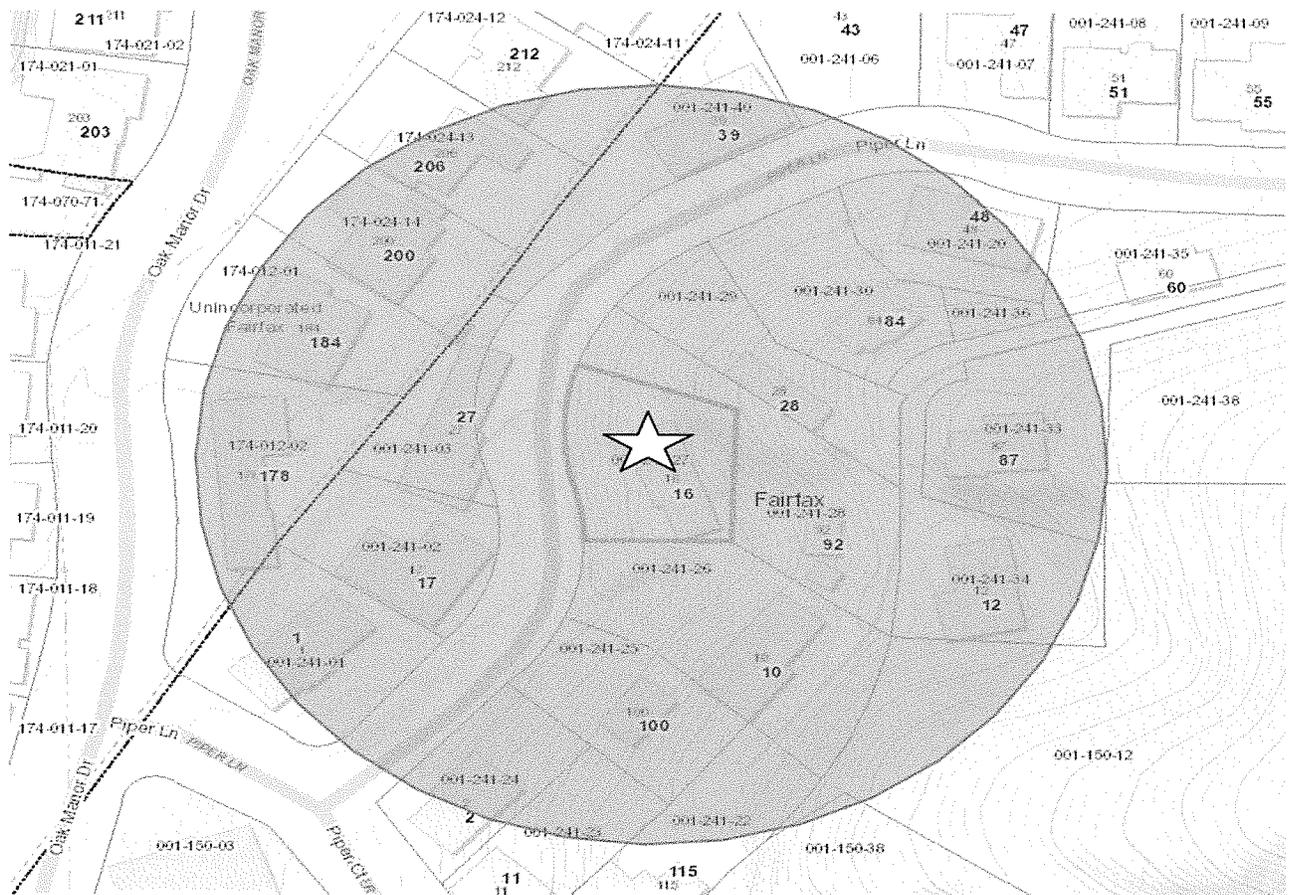


**TOWN OF FAIRFAX
STAFF REPORT
Department of Planning and Building Services**

TO: Fairfax Planning Commission
DATE: November 17, 2016
FROM: Jim Moore, Director of Planning and Building Services
Michelle Levenson, Zoning Technician
LOCATION: 16 Piper Lane; Assessor's Parcel No. 001-241-27
ZONING: Residential Single-family RS 7.5 Zone District
PROJECT: Reconstruct and Enlarge an Existing Deck
ACTION: Conditional Use Permit and Combined Front/Rear Setback Variance; Application No. 16-40
APPLICANT: Rich Dowd, Architect
OWNER: Judy Mayne
CEQA STATUS: Categorically exempt, § 15301(e)(1)



16 Piper Lane

BACKGROUND

The 6,794-square-foot site is steeply-sloped (43% slope) and developed with a 1,042-square-foot, 2-bedroom, 1.5-bath residence, a 400-square-foot garage and a 580-square-foot deck off of the front (western side) of the residence. The residence was constructed in 1960, is a single-story structure and is 15-feet in height.

