



TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
(415) 453-1584 / FAX (415) 453-1618

February 20, 2009

John Owens and Diana Dullaghan
177 Frustuck Avenue
Fairfax, CA. 94930

NOTICE OF PLANNING COMMISSION ACTION

RE: 177 Frustuck Avenue; Application # 09-02

Request for a setback variance, a height variance, encroachment permit and a second unit use permit in order to construct a second unit underneath an existing single-family residence and to construct parking for the second unit within the required side yard setback; Assessor's Parcel No. 003-193-02; Residential Single-family RS 6 Zone; John Owens and Diana Dullaghan, owners; John Owens, applicant; CEQA categorically exempt, § 5301(e), 15303(a) and 15305(a) and (b).

Dear Mr. Owens and Ms. Dullaghan,

At its meeting on February 19, 2009, the Fairfax Planning Commission denied the above referenced application.

RIGHT TO APPEAL

You and/or any interested citizen have the right-of-appeal to the Town Council from any action of the Planning Commission within ten days of the action. Contact the Planning Department staff at the Fairfax Town Hall for further information on how to appeal a Planning Commission decision.

If you have any questions regarding the Planning Commission action, or if you would like to purchase a copy of the meeting recording, please do not hesitate to contact the Fairfax Department of Planning and Building Services.

Sincerely,

Linda Neal
Senior Planner

Commission , and approved by the Council. We are returning to complete the intended application of a garage and affordable second unit from February 2008. The physical design of the house and garage is no different to the original 100% compliant design of 2004.

Construction of retaining walls as the foundations to a patio.

As you can see from the photographs we started construction of the foundations for a patio in the summer of 2008. We completed the foundations to the patio while the concrete trucks, and drilling rigs were next door at 183 Frustuck. We got held up in legal wrangling with the Town over our garage / unit application. The foundation is completed as far as we could proceed before coming to the Planning Commission. Our intention was to minimize construction time on the hill for our neighbors. We hoped to have completed the entire project in 2008.

The need for legal Second Units.

Fairfax needs more affordable housing. Units are needed to house people who want to live in Fairfax and cannot afford to buy homes or rent complete houses. Purpose built second units provide safe, code compliant dwellings. This is much preferred to the many illegal units in Town that do not meet Housing or Building Code, and clog our streets with on street parking. Fairfax needs to provide 64 units to comply with the State of California Affordable Housing Requirements. This unit would be one of the 64. Purpose built units provide Planning, Building, and Property Tax revenue for the Town. Their construction provides employment in this time of recession.

Variances for the Second Units

This application requires two variances. A parking variance for a fifth parking space. This parking space will provide safe off street parking with no impact to the neighborhood or surrounding neighbors. A height variance for a fourth story. We are not building a story. We are filling in an existing space under a house. It is a fourth story by technical definition only. The granting of this variance will provide safe affordable housing. Variances have been granted for all three second units approved to date. November 20 2003 88 Dominga approval to convert an existing 324 sq. ft.garage to a second unit. The unit and the parking space were located in the side yard set back and both needed variances.

April 17th 2008 17 Vista Way. Unit approved under the second unit amnesty. This project required **three variances**. A size variance, side yard setback variance, and a parking variance.

September 18th 2008 130 Mono Avenue approval under the second unit amnesty. This project required a side yard setback variance for an existing parking space.

Town desire for Affordable Housing and Green Building.

The Town of Fairfax has created an affordable housing committee . Members include Larry Bragman, Lew Tremaine, Mary Ann Magoria, Peter Ramsay, and Tony Gardener. There is currently a Second Unit Amnesty program in place to legalize existing second units. None of which have been legalized in nearly two years. The Planning Department, the Council, the Planning Commission are working towards changing

existing zoning to "mixed use overlay" to clear the way for builders of affordable units. The Planning Commission in 2005 expressed a desire that new houses include affordable second units, and they would be financially rewarded for doing so. Mr. Bragman, Ms. Maggoria, ExCouncilmember Egger have all expressed their desire for Green Sustainable Building. Four of the Planning Commissions expressed the same sentiments at the January 2008 appointment meeting. Niccolo Calderaro spoke strongly in favor of the house next door to us to include an affordable unit. He said he would be in favor of approving the house if it included a unit. This second unit is what the Planning Department, the Planning Commission, and the Town Council have been asking for. It is Green and Affordable. (see meeting quotes at the end of this letter).

Sustainability

Our existing house is the most sustainable house built to date in Fairfax. It produces 100% of it's electricity, and 70% of it's domestic hot water. A full list of sustainable features are on page A1.1 of the plans. The second unit is to be energy efficient, non toxic, and sustainable. It will produce most of it's own electricity. A full list of the unit's sustainable features appear on page A1.3 of the plans. A giant leap forward in the quality of rental property in Fairfax.

We hope you will view our application favorably. The Planning Department fully supports this project. This is the Green Sustainable Affordable Housing the Council, the Planning Commission, and Citizens of Fairfax have been asking for. We urge you to approve it.

Yours sincerely,

John Owens

Diana Dullaghan

Supporting Meeting Minutes John Owens Attended

Planning Commission Oct 20 2005

Continued discussion of General Plan Item. The Town considered charging an " In lieu of affordable housing fee" to all new construction over 2000 square feet. The minimum fee would be \$10,000 increasing as the house size increased. It was suggested that the fee be waived for new construction that included an affordable housing unit. The Planning Commission was encouraging affordable units to be built in new construction projects.

Town Council Meeting Minutes 9.19.07.

Appeal of the Planning Commission approval to construct a new home at 183 Frustuck Avenue.

Appellant Calderaro 165 Frustuck; stated that the Town was under stress and was losing open space and affordable housing; that the proposed structure would be almost 4,000 square feet and would be very prominent in the neighborhood; that it would be

built next door to the largest house in the area; that it would block views; that the house size was unprecedented and much too big, almost twice the size of the median sized house in the area; that the idea that it was a green project was hard to understand; that lots of earth would have to be removed for construction; that it would look like Daly City, not Fairfax; that the applicant would profit from the project, but that the neighbors properties would depreciate in value; that it would increase traffic; that the house should have been placed further down the lot; that the size should be reduced; that when such a large house was built, the builder should be required to contribute to the creation of affordable housing; that he would welcome a plan that included affordable housing; and that the project should be denied.

Excerpt from Town Council Meeting Minutes 10.17.07.

Appeal of the Planning Commission approval to construct a new home at 183 Frustuck Avenue.

Niccolo Calderaro, appellant, stated that the changes made to the plans by the applicant were cosmetic, not substantial, that there was still a plan for a garage on the ridgeline; that it was an opportunity for the Town to preserve his neighborhood; that the idea that it was a "green" project was misleading; that he was in favor of affordable housing and preserving Fairfax by protecting neighborhoods; that the house should be dropped down the hill; that the house be visible throughout the valley; and it would reduce the value of the neighbors property while enhancing the builders property value.

Council Meeting January 9th 2008

When Councilmember Bragman spoke in regards to the draft ordinance reducing the FAR of hillside homes. He said exceptions would be made for Green Building. Mr. Bragman has spoken on many occasions about the exceptions to be made for Green Building in Fairfax. He advocated affordable housing when he created the Second Unit Amnesty Program.

Council Meeting January 30th 2008 – appointment of Planning Commissioners. Pam Meigs, Shelbey Lamotte, Peter Ramsay and Terry Goyan in their speeches to the Council all proclaimed they were supporters of Green Sustainable Building, and Affordable Housing.

John Owens and Diana Dullaghan
177 Frustuck Avenue, Fairfax CA 94930
Tel 456 8064 Cell phone 717 7621
E-mail johnoph@aol.com

February 23, 2009

Appeal of the Planning Commission's decision on 2/19/09 to deny the second unit application at 177 Frustuck Avenue.

1. Commissioner Ketchum's Motion: Motion to deny . The project does not comply with the three story height limit of the Town of Fairfax 17.08.06A. That the definition of a second unit under the Town Code or Second Unit Amnesty does not suggest or convey a waiver of those requirements.

Fact: The second unit and second unit amnesty programs do not suggest or convey any specific exceptions. They state that exceptions to the ordinances require securing a variance. The Town has shown a willingness to grant multiple variances to the three second units approved to date. We requested the appropriate variances in the application, not *waivers*.

Examples:

(A) November 20, 2003. 88 Dominga. This application was **approved** outside of the second unit amnesty. Approval to convert an existing 324 sq. ft. garage into a second unit. The unit and the parking space were located in the side yard set-back and both needed variances. (I believe only one variance was allocated to the project to expedite a much needed second unit.)

(B) April 17, 2008. 17 Vista Way. Unit was **approved** under the second unit amnesty. This project required three variances. A size variance, a side yard set-back variance, and a parking variance.

(C) September 18, 2008. 130 Mono Avenue. **Approval** under the second unit amnesty. This project required a side yard set-back variance for an existing parking space. The second unit square footage also exceeded the 700 square foot or 30% of the main unit ordinance.

2. Commissioner Ketchum's Motion: Motion to deny . Granting of a fourth story would grant special privilege to this property, and in the long term deny similar privileges to properties that are upslope rather than downslope.

Fact: There is no evidence to support that the fourth story would be a grant of special privilege. A fourth story variance is the same as any other variance. Multiple variances have already been approved for the three second units to date. Every second unit application on any existing house is a unique application, as demonstrated by the range of variances already approved. We are not adding a story. The unit is to infill an existing space under our house. The

variance is called a "height variance". The height of the building will not change. There is no evidence to support upslope houses would suffer by approving this unit.

3. Commissioner Lacques' Motion: "Friendly Amendment" "I would like to make a friendly amendment that further finding is that the piece-meal nature of this application is such that if the project was originally proposed as is now being constituted with a covered garage, four stories, a second unit, given the square footage; the house would not have been approved because the project in its totality requires far too many variances."

