

BOOK 1, DIVISION 16 WAS LEFT BLANK



# TOWN OF FAIRFAX

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

July 9, 2008

Alan M. Mayer, Attorney at Law  
Law Offices of Alan M. Mayer, Inc.  
1120 Nye Street, Suite 200  
San Rafael, CA. 94901

RE: 177 Frustuck Avenue; Planning Application

Dear Mr. Mayer,

The Department of Planning and Building Services has reviewed your letter dated June 12, 2008 and we have the following point by points comments to make regarding its contents:

## 1. Site Plan

The site plan will be provided by applicant as requested by staff.

## 2. Finished Floor Elevations

The finished floor elevations will be provided by applicant as requested by staff.

## 3. Square Footage

The definition of FAR does not exclude unconditioned storage space as per the code section below.

**"FLOOR AREA.** Of single-family residences and duplexes, the sum of all interior floor area measured from the exterior faces of the exterior walls. The **FLOOR AREA** of any accessory structures on the same lot shall be included. The **FLOOR AREA** of any garage in excess of 500 square feet in size for single-family residences and 800 square feet for duplexes shall also be included. Any basement area, as defined herein, is not included."

In fact for other projects detached storage structures have been included in the FAR calcs. In some cases, storage space is not included in FAR calculations because the ceiling heights do not meet building code limits for living space?

#### **4. Floor Plans**

Floor plans will be provided. Staff is requesting the electrical plan just to ensure that the area is still storage. An on site inspection within 24 hours of the meeting could suffice to verify the area is still storage and not being used as living space.

#### **5. Trees**

The pathway that has been alleged to be on grade is not. The applicant was issued a permit by building indicating the path was on grade but excavation occurred in order to comply with the Uniform Building Code. Excavation occurred within a few feet of several mature trees and could impact their health. Therefore, staff is still requesting the arborist's report.

#### **6 and 7. Elevations and Encroachment Permit**

Staff has only received plans dated February 20, 2008 which still show stairs and a lower path in the right-of-way. Please submit revised plans which reflect removal of the lower path.

#### **8. Height Variance**

Regarding the question of whether the accessory structure is attached or detached, Staff is still taking the position that unless the primary structure shares a common party wall with the parking structure it is not attached.

However, it appears the either interpretation of the ordinance will yield the need for a public hearing. If the parking garage and storage area are viewed as integral to the main structure and as a single structure then the combined structure will be a four story structure. The second unit, is the first story, the lower level of the main house is the second story, the main level of the house is the third story and the garage is the fourth story. Since the ordinance prohibits four story structures in this zone this would require a height variance from the Planning Commission.

If the garage with storage structure is considered a detached accessory structure, then the two story accessory structure which exceeds the 15 foot height limit for accessory structures would require a height variance.

So it appears that either interpretation of the municipal code will require a public hearing process because a height variance will be required in either case.

In addition, since the Town Council letter of action from the 2004 approval required removal of the garage from the plans and that an uncovered parking deck be built; staff has major concerns with allowing this garage without requiring a public hearing process.

## **9 Parking Variance**

The parking variance is for the size of the space shown on the west side of the parking deck and for the fact that it is located within a required side yard setback. The code does not allow compact parking in conjunction with residential properties, only in conjunction with commercial properties, without a variance from the Planning Commission and parking is prohibited in side yard setbacks without a variance [Town Code sections 17.052.010(B) and 17.052.040(C)].

## **10. Access Pathways**

Even though the path is existing, it is now being proposed as access to a new living unit and the site plan should accurately show its' location and the location of lighting. The site plan does not. Elevations of the path may no longer be necessary since the applicant separated the application for the stairway from the project and has already constructed the stairway path. These stairs have not received final approval from the Building Department and they have not obtained any plans for the stairs or the stairway lighting. The lighting and the stairway rise, run, landings and handrails will have to be to code before the Building Official finalizes them as access to the second unit.

## **11. Design Review**

The code requires design review for second units if exterior changes will occur. A new deck is being proposed off the rear of the unit and new windows, etc. Design review is required per Town Code § 17.048.060 but is reviewed and approved by the Planning Director and does not require a public hearing.

## **12. Hill Area Residential Development Application**

Staff was requiring an HRD probably in error here. We were basing the requirement on the garage being an accessory structure over 200sf in size [Town Code §17.072.050(B)]. After reassessing the application we feel the fact that the floor of the parking structure already exists can be used as an argument for the project not requiring HRD information.

## **13. Lot Size**

The applicant has indicated that the error on lot size will be corrected.

## **14. Survey**

The second unit ordinance requires the submittal of a record of survey and planning applications subject to public hearings require the submittal of 14 sets of all information [Town Code § 17.048.040(D)]. There are new Commissioners who were not on the Commission when the house was approved and it is a requirement of the Second Unit Ordinance that a recorded survey be submitted, not just the planning application.

**15. Miscellaneous**

**i. Landscaping**

Staff is still of the opinion that a landscaping plan should be submitted for the access pathway to the second unit. Also, since the unit proposal includes a new deck and new windows which may impact neighbors, staff and the Commission may want to require landscape screening as a condition of approval when reviewing the application to write the staff report and/or the Commission may require a landscaping plan. The applicant may want to submit a written indication of why no landscape screening is required.

**ii. Lighting Plan**

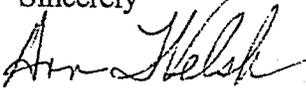
A lighting plan must be submitted for the access stairway that will provide the only access to the unit for a safety review.

**iii. Story Poles**

Story poles for the garage are imperative especially since the Town Council approved the project on appeal for only an uncovered parking deck.

If you have any questions regarding staff's review and response to your letter, please do not hesitate to contact me.

Sincerely



Ann Welsh

Director of Planning and Building Services

cc. Michael Rock, Town Manager  
John Owens and Diana Dullaghan

**Subj:** RE: 177 Frustuck Planning Process  
**Date:** 8/11/2008 2:30:34 P.M. Pacific Daylight Time  
**From:** [planningdirector@townoffairfax.org](mailto:planningdirector@townoffairfax.org)  
**Reply-to:** [planningdirector@town-of-fairfax.org](mailto:planningdirector@town-of-fairfax.org)  
**To:** [mrock@townoffairfax.org](mailto:mrock@townoffairfax.org), [Johnoph@aol.com](mailto:Johnoph@aol.com)

Dear Mr. Owens:

Regarding the application that you have with Fairfax for a garage and a second unit; staff has spend a great deal of time with you discussing your options in this matter and is concerned about your allegations that we are not being reasonable in processing your application. As we have discussed you have every right to go to a public hearing on this application and request the variances that that this project would require.

Specifically, staff has made the following determinations that are simply statements of the Fairfax Town Code.

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2. If on the other hand you build a garage that is detached from your house and not connected to the house by a party wall, this will require a height variance and a setback variance because the municipal code allows only one story attached structures that are not higher than 15 feet and requires a 10 foot front yard setback for detached structures. The proposed garage exceeds this height limit and setback requirement so a variance would be needed.
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Hopefully we can move this project forward to a public hearing at some time in the near future.

Regards,

Ann Welsh, AICP  
Director of Planning and Building Services  
Town of Fairfax  
142 Bolinas Road  
Fairfax, CA 94930  
415-453-1584 (o)  
415-453-1618 (f)  
[planningdirector@townoffairfax.org](mailto:planningdirector@townoffairfax.org)

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**From:** Linda Neal [<mailto:lneal@town-of-fairfax.org>]  
**Sent:** Monday, August 11, 2008 9:51 AM  
**To:** Planning Director  
**Subject:** Fw: 177 Frustuck Planning Frustration

— Original Message —  
**From:** [Susan Brandborg](mailto:Susan.Brandborg)

Monday, August 11, 2008 AOL: Johnoph

18

**From:** Linda Neal [mailto:lneal@town-of-fairfax.org]  
**Sent:** Monday, August 11, 2008 9:51 AM  
**To:** Planning Director  
**Subject:** Fw: 177 Frustuck Planning Frustration

— Original Message —

**From:** Susan Brandborg  
**To:** Linda Neal  
**Sent:** Monday, August 11, 2008 9:45 AM  
**Subject:** Fwd: 177 Frustuck Planning Frustration

----- Forwarded message -----  
**From:** <Johnoph@aol.com>  
**Date:** Sat, Aug 9, 2008 at 9:08 AM  
**Subject:** 177 Frustuck Planning Frustration  
**To:** weinsoff@townoffairfax.org  
**Cc:** sbrandborg@townoffairfax.org

Hi David, & Susan

My name is John Owens. My wife, daughter, and I live at 177 Frustuck Avenue a new home we built two years ago. I do come to some Council meetings, and used to be a regular at Planning Commission meetings. I have addressed issues at Council usually concerning restricting peoples property rights. We have lived in Fairfax for 17 or 18 years.

