance: Application # 16-04
APPLICANT: Doug and Maureen Kroll
OWNER: Same
CEQA STATUS: Categorically Exempt, § 15303(e) and 15305(a)



9 CHESTER AVENUE

AGENDA ITEM # 1

BACKGROUND

The irregularly shaped, 8,844 –square-foot site is located at the corner of Chester and Ridgeway Avenue(s) and slopes up from Chester Avenue at an average rate of 38%. The site is developed with a 1,350-square-foot, 3-bedroom, 2-bathroom single-family residence that was built in 1929.

DISCUSSION

The Department of Planning and Building Services received a complaint from a nearby resident that construction was occurring at 9 Chester Avenue. The owners were contacted and advised that the accessory structure (art studio/storage shed), outdoor patio with retaining wall and privacy screening, and expansion of a tiered deck/stairway system connecting the residence to the accessory structure and the street required discretionary zoning permits from the Planning Commission. The accessory structure is 120 square feet in size, the patio area is 78 square feet and the irregularly-shaped deck is roughly 600 square feet

The residence and accessory art studio/storage shed, deck and access stairways comply with the regulations of the Residential RD 5.5-7 Zone District 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	15 feet, 1 story (accessory structures)
Existing	6 ft	21 ft	27 ft	70 ft & 10 ft	80 ft	.15	.15	unpermitted shed is 12 ft. 6 in., 1 story
Proposed	same	9 ft	15 ft	37 ft & 10 ft	47 ft	.16	.17	same

Notes: The patio is constructed of concrete and is at grade, and is therefore not considered a structure and thus not subject to setback regulations (see the definition of a “structure”-Town Code § 17.008.020, Structure). The wall for the patio is 4 feet or less in height and is subject to the same regulations as a fence and can therefore be located within the required setbacks (Town Code 17.044.080).

Town Code § 17.084.060(B) limits the height of accessory structures to 15 feet and 1 story. The accessory structure is 11 ½ feet in height and 1 story and complies with the height regulations for accessory structures.

Use Permit

Town Code § 17.084.040 lists the permitted uses of accessory structures. An art studio/storage shed is not found on the permitted list. Therefore, use of the structure as an art studio/storage shed requires Planning Commission approval of a Use Permit.

Town Code § 17.084.050(C) sets forth the building site requirements for the property and requires that a parcel with a 38 % slope be 30,000 square feet in size and 179 feet wide. The site is only 8,844 square feet in size and 116 feet wide. Because the site is substandard, any improvements also require the approval of a Use Permit by the Planning Commission as indicated in the first paragraph of Town Code § 17.084.050-“Building Site Requirements” as follows:

“In the RD 5.5-7 zone, a use permit or hill area residential development permit (HRD) must be first secured for any use, occupancy or physical improvement of or on a building site failing to meet the... minimum area... and minimum width...” requirements.

The purpose of the conditional use permit is to allow the proper integration of uses into Fairfax that may be suitable only in certain locations in the Town or in a particular zone, or only if the uses are designed or laid out on the site in a particular manner [Town Code § 17.032.010(A)].

When considering an application for a conditional use permit, the Planning Commission must assess the impacts of the proposal on all adjacent uses and structures, on the site itself and potential project impacts on public health, safety and general welfare [Town Code § 17.032.010(B)].

The tiered deck and access stairs, patio and art studio/storage structure have been located on the southeastern side of the lot avoiding the mature trees on the site. The southeast side of the site is bordered by Chester Avenue to the northeast and Live Oak Avenue to the south. There are residences to the west and southwest of the site but the accessory structure and deck maintain substantial setbacks (over 60 feet) from the neighboring structures.

The art studio/shed and deck have been sited to have minimal impacts on the slope of the site, existing trees and vegetation and neighboring properties.

Minimum Rear and Combined Front/Rear Setback Variances

The site is very irregular in shape and narrows at the southern end to 20 feet. The shape of the site makes it difficult to comply with the minimum rear setback requirement and impossible to comply with the combined front/rear setback, while also avoiding the mature trees on the site. The applicants are requesting variances to maintain a minimum rear setback of 8 feet instead of the required 12 feet, and a combined front/rear yard setback of 14 feet instead of the required 35 feet [Town Code §§ 17.084.070(B)(1) and (2)].

As discussed above, the structures maintain over 60 foot setbacks from the closest neighboring structures at 11 Chester Avenue and 20 Live Oak Avenue meeting the intent of the minimum yard setback regulations.

Other Agency/Department Comments/Conditions

Ross Valley Fire District –

1. A sprinkler system must be installed that complies with the requirements of the National Fire Protection Association (NFPA) 13-D and local standards; or alternative materials or methods must be incorporated into the project in accordance with Section 104.9 of the California Fire Code.
2. The site shall comply with the Ross Valley Fire Department Fire Protection Standard 220 Vegetation/Fuels Management Plan by maintaining an effective firebreak/defensible space zone of 30 to 100 feet around the site structures.
3. 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.
4. Carbon monoxide alarms shall be provided in existing dwellings when a permit is required for alteration, repairs or additions that exceed \$1,000. Carbon monoxide alarms shall be located outside each dwelling unit sleeping area, in the immediate vicinity of bedroom(s) and on every level of a dwelling unit including basements.
5. Address numbers at least 4 inches tall must be in place adjacent to the front door. If not clearly visible from the street, additional numbers are required. Residential numbers must be internally illuminated, placed next to a light or be reflective numbers.
6. A class "A: roof assembly is required for this project.

