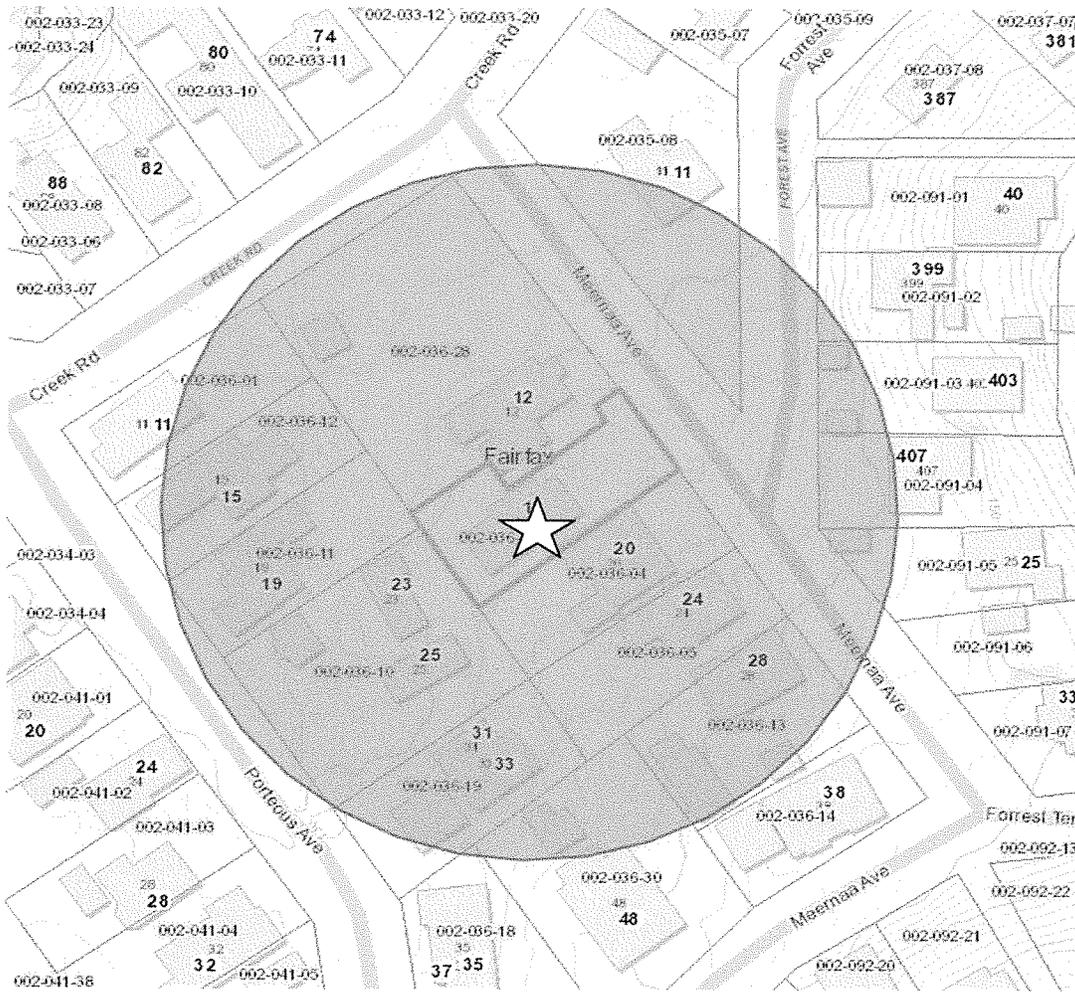


**TOWN OF FAIRFAX  
STAFF REPORT  
Department of Planning and Building Services**

**TO:** Fairfax Planning Commission  
**DATE:** December 15, 2016  
**FROM:** Garrett Toy, Acting Director of Planning and Building Services  
 Michelle Levenson, Zoning Technician  
**LOCATION:** 18 Meernaa Avenue; Assessor's Parcel No. 002-036-29  
**ZONING:** Residential Single-family RD 5.5-7 Zone District  
**PROJECT:** Install a Pre-fabricated Hot Tub and Sauna  
**ACTION:** Conditional Use Permit; Application No. 16-43  
**APPLICANT:** Christopher Schrader  
**OWNER:** Mariana Caplan  
**CEQA STATUS:** Categorically Exempt, §15303(e)



**18 Meernaa Avenue**

## BACKGROUND

The 6,250-square-foot site is level (4.8-percent slope) and developed with a 1,872-square-foot, 2-bedroom, 2.5-bath residence, and a 266-square-foot, detached carport. The residence was constructed in 1941, is a two-story structure and is 25-feet in height.

