

Town of Fairfax
Memorandum of Understanding

DATE: January 3, 2012

TO: Town Residents, Business Owners and Members of the Public

FROM: James M. Moore, Director of Planning & Building Services



SUBJECT: Information and Advice Provided by Town Staff

Please note: information and advice given by staff at the front counter, on the telephone, or via emails is a response to preliminary and/or general questions, and represents only a staff person's good faith interpretation of how applicable codes would apply to the facts presented as he or she understands them.

Such information should not be relied upon as a final determination from the Town, which can be obtained only after submission of a complete project application and its consideration by the appropriate reviewing body (e.g., Planning Commission, Design Review Board or Town Council) or official (e.g., Planning Director or Building Inspector) as is required by the Town Code for the particular permit being sought.

Please sign and date this Memorandum of Understanding below verifying that you have read and acknowledge its provisions.

Signature: _____ **Date:** _____

Name: _____

Email Address: _____

Telephone Number: _____

Home or Mailing Address: _____

Property of Interest in Fairfax: _____

[Please print legibly]

John Owens & Diana Dullaghan
177 Frustuck Avenue, Fairfax CA 94930
Tel. 456-8064 Email: johnoph@aol.com

SEP 03 2013

September 3 , 2013

Hand Delivery

Jim Moore, Planning Director
Linda Neal, Senior Planner
Town of Fairfax
142 Bolinas Road
Fairfax Ca 94930

Re: 177 Frustuck Avenue affordable second unit application

Dear Mr. Moore and Ms. Neal:

After you received our letter dated 8.22.13 Ms. Neal e mailed me a Memorandum of Understanding (attached). I am familiar with this document and it does not apply in this situation. The document covers preliminary advice or questions as quoted below.

" Please note: information and advice given by staff at the front counter, on the telephone, or via e mails is a response to preliminary and/or general questions, and represents only a staff person's good faith interpretation of how applicable codes would apply to the facts presented as he or she understands them" (Memorandum of Understanding January 3 2012)

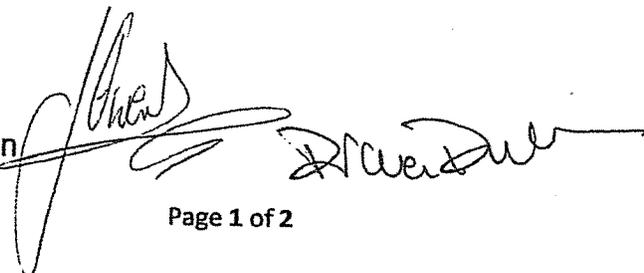
It certainly does not cover a thirty four page detailed Staff Report on our 177 Frustuck Second Unit . I had asked the agenda item to be removed from the 8.15.13. Planning Commission because statements were incorrect, and the report included false statements that have no supporting evidence. A Staff report with inaccuracies and untrue statements would have been detrimental to our application, and to the Town of Fairfax.

The purpose of my last letter was to point out the statements in the Staff Report that were inaccurate, not true, or had not been supported by a past history of Planning Applications in the Town of Fairfax. If the Town interprets those inaccuracies as " A Staff person's good faith interpretation of how applicable codes would apply to the facts presented as he or she understands them". I believe I have the right to challenge those interpretations prior to a public hearing. The Staff Report is full of errors, and the Town presented no evidence in the Staff Report to support any of the statements that I challenged.

Please review my previous letter 8.22.2013 , and if you have any information to the contrary to my challenges of the Staff Report please let me know. If not please make the corrections to the Staff Report (per my last letter) so this application can proceed.

Best regards,

John Owens & Diana Dullaghan



John Owens & Diana Dullaghan
177 Frustuck Avenue, Fairfax CA 94930
Tel. 456-8064 Email: johnoph@aol.com

September 4 , 2013

TOWN OF FAIRFAX

Hand Delivery

SEP 05 2013

Jim Moore, Planning Director
Linda Neal, Senior Planner
Town of Fairfax
142 Bolinas Road
Fairfax Ca 94930

RECEIVED

Re: Lack of interest from the Town of Fairfax
177 Frustuck Avenue affordable second unit application

Dear Mr. Moore and Ms. Neal:

I have extensively read the adopted 2010 Housing Element of the Town of Fairfax (not yet approved by State of California HCD). I have read the rejection letter Dec. 13. 2012 from the California Department of Housing and Community Development of the 2010 Housing Element (currently not approved by the State of California HCD). I extensively read the 2006 Housing Element (rejected by HCD). I am aware that the Town is rushing to get the 2010 Housing Element modified and approved by year end to avoid losing \$300,000 in funding.

It is my understanding that the California Department of Housing and Community Development is requiring the Town of Fairfax to produce 172 Housing Units during the 2007 to 2014 Planning period. That number is comprised of the 64 units not created prior to 2007 and 108 Units required by 2014. A large majority of those housing units are to be very low, or low income housing. The Town has produced only a handful of dwellings to date that would count towards this very large quota.

"Policy LU-8.1.2: The Town of Fairfax shall permit construction of well-designed second units consistent with state law, zoning requirements, and building codes, parking requirements and street capacity." 2010 Housing element

"Goal H-6: Create additional opportunities for the development of Accessory Dwelling Units.

Objective H-6.1: At least 27 units of well-designed, legal, second ADUs in all residential neighborhoods; applying reasonable parking and street capacity standards. 2010 HE.

"The Town will monitor the production of housing through an annual report to the Town Council on the units constructed each year and their affordability by income level. If the number of affordable units falls short of the expected number the Town will adopt additional revisions to the Zoning Ordinance and additional incentives to increase the likelihood that the new construction objectives contained in the 2010 Housing Element can be achieved." 2010 HE

"Housing Element in order to accommodate our current needs. In short, many of the policies and objectives proved unattainable. As a result, the 2010 Housing Element update must take into account the shortcomings of the 2006 Housing Element to ensure that the Town of Fairfax does not face fines and penalties from State and federal agencies, or challenges from housing advocacy groups." 2010 HE

It is clearly stated in the 2010 Housing Element that the Town will be subject to fines, penalties, and possible lawsuits if it does not produce housing. Fairfax is the longest outstanding Town in Marin County that has not had a Housing Element approved by the HCD, and in all probability is the Town that has produced the least amount of affordable housing. It is fiscally and morally irresponsible to the Citizens of Fairfax to deny our affordable second unit. Please correct me if I am wrong.

The proposed affordable second unit at 177 Frustuck Avenue will be a LEED certified energy efficient well designed infill second unit. It will be located in an existing space below an existing residence with twice the required off street parking.

8.15. 2013 Staff Report. " Design Standards – the unit is located below the existing residence and the entrance will be from the side. Therefore the unit will not be visible from the street and the residence will still appear to be a single family residence."

We believe it meets all the criteria of the 2006, and 2010 Housing Elements and should be a proud addition to the Fairfax Housing stock. We know that the Town has made exceptions and variances for at least three affordable second units (details included in the 8.8.2013 letter to Planning Commission).

I am greatly surprised that the Town of Fairfax has acted to the contrary of all the above stated goals. Prior to an inaccurate Staff Report which was a rush to deny the unit we had not been contacted by the Planning Department to try and resolve any issues to move forward and get this unit approved. None of the Planning Commissioners requested to visit the site or ask any questions. We have not been contacted by the Affordable Housing Committee, or the General Plan Implementation Committee. Yesterday 9.3.2013 you agreed to meet with me if I signed a Memorandum of Understanding that said the "Staff" was not responsible for it's planning interpretations , and on the understanding that you would not change anything in the Staff Report that I have pointed out mistakes and inaccuracies in my last two letters. That is not exactly an Olive Branch of an offer.

We have lived in Fairfax for at least twenty two years. I have followed the Planning Agenda for ten years. The approval and permitting of our original home took more than two years. It was

completed in three and a half years. A recent home destroyed by fire on Valley Road took more than two years to have the rebuild plans approved. It could be at least four years before that house is complete. Peter Ramsay former Planning Commissioner and 40 year veteran of affordable housing took two and a half years to legalize his second unit. The Second Unit Amnesty program has never produced results (Ramsay may be the only one). If the Town really intended to legalize second units the Second Unit Amnesty program should have been revamped years ago to produce housing for the 2014 deadline. It is too late to start now. The Town is sixteen months away from the Housing Element deadline to build 172 dwelling units. Given the long average time to process applications I very much doubt that the Town could break ground on any Housing Units, or legalize any existing units to meet the 172 unit quota before the end of 2014. The Town of Fairfax at this very moment has the opportunity to approve a LEED Certified Affordable Second Unit which can be complete within six months of approval, and count towards that quota. We are willing to meet with the Planning Department, and any of the above Committees to move this application forward. I will address your 9.3.13. offer of meeting , and the Memorandum of Understanding in my next letter. Your 9.3.13. comment "If you go forward" is offensive. We would not have paid \$3685 in Planning Application fees and submitted fourteen sets of plans if our intention was not to move forward. We have always intended to move forward and complete this second unit. We simply asked for the application to be temporarily taken off the Planning Commission 8.15.13. agenda because the Staff Report contained mistakes and inaccuracies.

Best regards,

John Owens & Diana Dullaghan

Handwritten signatures of John Owens and Diana Dullaghan. The signature of John Owens is written above the signature of Diana Dullaghan. Both signatures are in black ink and are cursive.