Fact: Quite the contrary if the house, garage, and second unit application were submitted together in 2004 the project could have been approved without requiring any variances (with a slight modification of the design of the second unit parking space). The combined square footage of the house with the second unit would be 2653 square feet.

Fact: The house size is still smaller than 175 or 183 Frustuck - the two adjacent houses. The Floor Area Ratio of our lot would allow a 3900 square foot residence to be built without variances. Fairfax has approved quite a few residences 3500 square foot and larger. This current project only requires two variances. One less variance than the unit at 17 Vista Way. "Piece-mealing" is not a crime, nor is it against any local ordinance. If there has been any "piece-mealing" since the inception of this project, it was due to the actions of the Planning Commission, who in 2004 denied a fully compliant house and garage that required no variances.

4. Staff Report: The approval of the second unit complies with the goals of the 2006 Town of Fairfax Housing Element.

Goal H3 – To create high quality, well designed, and sustainable affordable housing.

Goal H8 – To create opportunities for the development of accessory dwelling units.

5. The approval of the second unit meets the purpose of the second unit ordinance 17.26.010

"The purpose of this chapter is to implement the housing element of the general plan in order to increase housing opportunities for all economic segments of the community. The intent is to provide for retention in the housing stock of existing units that comply with health and safety standards and to encourage construction of new accessory residential units in full compliance with such standards. Furthermore, it is the purpose of this chapter to allow the more efficient use of the town's existing housing stock of dwellings, to provide rental housing units for persons who are elderly or disabled, to provide economic support for resident families of limited income, and to protect the single-family character of a neighborhood by ensuring that residential second units are installed under such additional conditions as may be appropriate to further the purposes of this chapter. This chapter establishes standards for units and procedures to accomplish the following:

Identify and legalize existing units through permit procedures in order to ensure a healthy and safe living environment;

Develop new units through permit procedures that set standards to mitigate neighborhood and environmental impacts.”

6. Staff Report: The construction of this second unit will protect the single family character of the neighborhood. It provides two off street parking spaces for the second unit. One space already exists, the second will not have any visual impact. The unit is to be built below the existing living space. All windows and doors are below and not visible to the adjacent neighbors at 175 and 183 Frustuck Ave. The unit and the outdoor patio area will be located more than 86 feet from neighbors on Hickory. The unit and patio will be screened from Hickory by shrubbery.
7. Non-Opposition: There has been no neighborhood opposition to the construction of this unit. One neighbor spoke in favor of the unit.
8. Staff Report: The denial of the application would result in unreasonable hardship to the owners by eliminating their ability to provide an affordable second living unit which has been determined desirable by both the Planning Commission and the Town Council, as evidenced by their adoption of the Fairfax Housing Element.

And, also evidenced by pertinent comments from minutes of public meetings that John Owens personally attended – see below.

Planning Commission October 20, 2005

Continued discussion of General Plan Item. The Town considered charging an “In lieu of affordable housing fee” to all new construction over 2000 square feet. The minimum fee would be \$10,000 increasing as the house size increased. It was suggested that the fee be waived for new construction that included an affordable housing unit. The Planning Commission was encouraging affordable units to be built within new construction projects.

Town Council Meeting Minutes 9/19/07

Appeal of the Planning Commission approval to construct a new home at 183 Frustuck Avenue. (next door to us) Appellant Calderaro 165 Frustuck; stated that the Town was under stress and was losing open space and affordable housing. That when such a large house was built, the builder should be required to contribute to the creation of affordable housing; that he would welcome a plan that included affordable housing; and that the (existing) project should be denied.

Council Meeting January 30, 2008 – appointment of Planning Commissioners.

Pam Meigs, Shelby Lamotte, Peter Ramsay and Terry Goyan in their speeches to the Council all proclaimed they were supporters of Green Sustainable Building, and Affordable Housing. At the same meeting, Councilmember Bragman spoke on the subject of modifying the FAR of hillside homes and making exceptions for sustainable building.

Fact: The two variances should also be granted because of the promised exceptions Councilmember Bragman has said on many occasions would be made for sustainable building. Our house is to date the most sustainably built house in Fairfax. Producing 100% plus of its electricity, 70% of hot water. Add to that three biodiesel vehicles, and a long list of Green features. It is also the lowest carbon footprint residence in Fairfax. The second unit is to be sustainably built and will include a 1.3 kilowatt PV system located on the roof of the garage.

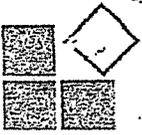
Council Meeting January 9, 2008

When Councilmember Bragman spoke in regards to the draft ordinance reducing the FAR of hillside homes. He said exceptions would be made for Sustainable Building. Mr. Bragman has spoken on many occasions about the exceptions to be made for Green Sustainable Building in Fairfax. He advocated affordable housing when he created the Second Unit Amnesty Program.

9. Planning Commission Chairman Lacques reviewed the wrong house. He went to 183 Frustuck Avenue, which is approximately 30% larger than our house, and has a garage 40% larger than our proposed garage. It is significantly more massive than our house. 183 is a plywood box without windows or doors. His first question to applicant was "are you going to occupy the house?" Our house was completed and has been occupied by our family since June 2006. His opinions and vote were based on the wrong property. He obviously has little understanding of plans or construction. A sheet of photographs showing the house and driveway are part of the set of plans submitted. Our street numbers are clearly visible at the edge of our driveway. When the Chairman of the Planning Commission commands the meeting based on his mis-perceptions from 183 Frustuck, it brings the whole proceedings and vote into question.

Summary

Our sustainable house and sustainable affordable second unit are exactly what the Town has continually asked for. Approval of our second unit is the affirmation of the Town's desire for Sustainable and Affordable Housing. Denial of the second unit displays extreme hypocrisy and ongoing extreme bias toward the Owens family.



Date: April 15, 2009

To: Town Council
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930

From: Pete Gang, AIA, LEED-AP
Common Sense Design
145 Keller Street
Petaluma, CA 94952

Re: Planning Application for proposed second unit and garage:
177 Frustuck Avenue
Fairfax, CA 94930
APN: 003-193-02

Dear Members of Town Council,

I am a licensed architect, a co-founder (in 2001) of the Redwood Empire Chapter of the U.S Green Building Council, and a co-founder and core faculty (2003-2008) with Sonoma State University's Green Building Professional Certificate Program, one of the first of its kind in the country.

I have had a long and intimate involvement in the evolving world of green building.

I am also the design architect for the house and carport at 177 Frustuck Avenue which were unanimously approved by Fairfax Town Council in August of 2004. My comments here concern the 'green' credentials of both the existing house and the proposed second unit.

It is understood among the national green building community that the LEED for Homes ('LEED-H') green building rating system represents the highest standard for residential energy and environmental performance. Although the house was designed and built prior to LEED-H, I recently conducted an informal post-construction assessment of the existing house and awarded points in the following categories:

| | |
|--------------------------------|--------------------|
| Innovation and Design Process: | 1 point |
| Location and Linkages: | 7 points |
| Sustainable Sites | 18 points |
| Water Efficiency | 11 points |
| Energy and Atmosphere | 30.5 points |
| Materials and Resources | 3 points |
| Indoor Environmental Quality | 12 points |
| Awareness and Education | 0 points |
| TOTAL: | 82.5 points |

Based on this cursory evaluation the house would easily earn *at least* the 75 points needed to be certified at the level of LEED Gold.

Common
Sense
Design

145 Keller Street
Petaluma, CA
94952

(707) 762-4838

Architecture
& Planning



I have also reviewed the drawings for the proposed small second unit. Because this project will benefit from the green features already in place in the existing house and from a more clearly articulated set of green building criteria, I am confident that it could be certified at the LEED Platinum level.

Finally, at this critical point in human history, as we find ourselves beset by the twin realities of global peak oil production and global climate change, if we intend to bequeath to our children a planet that is complete with a functional ecosystem, we must – both personally and as a responsible society – do everything within our powers to reduce the use of non-renewable, carbon-emitting fossil fuels. Small, energy-efficient second units infilled within existing urban settings, like the one proposed at 177 Frustuck Avenue, are exactly the type of project that desperately need.

I urge you to approve this proposed second unit and garage.

Please do not hesitate to contact me if I can provide additional information or clarification in this matter.

Sincerely,



Pete Gang, AIA, LEED-AP
COMMON SENSE DESIGN

John Owens and Diana Dullaghan
177 Frustuck Avenue, Fairfax CA 94930
Tel 456-8064 Cell phone 717-7621
e-mail johnoph@aol.com

April 25th, 2009

Sustainable Fairfax

Re: Town Council appeal of second unit application 177 Frustuck

Dear Sustainable Fairfax

My wife and I are trying to get approval for a sustainable affordable second unit to our existing sustainable house. Our house was constructed 2 ½ years ago. It was designed by Pete Gang Architect who teaches Green Building at Sonoma State University. We originally submitted the application for the second unit in February of 2008. The application was resubmitted and then denied by the Planning Commission in March 2009. Our last chance for approval is May 6th when the unit will come before the Town Council on appeal.

The house was recently reviewed under the Leed for Homes Green Building Rating System. The existing house exceeds Leed Gold standard, and the proposed second unit would meet Leed Platinum. A complete list of Sustainable Building Features is included on page one of our plans. We own and drive three biodiesel vehicles. We believe our house to be the lowest carbon footprint home in Fairfax.

We would really like to get the support of Sustainable Fairfax behind our project, and have someone speak at the Council Meeting in favor of this unit. Please call us. We would welcome a visit.

Thank you for your consideration,

John Owens

Diana Dullaghan

John Owens Diana Dullaghan
177 Frustuck Avenue, Fairfax CA 94930
Tel 456 8064 e mail johnoph@aol.com

April 27th 2009

Town Council
Town of Fairfax
142 Bolinas Rd.
Fairfax CA 94930

Petition from the workers of Fairfax in support of a legal sustainable second unit to be constructed at 177 Frustuck Avenue.

