



TOWN OF FAIRFAX

STAFF REPORT

February 5, 2014

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager
Jim Moore, Director of Planning and Building Services

SUBJECT: Adoption of a resolution of the Town Council of the Town of Fairfax denying the appeal and upholding the decision of the Planning Commission as to Application No. 13-31 (177 Frustuck Avenue - APN 003-193-02)

RECOMMENDATION

- 1) Open/close Public hearing
- 2) Adopt a resolution denying the appeal and upholding the decision of the Planning Commission as to Application No. 13-31 for a residential second unit, height variance, side setback variance, and encroachment permit for 177 Frustuck Avenue.

DISCUSSION

The applicants applied for a Residential Second Unit Use Permit in 2009 along with the following additional discretionary permits; a Height Variance to have a fourth story second unit underneath the three story residence, a Parking Variance and Encroachment Permit to have the required second unit parking located within the side yard setback and partially within the public right-of-way.

The request was denied by the Planning Commission on February 19, 2009 and the denial was upheld on appeal by the Town Council on August 5, 2009 by the adoption of Resolution No. 09-56

The owners re-submitted the application, with no changes, a second time. The Commission denied the application on November 21, 2013. They were unable to make the findings that special circumstances existed to approve the requested Height Variance, Setback Variance and encroachment permit to allow a 4 story residential structure with private parking in the public right-of-way for the second unit.

The owners have appealed the Commission's decision (Exhibit A, appeal form and attachments).

The staff report including a discussion of the project and the various discretionary permits required for the project from the November 21st 2013 meeting are attached as Exhibit B. The minutes from that meeting are attached as Exhibit C.

FISCAL IMPACT

None.

ATTACHMENTS:

Exhibit A – appeal and supporting documentation

Exhibit B – November 21, 2013 Commission Staff Report and attachments

Exhibit C – Minutes from the November 21, 2013 Commission meeting

Exhibit D – Town Council Resolution 09-56, 7/1/09 Council minutes, 2/19/09 Commission minutes

RESOLUTION 14-__

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
DENYING THE APPEAL AND UPHOLDING THE DECISION
OF THE PLANNING COMMISSION AS TO APPLICATION NO. 13-31
(177 FRUSTUCK AVENUE - APN 003-193-02)**

WHEREAS, the owners of 177 Frustuck Avenue (the "Applicants") submitted Application No. 13-31 to the Town to request a Use Permit and Height Variance for a residential second unit, an encroachment permit and Setback Variance to place the parking required for the requested second unit within the side yard setback and partially within the public right-of-way (the "Application"); and

WHEREAS, on November 21, 2013, the Planning Commission held a duly noticed Public Hearing to consider the Application, at which time all interested parties were given a full opportunity to be heard and to present evidence; and

WHEREAS the Planning Commission, on the basis of substantial evidence in the record before it, made findings for denial based on the project not complying with the requirements set forth in Sections 17.048.040(D) and (E) and 17.080.060A of the Town Code; and

WHEREAS, the Applicants appealed the Planning Commission's denial of the Application to the Town Council of the Town of Fairfax. Applicants, acting as appellants, requested that the Planning Commission's November 21, 2013, decision be overturned; and

WHEREAS, the Town Council held a duly noticed Public Hearing on February 5, 2014, on the appeal at which time all interested parties were given a full opportunity to be heard and to present evidence; and the Council reviewed the findings and the records of the Planning Commission meeting of November 21, 2013; and

WHEREAS the appealed project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to 14 C.C.R. § 15303, "New Construction or Conversion of Small Structures", Class 3(a) of the CEQA Guidelines.

NOW, THEREFORE, the Town Council of the Town of Fairfax does hereby find and determine as follows:

1. There is substantial evidence in the record to support the findings and decision of the Planning Commission on this Application.
2. There are no special circumstances applicable to the property to justify exceeding the height limit of 35 feet and three stories in Section 17.080.060A of the Town Code.

3. There exist no special circumstances applicable to the property, including size, shape, topography, location or surroundings, such that the strict application of the zoning ordinance deprives the property of privileges enjoyed by other property in the vicinity and under the same zoning classification, and thus no lawful basis for granting a variance from the Town's zoning ordinance under Government Code § 65906.
4. The construction of a Residential Second Unit on this property would cause excessive or unreasonable detriment to adjoining properties or premises because the parking for the unit would be located almost entirely within the public right-of-way. The future use of the right-of-way for public improvements would eliminate the required parking for the unit and for the guest parking space for the main residence and render the site non-conforming with the parking requirements.
5. Approval of the three discretionary permits, the Height Variance, Setback Variance and Encroachment Permit to facilitate the creation of a Residential Second Unit would not be in the public interest or for the protection or enhancement of the safety or welfare of the community because the increased density cannot be accommodated in compliance with the Town Code.
6. Denial of the permits does not deny the owners substantial use of the property, which is already improved with an existing single-family residence.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Fairfax hereby denies the appeal and upholds the decision of the Planning Commission, which denied the Application #13-31 for 177 Frustuck Avenue.

The foregoing resolution was duly and regularly adopted by the Town Council of the Town of Fairfax, County of Marin, State of California, at a regular meeting thereof, held on the 5th day of February 2014, by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

DAVID WEINSOFF, MAYOR

Attest:

Michele Gardner, Town Clerk