John Owens & Diana Dullaghan
177 Frustuck Avenue, Fairfax CA 94930
Tel. 456-8064 Email: johnoph@aol.com

September 5, 2013

TOWN OF FAIRFAX

Hand Delivery

SEP 05 2013

Jim Moore, Planning Director
Town of Fairfax
142 Bolinas Road
Fairfax Ca 94930

RECEIVED

Re: September 3rd offer to meet.

Dear Mr. Moore:

Thank you for your e mail offer to meet in person to discuss the Staff Report of 8.15.13. I have read the attached Memorandum of Understanding . "information or advice given by staff at the front counter, on the telephone, or via e mails is a response to preliminary and or general questions, and represents only a staff person's good faith interpretation of how applicable codes would apply to the facts presented as he or she understands them"

This paragraph deals with preliminary conversations at the front counter , or on the phone by "front counter staff", and a signature of the MOU verifies that preliminary information is exactly that.

However the second paragraph discusses that such preliminary information cannot be relied upon as a final determination from the Town which can only be obtained after submission of a complete project application and it's consideration of the appropriate reviewing body or official. (eg. Planning Director or Building Inspector).

The Town has received from us a complete application and completed a review of the application. I assume that as the Director of Planning and Building Services you are the "official" who has the authority to review or supervise the review of our application. I believe a full review had taken place before the Staff Report was written. Mistakes were made that we would like corrected. The MOU does not apply at this stage in our application, and it is only for " front counter staff" and not the "official" who has completed a thorough review of the application.

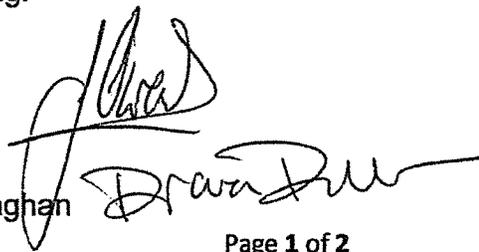
I would be willing to meet with you to discuss our application and would sign the MOU with a note that the MOU covers meetings with "front counter staff" giving preliminary information, but not Town Officials who have completed a thorough review.

Your statement that if I disagree with the Staff Report, I am welcome to take it up at the Planning Commission is inappropriate. The Planning Commission is a group of volunteers who are not qualified to discuss any changes to the Staff Report.

We have always intended to move forward with this application, and never withdrew the application. We simply pointed out that the Staff Report had errors, and we wanted errors corrected before proceeding.

Best regards,

John Owens & Diana Dullaghan





John Owens <johnowensservices@gmail.com>

177 Frustruck Application

1 message

Jim Moore <jmoore@townoffairfax.org>
To: John Owens <johnowensservices@gmail.com>
Cc: Linda Neal <lneal@townoffairfax.org>

Thu, Sep 5, 2013 at 1:30 PM

Mr. Owens,

We are in receipt of your most recent letters dated September 4 and 5, and have this response to offer.

(1) If you would like to meet and discuss your application and/or our staff report please signed the MOU and return it to us. We will gladly schedule an appointment after you have done so. We are particularly interested in your signing the MOU so that there is not any confusion on your part as to staff's role in the processing of your application.

(2) We have read your prior letters claiming that our staff report has errors, and do not agree. We stand by the staff report, and with all respect, it's staff's report not yours. As we have said to you, it is your right to make your case about our assumptions to the Planning Commission. Contrary to your statements about the Planning Commission being a group of "volunteers who are not qualified to discuss any changes to the staff report" you could not be more mistaken. That is exactly what is discussed and reviewed at every meeting.

(3) The dispute you have with us about the parking requirements for a second unit on your property with relation to your previous entitlements also fly in the face the Town's Code. You are not entitled to play a shell game with two covered parking spaces out of the public right-of-way that are required for the main house.

(4) I am well aware of what our 2010 Housing Element is about, including the recent amendments passed last week at a joint meeting of the Town Council, Planning Commission, General Plan Implementation Committee, and the Affordable Housing Committee. In fact, you seem again to be most confused about what the State requires Towns like Fairfax to do. Contrary to your statement in the most recent letter – the State does not require "the Town of Fairfax to produce" a single unit; only to zone for units to be created where appropriate.

(5) You also seem not to understand that you have, by your own design and previous arguments, three floors already on-site: and that was exactly the issue that prohibited you from winning an appeal.

As you know, I was not employed with the Town of Fairfax when your previous application went before the Planning Commission. I was however, working here during the appeal and remember that event well. Particularly, the part about a fourth floor – that you seem to conveniently forget. As we see it, that is the main issue you will still be faced with.

Having said all this, we would respectfully request that you accept the fact that you do not have staff's support for an application that is identical to one that was previously denied by both the Planning Commission and the

Town Council under appeal.

Please let us know when you would like to be on a future Planning Commission agenda.

Best Regards,

Jim

James M. Moore

Director of Planning & Building Services

Town of Fairfax

142 Bolinas Road

Fairfax, CA 94930

Phone: (415) 453-1584

Fax: (415) 453-1618

"The Life of the Land is Perpetuated in Righteousness"

(Ua mau ke ea o ka aina i ka pono has been the motto of Hawaii for over 160 years)

OCT 01 2013

RECEIVED

John Owens & Diana Dullaghan
177 Frustuck Avenue, Fairfax CA 94930
Tel. 456-8064 Email: johnoph@aol.com

September 30, 2013

Hand Delivered

Jim Moore, Planning Director
Town of Fairfax
142 Bolinas Road
Fairfax Ca 94930

Re: Response to email 9/5/13 from Jim Moore re: 177 Frustuck -

Dear Mr. Moore,

The main issue we are dealing with in this application is fairness. The Town has not treated us fairly in the past, and we are not being treated fairly with our current application. I will address each of your points as briefly as possible.

1. The Memorandum of Understanding – If your intention is that Staff be void of responsibility for their over the counter opinions, or interpretations in the Staff Report, then the MOU would have to be given in advance of any over the counter advice, and wording of Staff's non- responsibility would need to be part of the Planning Application Documents. It simply does not apply when approximately 60 days after we paid \$3680 to submit our planning application you produced a document for us to sign and believe it can absolve your department of responsibility. The document does not apply after the fact, and by its very wording only applies to preliminary information before the application is submitted.

2. I disagree with the Staff Report, and I believe it to be fabricated and biased to yet again derail our second unit application. I will produce independent documentation to support my opinions, and I believe I have the right to challenge the Staff Report directly to you the Director of Planning and Building Services. My opinions of inaccuracies and fabrication in the Staff Report are certainly supported by Ms Neal' s past efforts to derail our projects to improve our property, despite the eventual approval of those projects.

We received a letter from Ms. Neal, dated March 20, 2008, stating that our Planning application for a garage and second unit were incomplete. The letter asked for eighteen items to be corrected (basically an outright effort to make it impossible to pursue our garage). After months of wasted time it was determined that twelve of the items were not required by Town Code and were eliminated as requirements. The two most significant items of the eighteen requests were for a height variance and a Hillside Residential Development Permit. These were not required and eliminated. The garage was eventually approved without any special requirements or variances. This was only after the Town Attorney had recommended in public meetings not to pursue the attached/detached issue which required the height variance due to the Town not having any code to support Ms. Neal's theory.

In August 2008, we applied to construct a patio on the lower part of our property. We applied for a building permit over the counter with engineered plans. Ms. Neal became involved and viewed the patio as a "retaining wall with a fence on top" and stating that we would need to go before the Planning Commission for a variance. After months of wrangling, the correct Town Code was upheld (by Anne Welsh, Planning Director, Larry Kennings, interim Planning Director, and Mark Lockaby, Building Official). We built a landscape accessory structure (patio) with a 42" guardrail permitted over the counter by the Building Official with no variance.

Ms. Neal also wrote the motion to deny the previous application for our second unit approved by the Town Council on 8/5/2009. I wrote to the Town stating that most of the items in that motion never happened, and were not on the audio tapes. Council Member Brandborg stated the same opinion at the 8/5/2009 Council meeting as the motion to deny was being approved, and her remarks were ignored.

The prior evidenced items do not reflect a good track record in support of your statement "We stand by the staff report, and with all respect it's staff's not yours". I have challenged many written items in the past and I have always been correct. This process is a huge waste of my time and taxpayer's money.

Again, I am stating that going before the Planning Commission is not the venue to discuss the inaccuracies in the Staff Report. They are volunteers, and they rely heavily on the Staff report which takes 30 days to produce, and I would have 3 minutes to plead my case to a group of volunteers. We have not been treated fairly by the Planning Commission in the past. I am convinced this is not the forum to make the necessary corrections to the Staff report.

Examples of past problems with the Planning Commission:

June 2004: The Ross Valley Reporter made allegations of cronyism at the Planning Commission stemming from the meeting when our fully conforming 2095 sq. ft. house was first denied by the Planning Commission. Two Commissioners left the podium while the meeting was still in progress to congratulate our neighbor and major opponent ex-Council Member Niccolo Caldararo.

Subsequently a Planning Commissioner had the minutes altered to show a recess had been called. Commissioner Madsen complained to the Council about the altering of the minutes and cronyism. It was agreed at the Council Meeting that no recess was called, and the minutes were reset. Commissioner Hailer complained of cronyism at the same Council meeting.