Regarding Appeal to the Town Council for approval of a sustainable, affordable second unit at 177 Frustuck Ave., Fairfax: Attachment Page of signatures of workers and/or residents of Fairfax who want/need more affordable housing in our town and want this affordable housing unit approved by the Fairfax Town Council.

| Print Name: | Address: | Workplace: | Job Description | Signature |
|------------------------|-----------------------------|---------------------|-----------------|----------------|
| 1. "Lucy Wanders" | "44 Branch St, Fairfax" | "Bakery, Fairfax" | "Baker" | "Lucy Wanders" |
| 2. STEVEN WASSERMAN | 1 Madison Way, Fairfax | Son Kaboul | MTY | |
| 3. JILL VACCARO | 21 ALEMAR RD | Koffee Kafe Fairfax | Self Employee | |
| 4. JOYENA REYES | 57 Broadways Blvd | | | |
| 5. Erik Reyes | 57 Broadway Blvd | Fairfax | Self Employee | |
| 6. Sarah Chagnolle | 57 Broadway Blvd | Fairfax | Self Employee | |
| 7. J. Langley | 57 Broadway Blvd | Fairfax | Self Employee | |
| 8. M. No. [unclear] | 2090 STD | Fairfax | Self Employee | |
| 9. [unclear] | 183 TAYLOR BL | Fairfax | Self Employee | |
| 10. [unclear] | 53 TAYLOR DR | Fairfax | Self Employee | |
| 11. ELIZABETH WARDEN | 2092 SFD | Fairfax | Self Employee | |
| 12. Celine Rishner | 2885 SFD | Fairfax | Self Employee | |
| 13. Vernie Yancy | 101 Gregory Pk | Fairfax | Self Employee | |
| 14. A. [unclear] | Leuterer Dr | Fairfax | Self Employee | |
| 15. Ernesto Hernandez | 2017 Sir Francis Drake Blvd | Fairfax | Self Employee | |
| 16. Marcelle Geller | 2091 Sir Francis Drake Blvd | Fairfax | Self Employee | |
| 17. Katie Johnson | 2004 Sir Francis Drake Blvd | Fairfax | Self Employee | |
| 18. Jimmy J. [unclear] | 225 Cascade Dr. | Fairfax | Self Employee | |
| 19. [unclear] | 85 Horsehoe Hill, Edinburg | Fairfax | Self Employee | |
| 20. J. Luos | 306 Forrest Ave | Fairfax | Self Employee | |
| 21. Allison [unclear] | 117 [unclear] | Fairfax | Self Employee | |
| 22. Pablo Melo | 3 [unclear] | Fairfax | Self Employee | |
| 23. SPINA KAPPANOY | 5 CAN PASSAGE | Fairfax | Self Employee | |
| 24. Kelly Lowndes | | Fairfax | Self Employee | |
| 25. [unclear] | | Fairfax | Self Employee | |

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156-8064

Regarding Appeal to the Town Council for approval of a sustainable, affordable second unit at 177 Frustuck Ave., Fairfax: Attachment Page of signatures of workers and/or residents of Fairfax who want/need more affordable housing in our town and want this affordable housing unit approved by the Fairfax Town Council.

11

| | Print Name: "Lucy Wanders" | Address: "44 Branch St, Fairfax" | Workplace: "Bakery, Fairfax" | Job Description "Baker" | Signature "Lucy Wanders" |
|-----|-------------------------------|-------------------------------------|---------------------------------|----------------------------|-----------------------------|
| 1. | Louise G. Souza | 18 Class Circle Fairfax | Home and ret. | — | Louise G. Souza |
| 2. | Beverly Rombro | 39 Rockridge Fairfax | Henns corner Fairfax | stylist | Beverly Rombro |
| 3. | Luanna Meyerason | 39 Rockridge Fairfax | Beu's Hair Design Fairfax | stylist | Luanna Meyerason |
| 4. | DANBARA DILLI | 139 Bellin Rd Fairfax | Beu's Hair Design Fairfax | stylist | DANBARA DILLI |
| 5. | Adam Woller | 11, Athena Ct Fairfax | MMWD | — | Adam Woller |
| 6. | Deek Wise | 66 Madison Rd Fairfax | Pharm - Medicinal | Pharm | Deek Wise |
| 7. | Jean Mariat | 175 Frustuck Ave Fairfax | retired | — | Jean Mariat |
| 8. | Bob Norwood | 21 Walden Lane Ft. Fairfax | retired | — | Bob Norwood |
| 9. | Kristen Goffrey | 10 Walsh Lane FX Fairfax | Fairfax | Marketing | Kristen Goffrey |
| 10. | Genevieve Solberts | 800 FRUSTUCK AVE Fairfax | Fairfax | Teacher | Genevieve Solberts |
| 11. | Megan + Leanne | McCardle, 10 Mountain View, Fairfax | Fairfax | Teacher | Megan + Leanne |
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Regarding Appeal to the Town Council for approval of a sustainable, affordable second unit at 177 Frustuck Ave., Fairfax: Attachment Page of signatures of workers and/or residents of Fairfax who want/need more affordable housing in our town and want this affordable housing unit approved by the Fairfax Town Council.

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| | Print Name: "Lucy Wanders" | Address: "44 Branch St, Fairfax" | Workplace: "Bakery, Fairfax" | Job Description "Baker" | Signature "Lucy Wanders" |
|-----|-------------------------------|-------------------------------------|---------------------------------|----------------------------|-----------------------------|
| 1. | Marsha von Gelder | 5 SCenic Rd Fx | Fx lumber | clerk | |
| 2. | Rene Klemm | 130 Mono Ave Fx | Mason H37 | Specialist | |
| 3. | Shawn Swihard | 35 Inyo ave | Fairfax Ea | Sales | |
| 4. | Scott Lee | 40 Inyo AVE | FAIRFAX | ENGINEER | |
| 5. | Michelle Lee | 410 Inyo AVE | FAIRFAX | designer | |
| 6. | Pamela Roon | 57 Dumireya Av | Fairfax | computer | |
| 7. | Keike Stephens | 175 E. Chikura Av | Legislators | Paulson | |
| 8. | Shira Rowell | 17 Napa Ave | Fairfax | manager | |
| 9. | Gregory K LeMay | 54 major rd | Fairfax | retail | |
| 10. | Rosemary Lincoln | 130 Mono Ave | Fairfax | homeStager | |
| 11. | Carol Kazarian | 23 Woodland Ct. Fairfax | Fairfax | Admin Assist. | |
| 12. | TONY TRINCA | 128 UNIT A MONO AVE Fx | FAIRFAX | CENTRA CTOR | |
| 13. | Nana Ibrahim-Cox | 125 Mono ave | Fairfax | midwife | |
| 14. | DANIEL ELLIS | 125 MONO AVE. | FAIRFAX | LANDSCAPERS | |
| 15. | Maria Champa | 128 MONO AVE | FAIRFAX | office manager | |
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Regarding Appeal to the Town Council for approval of a sustainable, affordable second unit at 177 Frustuck Ave., Fairfax: Attachment Page of signatures of workers and/or residents of Fairfax who want/need more affordable housing in our town and want this affordable housing unit approved by the Fairfax Town Council.

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| | Print Name: "Lucy Wanders" | Address: "44 Branch St, Fairfax" | Workplace: "Bakery, Fairfax" | Job Description "Baker" | Signature "Lucy Wanders" |
|-----|-------------------------------|-------------------------------------|---------------------------------|----------------------------|-----------------------------|
| 1. | Ben Wilson | 21 Burchard Way, Fairfax | Self-employed | Per/marketing | <i>[Signature]</i> |
| 2. | Sandy Falk | 21 Burchard Way, Fairfax | Public relations | N/A | <i>[Signature]</i> |
| 3. | Jean Moore | 14 Burchard Way, Fairfax | (retired) | Writer | <i>[Signature]</i> |
| 4. | Steven Lerner-Wright | 17 Burchard Way, Fairfax | Writer/teacher | chief | <i>[Signature]</i> |
| 5. | Rich Brewster | 15 Aureo Way | (retired) | Speech-Language Therapist | <i>[Signature]</i> |
| 6. | Lynette Carlton | 14 Aureo Way | retired | Writer | <i>[Signature]</i> |
| 7. | Charlie Pearson | 14 Aureo Way | u | center | <i>[Signature]</i> |
| 8. | VINCENT DAWICO | 24 ARBOLEDA WAY | contractor | RN | <i>[Signature]</i> |
| 9. | Kathy Damico | 24 ARBOLEDA CIR | | | <i>[Signature]</i> |
| 10. | Debra Olesen | 26 Arboleda Cir. | M SH | | <i>[Signature]</i> |
| 11. | ROBERT CAVALIN | 10 ARBOLEDA CIR | | | <i>[Signature]</i> |
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| | Print Name: "Lucy Wanders" | Address: "44 Branch St, Fairfax" | Workplace: "Bakery, Fairfax" | Job Description "Baker" | Signature "Lucy Wanders" |
|-----|-------------------------------|-------------------------------------|---------------------------------|----------------------------|-----------------------------|
| 1. | LUCY JAMES | 2501 SFD. Blvd #9A, Fairfax | Fairfax/coffee | Barista | <i>Lucy James</i> |
| 2. | Shoshan Parry | 106 Downings Ave, Fairfax | Java Hut | " | <i>Shoshan Parry</i> |
| 3. | Robin Durnell | 45 MEDWAY RD, San Anselmo | Java hut, FX | Barista | <i>Robin E. Durnell</i> |
| 4. | Annle Sasau | 1 FAWN RIDGE, EMERY | UNAF HUT, FX | " | <i>Annle Sasau</i> |
| 5. | Sam Luels | 20 PCH SPRINGS, FAIRFAX | Bakery | " | <i>Sam Luels</i> |
| 6. | Helena Drumm | 2 Sierra Ave, San Anselmo | Friedepk., FX | FF | <i>Helena Drumm</i> |
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Regarding Appeal to the Town Council for approval of a sustainable, affordable second unit at 177 Frustuck Ave., Fairfax: Attachment Page of signatures of workers and/or residents of Fairfax who want/need more affordable housing in our town and want this affordable housing unit approved by the Fairfax Town Council.