The house we built is certainly the most sustainable house to date in Fairfax. We produce 100 plus percent of our electricity, 70% of our hot water, and have 3 bio diesel vehicles running on 100% recycled vegetable oil.

We submitted an application for a garage and a sustainable second unit in February and have been stonewalled since. We are re applying for the same garage that was on the 2004 application as an attached garage which needed no variances. It is now being deemed a detached garage and needs two variances. We were thrown an arbitrary list of corrections to our plans which could have cost \$20 to \$30,000 in experts. I read the Town Code and discovered that 90% of the reports were not required. We responded with personal letters with no change. We have now responded with attorney's letters, and a personal appearance by Alan Mayer our attorney. Still no change on the garage, and now we are being given an either or choice on the second unit. Because some one came up with a response of if you prevail on the garage you cannot get the second unit without variances.

I don't know if you have been made aware of this situation because the Town has received Attorney's letters. My wife and I are thoroughly sickened with the response to our proposal. In building our house we built what the Town is always touting as their goals. We want to produce an affordable sustainable second unit of which the Town needs to provide 128, and is also touted as a goal of the Town.

We've been through the collusion at the Planning Commission ( it made front page of the Ross Valley Reporter). We've had the neighborhood petition full of lies, we've been personally threatened in the street. We've been bullied at Council to build a house without a garage. We firmly agreed back in 2004 that we would not be bullied a second time. We do not want to enter into litigation with the Town. We want the bullying to stop, and be allowed to build the "Green and Organic" additions to our house. We are now very experience in the politics, codes, and running of this Town. It is no longer our first Rodeo. We would like to discuss this situation with you, and try and move this forward in weeks instead of years.

Thank you for your consideration,

John, and Diana 456 8064 Home 717 7621 John's cell phone

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Looking for a car that's sporty, fun and fits in your budget? [Read reviews on AOL Autos.](#)

—  
Susan Brandborg  
Payroll Accountant  
Yosemite National Institutes  
415-332-5776  
Fax: 415-332-5783

Dear Anne ,

I have not found the Town's approach to this application to be reasonable. I think it's reasonable that I be asked to conform to the requirements of the Town Code, and the requirements of the planning application process. I am very willing to do so.

In February I was overcharged for an application that was allocated to the wrong very restrictive hillside residential permit category, and incorrectly allocated and charged to design review. I was asked to produce a list of reports from experts that probably would have cost me \$20,000. These reports were not a requirement of my application. They are not required under a use permit. I have never been reimbursed for the overcharge. I was informed that I need two variances for a garage application. The same garage application that required no variances in 2004. That was not a good start to the process.

Last week I submitted an expensive engineered set of plans for a patio to the building department. I was informed by the building inspector that the planning department had denied my application.. The project has stalled and I have not received the written denial, and code requirements that I requested. I have not received a refund of my \$350 plan check fee that the Building Inspector said he would not charge.

I was also dismayed last week when the building inspector would not sign off my building permit for a pathway because the planning department were requesting a lighting plan.. There is no requirement under HRD, use permit or building permit for a lighting plan.

To date I have not received the required town code section for an attached building. Please could you quote me the code section. Then explain to me how my garage does not conform to that section of the code. If it does not conform to the code ? Could you then inform me of the specific requirements I have to meet to make it conform.

Thank you for your consideration,

John Owens

In a message dated 8/11/2008 2:30:34 P.M. Pacific Daylight Time, [planningdirector@townoffairfax.org](mailto:planningdirector@townoffairfax.org) writes:

Dear Mr. Owens:

Regarding the application that you have with Fairfax for a garage and a second unit; staff has spend a great deal of time with you discussing your options in this matter and is concerned about your allegations that we are not being reasonable in processing your application. As we have discussed you have every right to go to a public hearing on this application and request the variances that that this project would require.

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Regards,

Ann Welsh, AICP

Director of Planning and Building Services

Town of Fairfax

142 Bolinas Road

Fairfax, CA 94930

415-453-1584 (o)

415-453-1618 (f)

[planningdirector@townoffairfax.org](mailto:planningdirector@townoffairfax.org)

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John, and Diana 456 8064 Home 717 7621 John's cell phone

**Subj:** RE: 177 Frustuck Planning Process  
**Date:** 9/26/2008 8:19:46 P.M. Pacific Daylight Time  
**From:**  
**To:**

Hello John,

Sorry for not getting back to you about your project. The office has been extremely busy. I hope to provide you with that explanation that I promised by next Tuesday. Until then, we have tentatively scheduled your project for the Planning Commission meeting of October 16<sup>th</sup> if you wish to have a hearing at that time.

Best Regards,

Ann Welsh

**From:** Johnoph@aol.com [mailto:Johnoph@aol.com]  
**Sent:** Tuesday, August 12, 2008 6:33 AM  
**To:** planningdirector@town-of-fairfax.org  
**Cc:** Michael Rock; weinsoff@townoffairfax.org; sbrandborg@townoffairfax.org  
**Subject:** Re: 177 Frustuck Planning Process

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Wednesday, October 01, 2008 AOL: Johnoph

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Date: Sat, Aug 9, 2008 at 9:08 AM  
Subject: 177 Frustuck Planning Frustration  
To:  
Cc:

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Director of Planning and Building Services  
Town of Fairfax  
142 Bolinas Road  
Fairfax, CA 94930  
415-453-1584 (o)  
415-453-1618 (f)  
planningdirector@townoffairfax.org

**From:** Linda Neal [mailto:lneal@town-of-fairfax.org]  
**Sent:** Monday, August 11, 2008 9:51 AM  
**To:** Planning Director  
**Subject:** Fw: 177 Frustuck Planning Frustration

----- Original Message -----

**From:**  
**To:**  
**Sent:** Monday, August 11, 2008 9:45 AM  
**Subject:** Fwd: 177 Frustuck Planning Frustration

----- Forwarded message -----



# TOWN OF FAIRFAX

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

August 25, 2008

John Owens  
177 Frustuck Avenue  
Fairfax, CA. 94930

Re: Retaining wall; building permit application

Dear Mr. Owens,

In order for the Planning Department to approve a building permit for a retaining wall that exceeds 6ft in height a height variance must be obtained first from the Planning Commission. See the enclosed Town Code § 17.044.080(B)(2). The fee for a retaining wall height variance is \$450.00.

If you have any questions, please feel free to contact the Department of Planning and Building Services.

Sincerely,

Ann Welsh  
Director of Planning and Building Services

John Owens Diana Dullaghan  
177 Frustuck Avenue  
Fairfax CA 94930  
415 456 2906 Fax 415 456 9017  
8.28.08.

Ann Welsh  
Planning Director  
Town of Fairfax CA 94930  
Fax 453 1618

Dear Ann,

This is to clarify our conversation this morning of what my expectations are in regards to the revised set of plans I resubmitted on the 14<sup>th</sup> of this month.

The plans are now for a garage only. We have removed the second unit for now, and fully intend to re apply for it in the future. My interpretation of the Town Code is that we are now applying for a use permit for a garage ( a conditional use permit is required for a garage in the RS6 zone ) with the Planning Commission. I read the code as not requiring Design Review for this type of project.

Please review our plans as to it being a complete application.

We believe the garage needs no variances. If you believe it needs variances. Please quote the applicable code, and the variances required.

We believe the building is one continuous building. If it's your view that it is not. Please let us know why, and include the applicable code.

If your view is that our garage is detached. Could you please include a clear explanation of what we would have to do to make it attached.

Yours sincerely,

John Owens



cc. Alan Mayer Esq.