October 2008: Our attorney Alan Mayer asked Commissioner Meigs to recuse herself from the upcoming October 16th Planning Commission Meeting stemming from the Caldararo incident. Ms. Meigs then recused herself from the meeting leaving the podium. She then returned to the podium at the chairman's insistence and re-entered the meeting without any comment, spoke negatively about the project, and subsequently cast a majority vote against the project - after she officially recused herself. Ms. Meigs was also cast a majority vote against us at the Feb. 19, 2009 meeting.

November 4 2008: Attorney Alan Mayer wrote to the Planning Director in regards to Commissioner Goyan supplying services in Town without a business license, and possibly working on projects without building permits. Mr. Goyan is still working in Town without a business license, and without a Contractors License. He also cast a majority vote against at the October 16, 2008 meeting, and February 19, 2009 meeting.

At the February 19, 2009 Planning Commission meeting, Commissioner Laques said that he had been into our house that very afternoon. During his presentation I expressed great concern that he may have trespassed into our home with our teenage daughter home alone. He continued to insist he had been in our house. It turned out he went into someone else's house without their permission. He went to the wrong address. And still he had the audacity to cast a majority vote against our project when it was obvious he was unable to read plans, or locate a house with the required 4" high street numbers in three locations around our driveway.

Given the evidenced track record to date, I do not believe the Planning Commission volunteers can give a fair and impartial review of the errors and inaccuracies that exist in the 8/15/13 Staff Report. It is not part of their written duties.

3. Your suggestion that I am playing a "shell game" with the parking is not correct. The parking layout on our plans was created in 2008, at an over the counter meeting with Ms. Neal. Anne Welsh, the Planning Director at the time, was delighted when I proposed a second unit under the existing house. She recommended I work out the details with Ms. Neal. Ms. Neal recommended the compact space in the side-yard setback, and she was fully aware it would need a side-yard setback variance. Ms. Neal and Staff recommended this parking layout at three public meetings in 2009. It does not fly in the Face of the Town Code. It is consistent with similar parking spaces and variances already approved in the Town. The interpretations of the code and the implied precedents are false in the 8/15/09 Staff report.

4. This is also about Fairness. As Planning Director at the Town since 2009, you have been responsible for the production of the 2010 Adopted Housing Element (currently approved version, not the proposed amended version). The Town has stated unachievable goals in regards to producing affordable housing and second units. The Town has been deficient in producing any programs to create second units within the 2009 to 2014 timelines. The Town simply is choosing to ignore that this proposed sustainable energy efficient second unit meets and exceeds the written goals, and the written promise of exceptions should the quota not be attained.

"Goal H-6: Create additional opportunities for the development of Accessory Dwelling Units.

Objective H-6.1: At least 27 units of well-designed, legal, second ADUs in all residential neighborhoods; applying reasonable parking and street capacity standards.

"The Town will monitor the production of housing through an annual report to the Town Council on the units constructed each year and their affordability by income level. If the number of affordable units falls short of the expected number the Town will adopt additional revisions to the Zoning Ordinance and additional incentives to increase the likelihood that the new construction objectives contained in the 2010 Housing Element can be achieved."

Four years have passed since our last application. The 2010 adopted Housing Element further reinforces that our unit meets the Town goals, and the exceptions the Town says they are willing to make. The 2014 deadline of 172 housing units is fast approaching. There is a real need for affordable housing in Fairfax. In 2009 we submitted a petition from 126 workers & residents in Fairfax in support of the unit. All of our surrounding neighbors were in full support of the unit (except one council member, and one ex-council member).

5. It is only in Fairfax that a house like ours is classified as existing three stories. In other cities in Marin County, the State of California, and the rest of the United States, it would be classified as two existing stories. The Town changed the code that is used everywhere else in 2003 or 2004. This is actually the "infill" sustainable development of an existing space. It is not the building of a fourth story. It is a vacant space that already exists under the house. Great exceptions have already been made for at least three second units. The Town Council even waived the need for fire sprinklers for the legalizing of existing second units in 2010 against the objections of the Fire Marshall.

"If the number of affordable units falls short of the expected number the Town will adopt additional revisions to the Zoning Ordinance and additional incentives to increase the likelihood that the new construction objectives contained in the 2010 Housing Element can be achieved."

In the 2006 Housing Element, the Town stated that there are only a handful of building lots left in Fairfax. There could not be a run of applicants for this type of housing. Approval of this unit could only improve the housing situation in Fairfax. If there is any precedent to be set it would be to encourage energy efficient infill development with adequate off-street parking.

Respectfully, I do believe Staff is acting contrary to the Town Code and the approved Housing Element. The "Owens versus The Town of Fairfax stand-off" began in 2003, when we placed an existing building lot within Town into escrow with the intention of building a sustainable reasonably sized house for our family. The battle of egos has continued, and it has nothing to do with precedents, or codes, or more importantly the dire need for affordable housing units in Fairfax.

Again, I am asking that the inaccuracies and incorrect statements in the Staff Report be corrected so that our application can proceed. I am including multiple photographs of existing parking in the side-yard setbacks and the Town right of way that Ms. Neal states firmly in the Staff Report would set a precedent in the Town. I counted 32 examples of such parking on Cascade Drive alone. This is one street in Fairfax. Must I perform a survey of all parking spaces in Fairfax to prove your Staff Report is wrong, and that you are only delaying our project?

We look forward to your prompt response.

Best regards, John Owens & Diana Dullaghan

Enclosures: Photos of parking in side-yard setbacks and town right of way in Fairfax

This is the true parking situation in Fairfax. Cars parked in the Town Right of Way between every tree on Cascade Drive. Most streets look like this at night with cars on the dirt at the side of the road. The Town needs valuable off street parking. There cannot be a precedent for our proposed parking space. I counted 32 situations on this one street alone with parking, and driveways in the sideyard setback and the Town right of way.



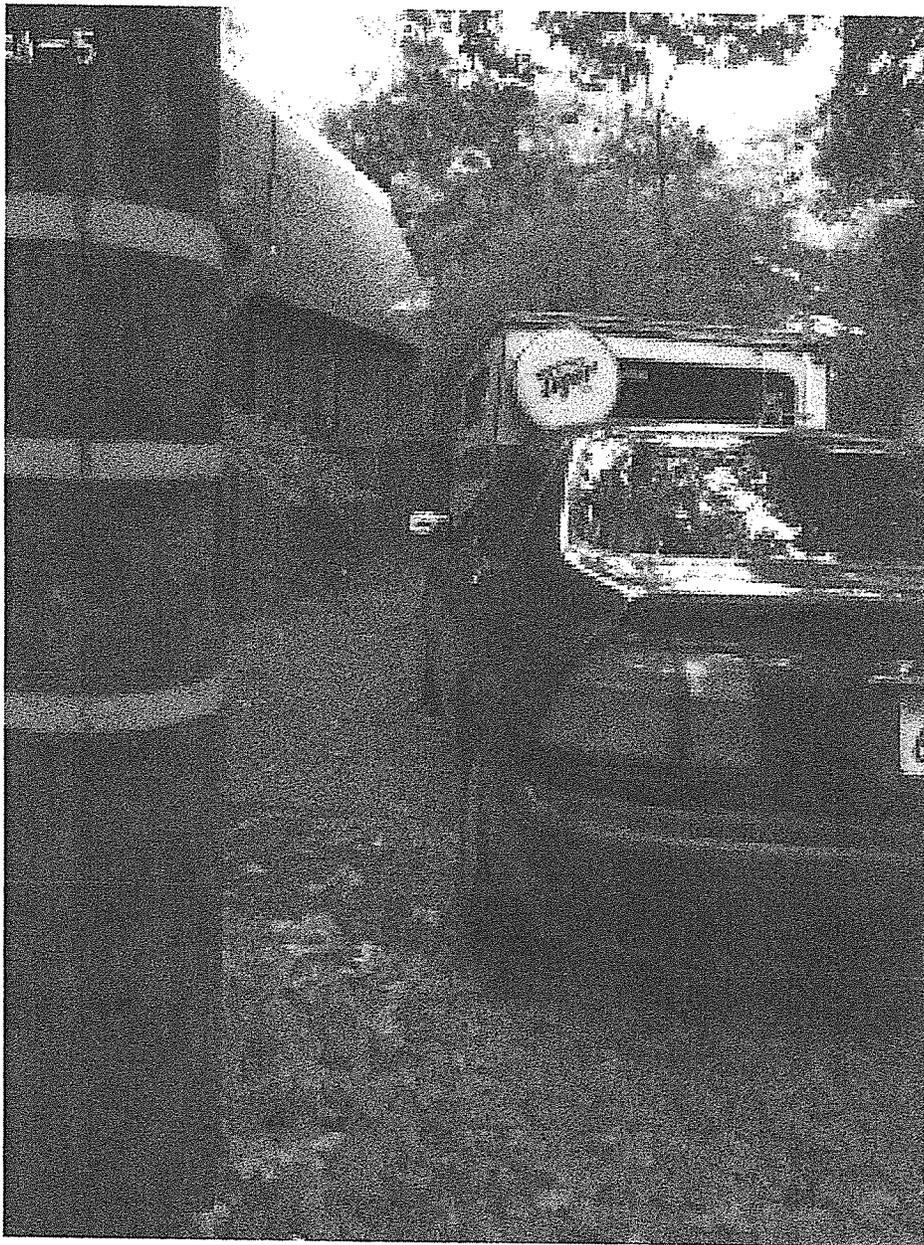
213 Cascade – three spaces in Town right of way, one also in side yard set back