6

| | Print Name: "Lucy Wanders" | Address: "44 Branch St, Fairfax" | Workplace: "Bakery, Fairfax" | Job Description "Baker" | Signature "Lucy Wanders" |
|-----|-------------------------------|-------------------------------------|---------------------------------|----------------------------|-----------------------------|
| 1. | Laurie Hailer | 141 Porters, Fairfax | Davidson MS | Teacher | <i>Laurie Hailer</i> |
| 2. | William Madsen | 109 Porters, Fairfax | SFFD | Firefighter | <i>William Madsen</i> |
| 3. | Kim Madsen | 109 Porters, Fairfax | Project Openhand | Diethian | <i>Kim Madsen</i> |
| 4. | have Romano | 146 Porters, Fairfax | Keiser, San Rafael | Pharmacist | <i>have Romano</i> |
| 5. | Dan Silvester | 146 Porters, Fairfax | Wittell/Kear, SF | Compliance | <i>Dan Silvester</i> |
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Regarding Appeal to the Town Council for approval of a sustainable, affordable second unit at 177 Frustuck Ave., Fairfax: Attachment Page of signatures of workers and/or residents of Fairfax who want/need more affordable housing in our town and want this affordable housing unit approved by the Fairfax Town Council.

Print Name: "Lucy Wanders"

Address: "44 Branch St, Fairfax"

Workplace: "Bakery, Fairfax"

Job Description: "Baker"

Signature: "Lucy Wanders"

(2)

1. Marsha von Gelder 5 Scenic Rd Fr Ex lumber clerk
2. Marsha von Gelder 5 Scenic Rd Fr Ex lumber clerk
3. Marsha von Gelder 5 Scenic Rd Fr Ex lumber clerk
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24. Marsha von Gelder 5 Scenic Rd Fr Ex lumber clerk
25. Marsha von Gelder 5 Scenic Rd Fr Ex lumber clerk

| Print Name | Address | Workplace | Job Description | Signature |
|--------------------|-----------------|-----------|-----------------|-------------|
| Marsha von Gelder | 5 Scenic Rd Fr | Ex lumber | clerk | [Signature] |
| Shawn Sufhal | 35 Tingo ave | FAIRFAX | SALES | [Signature] |
| Devin Lee | 40 WYB AVE | FAIRFAX | DESIGNER | [Signature] |
| Michelle Lee | 40 WYB AVE | FAIRFAX | DESIGNER | [Signature] |
| John Roonz | 57 Pomona Av | FAIRFAX | COMPUTER | [Signature] |
| Mike Stephens | 57 Pomona Av | FAIRFAX | COMPUTER | [Signature] |
| Shara Randall | 57 Pomona Av | FAIRFAX | COMPUTER | [Signature] |
| Shara Randall | 57 Pomona Av | FAIRFAX | COMPUTER | [Signature] |
| Rosemary Lincoln | 130 Mono Ave | FAIRFAX | COMPUTER | [Signature] |
| Carol Kazarian | 23 Woodland Ct | FAIRFAX | COMPUTER | [Signature] |
| Margaret M. Harris | 103 Mono Ave | FAIRFAX | COMPUTER | [Signature] |
| Denym Cross | 30 Deuce Ct Frx | FAIRFAX | COMPUTER | [Signature] |

Regarding Appeal to the Town Council for approval of a sustainable, affordable second unit at 177 Frustuck Ave., Fairfax: Attachment Page of signatures of workers and/or residents of Fairfax who want/need more affordable housing in our town and want this affordable housing unit approved by the Fairfax Town Council.

15

| | Print Name: "Lucy Wanders" | Address: "44 Branch St, Fairfax" | Workplace: "Bakery, Fairfax" | Job Description "Baker" | Signature "Lucy Wanders" |
|-----|-------------------------------|-------------------------------------|---------------------------------|----------------------------|-----------------------------|
| 1. | Charlie Cain | 109 Broadview | Fairfax Lumber | Mgr | |
| 2. | Augie Venezia | 109 Broadway | Fairfax Lbr | Pres | |
| 3. | Kris Kenworthy | 109 Broadway | Fairfax Lumber Lumber Counter | | |
| 4. | Kevin McLaughlin | 109 Broadway | Fairfax Lumber | Sales/Stock | |
| 5. | Pat Delack | 159 Oak Manor Dr. | Lumber yard | Sales/cur. service | |
| 6. | Dash Carter | 109 Broadway | Fairfax Lumber | Sales/cur. service | |
| 7. | Thomas Rutherford | 109 Broadway | Fairfax Lumber | Yard manager | |
| 8. | Peter Balke | 109 Broadway | Fairfax Lumber | Yard smart | |
| 9. | Alida R. Adams | 238 WOODDALE RD. | Fairfax Lumber | Yard | |
| 10. | Derek Smith | 603 Manor Rd | Fairfax Lumber | Yard | |
| 11. | Robert Bicks | 82 Woodland | Fairfax Lumber | Yard Supervisor | |
| 12. | Memekazi | 159 Oak Manor Dr | Fairfax Lumber | Nurses | |
| 13. | Ryan Murphy | 44 Belview Rd | Bradley R.E. | Realtor | |
| 14. | Wally Achman | 44 Barnum's Rd | BRADLEY R.E. | RETOR | |
| 15. | Veronica P. | 3233 Santa Clara Ave. #21 Unit | Shim Latus | Writer | |
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CA: 04/23/15

Recording Appeal to the Town Council for approval of a sustainable, affordable second unit at 177 Frustuck Ave., Fairfax: Attachment Page of signatures of workers and/or residents of Fairfax who want/need more affordable housing in our town and want this affordable housing unit approved by the Fairfax Town Council.

23

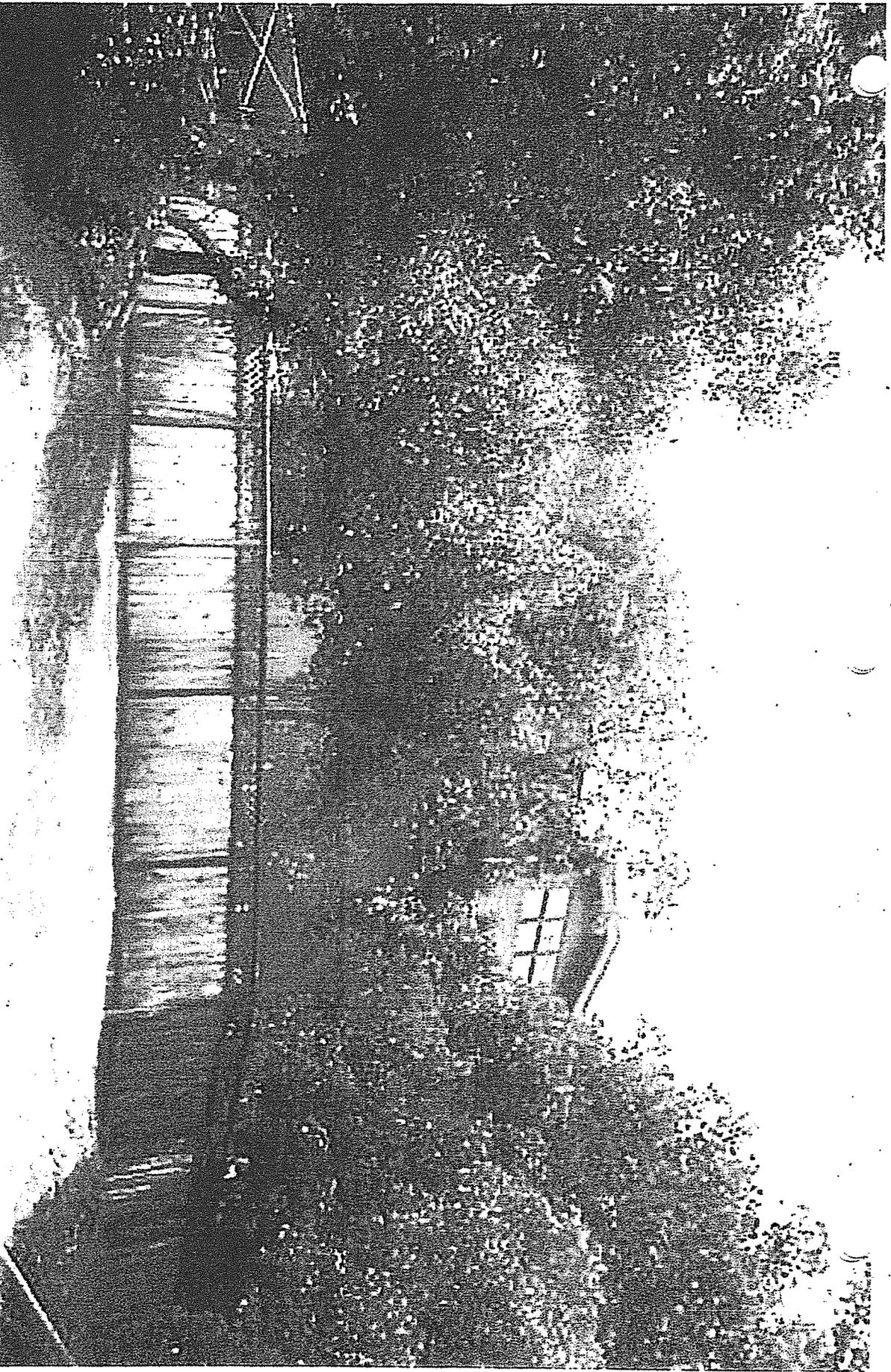
| | Print Name: | Address: | Workplace: | Job Description | Signature |
|-----|---------------------|-------------------------|---------------------------------|-----------------|---------------------|
| 1. | "Lucy Wanders" | "44 Branch St, Fairfax" | "Bakery, Fairfax" | "Baker" | "Lucy Wanders" |
| 2. | TRANSOIC RAMSAY | 180 Nuno Ave. | Self-employed, Fairfax | Surveyor | J Ramsay |
| 3. | PAUL KAUFZ | 115 MONO AVE | RETIRED FAIRFAX | | Paul Kaufz |
| 4. | | | | | |
| 5. | ALORA DONES | 25 MAPLE AVE | STACE, FAIRFAX | | Alora Dones |
| 6. | Antonetta Jones | 25 Maple Ave | 94930 | | Antonetta Jones |
| 7. | RYAN LUE | 45 Hedway Rd | Sustainable Bites | Mechanic | Ryan Lue |
| 8. | STANRA DANITH JONES | 753 CENTER BLVD. STE C | DANSTH - JONES ASSOC. TAX PROF. | | Stanra Danith Jones |
| 9. | PAUL GRENNEY | 50 ORANGE ST. Saw River | BRANDY WIDE | Chief Partner | Paul Grenney |
| 10. | CATHY DANCY | Box 499 FOREST KNOLLS | Client Fantasy in Home Suits | | Cathy Dancy |
| 11. | ERIN G. MURPHY | 33 MYD AVE. FAIRFAX VA | PUB, FAIRFAX | Server | Erin G. Murphy |
| 12. | Edy J. Beard | 128A HOWARD AVE | DISABLED | Ret | Edy J. Beard |
| 13. | MIKE FLAHERTY | 127 MOUND AVE | Contractor | " | Mike Flaherty |
| 14. | Shane Deal | 44 Belle Ave. | " | " | Shane Deal |
| 15. | Sean Deal | 44 Belle Ave. | " | Nurse. | Sean Deal |
| 16. | PETER BANDZUKS | 51 BELLE AVE. | BUILDER | " | Peter Bandzüks |
| 17. | JIM HEWETT | 24 Cluster Ave. | Bike Shop | Mgr. | Jim Hewett |
| 18. | DAN ZACURE | 218 Mono Ave. | Mechanic | | Dan Zacure |
| 19. | DREW LANDERS | 95 Southm Rd | Arthritis free care | owner | Drew Landers |
| 20. | GRANT | 601 MANUEL | Grantwriter | ME | Grant |
| 21. | J.C. | 566 Scenic Ave. S.A. | unemployed | scrub | James D Chen |
| 22. | Johnny Moya | 327 Olmum Ln. | Contractor | work | John Moya |
| 23. | Rachel Long | 28 Iron Springs Rd | Self-employed | massage | Rachel Long |
| 24. | Nicola Cramer | 102 Warden Ave | Self-employed | R.A. | Nicola Cramer |
| 25. | R. ADAM SMITH | 296 CYPRESS DR | WHOLE FOODS | STORE DESIGNER | R. Adam Smith |