DISCUSSION

The proposed project would involve replacing the deteriorated 580-square-foot deck with an 842-square-foot deck. Enlarging the deck by 262 square feet would require the removal of an existing, diseased coast live oak tree. The project conforms to the Residential Single-family RS-7.5 Zone District regulations as follows:

	Front setback	Rear setback	Combined front/rear setback	Side setbacks	Combined side setbacks	FAR	Lot coverage	height
Permitted	6 ft.	15 ft.	40 ft.	10 ft. & 10 ft.	25 ft.	.40	.35	35 ft., 3 stories
Existing	14 ft.	10 ft.	24 ft.	8 ft. & 3 ft.	21 ft.	.15	.30	15 ft., 1 story
Proposed	13 ft.	10 ft.	23 ft.	No change	No change	No change	.34	No change

The project requires the approval of the following discretionary permits:

Conditional Use Permit:

Town Code § 17.084.050 requires that a Conditional Use Permit be obtained prior to any expansion/modification of a residence on a parcel that does not meet the minimum size and width requirements based on the slope of the site. The project site has a slope of 43-percent, therefore the Town Code requires a minimum area of 43,600 square feet and a minimum width of 184 feet. The site is 6,794 square feet in area and has a minimum width of 52 feet; therefore, the project requires the approval of a Use Permit by the Planning Commission because the parcel does not meet the minimum standards.

In order to approve a Use Permit for the project, the Commission must be able to make the following findings (Town Code Section 17.032.060): (1) granting of the approval would not constitute a "special privilege" nor contravene the doctrines of equity and equal treatment; (2) the project would not create a public nuisance, cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects or create undue or excessive burdens in the use or enjoyment of the property; (3) implementation of the project would not result in the property or the structure being out of scale with the site, or out of character with the neighboring properties; (4) approval of the project is in keeping with the objectives, goals or standards set forth in the Town of Fairfax General Plan; and (5) approval of the project would result in equal or better development of the premises than would otherwise be

the case and the approval is in the public interest and for the protection and enhancement of the community.

The existing deck is deteriorated and requires replacement. The current configuration of the deck is awkward as it was built to avoid an existing coast live oak tree. The tree has been determined to be diseased and requires removal (Exhibit B). A Tree Removal Permit was issued by the Town's Tree Committee for removal of the tree in October 2005. Because the 2005 permit has lapsed and is no longer valid, the applicant has applied for and would require approval from the Tree Committee to remove the tree prior to the issuance of a building permit for the project. As proposed, the deck would be extended into the area that was occupied by the tree. There are limited opportunities for providing usable outdoor space on the site as the rear and side yards of the property are steep. The area where the deck would be extended is one of the remaining areas on-site that could be utilized for outdoor living space.

Approving a Use Permit for the project would not result in a grant of special privilege as several other properties located on steep slopes contain decks of a similar size, providing the occupants with usable outdoor living space, a "privilege" that is enjoyed by many Town residents. The project would result in the removal of a potentially dangerous, diseased tree thereby preventing a public nuisance. The deck would be located a considerable distance from adjoining properties, and would not be out of scale with neighboring properties as the deck would be extended modestly and would be located primarily within the same footprint as the existing deck. The project is consistent with Town General Plan and would result in increased outdoor use of the site, resulting in better development of the site.

Combined Front/Rear Setback Variance:

As discussed above, the Town Code requires a front and rear combined setback of 40 feet for the property. The existing combined front/rear setback is 24 feet; with construction of the deck the combined setback would be further reduced to 23 feet. Therefore the project requires a variance to the combined front/rear setback.

Town Code Section 17.028.070 states that the Planning Commission must find the following when approving a variance request: (1) due to special circumstances applicable to the property (e.g., size, shape, topography, etc.) strict application of the Code would deprive the applicant(s) privileges enjoyed by other property owners in the RS 7.5 Zone; (2) approval of the variance would not constitute a grant of special privilege and is consistent with the limitation upon other properties in the RS 7.5 Zone; (3) strict application of the title would result in an excessive or unreasonable hardship; and (4) granting of the variance would not be detrimental to the public or injurious to the subject property or other property in the vicinity.

As discussed above the site is steep and provides limited opportunities for useable outdoor space. The location in which the deck would be enlarged is one of the remaining developable locations for outdoor use that requires minimal excavation of the hillside. Construction of the project would afford the property owner with enhanced use

of the project site, a “privilege” enjoyed by many Town residents and the proposed size of the deck is consistent with other Town properties with lots that are steeply sloped. Because the project would involve replacement of a deteriorated deck and removal of a diseased tree, granting of the variance would prevent a potentially injurious situation, a benefit to the property owner and the public.

Other Agency/Department Comments/Conditions

Ross Valley Fire Department

1. The project site is located in a “Wildland Urban Interface Zone” and shall comply with CBC Chapter 7A and CRC R327.
2. Maintain around the structure an effective firebreak by removing and clearing all flammable vegetation and/or other combustible growth. Obtain approval of a Vegetative Management Plan (VMP) in compliance with Ross Valley Fire Protection Standard 220, Vegetation/Fuels Management.
3. 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. The numbers must be internally illuminated, placed next to a light or be reflective numbers.

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 requirement it shall be installed prior to the project final inspection.