# **FAX**

**John Owens**

**177 Frustuck Ave, Fairfax, CA 94930**

**Tel: (415) 456-2906 Fax: (415) 456-9017**

TO:	Ann Welsh	FROM:	John Owens
FAX:	453 1618	DATE:	August 28, 2008
Clarification of our conversation this morning.			
John			

HP Officejet J5700 All-in-One series

Fax Log for  
JOHN OWENS  
4154569017  
Aug 28 2008 2:39PM

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Last Transaction

Date	Time	Type	Station ID	Duration	Pages	Result
Aug 28	2:37PM	Fax Sent	4531618	1:27	2	OK

**§ 17.044.050 HEIGHT LIMITS.**

Height limitations stipulated elsewhere in this title shall not apply to the following: church spires; chimneys; belfries; cupolas; domes; monuments; water towers; fire and hose towers; observation towers; distribution and transmission towers, lines and poles; windmills; smokestacks; flagpoles.

(Prior Code, § 17.24.050) (Ord. 352, passed --1973)

**§ 17.044.060 YARDS AND OPEN SPACE.**

No yard or other open space provided about any building for the purpose of complying with the provisions of this title or any permit issued thereunder shall be considered as providing a yard or open space for any other building, and no yard or other open space on one building site shall be considered as providing a yard or open space for a building on any other building site.

(Prior Code, § 17.24.070) (Ord. 352, passed --1973)

**§ 17.044.070 PROJECTIONS INTO REQUIRED YARDS.**

(A) Certain architectural features may project into required yards or courts as follows.

(1) Cornices, canopies or eaves may project a distance not exceeding two feet.

(2) Bay windows, balconies, decks and chimneys may project a distance not exceeding two feet.

(3) Bay windows, balconies, decks and chimneys may project a distance not exceeding two feet unless greater projection is required by the building code of the town.

(B) Projection allowed in this section shall not come closer than three feet to a property line unless otherwise allowed by variance.

(Prior Code, § 17.24.080) (Ord. 352, passed --1973; Am. Ord. 461, passed --1979)

**§ 17.044.080 FENCES, WALLS, HEDGES AND BULKHEADS.**

(A) A fence, wall, hedge or bulkhead, maintained so as not to exceed six feet in height, may be located along side and rear lot lines; provided that, fences, walls, hedges or bulkheads may be maintained at higher heights only after obtaining a variance from the Planning Commission.

(B) Fences, walls and hedges may be located in required yards as follows.

(1) If not exceeding at any point four feet in height above the elevation of the surface of the ground at such point, they may be located in any yard or court.

(2) If not exceeding at any point six feet in height above the elevation of the surface of the ground at such point, they may be located at any point to the rear of the front setback line.

(Prior Code, § 17.24.090) (Ord. 352, passed --1973; Am. Ord. 461, passed --1979)

(C) Access to the property is via a private or public undeveloped roadway; and (An undeveloped roadway is an unpaved or paper road which must be improved.)

(D) The property does not meet the minimum building site requirements defined in Chapters 17.076 through 17.088 of this code.

(Prior Code, § 17.38.020) (Ord. 352, passed - -1973)

**§ 17.072.030 DEVELOPMENT PERMIT REQUIRED.**

Except for uses listed in § 17.072.050, land in the HRD overlay zone may not be used or developed until plans for development have been approved by the town and a hill area residential development permit is issued.

(Prior Code, § 17.38.030) (Ord. 352, passed - -1973)

**§ 17.072.040 DEVELOPMENT PERMIT; PROCEDURAL REQUIREMENTS.**

The procedural requirements for obtaining the hill area residential development permit are as follows:

(A) Submission of a development plan to the Planning Commission;

(B) Public hearing before the Planning Commission, with notice thereof given pursuant to the provisions of § 17.004.070; and

(C) Approval of the hill area residential development permit pursuant to § 17.072.110 of this chapter, subject to appeal to the Town Council under § 17.072.120.

(Prior Code, § 17.38.040) (Ord. 352, passed - -1973; Am. Ord. 628, passed - -1994)

**§ 17.072.050 USES PERMITTED WITHOUT A DEVELOPMENT PERMIT.**

The following uses are permitted outright in the HRD overlay zone:

(A) Additions to existing structures provided that the addition is not a 50 percent remodel, as defined in § 17.016.040 of this title;

- (B) Accessory structures under 200 square feet in area;
- (C) Fences and retaining walls (under four feet); and
- (D) Maintenance and repair of existing structures.

(Prior Code, § 17.38.050) (Ord. 352, passed - -1973)

**§ 17.072.060 REFERRAL TO DESIGN REVIEW BOARD.**

(A) Projects requiring a hill area residential development permit shall be reviewed by the Planning Commission prior to being referred.

(B) The Design Review Board shall address the following issues:

- (1) The visual impact of the structure upon view corridors found to be significant;
- (2) The size, scale, siting and design of the proposed structure;
- (3) Materials and color of the structure; and
- (4) Landscaping.

(Prior Code, § 17.38.060) (Ord. 352, passed - -1973; Am. Ord. 605, passed - -1991; Am. Ord. 693, passed 7-16-2002)

**§ 17.072.070 DESIGN REVIEW PROCEDURES.**

(A) Projects shall be reviewed pursuant to the procedures set forth in Chapter 17.020 of this title.

(B) A separate application for design review shall be required.

(Prior Code, § 17.38.070) (Ord. 352, passed - -1973)

**§ 17.072.080 DEVELOPMENT PERMIT APPLICATION;  
CONTENTS.**

The submittal shall include the following information:

(A) Completed application made by owner or owners of the land involved, or any agent thereof, on forms prescribed by the town accompanied by fees established by resolution of the Town Council;

17.072.050

No HRD — accessory structure under 200 sq ft.  
— fences + retaining walls under 4 ft.

~~17~~

RS6 zone 17.080.40

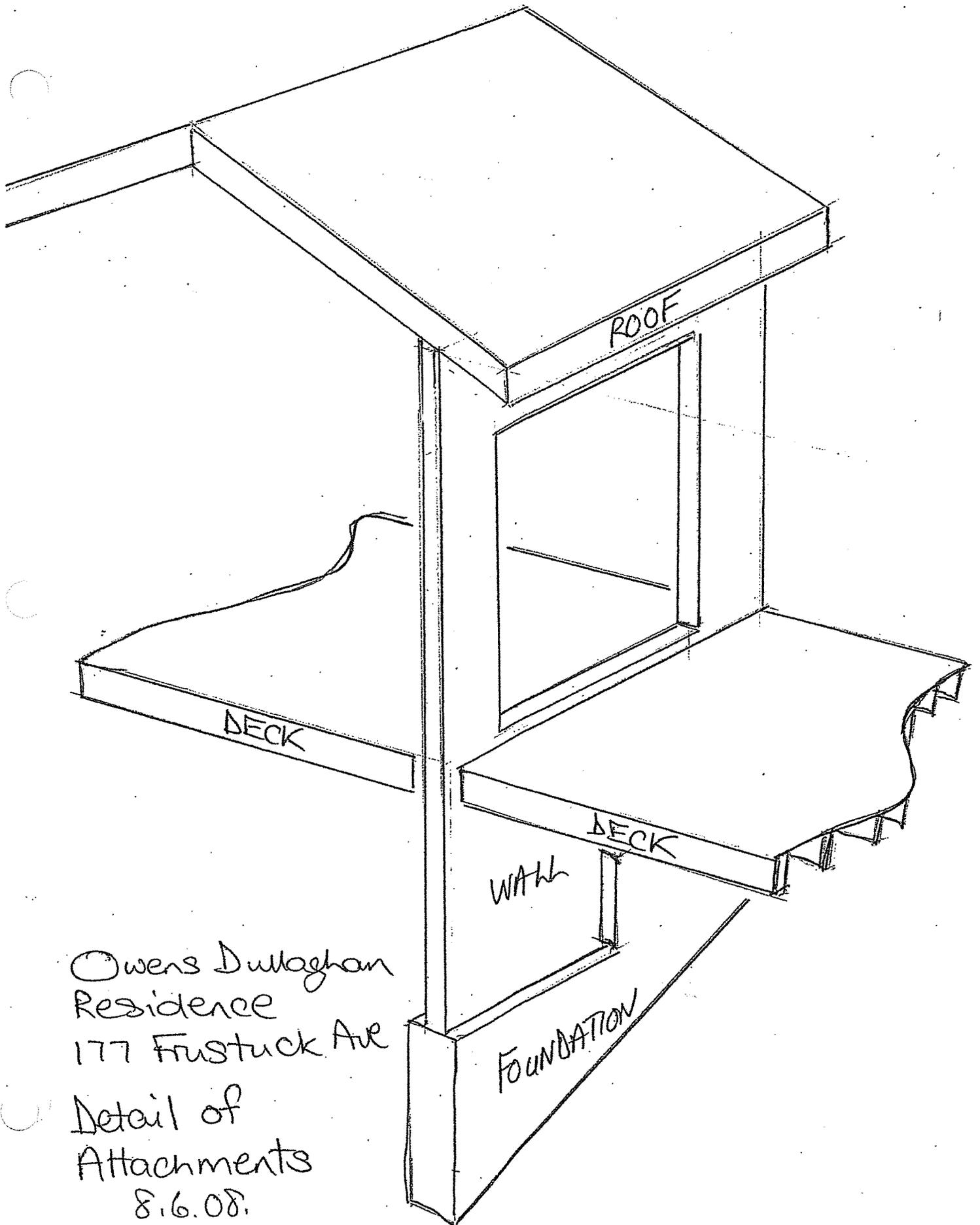
Accessory uses in RS6 zone patio.