217 Cascade Town right of way, and sideyard setback



345 Cascade Town right of way, sideyard setback



349 Cascade Driveway and Parking in T.r.o.w. and sideyard setback



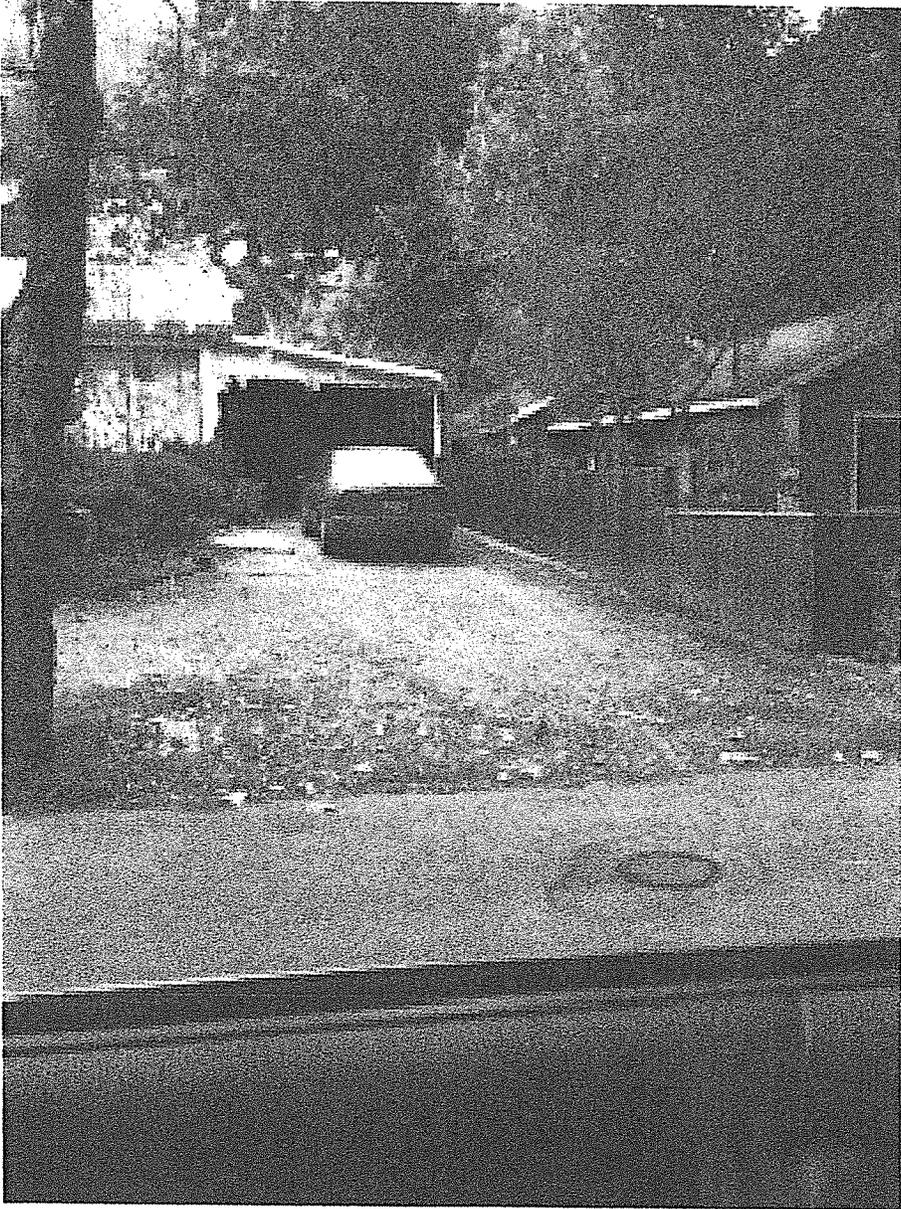
360 Cascade Driveway, Parking, and Garage in sideyard setback