Note: the Ross Valley Sanitary District, Fairfax Police, Public Works and Building Departments had no comment on the project.

RECOMMENDATION

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to approve Application No. 16-40 by adopting Resolution No. 16-32 setting forth the findings and conditions for the project approval.

ATTACHMENTS

Exhibit A-Resolution No. 16-32

Exhibit B-Guastucci's Tree Service letter

RESOLUTION NO. 16-32

A Resolution of the Fairfax Planning Commission Approving a Conditional Use Permit and a Combined Front/Rear Setback Variance to Replace and Expand an Existing 580-Square-Foot Deck by 262 Square Feet (a total of 842 square feet) at 16 Piper Lane

WHEREAS, the Town of Fairfax has received an application for a Conditional Use Permit and a Combined Front/Rear Setback Variance to replace an existing 580-square-foot, deck with an 842-square-foot deck in the front yard of an 1,042-square-foot, 2-bedroom, 1.5-bathroom single-family residence at 16 Piper Lane; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on November 17, 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 Conditional Use Permit and Combined Front/Rear Setback as long as certain conditions, as listed below, are met; and

WHEREAS, the Commission has made the following findings:

1. The proposed 842-square-foot deck is similar in size, mass and design on the site to other residential structures in the Oak Glen subdivision. Therefore, the approval of the use permit and the variance shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.
2. The residence will continue to maintain the required Floor Area Ratio and Lot Coverage limitation(s) with construction and expansion of the deck. Prior to construction of the project, the residence complies with the required front and side setbacks but maintains no rear setback therefore the combined front/rear setback is below the required 40-foot requirement. With construction of the deck project, the residence would intrude further into the front setback by 1 foot further reducing the combined front/rear setback from 24 feet to 23 feet.

Due to the steep topography of the site, the resultant lack of available outdoor space, the necessity to replace an existing deteriorated deck and remove a diseased tree, extension of the deck into the required setback make the strict application of Town Code Section 17.028.070 difficult. A strict application of the combined 40 foot front-rear setback requirement would place an undue hardship on the property owner and would deny the owner of privileges enjoyed by other residents with parcels of similar topography. Therefore, the development and use of the property as approved under the use permit and variance 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 and variance will result in equal or better development of the premises than would otherwise be the case. Therefore, the project is in the public interest and will enhance the general health, safety and welfare of the community.

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 RD Architecture entitled, "Mayne Residence, 16 Piper Lane", stamped "received" on 9/20/16, Sheets A1.0 through A1.1, and Sheet A3.1.
2. Prior to the start of construction the applicants shall obtain a tree removal permit and a building permit. Prior to the "final" building permit inspection, the 842-square-foot deck reconstruction and expansion shall be constructed as shown on the above referenced 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, the developer and all employees, including contractors and subcontractors must comply with all requirements set forth in Ordinance # 637 (Chapter 8.32 of the Town Code), "Urban Runoff Pollution Prevention".
9. Any changes, modifications, additions or alterations made to the approved set of plans will require a modification of Application No. 16-40. **Any** construction based on job plans that have been altered without the benefit of an approved modification of Application No. 16-40 will result in the job being immediately stopped and red tagged.
10. 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. The project site is located in a "Wildland Urban Interface Zone" and shall comply with CBC Chapter 7A and CRC R327.
2. Maintain around the structure an effective firebreak by removing and clearing all flammable vegetation and/or other combustible growth. Obtain approval of a

Vegetative Management Plan (VMP) in compliance with Ross Valley Fire

Protection Standard 220, Vegetation/Fuels Management.

3. 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. The numbers must be internally illuminated, placed next to a light or be reflective numbers.

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 a requirement it shall be installed prior to the project final inspection.

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. A construction management plan shall be submitted to the Building Official with the building permit application and shall become a condition of building permit issuance.
5. All exterior lighting, including landscape lighting, shall be LED and shall direct light downward.

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 Variance 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 17th, day of November, 2016, by the following vote:

AYES:

NOES:

ABSTAIN:

Chair, Laura Kehrlein

Attest:

Jim Moore, Director of Planning and Building Services

Guastucci's



Tree Service

30 Creek Rd, Fairfax, CA 94930
Phone: 415-456-4443 Fax: 415-460-1711
liza@Guastuccitreeservice.com

Town of Fairfax
142 Bolinas Rd.
Fairfax, CA 94930

, October 24, 2016

Tree Evaluation

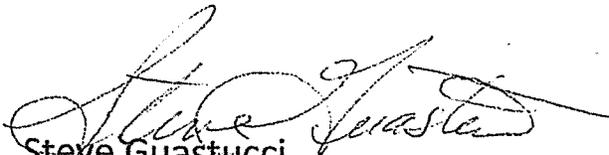
Address: 16 Piper lane
Fairfax, CA 94930

Owner: Judy Mayne

The Coast live Oak tree located in the front of house next to fence has several old cavities.

The lower section near the dirt level is severely rotten, this tree presents a danger of failing and falling on the lower street.

This tree should be removed as soon as possible.



Steve Guastucci
Guastucci's Tree Service

ATTACHMENT B