Marin Municipal Water District –

1. Compliance with all indoor and outdoor requirements of District Code Title 13 – Water Conservation is a condition of water service.
2. Should backflow protection be required, it shall be installed as a condition of water service.

The following agencies/departments did not provide comments or conditions for the project:

Fairfax Police Department
Fairfax Public Works Department
Fairfax Building Department
Ross Valley Sanitary District

RECOMMENDATION

Move to adopt Resolution No. 16-04 approving application # 16-04 and setting forth the findings and conditions of approval for the project.

ATTACHMENT

Attachment A – Applicant’s Supplemental Information

RESOLUTION 16-04

A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF FAIRFAX APPROVING APPLICATION NO. 16-04 FOR A USE PERMIT AND VARIANCES OF THE MINIMUM REAR SETBACK REGULATION AND THE COMBINED FRONT/REAR SETBACK REGULATION TO ALLOW A 120-SQUARE-FOOT ACCESSORY STRUCTURE, RETAINING WALL, PATIO, DECK AND STAIRWAY IMPROVEMENTS TO BE BUILT AT 9 CHESTER AVENUE

WHEREAS, on January 20, 2016, Douglas and Maureen Krull submitted an application for a Use Permit to place a 120-square-foot accessory art studio/storage shed, retaining wall, patio deck and stairway improvements on their property at 9 Chester Avenue; and

WHEREAS, on March 17, 2016, the Planning Commission considered a staff report and its exhibits; and

WHEREAS, as set forth in the staff report prepared for the Planning Commission, the proposed improvements will not increase the floor area or the lot coverage, as defined in the Town Zoning Ordinance, of the property beyond the 40% floor area ratio and the 35% lot coverage permitted by the Town Code and the Commission finds as follows:

1. The proposed accessory structure with its use restricted to that of an artist studio/storage shed, retaining walls, patio and expansion of a deck to connect the residence with the accessory structure will not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment. Other similar Use Permits have been granted throughout the Town.
2. The approval of the Use Permit for the improvements in a location that exceeds most of the required setback requirements and maintains the existing mature trees on the site will not cause unreasonable detriment to adjoining properties or premises. The structures, as designed and in compliance with the height restrictions for the RD 5.5-7 Zone, will not 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. The Use Permit for the accessory art studio/storage shed will allow the owners a substantial use of their property and is similar to the use of other residentially zoned properties with accessory structures used for living space.
4. The use permit is not contrary to the objectives, goals and standards set forth in the Town Zoning Ordinance and the findings required by Town Code §17.032.040 for a conditional use permit.

5. Because of special circumstances applicable to the property, including its irregular size and steep slope, the strict application of the minimum rear and combined front/rear setback regulations will deprive the applicant of privileges enjoyed by other property owners in the vicinity and under identical zone classification.
6. The distances between the improvements and neighboring structures and residences exceed 60 feet, thereby meeting the intent of both the minimum rear and combined front/rear setback regulations. Therefore, the variance or adjustment will not constitute a grant of special privilege, is consistent with the limitations upon other properties in the vicinity and under identical zone classification, and is consistent with the objectives of this title.
7. The strict application of this title would result in excessive or unreasonable hardship. There is nowhere on the site to locate an accessory structure without violating some setback or removing mature trees.
8. The granting of the variance of adjustment will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated.

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

1. This approval is limited to the placement of a manufactured Summerwood Product structure of a "Copper Creek" style that is 120 square feet or less in size with minimal electrical outlets, construction of an outdoor patio and installation of a hot tub and construction of a deck (to be determined by the Department of Planning and Building Staff).
2. Prior to issuance of a building permit the owners shall sign, have their signatures notarized and then record a deed restriction indicating the accessory structure is to be used as an artist studio or for storage and shall not contain any plumbing. This document shall be prepared by the Department of Planning and Building Services.
3. Prior to issuance of an occupancy permit the Building Official shall field check the completed project to verify compliance with the approved plans and building code requirements.
4. **Any** changes, modifications, additions or alterations made to the approved set of plans will require a modification of Use Permit Application # 16-07. **Any** construction based on job plans that have been altered without the benefit of an approved modification of Use Permit 16-07 will result in the job being immediately stopped and red tagged.

5. 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.
6. Prior to issuance of the building permit for the project it shall be reviewed and approved, possibly with additional conditions, by all agencies/departments with jurisdiction over the project.

Miscellaneous Conditions

The applicant must comply with any all conditions listed above unless a specific agency waives their conditions in writing to the Department of Planning and Building Services.

NOW, THEREFORE, BE IT HEREBY FOUND AND RESOLVED by the Planning Commission of the Town of Fairfax that said Commission does approve Conditional Use Permit Application No. 16-07 allowing the placement of a 120(or less)-square-foot manufactured accessory building, construction of an outdoor patio, retaining wall, and deck, and stairway expansion, as depicted on the plans and supplemental information submitted by the owner and reviewed and made part of the record at this March 17, 2016 meeting of the Fairfax Planning Commission, for an art studio/storage accessory structure, retaining wall, deck, outdoor patio and stairway expansion at 9 Chester Avenue.

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 17th day of March, 2016, by the following vote:

AYES:
NOES:
ABSENT:

Chair, Laura Kehrlein

Attest:

Jim Moore, Director of Planning and Building Services