Driveway and one parking spot town right of way, sideyard setback



362 Cascade Driveway, Parking, Garage in and sideyard setback

Driveway and parking in T.r.ow. and sideyard setback

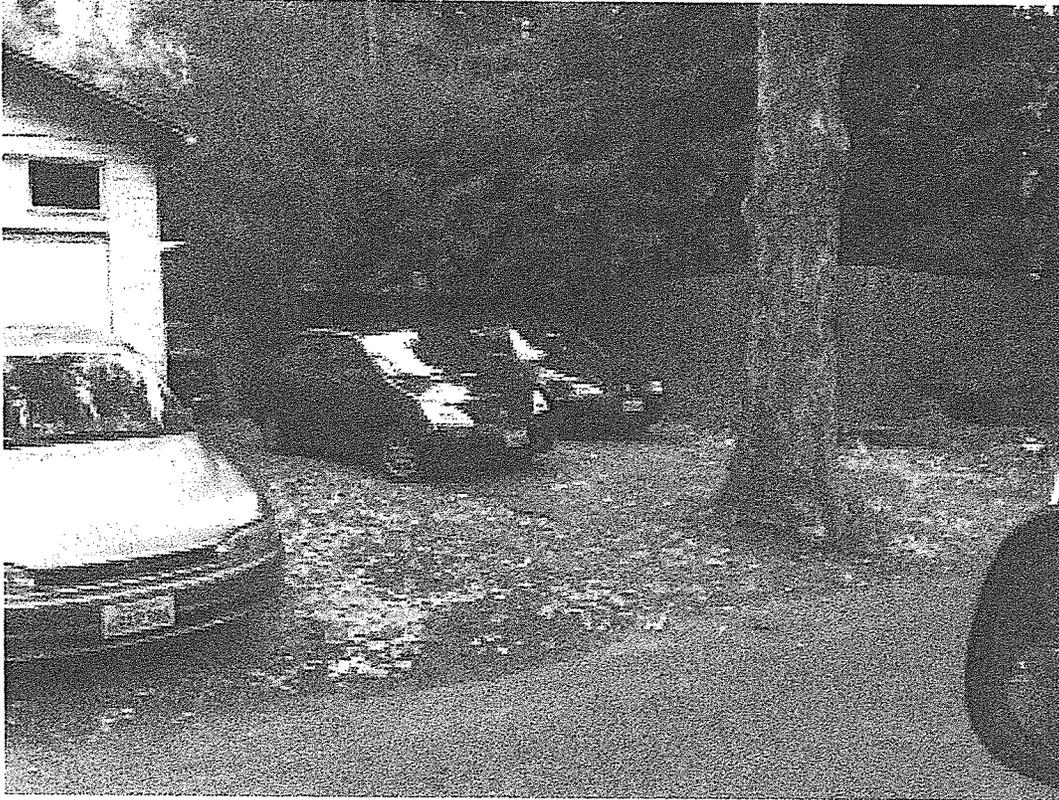


415 Cascade Parking and Drive T.r.o.w. and sideyard setback

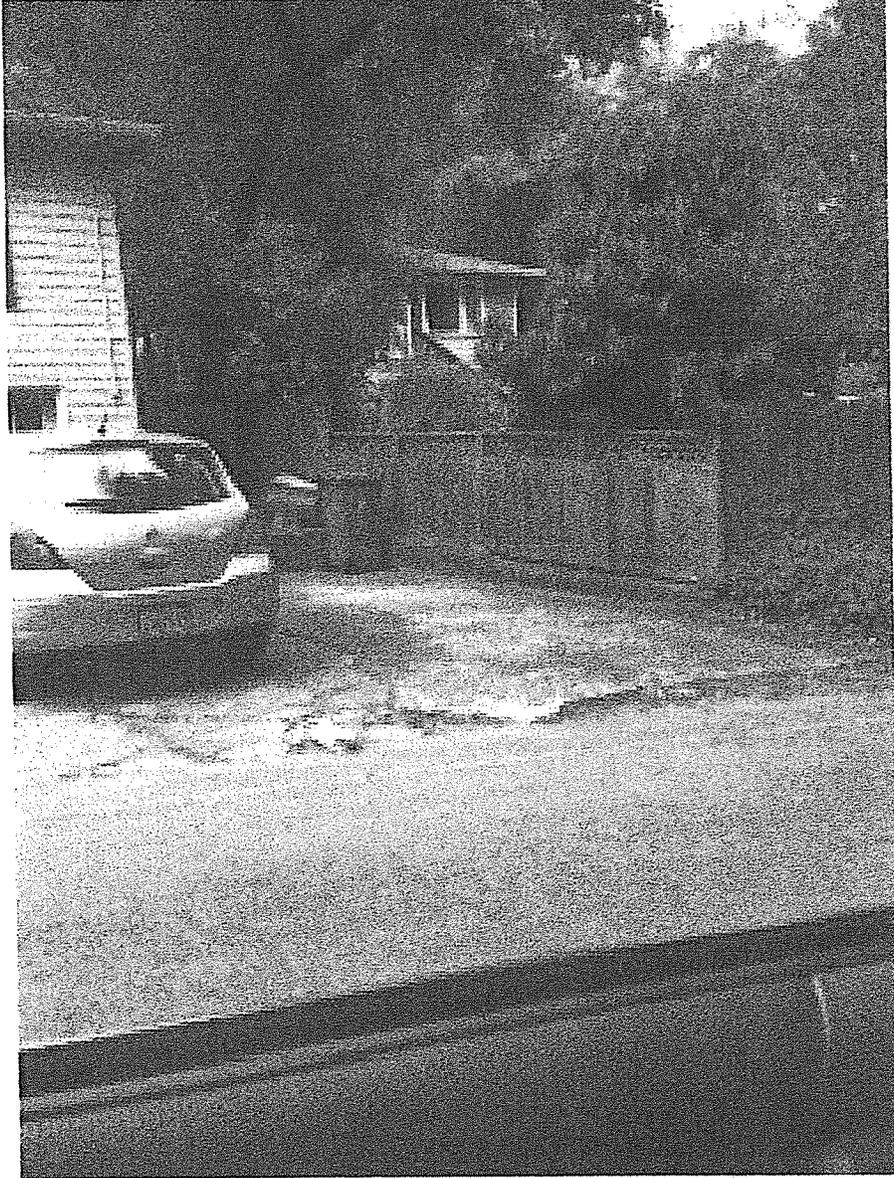


428 Cascade Four spaces T.r.o.w.

Driveway and two spaces Tr.o.w. and sideyard setback



444 Drive, Parking, in T.r.o.w. and side yard setback



John Owens & Diana Dullaghan
177 Frustuck Avenue, Fairfax CA 94930
Tel. 456-8064 Email: johnoph@aol.com

September 5, 2013

Parking Code Fairfax

§ 17.052.010 GENERAL REQUIREMENTS.

(A) Except as otherwise required by variance, every building or use hereafter created or established shall be provided with minimum off-street parking and loading spaces.

(B) No off-street parking spaces or garage, carport or other accessory structure for parking use, required or additional thereto, shall be located in a required side yard setback.

(C) (1) No garage, carport or other accessory structure for parking use shall be located in the front yard setback except as set forth in § 17.052.020.

(2) Uncovered parking spaces may be created in the portion of the required front yard setback not included in the side yard.

(D) At least one of the off-street parking spaces for a residential unit must be covered, except as set forth in § 17.052.020.

(Prior Code, § 17.28.010) (Ord. 352, passed - -1973; Am. Ord. 486, passed - -1981; Am. Ord. 490, passed - -1982)

§ 17.052.020 EXCEPTIONS.

(A) If particular circumstances justify an exception, the amount, dimensions and location of required parking and loading facilities may be altered by variance or design review requirements.

(B) In RM, SF-RMP and PDD zones, one guest parking space shall be provided for each five dwelling units. Available curb parking along the property's street frontage may be credited toward the required guest parking where found appropriate and as part of the design review or variance procedure.

(C) On lots which have a slope greater than 15 percent on the general plan slope map or on a topographic map prepared by a licensed land surveyor and which are downslope lots, uncovered parking decks which have a finished elevation equal to or less than the elevation of the town right-of-way may be constructed in the front yard setback. Decks of this type may exceed the height requirement for accessory buildings.

(D) Lots which have a slope greater than 15 percent on the general plan slope map or on a topographic map prepared by a licensed land surveyor, and which are downslope lots, are exempted from the covered parking requirement set forth in § 17.052.010(D).

(Prior Code, § 17.28.020) (Ord. 352, passed - -1973; Am. Ord. 486, passed - -1981; Am. Ord. 490, passed - -1982)

§ 17.052.030 REQUIRED PARKING SPACES.

Off-street parking spaces shall be provided according to the following schedule, and where a parcel includes two or more uses, the parking requirements shall be the aggregate of the requirement for the various uses:

(A) (1) Dwellings, including one-family and two-family dwellings, apartments and mobile homes:

(a) Studio units without separate bedrooms: one space.

(b) One-bedroom units: two spaces.

(c) Two-bedroom units: two spaces.

(d) Units with three or more bedrooms: two spaces.

§ 17.052.040 STANDARDS FOR PARKING SPACES.

(A) Parking facilities shall be designed to provide for safe circulation of vehicular and pedestrian traffic within the parking area and in relation to adjacent streets. Direct backing into or out of parking from a public street shall not be permitted, except for one-family and two-family dwellings.

(B) Minimum dimensions of parking spaces shall be as follows:

(1) Width: nine feet, excluding any interfering structure.

(2) Length: 19 feet, or 22 feet if abutting and parallel to a curb, wall or other obstruction.

(C) In all zones except RS-7.5, RS-6 and RD 5.5-7, 25 percent of the assigned spaces may have a minimum size of 8 feet by 16 feet.

(D) Width of parking aisles shall be according to the schedule in Appendix A to this chapter.

(E) No tandem parking stall shall be allowed, except for a guest space in tandem with required parking for the principal residence. Tandem parking shall not be used in conjunction with a parking space required for a residential second unit.

SECOND UNIT

(D) *On-site parking.* The site must be able to accommodate a legal on-site parking space for the second unit in addition to the parking required for the principal residence on private property and as further prescribed by Chapter 17.052 of this title. The parking space for the second unit shall not be in tandem with the spaces for the main residence and must be located in an area of the site where it is accessible at all times. A record of survey including the site topography is required to demonstrate the location of the all the required parking for the main residence and second unit.

HEIGHT LIMIT RS6 ZONE

§ 17.080.060 HEIGHT REGULATIONS.

Height regulations in the RS-6 zone are as follows:

(A) Except as otherwise permitted by variance, no building or structure occupied by a principal use on a lot having a slope of ten percent or less shall exceed a height of 28.5 feet nor contain more than two stories. On lots having a slope in excess of ten percent, no building or structure

occupied by a principal use and situated on the downhill side of the street upon which it has its primary frontage shall exceed 35 feet in height, and if situated on the uphill side of the street shall not exceed 28.5 feet in height nor contain more than three stories.

DEFINITION OF A STORY

STORY. The portion of a building included between the surface of any floor and the surface of the next floor above it, or if there be no floor above it, then the space between the floor and the ceiling next above it. A basement shall be counted as a **STORY** for the purpose of height measurement if subdivided and used for dwelling or business purposes.

Best regards,

John Owens & Diana Dullaghan



John Owens <johnowensservices@gmail.com>

Sept. 30 letter

2 messages

Jim Moore <jmoore@townoffairfax.org>
To: John Owens <johnowensservices@gmail.com>
Cc: Linda Neal <lneal@townoffairfax.org>

Tue, Oct 1, 2013 at 11:16 AM

Hello John,

We are in receipt of your September 30th letter and have read it thoroughly. Nothing therein has changed our interpretation of the Town Code, with regards to your pending application, as reflected in our 8/15/13 staff report and/or the process going forward with your application – should you decide to move forward.

Please let us know if you decide to proceed and we will schedule you on a Planning Commission agenda.

Best Regards,

Jim

James M. Moore
Director of Planning & Building Services
Town of Fairfax
42 Bolinas Road
Fairfax, CA 94930

OCT 03 2013

RECEIVED

John Owens & Diana Dullaghan
177 Frustuck Avenue, Fairfax CA 94930
Tel. 456-8064 Email: johnoph@aol.com

October 3, 2013

Hand Delivered

Jim Moore, Planning Director
Town of Fairfax
142 Bolinas Road
Fairfax Ca 94930

Re: Discretionary time period has expired for 177 Frustuck Planning Application.

Dear Mr. Moore,

This letter is to inform you that the discretionary time period allowed for our Planning Application has expired. The application was submitted on 6.27.13. The Town was required to contact us in writing within 30 days (7.26.13.) as to whether the application was complete or incomplete. The Town failed to contact us. The first communication we received on 8.6.13 was the Public Notice that we were on the 8.15.13 Planning Commission Agenda. Therefore the application was deemed complete on 7.26.13. The obligatory Public Notice was mailed out 8.2.13. and we received a copy on 8.6.13. This application is California Environmental Quality Act exempt requiring that it be approved or denied within 60 days of being deemed complete. The discretionary time period expired on 9.24.13.

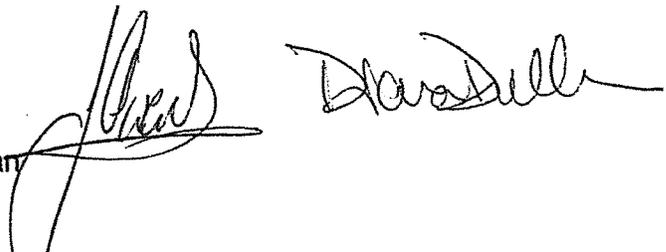
The application was removed from the Planning Commission agenda because of obvious errors in the plan review and incorrect statements. I have continually asked in writing for the corrections to be made since 8.13.13. I have continually attempted to proceed with this application. Our project has been delayed by your continued denial that errors exist (even though I have produced documentation to the contrary). Further delays have occurred due to you requiring that I sign an inappropriate Memorandum of Understanding which only applies to pre application conversations with "over the counter staff" before I could meet with you in person.

The discretionary time period has expired and I would like to make arrangements to collect my Building permit from the Building Official. Please let me know what will be required for me to secure the permit from the Building Official.

As I have stated in writing on many occasions we intend to proceed with this application.