Regarding Appeal to the Town Council for approval of a sustainable, affordable second unit at 177 Frustuck Ave., Fairfax: Attachment Page of signatures of workers and/or residents of Fairfax who want/need more affordable housing in our town and want this affordable housing unit approved by the Fairfax Town Council.

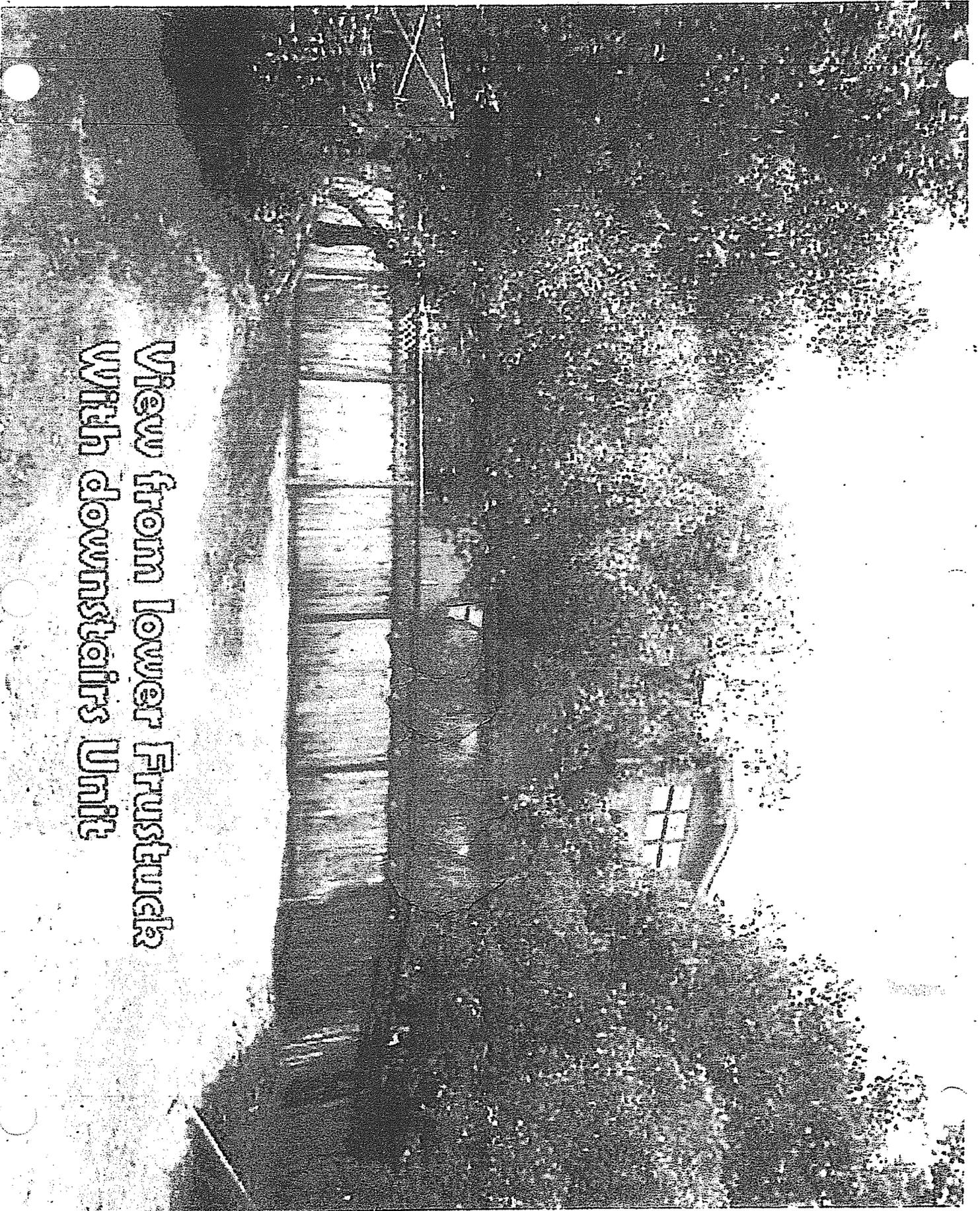
| Print Name: | Address: | Workplace: | Job Description | Signature |
|------------------------|----------------------------|-----------------------------|-------------------|---------------------|
| "Lucy Wanders" | "44 Branch St, Fairfax" | "Bakery, Fairfax" | "Baker" | "Lucy Wanders" |
| 1. WADIMIR CALDERINA | 402E BURLINGS RD. | AUGUST RHYTHM | OWNER | Wadimir Calderina |
| 2. ROBERT PARRIT | 64 BOLINAS RD | SUN AUTO | OWNER | Robert Parrit |
| 3. Marguerite Cimino | 69 Bolinas Rd. | FAIRFAX TOR BROS | OWNER | Marguerite Cimino |
| 4. Patricia Bruszewski | 99A WESSEL Bldg Fairfax | Sherman's | COWNER | Patricia Bruszewski |
| 5. Lilia Ramachandran | 15 Herrera Dr Fairfax | Sherman's, Fairfax | manager | Lilia Ramachandran |
| 6. Rebecca Co | 19 Bolinas Rd Fairfax | SACHSON ETHE | OWNER | Rebecca Co |
| 7. Matthew Edwards | 21 Solinas Rd Fairfax | O'Brien, Fairfax | Manager | Matthew Edwards |
| 8. Karen Mackenzie | 17 Bolinas RD Fairfax | Origin, Fairfax | Sales | Karen Mackenzie |
| 9. Ernesto Molina | 15 Bolinas Road Fairfax | STUR | owner | Ernesto Molina |
| 10. JUSTIN REEFSTER | 9 BROADWAY BLVD | FAIRFAX THEATER | MANAGER | Justin Reefster |
| 11. Silvestre Pichon | 15 Valley Rd | Fairfax Under | assistant manager | Silvestre Pichon |
| 12. Tom McLean | 25 LOCUST AVE | FAIRFAX Bikes | owner | Tom McLean |
| 13. Ed DeMaestri | 1812 St Francis Drake Blvd | FAIRFAX Garage | owner | Ed DeMaestri |
| 14. Sangeet Karmas | 1789 St Francis Drake Blvd | VALERO STAG | Casual | Sangeet Karmas |
| 15. ANSSA REMINGTON | 44 BUTTERFIELD RD. | BEACH HOUSE STYLE | PART OWNER | Anssa Remington |
| 16. Martin House | 9616 Miller Rd | Sushine Bikes | owner | Martin House |
| 17. Daniel Barnes | 1785 St Francis Drake | Fairfax "Sunshine" | Medicinal sales | Daniel Barnes |
| 18. Clark Manduout | 213 Center Blvd | Fairfax Gym | DIVERT | Clark Manduout |
| 19. Zaun Li | 709 Center St | Fairfax | owner | Zaun Li |
| 20. Sue Perardo | 1942 St Francis Drake | FAIRFAX | Medicine/gym | Sue Perardo |
| 21. Krista McKeague | 31 Gregory Dr | San Demetrios School | Teacher | Krista McKeague |
| 22. SAGAR KANASEGA | 140 MANDRINE RD | SN FRANCISCO | SOFTWARE | Sagar Kanasega |
| 23. Julie Lee | 140 RADNONE Rd | Fairfax | Field Review | Julie Lee |
| 24. Julie Lee | 140 RADNONE Rd | Fairfax | Field Review | Julie Lee |
| 25. | | | | |

23

**View from Lower Frustruck
No downstairs Unit**



**View from Lower Frustuck
With downstairs Unit**





TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
(415) 453-1584 / FAX (415) 453-1618

TOWN OF FAIRFAX
TOWN COUNCIL
MEETING AGENDA
7:30 PM, WEDNESDAY MAY 6, 2009
FAIRFAX WOMEN'S CLUB, 46 PARK ROAD

PUBLIC HEARING ITEMS

Draft Tree Ordinance, Town Code Chapter 8.36;

Introduction and first reading of an ordinance regulating the tree removal and protection process in Fairfax. The draft Ordinance includes, but is not limited to, definitions of "Heritage Trees" and "Undesirable Trees," requires the submittal of arborists reports prior to removal of certain trees and the submittal of Tree Protection Plans for construction sites.