~~17.0520~~

(B) 17.080.060 Height Regulation

No accessory building or structure on any lot shall exceed 15 feet in height

nor contain more than one story, provided that, ~~required~~ handrails required by the Uniform Building Code shall not be included in the measurement.



Owens Dullaghan  
Residence  
177 Frustuck Ave

Detail of  
Attachments  
8.6.08.

Roof structure.

14'3"

17'0"

Continuous  
framed +  
sided wall  
with deck  
not shown

Concrete  
Foundation

Scale 1/2" = 1'

Owens Dullaghan Residence  
177 Frustuck Ave.  
Detail of Attaching Wall  
8.6.08.

Roof

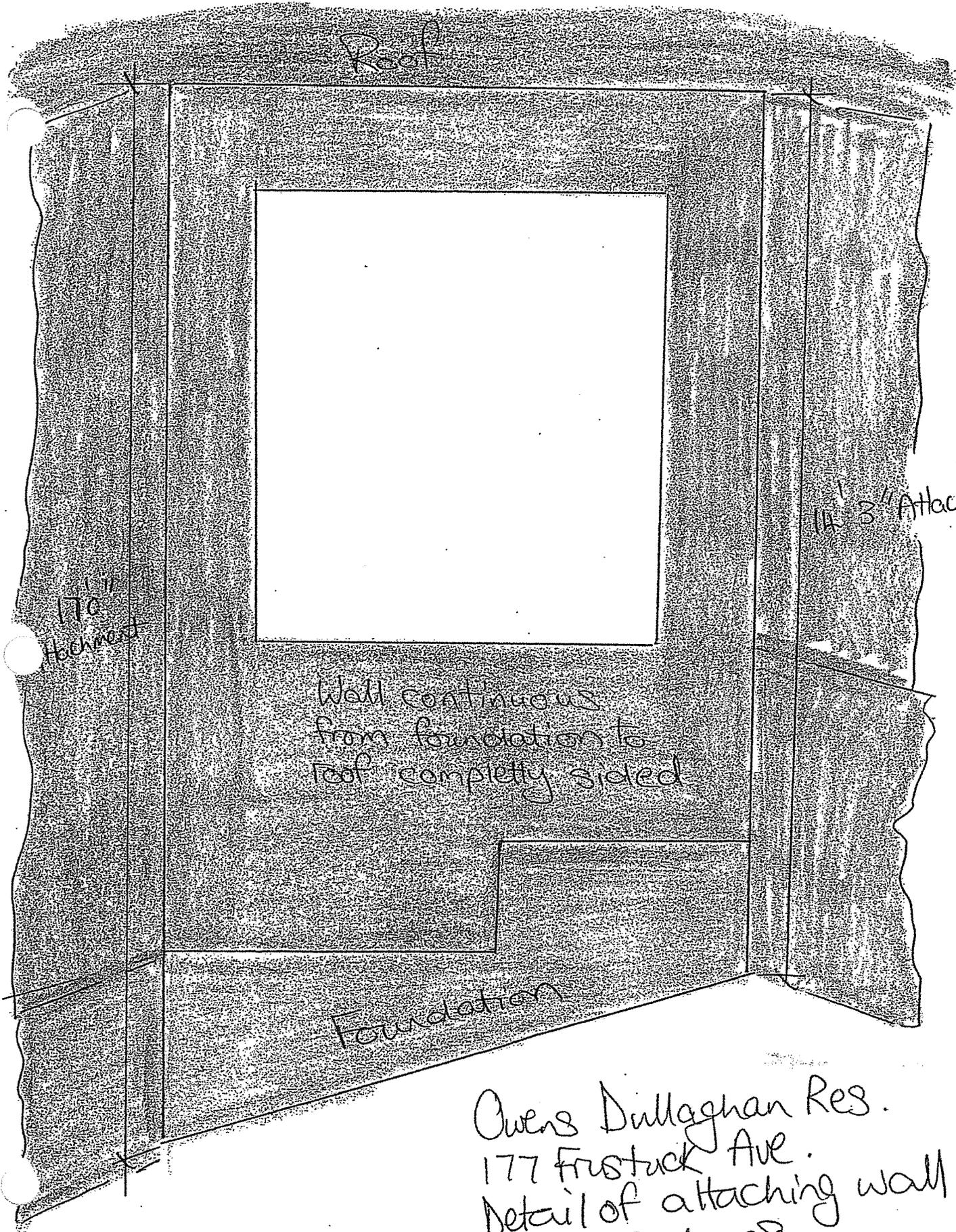
14' 3" Attachment

17' 0" Height

Wall continuous from foundation to roof completely sided

Foundation

Owens Dullaghan Res.  
177 Frisvick Ave.  
Detail of attaching wall  
8.6.08.



Roof

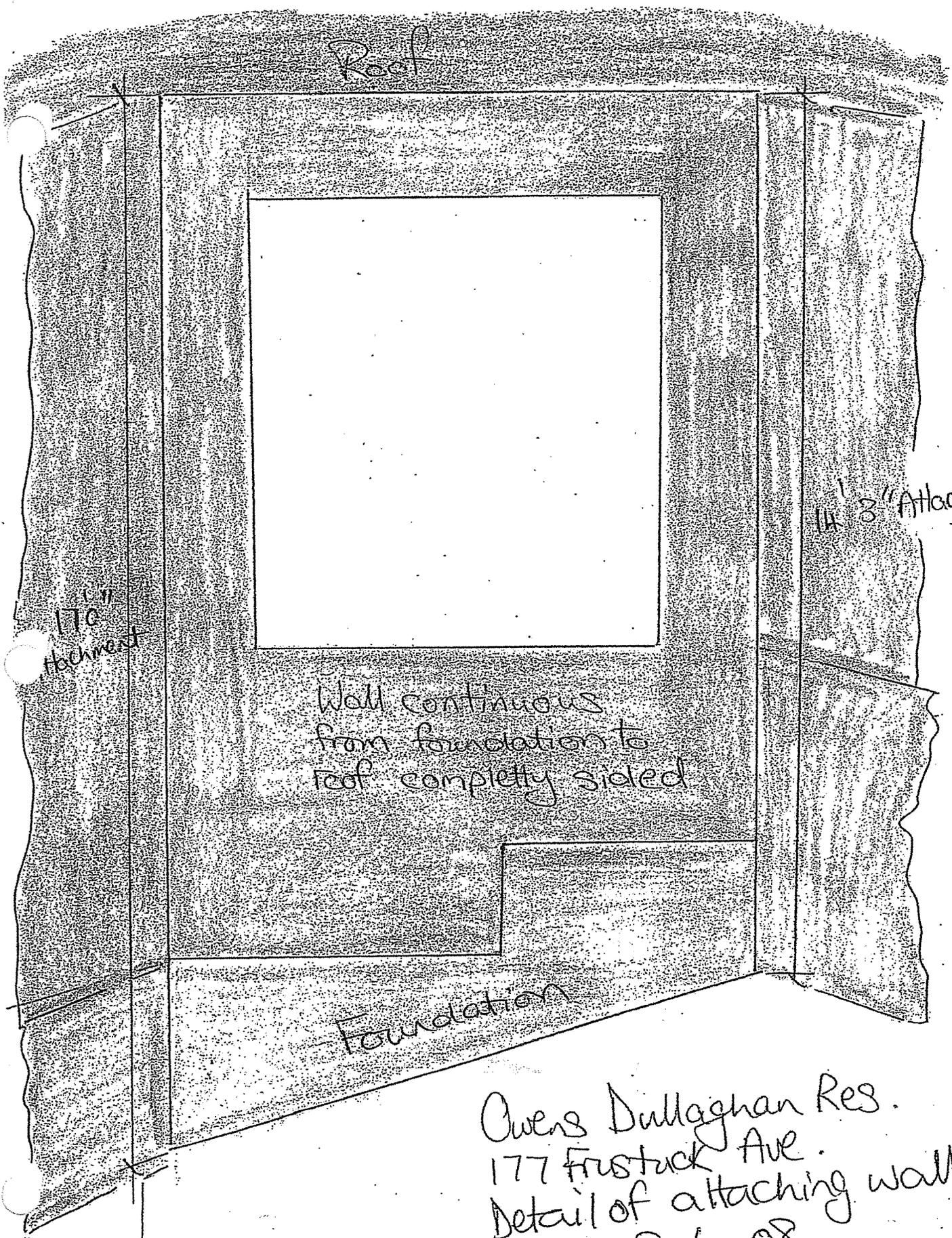
1 1/2" Attachment

1 1/2" Attachment

Wall continuous from foundation to roof completely sided

Foundation

Owens Dullaghan Res.  
177 Frustuck Ave.  
Detail of attaching wall  
8.6.08.