Yours sincerely,

John Owens, Diana Dullaghan



24



TOWN OF FAIRFAX

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

October 8, 2013

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

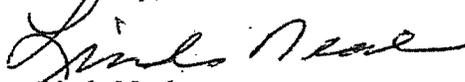
Re: 177 Frustruck Avenue; Planning Application

Dar Mr. Owners and Ms. Dullaghan,

On August 15, 2013 the Planning Commission granted your written request that your proposal for a residential second unit at 177 Frustuck Avenue be removed from the agenda where it had been scheduled for Commission action.

In order to comply with California Permit Streamlining regulations your project has been rescheduled for the November 21, 2013 Commission hearing. All written information that you have submitted since the August meeting will be included with the previously written staff report on the project. Any additional information that you want to include in the prepared Planning Commission information packet must be received no later than November 6, 2013. If you have any questions please feel free to contact the Department of Planning and Building Services.

Sincerely,


Linda Neal
Principal Planner

cc. Jim Moore, Director of Planning and Building Services

TOWN OF FAIRFAX

OCT 14 2013

RECEIVED

John Owens & Diana Dullaghan
177 Frustuck Avenue, Fairfax CA 94930
Tel. 456-8064 Email: johnoph@aol.com
October 14, 2013

Linda Neal Principal Planner
Town of Fairfax
142 Bolinas Road
Fairfax Ca 94930

Re: October 8th 2013 letter from the Department of Planning and Building Services

Dear Ms. Neal,

I believe you are mistaken again with your statement " In order to comply with California Permit Streamlining regulations your project has been rescheduled for November 21, 2013 Commission hearing". This cannot apply as the discretionary time period has simply expired. I never requested any extension of time, and no such requests for any extension were made of me verbally or in writing from the Town of Fairfax. The Planning Commission no longer has discretion over issuing the permit for our application. I had our second unit application taken off the 8.15.2013 Planning Commission agenda for corrections to be made to the mistakes and inaccuracies in the Staff Report. I promptly brought the errors to your attention and corrections have not been made. The discretionary period has already expired.

You state " If you have any questions please feel free to contact the Department of Planning and Building Services" My question is; How does placing the application on the November 21 agenda comply with the Permit Streamlining Act if the time limits have expired ?

In my letters dated; 8.18.2013, 9.4.2013, 9.5.2013, 9.9.2013, 9.12.2013, 9.30.2013, and 10.3.2013 I have continually asked for our application to proceed. I am again requesting that a building permit be issued as the 90 day discretionary time period has expired. Please let me know in writing by October 18th 2013 the answer to my question, and when I can pick up the building permit.

Yours sincerely,



John Owens, Diana Dullaghan



John Owens <johnowensservices@gmail.com>

Letter Dated Oct. 14, 2013

1 message

Jim Moore <jmoore@townoffairfax.org>

Wed, Oct 16, 2013 at 8:56 AM

To: John Owens <johnowensservices@gmail.com>, "johnoph@aol.com"
<johnoph@aol.com>

Cc: Linda Neal <lneal@townoffairfax.org>

Hello John,

We are in receipt of your October 14, 2013 letter and have reviewed it thoroughly. Once again, you are confused with the process.

YI: Your application for a second unit is being placed on the November 21, 2013 Planning Commission agenda for their consideration.

Best Regards,

Jim

James M. Moore

Director of Planning & Building Services

Town of Fairfax

142 Bolinas Road

Fairfax, CA 94930



John Owens <johnowensservices@gmail.com>

177 Frustuck Application: PSA Verification

1 message

Jim Moore <jmoore@townoffairfax.org>

Thu, Oct 17, 2013 at 8:43 AM

To: John Owens <johnowensservices@gmail.com>, "johnoph@aol.com" <johnoph@aol.com>

Cc: Linda Neal <lneal@townoffairfax.org>

Hello John,

FYI: Linda and I have decided to send your letters, and the questions about the time frame for processing your application under the Permit Streamlining Act on to our Town Attorney for review. We will share with you what we can when we get a response.

In the meantime, we plan on putting you on the November 21, 2013 Planning Commission Agenda.

Best Regards,

Jim

James M. Moore

Director of Planning & Building Services

Town of Fairfax

142 Bolinas Road

TOWN OF FAIRFAX

OCT 30 2013

RECEIVED

John Owens & Diana Dullaghan
177 Frustuck Avenue, Fairfax CA 94930
Tel. 456-8064 Email: johnoph@aol.com
October 25th, 2013

Jim Moore Planning Director
Linda Neal Principal Planner
Town of Fairfax
142 Bolinas Road
Fairfax Ca 94930

Re: Town use of the permit Streamlining Act

Dear Mr. Moore, Ms. Neal,

I have periodically attended Planning Commission meetings since we placed our building lot in escrow in 2003. I have observed on multiple occasions Ms. Neal prompting the waiver of an applicant's rights under the Permit Streamlining Act (PSA) in order to continue a Planning Application. I have included four examples from the minutes of Planning Commission meetings where applicants were specifically asked to waive their rights under the PSA. The Town is well aware of the PSA and it's time limits.

In the case of our application I simply asked that our application be temporarily removed from the Planning Commission agenda for corrections to be made to the 8.15.13. Staff Report. I never asked for any extension of time or to delay the proceedings. I have continually asked you to proceed in my multiple letters dated 8.18.2013, 9.4.2013, 9.5.2013, 9.9.2013, 9.12.2013, 9.30.2013, and 10.3.2013 The Town has never approached us verbally or in writing to waive our rights under the PSA.

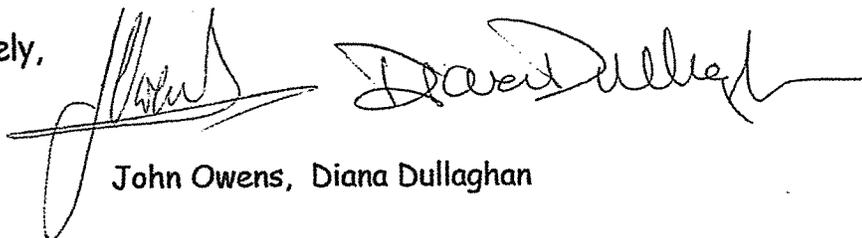
Your October 8th 2013 statement " In order to comply with California Permit Streamlining regulations your project has been rescheduled for November 21, 2013 Commission hearing" cannot apply to our application. The Town of Fairfax has never been in compliance with the PSA. Correct me if I am wrong. It is my understanding that in order to comply with, or use the California Streamlining regulations the Town of Fairfax has to include the PSA and it's associated time limits as part of the Planning Application form. The purpose of including this information is to inform the applicant of the time limits and their rights regarding the PSA.

Gov. Code 65941.5. Each public agency shall notify applicants for development permits of the time limits established for the review and approval of development permits pursuant to Article 3 (commencing with Section 65940) and Article 5 (commencing with Section 65950), of the requirements of subdivision (e) of Section 65962.5, and of the public notice distribution requirements under applicable provisions of law. The public agency shall also notify applicants regarding the provisions of Section 65961. The public agency may charge applicants a reasonable fee not to exceed the amount reasonably necessary to provide the service required by this section. If a fee is charged pursuant to this section, the fee shall be collected as part of the application fee charged for the development permit.

The Town has used the PSA to it's advantage on multiple occasions all the while never being in compliance with the PSA because the applicant was never informed of the PSA or their rights.

The discretionary time period to review our project expired on September 24th 2013. I am again requesting our building permit be issued. Please do not waste more time and tax payer's money delaying the building of a much needed Leed Certified Affordable Housing Unit. Especially as the Town has a looming 2014 deadline from the Housing and Community Development Agency of 172 Housing units, and has no active programs in process to meet that deadline.

Yours sincerely,



John Owens, Diana Dullaghan

In response to Commissioner Hamilton, Ms. Neal clarified the front and combined setbacks. She noted that they were 15 feet, where normally 25 feet would be required.

Commissioners Lacques and Ketcham discussed setbacks in relation to the plans with Ms. Neal.

The Chair opened the hearing to the public.

Gary Roth, applicant, said they needed an extra bedroom, and that they had worked hard to minimize the space required and keep the profile of the addition low in order to minimize the project's impact on the neighborhood.

Max Crome, project architect, discussed the options to increase square footage, and said that it would be less typical of the neighborhood to add another story. He discussed the design in more detail.

The Chair closed the hearing to the public.

In response to Commissioner Ketcham, Mr. Crome confirmed they were removing the wood-burning fireplace. He discussed the materials being used for the garage, and noted that the roof of the addition would match the garage.

Commissioner Hamilton said that this was a modest addition that fitted in well with the character of the neighborhood, with which Commissioner Lacques was in agreement. He noted that the variance was minor.

Commissioner Ketcham also concurred, and he said that this was a modest improvement to the neighborhood. Commissioner Ramsey was in agreement, and Chair Meigs noted that the increase in square footage was limited and that she also supported the project.

M/S, Hamilton/Ramsey, Motion to approve Application # 08-45 for a Variance of the combined front/rear setback requirement to construct at 319sf kitchen expansion, bedroom and bath addition/remodel to an existing 1,276sf, two bedroom one bath single-family residence for a total living space square footage of 1,595sf; Assessor's Parcel Numbers 001-113-11 & 12; Residential RD 5.5-7 Zone;

AYES: All

The Chair read the appeal rights.

