

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

TO: Fairfax Planning Commission
DATE: October 20, 2016
FROM: Jim Moore, Director of Planning and Building Services
SUBJECT: Report on the outcome of the July 26, 2016, Fairfax Open Space Committee meeting where the new house and second unit project, approved by the Commission on July 21, 2016 for the 50.2 acre site located at 615 Oak Manor Drive (Assessor's Parcel No. 174-070-71) was discussed.

BACKGROUND

A duly noticed public hearing on Application # 16-24 was conducted by the Planning Commission on June 16, 2016 and approved via Resolution No. 16-21. However, toward the end of the public hearing a Commissioner expressed concern that the Fairfax Open Space Committee (FOSC) had had limited time and/or member resources to review and provide comment on the project when it was first routed to them during the initial thirty day review period (as called for in the General Plan Open Space Element) . A condition to the resolution was then added saying that the applicant/owner would meet with FOSC prior to issuance of a Building Permit to discuss the project.

DISCUSSION

The applicant did meet with the FOSC on July 26, 2016. Members asked a series of questions including: Would there be continued public trails access on the property? What will become of the remaining acreage of the property, and are there plans to fence off parts of the property?

In response Mr. Schwartz said that: (1) he did intend to make trails available for public access for a specific period of time (please see email correspondence attached); (2) that he did not intend to dedicate any remaining acreage for a permanent open space easement – though he was open to discussions on the possible purchase of open space easements on portions of the property; and (3) explained his limited fencing plans – as discussed at the July 21, 2016 Planning Commission public hearing.

ATTACHMENTS

Attachment A: Robert Schwartz's email correspondence dated August 10 & 11, 2016
Attachment B: Jack Judkins Memorandum on behalf of FOSC dated October 12, 2016

Jim Moore

From: robert schwartz <robmschwartz@yahoo.com>
Sent: Thursday, August 11, 2016 12:56 PM
To: Jack Judkins; Jim Moore
Subject: Re: easements, consents, licenses, etc

Hi Jim and Jack,

Jim, you had asked for some word on what we would be offering by today, and not surprisingly it has been as simple as I had hoped, though, my lawyer and I seem to have come up with a satisfactory solution. I had hoped to hammer it out this afternoon, with him, but he is out of town until Monday. Jack, my lawyer did email me today, however, and wrote: "The more I think about this, the more I like the Notice of Consent with a clause stating you will not revoke it for 5 years."

So, Jim, we will be offering a Notice of Consent to use the trail in question with a clause stating that we will not revoke it for 5 years and that it is transferable to any other owners during the next 5 years. The Notice will have a few conditions protecting other areas of the property, etc., that has been discussed already. We've decided on a shorter term of 5 years, rather than a longer one of 10 years or so, so that actually, its much easier to work towards finding a more enduring solution while Jack and I are more likely to still be in the picture, since things might be more tenuous and the landscape, so to speak, has a greater possibility of changing.

Jack, I had hoped to be able to maybe talk with you and my lawyer this afternoon together on speaker phone, but I've found out that he is not available till next week, but the feedback that he gave today should be enough for you Jim.

thanks to both of you for your help!

Rob

From: Jack Judkins <jbjudkins@comcast.net>
To: robert schwartz <robmschwartz@yahoo.com>
Sent: Thursday, August 11, 2016 6:50 AM
Subject: Re: easements, consents, licenses, etc

Hi Rob

I really appreciate your following through on this. Sorry for not responding yesterday. I had a very busy and late day at work.

Your lawyer is, of course, correct – an easement or license requires a holder. We would have to arrange this with the Town or MOST. I haven't dealt much with the notice of consent approach, which I presume is pursuant to the Civil Code sections which allow a landowner to give consent to public access without granting a more permanent right or interest. From my view a notice of consent

is not necessarily binding or irrevocable and in order to make it so would probably require an agreement with a third-party – again the Town or MOST.

I could talk sometime today after 1 PM and before 3 PM or after 5 pm.

Jack

Sent from my iPhone

On Aug 10, 2016, at 8:36 AM, robert schwartz <robmschwartz@yahoo.com> wrote:

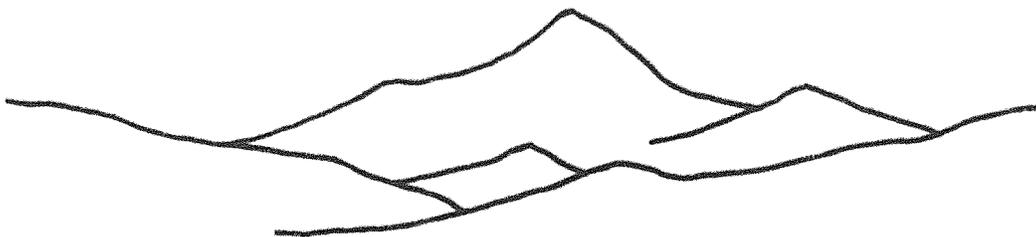
Hi Jack,

Thanks again to you and Nancy for your time last week.