Roof

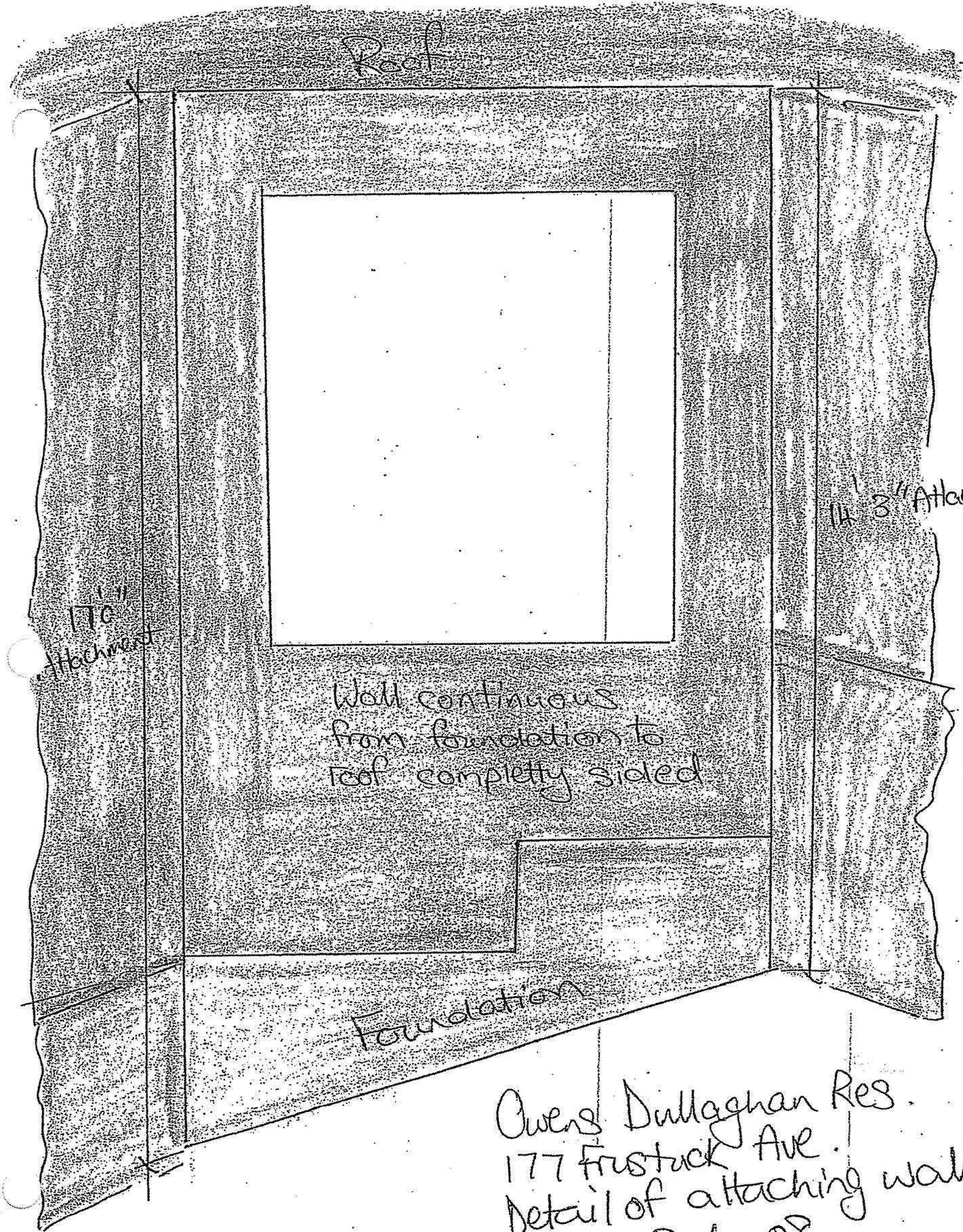
14" 3/4 Attachment

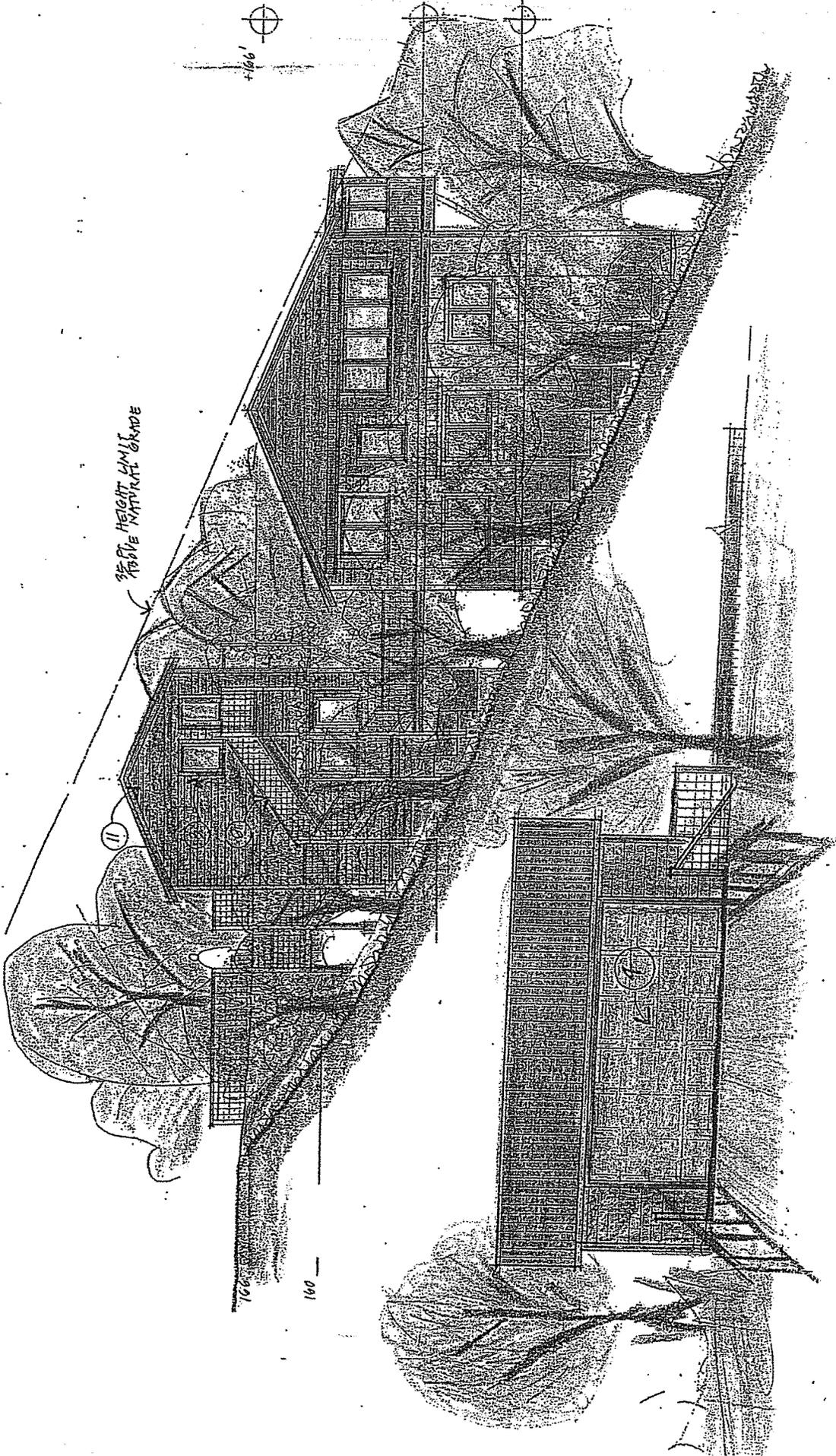
17" Attachment

Wall continuous  
from foundation to  
roof completely sided

Foundation

Owens Dullaghan Res.  
177 Frisvick Ave.  
Detail of attaching wall  
8.6.08.