15 Acacia Road; Applicant # 08-46

Request for a Hill Area Residential Development Permit, Front Setback Variance, Combined Side Yard Setback Variance, Height Variance for a 4-story building, Encroachment Permit and an Excavation Permit to construct a 2,184sf single-family residence with an attached 583sf two car garage for a total square footage of 2,767sf; Assessors Parcel No. 001-112-30

Senior Planner Neal presented the staff report, when she discussed excavation, and noted that the minimum amount of earth would be removed in order to allow construction. Ms. Neal discussed the removal of trees, for which replacements will be planted in other areas of the property.

However, she noted that the proposed residence was not in character with the neighborhood based on the floor area ratio (FAR), which she explained. Ms. Neal discussed changes staff believed should be made in order that the project complied with FAR guidelines. She said that infill developments on hillside lots needed to conform to similar styles in the area to ensure harmony, and that the design should meet the requirements of the General Plan Zoning Ordinances.

Ms. Neal said that the Town Engineer believed the site could be developed and she discussed the variances and the conditions under which they could be granted. She noted that the lot was narrow, steep, and the front property line was close to the road. She discussed the height variance, and noted that staff did not believe a reason existed to grant a four-story residence. Ms. Neal stated that there are other undeveloped lots, which were similar, so future height variances could be requested if this variance were approved. She discussed the options staff suggested, including denial of the project with the findings in the staff report.

Chair Meigs and Ms. Neal discussed a previous project, when Ms. Neal noted that the majority of the space consisted of two stories, with a few feet constituting a third story. In this instance, a new third story addition was being proposed.

In response to Commissioner Ketcham, the Town Attorney explained that the time limits of the Permit Streamlining Act could not be surpassed by time limits set by the Town's Ordinances. Thus, the shortest time limit would apply.

Ms. Neal confirmed the completion date of the submission of plans and materials for the project in response to the Chair.

Commissioner Hamilton and Ms. Neal discussed the driveway width, which Ms. Neal stated would be brought before the Town Council.

Ms. Neal and the Chair discussed the tiebacks in relation to a neighboring property. They also discussed an easement in relation to the neighboring property, which Ms. Neal said would be necessary.

Commissioner Ketcham and Ms. Neal discussed height and how it was measured.

Chair Meigs expressed concern over privacy issues caused by the third story windows to the neighboring property owner, and Ms. Neal confirmed that the neighbor had not contacted the Town with concerns.

The Chair and Ms. Neal discussed drainage in relation to the driveway wall.

Commissioner Lacques and Ms. Neal discussed a grey-water system, which Ms. Neal confirmed had been withdrawn by the applicant. They discussed the stability of the hillside.

Commissioner Ketcham and Ms. Neal discussed drainage, and Ms. Neal confirmed that the Town Engineer was comfortable that the lot could be developed.

The Chair opened the hearing to the public.

Ted Hugh, applicant, discussed the engineering issues, and the reasons they were requesting the variances. He noted that the request for a wider driveway was in response to the Fire Department. He addressed the design, and noted that they wished to collect grey water and install a ventilation system, which would require the height variance. Mr. Hugh also discussed the window design of the upper floors and the building materials.

In response to the Chair, Mr. Hugh said he had been in contact with Mr. Hoffmann.

Jeff Kroot, project architect, said that the site was extremely challenging, and discussed the reasons for the variances. He addressed the size of the house, and noted that the retaining walls constituted part of the calculations and, thus, the living space requested was fairly modest. He discussed the mezzanine loft and the windows, which served to ventilate the house.

Mr. Kroot also explained why he believed the house did not constitute four stories, partly because the garage should be considered a basement. He discussed the utility room in relation to a grey water system that is desired, and suggested that the height of the utility room could be lowered.

Mr. Kroot noted that parking was needed, and that he believed the house to be in scale with others in the neighborhood. He discussed the FAR, and noted that the variances requested are site specific, and were needed to build on a steep lot, whilst retaining redwood trees. The retaining walls were necessary to make the site safer and he discussed other reasons why the variances should be granted.

He discussed the setback in relation to the neighbors, the Hustons, when he noted that their house was close to the property line.

Chair Meigs and Mr. Kroot discussed the windows on the mezzanine floor, and Mr. Kroot noted that these were landing windows, and thus should not cause privacy issues, but that the sill heights could be raised.

In response to the Chair, Ms. Neal confirmed that ventilation is not required in the Code.

In response to the Chair, Mr. Kroot said he suggested lowering the ceiling height of the utility room so that it could not be used as living space and, thus, would not constitute a story.

Commissioner Ketcham noted the whole of the garage and utility were considered a story, and Ms. Neal explained that the Town Council had issued directions whereby a garage constituted a story, which made the project a four-story development.

Commissioner Ketcham and Mr. Kroot discussed the mezzanine and Commissioner Ketcham suggested design changes that would render the development a three-story structure, and discussion followed between staff and the architect.

Commissioner Lacques discussed ceiling heights with the architect, and solar paneling.

In response to Commissioner Hamilton, Ms. Neal said that variances could only be granted based upon physical features and not on green issues. However, conditions could be added to an approval to ensure that green features that are promised would be incorporated into the structure.

Commissioner Hamilton and Ms. Neal discussed how size was calculated.

Mr. Hugh discussed the foundation, which was designed to ensure a slide would not occur.

Ketcham suggested that changes could be made to the design to reduce the space and negate the necessity of a variance for a fourth level, and Mr. Kroot explained that the physical constraints of the lot have necessitated the variances.

Commissioner Ketcham reiterated his belief that space could be removed and the design changed so that a fourth story could be omitted.

Commissioner Hamilton and Neal discussed the retaining wall and the distance between the wall and the back of the house and the redwood trees.

Chair Meigs and Ms. Neal discussed lot coverage in relation to the patio area.

Commissioner Lacques and Mr. Kroot discussed the north elevation in relation to the Huston's property.

Commissioner Lacques and Mr. Pugh discussed the green features, and Mr. Pugh said he would abandon the green features if he were not able to obtain the fourth story variance.

In response to Commissioner Ketcham, Mr. Kroot discussed the necessity of the stairwell to the mezzanine floor, and Mr. Pugh discussed the reasons he believed his project should be approved.

The Chair announced a 5-minute break at 9.30pm.

Neil Krause, Acacia Road, said that a project in this location could impact him, but that the applicant has done all that was necessary to be considerate to his neighbors. He supported the project.

Kretchen Coles, Acacia Road, said that she appreciated the effort the applicant had made to stabilize the property and had done a good job.

A resident of Acacia Road said she was happy that the hillside would be stabilized and that an attractive house that fits the neighborhood will be built on the lot.

Babs Walker, Acacia Road, said that she had submitted a letter of support. She said that it would be a nice house and the hillside would be stabilized.

Jeff Bickner, Acacia Road, said that the lot was in need of attention and was suitable for a project such as this. He supported the project.

The Chair closed the hearing to the public.

Commissioner Lacques expressed concern that the outcome might not be positive unless the applicant waived his rights to ... under the Streamlining Act.

Commissioner Ramsey said that he appreciated the amount of care that had gone into the design; it was a difficult site; the public would benefit with a stabilized hillside, and the neighbors supported the project. He said that the argument was persuasive that the existence of the fourth floor would not be detected from the street, and he noted that variances were not inherently prescient. The Commissioner supported the project.

Commissioner Ketcham said that the proposal was well thought out, and that exceptions to the rules existed relating to the wall and driveway that would allow variances. However, they had an obligation to uphold the Town Code, and there appeared to be other areas of the property that could be used for construction. Commissioner Ketcham suggested that a variance for developing the front of the property could be more palatable than a variance for a fourth story. He was concerned that on small lots such as this, four-story additions could become the requested exception to the rules. The Town Council drafted an ordinance that allowed third stories, which was not well received, and he did not believe that findings could be made to allow the fourth story. He would, therefore, deny the request for the fourth-story variance for the reasons contained in the staff report.

Commissioner Lacques stated that he appreciated the work that had been put into the design on a difficult lot, and that all the variances requested, with the exception of the fourth-story addition, were necessary in order to construct a residence on the lot. He could not support a fourth-floor variance because a hardship was not being caused and would not be a limitation on building a home. Furthermore, the ceiling of the top floor could be opened in order to provide light, which would not necessitate a fourth floor. The variance request for a fourth story was too large and he would not wish to set a precedent. He supported the project, other than the variance for the fourth-story addition.

Commissioner Hamilton complemented the applicant on his design that has gained his neighbors' support, but they needed to consider the town as a whole. She would like to make the finding for the variance for the fourth story, but the green aspects that are planned for the project

could be incorporated into a three-story residence. She suggested that a front setback variance could be granted but that the fourth story was not a necessary feature that would warrant a variance.

Chair Meigs stated that everyone had worked hard on the project, but that the political will or an Ordinance did not exist to allow a four-story residence. She had not seen so many variance requests or so much excavation in one package. She could not support the project with a fourth story and Commissioner Ketcham and staff had made alternative suggestions.

General discussion followed, and staff confirmed that a different design without a fourth story had not been presented for consideration, and Commissioner Lacques noted that the Commissioner had been generous with the other variances.

Chair Meigs stated that the Town Code protected the town and its character and that it forbade a fourth story.

Discussion on the way forward followed. The Attorney explained the options available to the applicant.

The applicant waived his rights under the Permit Streamlining Act.