I'm trying to draw something up with my lawyer to temporarily ensure access, while we work towards finding a solution that will provide longer term protection of access that will be agreeable to all parties. Can we discuss the differences between a notice of consent, an easement, and a license, from your point of view? My lawyer points out that an easement or license needs to be granted to an entity. Is there a good time to call you today?

thanks!

Rob
510-495-7511



FAIRFAX OPEN SPACE COMMITTEE

MEMORANDUM

TO: Fairfax Planning Commission
Jim Moore, Director of Planning and Building Services

FROM: Fairfax Open Space Committee
Jack Judkins, Member

DATE: October 12, 2016

SUBJECT: 615 Oak Manor Project
Owner: Robert Schwartz

Background

At its June 16, 2016 meeting, the Fairfax Planning Commission approved the application by the property owner, Robert Schwartz (the “applicant”), for a Hill Area Residential Development Permit, Excavation Permit and a Design Review Permit to construct a 3,765 square-foot single family residence, 456 square-foot carport and a 689 square-foot residential second unit on his property at 615 Oak Manor. The commission approval was conditioned on the following requirement:

14. The applicant shall meet with the Fairfax Open Space Committee to see if they have any comments/concerns about the project. If the comments/concerns can be addressed in a manner that is agreeable to both the Fairfax Open Space Committee and the property owner, the mitigation measures shall be incorporated into the plans submitted for building permit. If issues are raised by the Fairfax Open Space Committee that cannot be addressed amicably, the matter shall be scheduled for a hearing before the Planning Commission and the Commission shall determine how the issues will be addressed. Any decision of the Commission is appealable to the Fairfax Town Council.

FOSC Concerns and Resolution with Applicant

The applicant, Mr. Swartz, attended the July 2016 meeting of the Fairfax Open Space Committee (“FOSC”). FOSC members expressed particular concern about a portion of a trail that is on the Oak Manor property, along its western boundary. The trail originates off of the access road to the MMWD water tank which is just above Wimbledon Lane in

Canon Village, then climbs eastward up the hill above the water tank and at the top of the hill heads north along the western boundary of Mr. Swartz's property, and then leads to Oak Manor Fire Road, which leads to the MMWD water tank, located at the end of Glen Drive Fire Road. FOSC members noted that the trail, including the portion on Mr. Swartz's property, has been used for many decades as a public access way on a regular basis. The concern was that the trail remain open and available to the public. Mr. Swartz indicated a willingness to discuss keeping the trail available for public use and a subcommittee of FOSC was appointed to meet with Mr. Swartz to discuss and work out this concern.

I am pleased to report on behalf of FOSC that Mr. Swartz and the FOSC subcommittee members were able to reach agreement. Mr. Swartz graciously agreed to prepare, sign and record a non-revocable Notice of Consent, binding on successors, authorizing public use of the trail for five years.

Here is the text of an email that Mr. Schwartz sent to the Planning Department Director, Jim Moore, explaining his intentions:

We will be offering a Notice of Consent to use the trail in question with a clause stating that we will not revoke it for 5 years and that it is transferable to any other owners during the next 5 years. The Notice will have a few conditions protecting other areas of the property, etc., that has been discussed already. We've decided on a shorter term of 5 years, rather than a longer one of 10 years or so, so that actually, it's much easier to work towards finding a more enduring solution while [FOSC subcommittee members] and I are more likely to still be in the picture, since things might be more tenuous and the landscape, so to speak, has a greater possibility of changing.

As Mr. Schwartz indicates in his email, FOSC also looks forward to working with him to reach a mutually acceptable longer-term resolution of this issue. FOSC greatly appreciates Mr. Schwartz's willingness to address FOSC's concern and to work cooperatively to resolve it.

Recommendation

FOSC recommends that the agreement regarding the trail on the property be reflected in the record of the permit approval for the development of the property. FOSC will keep the Planning Commission and Planning Director apprised of progress and will work with the Town Manger and Town Council in fulfilling the agreed resolution and in reaching a longer-tem accord on the use of the trail.