177 Frustuck Avenue; Application # 09-02

Appeal of the Planning Commission's denial of a request for a setback variance, a height variance, encroachment permit and a second unit use permit in order to construct a second unit underneath an existing three story, single-family residence and to construct parking for the second unit within the required side yard setback and the adjacent public right-of-way; Assessor's Parcel No. 003-193-02; Residential Single-family RS 6 Zone; John Owens and Diana Dullaghan, appellants/property owners; CEQA categorically exempt, § 15301(e), 15303(a) and 15305(a) and (b).

All interested persons are invited to attend and participate in the public hearings. In order to give all interested persons an opportunity to be heard, and to ensure the presentation of all points of view, members of the audience should (1) Limit presentation to three minutes; (2) Always address the Mayor; (3) State name and address; (4) State views and concerns succinctly; (5) Documents presented at the meeting must be submitted first to the Town Clerk, to be entered into the record.

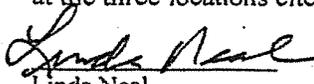
Staff Reports: Staff reports and associated materials will be available for public review at the front counter in Town Hall after 5:00 PM on the Friday before the meeting and on-line at the Town of Fairfax website.

Court Challenges: If you challenge in court the matter(s) described above, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered at, or prior to the above referenced public hearing [Govt. Code section 65009(b)]. If you need accommodation to attend or participate in this meeting due to a disability, please contact the Town Clerk at (415)453-1584.

The Final Agenda will be posted on the Friday evening before the hearing at the Fairfax Post Office, the Women's Club and Town Hall. Some items shown on this notice may be placed on the consent calendar or be taken out of order so all interested parties should be at the meeting promptly at 7:30 P.M.

If an item is continued, it is the responsibility of interested parties to note the new meeting date. Notices will not be sent out for items continued to a specific hearing date.

This public hearing was noticed in accordance with Government Code Section 65091 et seq. on or before April 24, 2009, at the three locations cited above.


Linda Neal
Senior Planner

Date: 4/24/09

DRAFT Fairfax Town Council Minutes
Regular Meeting
Fairfax Women's Club
Wednesday, May 6, 2009

The regular meeting was preceded by a closed session meeting regarding labor negotiations and pending litigation.

Call to Order/Roll Call:

COUNCILMEMBERS PRESENT:

Larry Bragman
Susan Brandborg
Mary Ann Maggione
Lew Tremaine
David Weinsoff

STAFF MEMBERS PRESENT:

Michael Rock, Town Manager
Jim Moore, Planning Director
Laurie Ireland-Ashley, Finance
Jim Karpiak, Town Attorney
Ken Hughes, Chief of Police
Mark Lockaby, Building Official
Judy Anderson, Town Clerk
Joanne O'Hehir, Minutes Clerk

Mayor Weinsoff called the meeting to order at 7.30 pm.

Approval of Agenda and Affidavit of Posting

M/S, Tremaine /Bragman, Motion to approve the agenda and the affidavit of posting.

AYES: All

Announcement of Closed Session Action

Mayor Weinsoff announced that information was received from the Town Manager and Legal Counsel on labor negotiations and pending litigation and that direction had been given.

Announcements

Mayor Weinsoff announced that a deal between the owners of the site of the former Albertson store and a prospective new purchaser had fallen through.

Mayor Weinsoff announced that information on the H1N1 virus was available on the Town's Website.

Councilmember Maggione announced that she would not be running again in the forthcoming elections.

Town Manager Rock requested the addition to the Consent Agenda of a resolution to enable the Town to participate in the Bay Area Quality Management District's (BAAQMD) application to the

Department of Energy (DOE) to provide partial funding for a Neighborhood Electric Vehicle, (NEV), as an urgency item.

M/S, Tremaine/Bragman, Motion to place on the Consent Agenda the Adoption of Resolution No. 09-36, A Resolution of the Town Council of the Town of Fairfax Authorizing Participation in the Bay Area Air Quality Management District's Grant Application Process for Partial Funding of a Neighborhood Electric Vehicle Purchase with American Recovery And Reinvestment Act Monies and to Authorize the Town Manager to Represent the Town in the Application.

AYES: All

Open Time for Public Expression

Michael Mackintosh, Pastori Avenue, stated that the First Annual Marin Sonoma Concourse d'Elegance event would be taking place on May 17, 2009, at the Marin Center to benefit Marin Hospice. Councilmembers accepted Mr. Mackintosh's gift of tickets to the event having conferred with Counsel.

Jim Fox, Sleepy Hollow, provided materials to Council Members on a possible future memorial sculpture to Jerry Garcia.

Patrick Troupe discussed the creation of a peaceful and prosperous world that began with communities. He stated that he would be available to speak to people if they wished, and he noted that community activities would be taking place in Fairfax.

Annual report from Representative to the Marin Commission on Aging

Interview and appointment of candidate to serve as the Fairfax representative to the Marin Commission on Aging for a three-year term to June 30, 2012 – Town Clerk

The representative to the Marin Commission on Aging was not at the meeting, and both related items were continued to the next meeting.

Interview and requested re-appointment of candidate to the Volunteer Board for a full three-year term to May 31, 2012

Holly Bragman was interviewed as a candidate to continue to serve on the Volunteer Board.

M/S, Bragman/Tremaine, Motion to appoint Holly Bragman to the Volunteer Board.

AYES: All

Presentation by the League of Women Voters regarding proposed Campaign Finance Reform

Alyssa Giambastini, President of the League of Women Voters, described a finance reform campaign that the League had undertaken to alert voters to unethical campaign activities and noted that a County Ordinance was expected to be enacted that called for greater transparency for election mailers and campaigns. Ms. Giambastini requested Council Members to sign a pledge to conduct a fair campaign to send to the League of Women Voters that would be published.

Mark Bell, Dominga, commented on negative campaigning and stated that candidates should resign if they did not carry out their promises once they were in office.

Ms. Giambastini noted that negative campaigning took place when someone misled or intimidated things about a candidate that were not true.

Councilmember Maggiore expressed concern that negative campaign materials sometimes provided an opposing view and that she would not want a campaign to be monitored unless it was egregiously wrong.

Mayor Weinsoff noted that Council Members should not comment upon one another's campaigns.

All the Council members, except Councilmember Maggiore signed the pledge to use fair campaign practices.

Consent Calendar

Adoption of Resolution No. 09-36, A Resolution of the Town Council of the Town of Fairfax Authorizing Participation in the Bay Area Air Quality Management District's Grant Application Process for Partial Funding of a Neighborhood Electric Vehicle Purchase with American Recovery And Reinvestment Act Monies and to Authorize the Town Manager to Represent the Town in the Application. (Added as an Urgency item)

Town Council minutes of November 19, 2008 and April 1, 2009

Accept and File Monthly Finance Report for March 2009 and First Quarter 2009 Investment Report

Adoption of Resolution No. 09-30, a Resolution of the Town Council of the Town of Fairfax appointing Town Manager Michael Rock as Deputy Town Clerk

Accept and File Report on the Floodgate Grant Program

Acceptance of a \$10,000 Grant for the Deer Park Trail from the Emig Trust Fund

Report on FEMA flood map and Flood insurance

Adoption of Resolution No. 09-32, A Resolution of the Town Council of the Town of Fairfax Authorizing the Artists-in-Residence to Renew the Mural at Central Field

Adoption of Resolution No. 09-33, A Resolution of the Town Council of the Town of Fairfax Authorizing the Director of Public Works to Implement the Resurfacing of Sir Francis Drake Boulevard From June Court to the West Town Limit Through the American Recovery and Reinvestment Act of 2009

Councilmember Brandborg requested the removal of the item on the Ross Valley Fire Department to be heard before the public hearings.

Councilmember Bragman requested that on Page 4 of the minutes of November 19, 2008, in the penultimate paragraph, the word "falsely" should be inserted between the word "out" and

"stating" to read as follows: "stated that the appellant's attorney had sent a letter out falsely stating that Mr. Bragman was doing illegal construction"

Councilmember Brandborg inquired if remaining monies from the Floodgate Grant Program would be spent on floodgates. Town Manager Rock stated that the Council would decide how the monies would be spent as part of the budget process.

Councilmember Bragman noted that the Town's reserve account was not included in the account reconciliations presented. Finance Director Ireland-Ashley stated that it was a separate fund but that she would provide Council Members with a listing of fund balances.

Michael Mackintosh, Pastori Avenue, requested that the item on the FEMA flood map be removed from the Consent Calendar for discussion.

M/S, Tremaine/Brandborg, Motion to approve the Consent Agenda with the amendment to the minutes of November 19, 2008, and the removal of the item on the Ross Valley Fire Department and the item on the FEMA flood map to be heard on the regular agenda.