# Public Notice

September 23<sup>rd</sup> 2008

Dear Homeowner/Resident,

We are writing to inform you that a Planning Application for the addition of a garage at 177 Frustuck Avenue, Fairfax, was filed on February 20<sup>th</sup> 2008 with the Town of Fairfax.

This is the same garage we applied for in our 2003 application, when 177 (fka "190") was an empty lot.

If you have any questions or concerns contact John Owens or Diana Dullaghan at 456-8064.

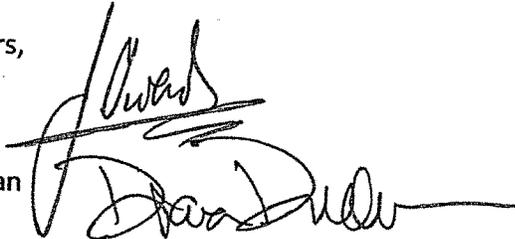
We would like to avoid the ugly fight than ensued with our house application, and also with the recent house application for 183 Frustuck .

A public hearing has not been scheduled to date. If you want to contact the Planning Department they can be reached at 453-1584, or Town Hall at 142 Bolinas Road, Fairfax.

Very truly yours,

John Owens

Diana Dullaghan

The image shows two handwritten signatures in black ink. The first signature is for John Owens, written in a cursive style. The second signature is for Diana Dullaghan, also in cursive. The signatures are positioned to the right of the printed names.

October 8, 2008

**VIA FACSIMILE ONLY**

Anne Welsh  
Town of Fairfax  
Planning Department  
142 Bolinas Road  
Fairfax, CA 94930

Re: 177 Frustuck Avenue, Fairfax

Dear Ms. Welsh:

My understanding with regard to the status of the Owens application to the Fairfax Planning Commission for their property at 177 Frustuck Avenue is that plans were submitted to the Town on August 14, 2008. As of this time the Owens have not received any written communication from the Town informing them that there are any problems with the documentation which was submitted. The Town had 30 days in which to ask for additional documents or to notify the applicant that the submissions were incomplete. After that 30 day period the submission is deemed complete as a matter of law according to the Streamline Permit Act.

A public notice was sent out by the Owens on September 23, 2008. A copy of that notice is enclosed and was sent out to all of the appropriate neighbors in a 300 foot radius of the property.

My understanding is that the law provides that the Town of Fairfax has 60 days from September 23<sup>rd</sup> in order to make a final determination on the application that was submitted to the Planning Department. If you believe this to be incorrect in any way, please let me know citing the appropriate code sections that the Town is relying upon.

As you know, it is the Owens position that no variances are needed for this project. We have been through this before and you have numerous documentation from the Owens

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Anne Welsh  
Town of Fairfax  
Planning Department  
October 2, 2008  
Page 2

specifically outlining why the garage proposed to be built, which is attached to the main structure, is not a "detached" structure.

Since the garage is an integral part of the main structure and not detached, it does not need a height variance as the building is three stories. You have previously supplied me with a definition of "detached building" citing prior code section 17.04.084. This would apply to a building that has "no party wall in common with another building". The Owens do not content that the garage is a detached building. To the contrary, it is not detached. It is not a separate building. It shares common walls, including foundations and roofs, with the rest of the building. If you are aware of any definition that would say this does not comprise an integral part of the building, I would be more than happy to review it. Just let me know what it is. The Town of Fairfax's position that because there is a "cut out" in the area between the garage portion and the rest of the house makes the garage portion "detached" is simply untenable and without any basis in any definitions within the Town codes. Again, if you are aware of any, please let me know what they are.

If there are any other variances besides the height variance which the Town of Fairfax believes are needed, please let me know what they are along with any ordinance or code specification to support the Town's position.

Any hearing in front of the Planning Commission at this point is merely to receive public comment and either approve or disapprove the plans that have been submitted. The issue of variance is not one to be considered by the Planning Commission since no variance is required.

Please let me know when the public hearing will be held. Thank you for your courtesy and cooperation.

Very truly yours,

Alan M. Mayer

AMM:kh  
cc: Client



## PROJECT DESCRIPTION

The project encompasses converting a 400sf parking deck into a 400sf garage.

## BACKGROUND/DISCUSSION

The 8,493sf property is a street-to-street site with the front and rear property lines located along different portions of the Frustuck Avenue right-of-way. The site has an average slope of 53% and is wooded with numerous oak trees.

A 2093sf single-family residence and a 400sf parking deck with a storage room beneath it exists on the site.

Prior to the residence being built on the site, The Fairfax Planning Commission denied a previously submitted design for the project with a tied vote on May 20, 2004, after continuing it once at their April 15, 2004 meeting (Exhibit A - Planning Commission April 15th and May 20th, 2004 minutes. Please note that a tie vote constitutes a project denial).

The applicants appealed the denial to the Fairfax Town Council. The Town Council continued the matter at both their June 15, 2004 and July 8, 2004 meetings requesting project redesigns and the relocation of the story poles to reflect the proposed changes to the plans. The Town Council approved the redesigned project on August 3, 2004 subject to the following conditions (Exhibit B - Town Council June 8, 2004 and August 3, 2004 meeting minutes):

- The parking structure shall be an un-covered parking deck.
- A deed restriction shall be applied to the storage area beneath the un-covered parking deck restricting conversion of the storage area to a residential use and/or an accessory dwelling unit.
- Any tree(s) identified for retention and harmed during construction shall be replaced with suitably mature trees.
- Existing trees 4, 5, 6, and 7 as outlined in the revised plan dated August 2, 2004 and other trees as identified in the June 18, 2004 plan shall be retained.
- Six 15' high trees shall be planted as proposed in the revised plan dated August 2, 2004.
- Conditions 2 through 10 as outlined in the April 15th, 2004 staff report shall be complied with (Exhibit D).

The Design Review Board went on to approve the revised design of the residence and uncovered parking deck at their April 15, 2004 meeting.

In the past staff has determined that rooms/structures that do not share a common (party) wall with another structure are *detached* buildings (Town Code § 17.008.020). A commonly accepted building industry definition of a party wall is the wall between two adjoining buildings or occupancies which provides common structural support and fire separation. Town Code §

17.008.010, defines an Accessory Structure as a detached subordinate structure, the use of which is clearly incidental and related to that of the principal structure or use of the land, and which is located on the same lot as that of the principal structure or use of the land. Based on the previous definitions one could argue that the parking deck/storage structure is a detached accessory structure and not part of the main residence. Detached structures are limited to one story in height [Town Code § 17.080.060(B)].

However, the applicant's attorney has argued that because the parking deck shares a common foundation and floor system and a shared roof system over a breezeway between the parking use and the main residence use, it should be considered attached. Staff has decided to accept this argument in order to move this application forward in the planning process. If the garage/storage structure is considered attached to the residence the structure is considered a three story building which is the maximum number of stories permitted on a down-sloping lot in the Residential Single-family RS 6 Zone regulations [Town Code § 17.080.060(A)].

### **USE PERMIT**

The property slopes down from Frustuck Avenue at an average rate of 53%. In 1973, the Town of Fairfax adopted a slope ordinance which increased the lot size and width requirements for properties with slopes. If this lot were being subdivided from the surrounding land today, it would have to be 42,000sf in size and 171ft wide in order to comply with the existing code.

Town Code § 17.080.050 requires that a Use Permit or a Hill Area Residential Development permit (HRD) must be first secured in the RS 6 Zone for any use, occupancy or physical improvement of or on a building site failing to meet the minimum size and width requirements. Therefore, the proposed garage improvement requires a Use Permit because the project site is only 8,493sf in size and less than the required 171ft in width.