M/S, Lacques/Ketcham, Motion to continue application # 08-46 for a Hill Area Residential Development Permit, Front Setback Variance, Combined Side Yard Setback Variance, Height Variance for a 4-story building, Encroachment Permit and an Excavation Permit to construct a 2,184sf single-family residence with an attached 583sf two car garage for a total square footage of 2,767sf upon the consent of the applicant to submit new plans to the Planning Commission with the understanding that the applicant has waived his rights under the Permit Streamlining Act.

AYES: All

Consideration/adoption of a Resolution 08-04, A Resolution of the Planning Commission that Recommends that the Town Council Adopt the Mixed-Use Overlay Zone Expanded Design Guidelines.

Chair Meigs stated that there were items included in the Resolution that the Subcommittee did not discuss. She further believed that the word 'Regulations' should be substituted for 'Guidelines', which would be more suitable.

Commissioner Hamilton agreed with the substitution and suggested other changes.

Commissioner Lacques stated that language should be added that the guidelines apply to properties in the Mixed Use Overlay Zone and did not apply to the whole town. Discussion followed.

M/S, Hamilton/Ramsey, Motion to adopt Resolution 08-04, A Resolution of the Planning Commission that Recommends that the Town Council Adopt the Mixed-Use Overlay Zone Expanded Design Guidelines with amendments.

Chair Ketcham said that he appreciated the proposed green building upgrades.

M/S, LaMotte/Lacques, Motion to approve Application # 10-03: Request for a Use Permit, Floor Area Ratio Variance and Combined Side Yard Setback Variance to construct a 208 square foot dining room addition to an existing 988 square foot single-family residence at 40 Merwin Avenue.

AYES: All

Chair Ketcham read the appeal rights.

4. 36 Merwin Avenue, application # 10-0; Request for a Use Permit and setback variances to construct a 1,445 square foot, two story addition to an existing 812 square foot single-family residence (107 square feet of existing to be removed); Assessor's Parcel No. 002-111-04; Residential Multiple Family RM Zone; Rowan and Vikki Fennell, applicants/owners; CEOA categorically exempt, § 15301(e)(2).

Commissioner LaMotte excused herself from the meeting at 10.25 p.m. and Senior Planner Neal presented the staff report. She explained that the lot was large but that a creek ran through the property. Since the lot was in the flood zone, the floors would need to be elevated above the flood plain. She discussed the discretionary permits.

Ms. Neal also addressed the required creek setbacks and staff's concern regarding the portion of the addition which would encroach the side yard setback of the neighboring property. Ms. Neal also discussed the parking variance. She noted staff's recommendation that the project be continued for redesign because the number of variances requested suggested that the addition was too large for the lot.

In response to Chair Ketcham, Ms. Neal discussed the Permit Streaming Act in relation to the project.

In response to Commissioner Meigs, Ms. Neal said that storm water runoff had not been studied because the lot was flat. She noted that the property was not in the urban wildland interface zone.

Rowan Fennell, applicant, discussed the project. He explained how they wanted to provide sufficient space from the creek which resulted in the need to encroach the side yard setback.

Mr. Fennell and Vice-Chair Hamilton discussed other options that had been considered.

Sarah Deeds, project architect, discussed the reasons why lifting the house would have caused problems, including the disruption of the floor plan and porch design. She said that they shifted the addition closer to the neighbor in order to meet the 20 foot creek set back. Ms. Deeds said that if the addition could be moved closer to the creek, there would not be a need to request multiple variances.

In response to Commissioner Meigs, Ms. Deeds said that it was assumed the storm water runoff would go into the creek.

Chair Ketcham opened the hearing to the public.

John Molloy, Merwin Avenue, said that he supported the project, although he expressed concern that the height and size of the wall directly next to his property might seem too imposing.

Vice-Chair Hamilton said that she would be amenable to the addition being shifted towards the front of the property in order to provide a 5 foot setback from the neighbor's side.

Commissioner Goyan said that it was hard to design an addition for the lot and that he could see the difficulty in lifting a house so close to the creek. However, he said that the addition would be too close to the neighbor's property line and that screening and drainage plans should have been included for discussion.

Commissioner Meigs said that she supported some of the ideas put in the staff report.

Commissioner Lacques said that he applauded the inclusion of energy efficient ideas in the plans but that the mass was intimidating on the neighbor's side. He believed that the plan was too ambitious for the site and that it needed to be more modest.

Chair Ketcham said that the structure would be massive in comparison to the present building and that he also remained concerned with the mass and height of the back structure. He noted that they were incorporating a huge mass on a limited part of the lot. He noted that more runoff would be produced that would need to be managed, and thus a drainage plan would be helpful, and that he was concerned that the second floor roof deck would cause privacy issues with the neighbor.

Vice-Chair Hamilton discussed an amendment to the design. Planning Director Moore suggested that the plate heights could be reduced in order to reduce the height of the structure without eliminating square footage and he noted that there was ancillary space that could be reduced to make the house smaller.

Ms. Deeds and Ms. Neal discussed the creek setbacks and a possible exemption to covered parking.

The applicants agreed to waive their rights with regard to the Streamlining Act, should it not be possible for them to appear at the next meeting.

M/S, Hamilton/Goyan, Motion to continue application # 10-0; Request for a Use Permit and setback variances to construct a 1,445 square foot, two story addition to an existing 812 square foot single-family residence (107 square feet of existing to be removed) with the provision of a drainage plan at 36 Merwin Avenue to a date uncertain.

AYES: All

COPY

Commissioner Madsen asked Mr. Sergent why he was opposed to the request for preferential parking if he had plenty of parking at his residence.

John Sergent said long time residence should be given more consideration than new residence; that Mr. Jamal is adding onto his house extensively; that the addition is imposing on the privacy of a neighbor on Madrone Court.

P. R. Ryerson, 60 Madrone, said Mr. Jamal spent his own time and money to built these retaining walls to create parking; that previously during the winter as the soil would get soft people were parking further into the roadway and closer to their driveway approach. He also said the two lower spots were not sufficiently wide enough and you could barley get by on the road if cars were parked there. He closed by saying he felt the request for preferential parking should be granted.

Commissioner Hailer asked Mr. Ryerson about the area there that was previously used for parking.

Mr. Ryerson said in one of the areas the shoulder was 18 inches wide; that he felt they were unsafe; that he never parked there; that if cars were parked there emergency vehicles could not get past. He said the other area was OK in the summer but that during the winter the area was slippery and unsafe and that cars would park further and further into the roadway as the rainy season progressed.

Emma said the reason she had asked Ms. Ewald not to park where she was parked was because she was partially blocking their driveway and she could not get out.

Commissioner Madsen asked staff if the Town Attorney was consulted about the liability issue.

Senior Planner Neal said no. She said the applicant could ask his attorney if there was a way to leave it public parking and also address the liability issue and then the Town Attorney could review the proposal to determine if it was acceptable to Town. She said however if the item was continued the Commission would have to ask the applicant to waive his rights under the permit streamlining act.

Commissioner Hailer said she does not interpret the ordinance as requiring an applicant to spend 10 thousand dollars per parking space; that the Commission does need to think of the long term and the fact that the property could be sold in the future; that maybe their should be a deed restriction on the property that would state when the property is sold the parking areas would revert to public parking.

Commissioner Meigs said that parking is tough in the hills; that she may be in favor of granting one parking space and that she would like the Town Attorney to review the ordinance before a decision is made.

Senior Planner Neal said if the Town Attorney were to review the ordinance before a decision was made the item would have to be continued off calendar and the applicant would have to agree to waive his rights under the permit-streamlining act.

Commissioner Meigs asked Mr. Jamal if he was willing to waive his rights under the permit streamlining act.

Rida Jamal said he would like a decision and that he was not willing to waive his rights under the permit streamlining act.

M/S Arguimbau-Meigs motion to approve one parking space to be designated as private preferential parking.

ROLL CALL

AYES: Meigs, Arguimbau

NAYS: Madsen, Hailer

John Owens & Diana Dullaghan
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Tel. 456-8064 Email: johnoph@aol.com

November 6, 2013

Jim Moore, Planning Director
Town of Fairfax
142 Bolinas Road
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Hand delivered

Alan Mayer Inc. Attorney at Law
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Re: Request to meet with the Town Attorney to save valuable resources

Dear Mr. Moore,

As requested today I submitted additional documentation for the November 21st Planning Commission meeting. I assume you will make the necessary copies for the Planning Commissioners so they will have the complete history of our planning applications for 177 Frustuck Avenue.

As stated in the my previous letters of 10.3.2013 and 10.25.2013 I firmly believe that the Town of Fairfax did not conform to the California Permit Streamlining Act and the discretionary time period for our planning application has expired. The Planning Commission no longer has discretion over our permit. The permit needs to be issued.

I know from your 10.17.2013 email that you and Ms. Neal were not clear on the Permit Streamlining Situation and referred our letters to the Town Attorney. You have not shared with us as to what you found as promised in that email.

I am suggesting that our attorney Alan Mayer Esq. meet with the Town Attorney to try and resolve the permit issue and save valuable time and money for the Owens's and the Town of Fairfax. The Town has a looming deadline of 172 housing units by 2014. Let us move forward to issue the permit for a Leed Certified Affordable Second Unit that may be the only housing unit of the 172 that could be completed in 2014.

We look forward to your prompt response.



Best regards, John Owens & Diana Dullaghan