AYES: All

Adoption of Resolution No. 09-31, A Resolution of the Town Council of the Town of Fairfax commending the Ross Valley Fire Department for hosting the Fire Explorer Training Program - Brandborg

M/S, Tremaine/Brandborg, Motion to adopt Resolution No. 09-31, A Resolution of the Town Council of the Town of Fairfax commending the Ross Valley Fire Department for hosting the Fire Explorer Training Program

AYES: All

Councilmember Brandborg presented a Resolution of Appreciation to Paramedic Gavin Illingworth of the Ross Valley Fire Department.

Report on FEMA flood map and Flood insurance – Bragman

Town Manager Rock presented the staff report.

Mayor Weinsoff opened the discussion to the public.

Michael Mackintosh expressed his concerns about the cost of flood insurance.

Town Manager Rock stated that no new Fairfax parcels had been added to the updated flood map, but that the County had sent some Fairfax property owners a letter about flood insurance that caused confusion.

Councilmember Bragman stated that the County had not provided sufficient time for people to appeal against the decision to designate their properties in a flood zone, which would affect some homeowners' insurance.

Mayor Weinsoff stated that flood controls in Ross Valley were necessary to solve flooding issues.

Mark Bell, Dominga Avenue, stated that the flood map was inaccurate and described the problems he had experienced trying to secure flood insurance.

Adoption of Resolution No. 09-34, A Resolution of the Town Council of the Town of Fairfax Adopting Guidelines for all Town Council appointed Commissions, Committees, and Boards – Town Manager

Mayor Weinsoff announced that the item was being brought forward to accommodate some committee members who were present. Town Manager Rock stated that he wished to postpone the item so that he could discuss the guidelines with the various committees before they were presented to the Town Council.

M/S, Brandborg/Tremaine, Motion to continue the Adoption of Resolution No. 09-34, A Resolution of the Town Council of the Town of Fairfax Adopting Guidelines for all Town Council appointed Commissions, Committees, and Boards, to the meeting on June 3rd, 2009.

AYES: All

177 Frustuck Avenue; Application # 09-02; Appeal of the Planning Commission's denial of a request for a setback variance, a height variance, encroachment permit and a second unit use permit in order to construct a second unit underneath an existing three story, single-family residence and to construct parking for the second unit within the required side yard setback and the adjacent public right-of-way; Assessor's Parcel No. 003-193-02; Residential Single-family RS 6 Zone; John Owens and Diana Dullaghan, appellants/property owners; CEQA categorically exempt, § 15301(e), 15303(a) and 15305(a) and (b) – Planning

Councilmember Bragman recused himself because of a potential conflict due to his ownership of property within 500 square feet of the subject property.

Planning Director Moore presented the staff report and explained that the project had been denied because it consisted of four stories. Planning Director Moore noted that a Deed Restriction had been applied to the storage space below the carport for a previous project, but that the Deed Restriction had never been filed at the County.

Mayor Weinsoff opened the public hearing.

The applicant, John Owens, provided materials showing support for his project including a petition in support of the project signed by 126 people. He stated that he would be providing a legal, affordable, sustainable second unit which satisfied the goals of the Second Unit Ordinance. He further stated that there were no neighborhood objections as the Planning Commission hearing; that two reasonable variances were required; that the unit qualified for a platinum standard for sustainability and energy efficiency; that it would be built within the existing footprint; that they were providing twice the required parking; and that no findings that could be legally supported were part of the denial of the application.

Shane Deal, Bell Avenue, owner of the property next door, stated that he supported the project.

Niccolo Caldararo, Frustuck Avenue, stated that the owner had bullied homeowners on the hill and threatened to sue people. He further stated that the Deed Restriction had not been filed and that he hoped the law and Town ordinances would be upheld.

Mark Bell, Dominga, stated that the Deed Restriction should have been filed.

Ted Pugh, Acacia Avenue, explained how exceptions could be made to allow fourth stories.

Peter Ramsay, Mono Ave, stated that he supported the affordable housing project.

John Reed, Scenic Rd., stated that homeowners should be allowed to build larger homes when green building materials were used.

Larry Bragman, Hickory Road, speaking as an individual, stated that the applicant had falsely accused him of building on his property without permits, and he noted that Mr. Pugh had modified the design of his house in order to comply with the law. Mr. Bragman stated that if the Council was inclined to approve the project, that the Deed Restriction should be filed prior to the issuance of the building permit.

Peter Lacques, Planning Commission Chair, Oak Avenue, stated that the applicant had originally planned to build a carport, which had been a factor in the decision of the Planning Commission on a previous application. Mr. Lacques explained that the project had been denied by the Planning Commission because it consisted of four stories.

Bill Madsen, Porteous Avenue, stated that he supported the project because it provided affordable housing and did not expand the building envelope.

Mayor Weinsoff closed the public hearing.

In response to Councilmember Brandborg, Planning Director Moore confirmed that the Deed Restriction still needed to be filed.

Councilmember Tremaine expressed concern that more four-story applications would come forward if this were approved and he stated that no evidence had been presented that the new unit would be affordable. Councilmember Tremaine stated that the Deed Restriction was requested on the storage area because it was the intent of the Town Council that a second unit should not be built in that location.

Councilmember Maggiore expressed concern that the Deed Restriction had not been put in place and stated that she supported the Town's height limit and third-story policy.

Councilmember Brandborg stated that the space was available to build a second unit and that it would aid the lack of affordable housing. Councilmember Brandborg stated that she would like the appeal to be upheld.

Mayor Weinsoff provided an opportunity for the appellant to rebut the comments made during the public hearing.

Mr. Owens stated that he had not been presented with a Deed Restriction.

Planning Director Moore stated that the Deed Restriction should be signed if the Council upheld the appeal in order to preclude a third unit from being built on the property. He noted that the garage had not been built and that if it was not constructed, the project would consist of a three-story house with a second unit that would meet the Town's requirements.

Consensus was reached by Council Members to continue the item to the next meeting which would allow the owner to file the Deed Restriction and explore other possibilities which pertained to the project.

Mayor Weinssoff adjourned the meeting for a break from 9:25 to 9:35 p.m.

Interview and appointment of Candidate to serve on the Volunteer Board to complete an unexpired term to July 31, 2010

Lana Pereyaslavska was interviewed as a candidate to serve on the Volunteer Board.

M/S, Bragman/Brandborg, Motion to appoint Lana Pereyaslavska to the Volunteer Board to complete an unexpired term to July 31, 2010.

AYES: All

Introduction and First Reading of Ordinance No. 743: An Ordinance of the Town of Fairfax Repealing and Replacing Town Code Chapter 8.36, Regulating the Removal of Trees – Planning

Planning Director Moore presented the staff report. He noted that it was important that the ordinance not expose the Town to claims that it was slow in allowing the removal of hazardous vegetation.

Councilmember Brandborg expressed concern about the proposed tree-replacement ratio of 3 to 1 and the Town's recommendation of arborists.

Town Manager Rock stated that the intent was for the Town to draw up a list of professional arborists to be used by applicants.

Councilmember Bragman supported the use of a list of arborists who would provide a second opinion for tree removal requests and suggested that language should be added to augment the Urban Wildlife Interface Code to involve the Fire Department in tree removals.

There was a consensus of the Council that the tree-replacement ratio of 3 to 1 should be removed and that the Tree Committee should be allowed discretion in determining tree replacement. The Council discussed the process for the removal of heritage trees and the use of permit fees and agreed to continue the discussion after considering the Master Fee study.

Mayor Weinssoff opened the discussion to the public.

John Reed, Scenic Road, stated that he believed fines should be raised for the illegal removal of heritage trees.

Town Attorney Karpiak discussed the difficulties of imposing civil fines for tree removals.

Karen Arnold, Meadow Way, stated that homeowners with heavily wooded properties needed to understand the implications from a fire and insurance standpoint and described her wooded property that caused her to be denied insurance coverage.

Ryan O'Neil, Canyon Road, Tree Committee member, stated that he had lost his homeowner's insurance, but was concerned that property owners could benefit financially by removing trees on their property. He believed that a fee should be charged for the illegal removal of large trees.

Michael Mackintosh, Pastori Ave., stated that people needed to be educated about trees and that tree maintenance could prevent the necessity of removal.

Peter Lacques, Planning Commission Chair, stated that there was general consensus on the Planning Commission that it was important to set standards for tree removal decisions and that they had discussed permit fees and fines during the drafting of the proposed ordinance.

Council gave direction to staff to include the thoughts and considerations that were discussed for the first reading of the Draft Ordinance in June.

Agenda Review

Due to the lateness of the hour, consensus was reached among Council Members that the items pertaining to the Adoption of Resolution No. 09-34, Adoption of Resolution No. 09-35, Discussion on brush-clearing and the Review of the Town's policies regarding contracts would be continued to the next meeting.

Approval of Town contract with Camille Esposito, Fairfax Open Circle Arts (FOCAS) to establish children's recreational programming in Fairfax - PARC

Town Manager Rock presented the staff report and stated that the program would provide an opportunity for the Town to expand its children's recreational program.

Mayor Weinsoff opened the discussion to the public.

Karen Arnold, Parks and Recreation Commissioner, stated that people wanted this type of program and that Camille Esposito was already offering a very successful program for the Town.

In response to Councilmember Bragman, Ms. Esposito stated that the program would cater to children under five and that they planned to hold affordable art classes for children of pre-school age and perhaps older.

Town Attorney Karpiak led a discussion on insurance and Town Manager Rock noted that the Town would be liable for insurance because it would be too onerous for the program manager to provide the required insurance.

M/S, Maggiore/Tremaine, Motion to approve the Town contract with Camille Esposito, Fairfax Open Circle Arts (FOCAS) to establish children's recreational programming in Fairfax with the friendly amendment that requiring finger printing and background checks of staff would be included in the contract.

AYES: All

Update on the status of the General Plan Elements

Planning Director Moore stated that the Circulation and Land Use Elements should be ready for review by the Town Council in July or August.