The purpose of the conditional Use Permit is to allow the proper integration into Fairfax of uses which may be suitable only if the uses are designed or laid out on a site in particular manner [Town Code § 17.032.010(A)]. In consideration of an application for a conditional use the Planning Commission shall give due regard to the nature and condition of all adjacent uses and structures, to the physical environs of the proposed use and to all pertinent aspects of the public health safety and general welfare [Town Code § 17.032.010(B)].

In order to approve a Use Permit the Planning Commission must be able to make the required findings contained in Town Code 17.032.060 as follows:

- The approval of the use permit shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.
- The development and use of property as approved under the use permit shall not cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects thereto, or create undue or excessive burdens in the use and enjoyment thereof, or any or all of which effects are substantially beyond that which might occur without approval or issuance of the use permit.

- Approval of the use permit is not contrary to those objectives, goals or standards pertinent to the particular case and contained or set forth in any Master Plan, or other plan or policy, officially adopted by the City.
- Approval of the use permit will result in equal or better development of the premises than would otherwise be the case, and that said approval is in the public interest and for the protection or enhancement of the general health, safety or welfare of the community.

Town Code § 17.052.020(D) exempts down-sloping lots such as the project site from having covered parking. Further, the Town Council approved the existing house on appeal with the condition that the parking be uncovered after holding two public hearings on the matter.

Town Code § 17.032.020(C) indicates that the Planning Commission may deny a Use Permit.

The applicant had not presented any information to the staff by the time of the writing of this staff report showing any change in the topography or physical layout of the site, surrounding residences or the adjacent public right-of-way that would result in a covered parking structure being of some benefit to the general public.

### **RECOMMENDATION**

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to deny Use Permit # 08-44 based on the following findings and advise the applicants of their right to appeal the action within 10 days to the Fairfax Town Council.

### **Suggested findings for denial in keeping with the previous action taken by the Town Council are as follows:**

1. The Town of Fairfax held the following public hearings on a proposed residence on this site that included a garage:
  - An April 15, 2004 Planning Commission meeting
  - A May 20, 2004 Planning Commission meeting
  - A June 8, 2004 Town Council meeting
  - An August 3, 2004 Town Council meeting

Public testimony was taken at all of these meetings. After taking into consideration all the public comments and the information provided by the applicants and their attorney, the Town Council approved the existing residence only after the covered parking was removed from the proposal. Therefore, the approval of the garage at this point would be inconsistent with the previous entitlements and conditions granted by Town Council on August 3, 2004 and would thus be a grant of special privilege and would contravene the doctrines of equity and equal treatment.



2. The construction of a garage on this deck would cause excessive or unreasonable detriment to adjoining properties or premises based on testimony taken at the above referenced public hearings and as evidenced by the ultimate action taken by the Town Council on August 3, 2004, approving the residence specifically with only an uncovered parking deck.
3. The August 3, 2004 decision contained a specific condition that the parking area be an uncovered parking deck, approval of this use permit, after that decision would be inconsistent and contrary to those objectives, goals or standards pertinent to the particular case.
4. Approval of the Use Permit would be in conflict with Town Code § 17.052.020 which exempts properties on down-sloping lots from having covered parking in order to maintain view corridors and to avoid visual obstructions to those using the public roadway.
5. Approval of the use permit will not be in the public interest or for the protection or enhancement of the safety or welfare of the community.

#### **ATTACHMENTS**

- Exhibit A – Minutes from the 4/15/04 and 5/20/04 Planning Commission meetings
- Exhibit B – Minutes from the 6/8/04 and 8/3/04 Town Council meetings
- Exhibit C – Minutes from the 9/8/04 Design Review Board meeting
- Exhibit D – Letter from Applicant's attorney dated 10/2/08
- Exhibit E – Letter from the Applicant's attorney dated

# Minutes from the 4/15/04 Planning Commission meeting

Commissioner Craine said their first variance allowed the applicants to build in their setbacks so he felt the suggested finding that states that the project would not be closer to the rear and side property lines should not be included.

Commissioner Herbert said he felt that finding could be deleted.

Mr. Asleson said the garage existed when he bought the property and that he just put a second floor on top of the existing garage.

M/S Craine-Herbert motion to approve application # 04-15 based on the findings and conditions in the staff report with one exception, which was to remove finding number one in the staff report.

Commissioner Madsen suggested an amendment to the conditions which would state that if the applicant can obtain a letter from the neighbors at 84 Willow showing that they have no objections to a window on that side of the addition that the Commission would lift the condition for a high window.

Commissioner Craine did not accept the amendment.

## ROLL CALL

AYES: Herbert, Madsen, Shaiken, Craine, Meigs, Chair Arguimbau

NOES: None

Chair Arguimbau said this is the decision of the Planning Commission and any interested party may file a written appeal at the Town Hall within 10 days. He said if there is no appeal the decision becomes final.

**190 Frustuck (address changed to 177 Frustuck);** request for a Hill Area Residential Development permit and an encroachment permit to construct a 2,523 s.f. single-family residence with an attached 430 s.f. garage; John Owens and Diana Dullaghan, applicants; John Wickham, owner; application # 04-14; Assessor's Parcel No. 3-193-02; Residential Single-family RS 6 Zone; CEQA categorically exempt per sections 15303(a) and 15305(b).

Senior Planner Neal read the staff report. She then said the Town had received a petition from the neighbors in the area concerned with the size of the proposed house, the accuracy of the survey and the placement of the garage. She said the Commission could continue the item so that the property line dispute could be resolved.

Commissioner Craine said maybe the driveway could be lowered to lower the house on the site.

Commissioner Herbert asked if staff had the numbers available to compare the size of the neighbor's home to the proposal.

Senior Planner Neal said staff did not have those numbers available.

John Owens, applicant, said he has had the property surveyed twice, that each survey produced the same results, that he picked up the recorded survey for his property and the abutting property at the County and that the surveys matched perfectly. He said the story poles have been up since November; that they sent a letter of introduction and colorized elevations to the neighbors in the area and they had not heard any dissenting comments until a few days ago. He said in regards to views; his wife was invited into the house above the site and the proposed house would not be visible from their house; that he has been in the house next door and the proposed house would not be visible from that house either, that the only thing you could see from that property is the garage from their side yard.

Commissioner Meigs asked the applicant if they had considered less decking so as to remove fewer trees.

John Owens said the property is fairly steep so the decks would be the only useable outdoor space.

Commissioner Meigs asked if the length of the driveway could be decreased.

John Owens said the driveway is as steep as allowed by the Town's Engineer and that the driveway length was determined by the parking requirements of the Town.

Chair Arguimbau asked the applicant if he agreed with attachment #1 of the neighbor's submittal.

Mr. Owens said no he did not. He said their proposal is not the 3,382 square feet sited in the submittal and that he had no way to verify the square footage of the neighboring homes or the lot sizes.

Pete Gang, architect for the applicant, said he worked to craft a design of a fairly challenging site which would minimize the impacts on the site and respect the concerns of the neighbors. He said the house is designed so as not to block light, views of the far hills or Mt. Tamalpais from the neighboring homes. He said the site is zoned for a single family home; that growth is inevitable and that in fill is a good way to guide growth.

Commissioner Meigs asked the architect if he had considered the amount of trees to be removed in developing the site.

Pete Gang, architect for the project, said the house could be located lower on the lot, but it would require a lot more excavation. He also said they tried reducing the foot print of the project but that it did not make a significant difference in the amount of trees that would need to be removed.

Chair Arguimbau asked the architect what square foot options were considered for the house.

Pete Gang said the target size was 1800 to 2000 square feet. He said the average new home is well over 2000 square feet and that this proposed home is smaller than the average new home.

Bill Myles, 189 Frustuck, expressed concern about the location of the driveway. He said there used to be a mirror on that curve several years ago because it is a dangerous curve; that the lot is much wider at the bottom and the house should be built from the lower portion of the lot; that he did not think that the proposal met the setback requirements and that the deck is too close to the neighbors deck which would bring down her property value.

Christa McKee, 31 Gregory Dr., said she was a previous neighbor of the applicants. She said that they are very kind, quiet and generous people and that they make great neighbors.

Joan Mariah, 175 Frustuck, said she was shocked when she saw the story poles for the garage because several trees would need to be removed and she wondered if the applicants could move the house over to save some of the trees.