## DISCUSSION

The proposed project would involve installing a pre-fabricated 52-square-foot hot tub and a 24-square-foot, 97-inch-in-height sauna along the western side of the residence. The project conforms to the Residential Single-family RD-5.5-7.5 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.	6 ft.	25 ft.	5 ft. & 5 ft.	15 ft.	.40	.35	28.5 ft., 2 stories
Existing	20 ft.	15 ft.	35 ft.	7 ft. & 11 ft.	18 ft.	.19	.24	25 ft., 2 stories
Proposed	No change	No change	No change	No change	No change	No change	.25	No change

The project requires the approval of the following discretionary permit:

### Conditional Use Permit:

Town Code § 17.084.050 requires that a Conditional Use Permit be obtained prior to any expansion/modification of a property or 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 4.8-percent, therefore the Town Code requires a minimum area of 5,500 square feet and a minimum width of 60 feet. While the site meets the minimum area requirement (the site is 6,250 square feet), the minimum site width is 40 feet therefore the project requires the approval of a Use Permit by the Planning Commission.

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 proposed sauna and hot tub would be located along the side of the residence, approximately 106 feet from the front property line. Because of the distance from the front property line and presence of mature landscaping and trees, the sauna and hot tub would not be visible from Meernaa Avenue. In addition, the improvements would be located behind a “jog” in the line of the residence, reducing the perceived mass and presence of the hot tub and sauna. The improvements would be located 23 feet from the side property line, well outside of the required side setbacks. The existing fence, vegetation and trees would aid in minimizing noise levels from the use and operation of the hot tub and sauna.

Approving a Use Permit for the project would not result in a grant of special privilege as several other properties located on similarly-sized parcels and located within the RD 5.5-7 Zone contain outdoor spa amenities. By installing these amenities, the occupant would have an enhanced use of the outdoor living space available on the parcel, a “privilege” that is enjoyed by many Town residents. The project would not create a public nuisance as the improvements would be screened from Meernaa Avenue, are located a sufficient distance from the required setbacks and would be required to be operated and used in accord with the Town Code’s noise provisions. The project would be consistent with the Town General Plan and would result in increased outdoor use of the site, resulting in better development of the site.

### **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 structures an effective firebreak by removing and clearing all flammable vegetation and/or other combustible growth within the defensible space zone of 30-100-feet. Contact the Ross Valley Fire Department for more information.

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

### **RECOMMENDATION**

1. Conduct public hearing.
2. Adopt Resolution No. 16-33 setting forth the findings and conditions for the project approval.

### **ATTACHMENT**

Exhibit A-Resolution No. 16-33



**RESOLUTION NO. 16-33**

**A Resolution of the Fairfax Planning Commission Approving a Conditional Use Permit to Install a Pre-fabricated Hot Tub (52 Square Feet) and Sauna (24 Square Feet) at 18 Meernaa Avenue**

**WHEREAS**, the Town of Fairfax has received an application for a Conditional Use Permit to install a 52-square-foot hot tub and a 24-square-foot, 97-inch-in-height sauna along the side of an 1,872-square-foot, 2-bedroom, 2.5-bathroom, single-family residence at 18 Meernaa Avenue;

**WHEREAS**, the Planning Commission held a duly noticed Public Hearing on December 15, 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 as long as certain conditions, as listed below, are met; and

**WHEREAS**, the Commission has made the following findings:

1. The 52-square-foot hot tub and 25-square-foot, 97-inch-in-height sauna are similar in size, mass and design on the site to other residential structures in the Deer Park subdivision. Therefore, the approval of the use 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, Lot Coverage and setback limitation(s) for the RD 5.5-7 Zone with installation of the hot tub and sauna. In addition, mature landscaping, trees and a fence will aid in minimizing views and noise from the operation and use of the spa amenities from adjacent property owners. 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 by enhancing use of the outdoor space by residents of the residential dwelling. 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 Schrader Design entitled, "18 Meernaa Site Improvement", stamped "received" on 11/01/16, Sheet A1.
2. Prior to the "final" building permit inspection, the 52-square-foot hot tub and 24-square-foot sauna 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. 16-43. **Any** construction based on job plans that have been altered without the benefit of an approved modification of Application No. 16-43 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 within the defensible space zone of 30-100-feet. Contact the Ross Valley Fire Department for more information.

### **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 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 15<sup>th</sup>, day of December, 2016, by the following vote:

AYES:

NOES:

ABSTAIN:

---

Chair, Laura Kehrlein

Attest:

---

Garrett Toy, Acting Director of Planning and Building Services