Mayor Weinssoff stated that the process had been slow and Councilmember Tremaine stated that the Planning Commission was doing a good job.

Report from the Affordable Housing Committee regarding potential sites

Councilmember Tremaine reported that discussions had been taking place with the Pastor of the Lutheran Church on Sir Francis Drake Blvd and with the owner of the site of the former Mandarin Garden Restaurant. He stated that both parties had expressed interest in creating affordable housing on the two sites.

Mayor Weinssoff opened the discussion to the public and the owner of the property of the former Mandarin Garden Restaurant stated that he agreed with the staff report.

Planning Director Moore discussed the prospective sites and stated that they would move forward with a site-capacity plan and would seek funding if the Council wanted to move forward.

There was a consensus of the council to accept the report and direct staff to move forward.

Request for a letter from the Mayor urging the Marin-Sonoma Mosquito and Vector Control District to preserve the "No-Spray List" – Bragman

Councilmember Bragman presented a brief report and stated that the Town should support a continuance of the "No-spray list" and the use of the telephone notification system. He stated that he would draft a letter to that effect if he had support from the Council.

Councilmember Maggiore stated that the letter should reflect the general wish that there be no spraying.

Mayor Weinssoff opened the discussion to the public.

Michael Mackintosh stated that the letter should point out that the Town's ordinance required notification of the use of pesticides, to which there was general consensus among Council Members.

M/S, Bragman/Tremaine, Motion to approve a draft letter from the Mayor to be sent urging Marin-Sonoma Mosquito and Vector Control District to preserve the "No-Spray List" and to encourage the implementation of a telephone warning system.

AYES: Bragman, Brandborg, Maggiore, Tremaine, Weinssoff,
NOES: None

Reports from Town Officials

Town Manager Rock reported on the noise from Ghiringhelli's Pizza that a citizen had complained about at the previous Council meeting and stated that there was nothing in the existing noise ordinance that would suggest that there was a violation of the Town Code. Town Manager Rock stated that he had not received other complaints, that the noise level had seemed reasonable when he walked past.

Direction was given to Town Manager Rock to contact Yvette Wakefield, the citizen who complained, and suggest that she contact the Police Department, who might investigate the matter.

Council Reports and Comments

Mayor Weinsoff reported that he would be attending a luncheon at the invitation of the Vice President of the Marin County Council of Mayors and Council Members (MCCMC).

Mayor Weinsoff reported that he and Councilmember Brandborg had met with the Marin County Green Building Collaboration prior to the last MCCMC meeting and he requested approval for the Council for him to continue meeting with the group as the Fairfax representative, to which the Council agreed.

Adjournment

On motion duly made and carried, the meeting was adjourned at 11pm.

Respectfully submitted,

Joanne O'Hehir

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of MAY 6, 2009

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Linda Neal: 3 to 2. One abstention.

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John reads his statement.

Public comment:

Shane Deal - supports unit.

Mike McIntosh - supports infill housing ...

MISSING from CD: - all public comments including Caldarraro when he accuses John of harassing the neighbors, knocking on their doors with an attorney, etc.

Tremaine: I'm very concerned about the precedent we would set for allowing this fourth story. We Mary Ann - a decision as council that we weren't going to allow 4th stories and I think that we need to abide by that. And there's a consistency to that in the way that we have taken the entire approach that we've taken to adding affordable housing to this community. We've been very deliberate about that. We've ensured that in the pursuit of affordable housing in creating a favorable atmosphere for it that we haven't changed height limits we haven't increased numbers of stories, we've been very careful about how we have approached density and I can't in good conscience allow a fourth story. I cannot support a fourth story to create a second unit. I just don't think in the long run its in the best interest of the community. The next thing you know we're going to wind up with a bunch of these you know, technical fourth stories, and its going to become very difficult with new construction to be able to say no to fourth stories. And I don't want to open that barn door. So, um, and the other thing is I mean we don't have any evidence before us that this is going to be an affordable unit. We have words that say it will be affordable but second units, we don't know what the rent's going to be. We haven't had an offer of percentage of market rate to make sure that its an affordable unit. I'm not seeing any of that, I'm just hearing it called affordable. And the trade off to add a second unit in the community and to open the barn door for fourth stories it isn't worth it to me.

Maggiore: When I said I wasn't going to run this is one of the things I'm never going to miss. I'm very disturbed by the fact that the conflict around the garage for Mr. Owens, sir, was predicated on the very fact that there was a deed restriction promised then. I can't vote - I will get to the height limit in a minute, but I can't vote for something which from the last time was all this storm and drama in this room and I voted for you to have the garage the way you wanted to have it was one of the predicates that there was absolutely going to be a deed restriction, and it's not happening. So to say that yes, you can have it if you do the deed restriction, we already went through that, yes you can have it, if you do the deed restriction. So that's really heavy on my mind. I just feel like what the heck, you know we made an agreement with you publicly and then that didn't happen. Second thing is, yeah, I see this as I ran on a

ticket of I don't want more than 3 stories I don't want more than 28 feet, and I have to stick with it. I understand that yeah, Lew and I started the co-founded the affordable housing committee, and I do want to see that happen, but this doesn't sit right with me, it doesn't feel right with me, I don't feel good about changing a new restriction, I don't feel adequately convinced that this is the truth. There's something about this that's just not the truth. So I'm voting against it.

Tremaine: David, can I add one other thing. If memory serves, and it's not what it used to be, I was the one who asked for the deed restriction, on what was then the parking deck, I'm pretty sure that I was the one who wanted that in there, and the reason for that was because at the time looking at it that was the only place I could think of where one would put a second unit. And, my intent was that there not be a second unit, given that location on that street with the level of, and I recognize that the fact that he's been very creative with what he's done to mitigate parking and in this particular incident but in my intent, initially, was to not put another second unit, legal or otherwise, in that neighborhood, in that location, for what that's worth.

Brandborg: Well I'm having a hard time in that I know we have these rules and regs but that's why we have variances and when I went out and looked at the space, I didn't see an increase to the footprint at all. It already exists there now, and do we pretend it's not there? But if you develop it it becomes a fourth story? I mean the space is already there, it's already covered in, so the creation of that space to become a second unit to help us with our problems of affordable housing and it would be guaranteed that it would be built green, I mean it would have solar panels, on the roof (garage roof) ..I support this project going forward, upholding the appeal.

John Owens: On the issue of deed restriction, right from the get-go in 2004, I said I had no problem with a deed restriction on the storage unit, and I still don't. No one has written up a deed restriction at the town or ever presented me with a document. I don't think it's my responsibility to restrict my own property, and I've got no problem with it, and never have, if somebody came to me tomorrow with a document I would sign it, I have never been presented with a document. The other item I would like to address is the item of bullying, I've never bullied anyone in my life, and I never will. And, I've never knocked on anyone's door with an attorney, and I never will. I've never threatened to sue the town, I never will, and the last time I came to the planning commission, I had 19 signatures from surrounding neighbors, I have great relationships with all my neighbors. And those are the issues that came up and I never ever had a problem with a deed restriction.

Maggiore: there's a confusion here, but that's not the town's responsibility, is it? Can our town attorney - I mean are we supposed to arrange for deed restrictions for property owners?

Attorney: I think it would be in our interest to do so. I'm a little confused as to what the deed restriction would say. If it would in fact restrict a second unit, that would conflict with what is now being requested. If there was a condition of approval of the prior project that there be such a restriction that never got recorded, that Mary Ann or Mary Ann not be some responsibility of the town in that. It still means that the property is going to be out of compliance with the old use permit now, it's very difficult to revoke a use permit and I'm not suggesting you go there, but I mean if indeed the deed restriction the purpose of the deed restriction is to prevent a second unit, it doesn't make sense to talk about us doing it now, when you're approving a second unit. If you're approving a second unit, that means that the deed restriction in effect would be waived.

Maggiore: Well I recall that that was what the conversation was. That Mr. Owens could build a garage with a deed restriction about a second unit.

JOHN OWENS: The deed restriction was to prevent us from using the storage room for residential use. That's what it asked. It had nothing to do with second units.

Attorney: It is my understanding that the deed restriction was on the storage building under the carport to prevent that from being a second unit, and one reason I think it's important to consider this tonight is because if you were to uphold the appeal, and allow the new second unit, under the existing residential structure, then it would be even more important to go forward with the deed restriction on the storage space so you preclude a third unit coming onto the site.

Maggiore: Ok, got it.

Weinsoff: Was the deed restriction agreed to prevent a second unit on the property? Certainly there, but was it broadly considered ...

Linda Neal: I pulled the letter of action and it states: A deed restriction shall be applied to the storage area beneath the uncovered parking deck restricting conversion of the storage area to a residential use and/or an accessory dwelling unit.

Weinsoff: I'm putting you on the spot I realize, but was it contemplated at the time that this would restrict second units in its entirety, or was it just that it would go there and no second unit there.

Linda Neal: I DIDN'T attend this meeting but I READ THROUGH THE minutes and I'm afraid you're going to have to rely on your council members recollection because there's really not much discussion - I'm not finding anywhere in here where it specifically stated that there never be a second unit anywhere on this property.

Tremaine: No, its not and I will stipulate that that's not what was said. But in asking for the deed restriction and probably it reflected my lack of imagination at the time or ongoing, I saw that as the place where a second unit would logically go if there was going to be a second unit. And so I was specific to that space, because in my mind if you were going to do a second unit, it would be in that storage area. Not contemplating that there could be a second unit inside the lower depths of you know bowels of the home. So um but I mean that was my intent at the time was that.

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John Owens: Well the stipulation is clear, its in writing, it says storage unit not to be used for residential use. And someone came and inspected it last year to see that it wasn't used for residential use. We've upheld the letter of the terms of the agreement.

Weinsoff: Could you address concern about the affordability of a second unit? How does one guarantee the second unit is affordable?

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