Bruce Bunnell, 170 Frustuck, felt the house should be built from the lower portion of the lot; that the average house is 14,000 to 15,000 square feet; that more trees and limbs would need to be removed for fire safety and that if this proposal is built he would have to look at the roofline instead of trees.

Ann Sheldon, 165 Frustuck, said that Frustuck is a densely built narrow road; that attention needs to be placed on the garage approach, which she felt would be unsafe as proposed and that the house should be built from the bottom of the site.

Niccolo Caldararo, 165 Frustuck, said the house is too large and therefore out of character for the neighborhood; that there is a property lines dispute; that he felt the driveway approach is unsafe and that there are enough concerns about the proposed project that he felt the application should be denied.

Liz Wickham, 11 Byron Circle, owner of the project site, said she and her husband purchased the property with the intention of building their home there, that she had heard from Mr. Bunnell who told her that the neighbors in the area were interested in buying the property to preserve it as a greenbelt; that after much discussion she and her husband decided to offer the property to the neighbors; that they sent an offer letter out to the neighbors but never received a response. She said that shortly after that her husband accepted a job offer in southern California and that they would no

longer be building their home there.

Steve Keston, 50 Redwood, said the lot is not open space; that it is a private lot, designated for a single family home; that the net loss of trees after replanting would be five trees; that the staging of the project construction was approved by the Town Engineer and the Public Works Director and that the house was placed on the site so as to minimize the impacts on the site.

Peter Ramsey, 130 Mono, said the applicant has spent a great deal of money to design a project that complies with the Town's zoning requirements and to minimize the impacts on the site and on the neighboring properties; that the proposal should not be denied because of an alleged property line dispute which has not been substantiated.

Commissioner Meigs said after listening to the comments of the neighbors it seemed that the proposal is out of character with the neighborhood. She also said there might be ways to redesign the project so that so many trees did not have to be cut down.

Chair Arguimbau said he also felt the house maybe out of character for the neighborhood. He also said that he was not sure the Commission could make the findings that the amount of excavation proposed is the minimum amount possible while allowing the applicant substantial use of the property.

Commissioner Madsen said a 2090 square foot house maybe a little large for Fairfax but that it is not an unreasonably large house; that the garage cannot be placed anywhere else on the property, so even if the house was reduced the number of trees that would need to be removed would be about the same. He said he thought it made sense to create storage space under the garage but that it would increase the amount of excavation needed for the project.

Commissioner Herbert said the applicants are trying to preserve the privacy screening and will be adding more trees; that in the future would provide additional screening. He cautioned people not to get too fixed on the way the lot will look on the day the arborist removes the trees. He said the lot was designed for a single family home and the owners have an entitlement to build something on the lot. He also said building from the bottom of the site would have a greater impact on the sites natural topography and would require a lot more excavation and that the proposal meets all of the planning requirements.

Commissioner Meigs wanted to point out that it would take years for the newly planted trees to replace the native oaks that would be removed.

Commissioner Shaiken said many neighbors feel the project is out of character with the neighborhood and that it is rare that the Commission gets so much opposition to a project. He said although it was a difficult decision he was leaning towards continuance.

Commissioner Herbert said there is no proof that there is a property line dispute. He suggested continuance of the project so that the property line dispute could be addressed and the size of the neighboring homes and lots could be verified.

Commissioner Craine said if the project was continued there would need to be direction for mitigation. He also said he thought it would be a good idea for the applicants and the neighbors to get together to try to find a solution that everyone would be happy with.

Chair Arguimbau said he felt the Commission could not make all the required findings to grant this application at this time and he thought the project should be continued.

Commissioner Madsen said that the continuance should be short so that the applicant does not miss the building season.

M/S Herbert-Madsen motion to continue the application until the applicant is ready to resubmit.

Commissioner Herbert suggested that the neighbors communicate with the applicant and also gather any information they thought would have relevance to the proposal, such as evidence of a property line dispute.



AYES: Herbert, Madsen, Shaiken, Craine, Meigs, Chair Arguimbau

NOES: None

**Residential Second Unit Ordinance;** review and action on a proposed amendment to Chapter 17.26 of Title 17, adopting regulations for the establishment of residential second units and incorporating a process for the review of applications at the ministerial level; Categorically exempt from the provisions of the California Environmental Quality Act of 1970 as amended per section 16061(b)(3).

Planning Director Kirkey read the staff report.

Commissioner Herbert said on page five, sentence N does not have an ending.

Planning Director Kirkey said it should have the word "metered" on the end of the sentence.

Chair Arguimbu asked staff how the size limits were determined.

Planning Director Kirkey said by looking at the previous ordinance and also the ordinances that other communities in Marin County have adopted. He said the proposed ordinance requires that the second unit is large enough that someone could reasonably live there and would comply with the building code standards but sets a cap of 700 square feet to insure that the unit remains affordable.

Peter Ramsay, 130 Mono, said he felt the requirement that the second unit's size is limited to a maximum square footage of 30 percent of the square footage of the primary residence is arbitrary. He said that requirement would cause some people with currently illegal second unit to unnecessarily go through the variance process to legalize those units.

M/S Shaiken-Madsen motion to approve the ordinance amending Title 17 of the Town Code regarding residential second units.

AYES: All

NOES: None

#### DISCUSSION ITEMS

Discussion of house size regulations pertaining to slope development requirements, lot coverage definition and potential "tear down" ordinance.

It was the consensus of the Commission to continue this item.

#### PLANNING DIRECTOR'S REPORT ON TOWN COUNCIL MEETING AND/OR ON-GOING ITEMS

There was no report from the Planning Director at tonight's meeting.

#### ADJOURNMENT

M/S Madsen-Herbert motion to adjourn the meeting at 10:15 p.m.

Respectfully submitted,

Mauney Kasuya  
Administrative Assistant

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# Minutes from the 5/20/04 Planning Commission Meeting

There was no public comment at tonight's meeting.

## COMMISSIONER COMMENTS/REQUESTS

There were no Commissioners comments at tonight's meeting.

## CONSENT ITEMS

There were no consent items scheduled for tonight's meeting.

## PUBLIC HEARING ITEMS

**190 Frustuck Avenue (address subsequently changed to 177 Frustuck Avenue); request for a Hill Area Residential Development, Excavation and Encroachment permits to construct a 2,523 s.f. single-family residence with an attached 430 s.f. garage; John Owens and Diana Dullaghan, applicants; John Wickham, owner; application # 04-14; Assessor's Parcel No. 3-193-02; Residential Single-family RS 6 Zone; CEQA categorically exempt per sections 15303(a) and 15305(b).**

Senior Planner Neal read the staff report.

Commissioner Herbert asked if staff had an opportunity to verify the square footage of the neighboring homes.

Senior Planner Neal said staff has no way to verify the size unless staff went out and measured the square footage of each home.

Commissioner Meigs asked staff the square footage of the decks.

Senior Planner Neal said the decks would be 688 square feet including the stairs that connect the decks.

Commissioner Meigs asked if that is included in 2,093 square feet called out in the staff report.

Senior Planner Neal said no the 2,093 square feet is just the living space.

Commissioner Madsen asked if staff would be able to verify the square footage of the neighboring homes if it became necessary.

Senior Planner Neal said that has never come up before and staff would have to check with Town Attorney Brecher to see if that was legally possible.

Planning Director Kirkey said what is before the Commission is an application for a Hillside Residential Development Permit (HRD). He said that this application meets most of the zoning requirements for the site; that the only question before the Commission is does the project meet the requirements for a HRD application.

Commissioner Meigs asked how many trees would be saved by building an uncovered parking deck.

Senior Planner Neal said the number of trees removed would be the same.

John Owens, applicant, said covered parking is typical in the neighborhood; that no trees would be saved by having uncovered parking; that eight of the last nine new houses approved in Town had covered parking. He said the house would be set down the hill so only one foot of the roofline would be visible from the street and that the arborist has found a way to save seven additional trees on the site. He said he went to the County Assessors office and made copies of the records for the neighboring homes and that most of the homes sited in the petition from the neighbors are larger than

claimed on the petition, some of them significantly larger. He closed by saying most projects in Fairfax require a variance or a use permit but that his proposal meets all of the zoning requirements.

Commissioner Herbert said in the submittal from Mr. Owens there are several alternative placements for the house and the garage. He asked Mr. Owens how he felt about the different alternatives.

John Owens said his architect could probably answer that question better.

Chair Arguimbau indicated to Mr. Owens that in his comparisons of house and lot sizes it appears the proposed house at 190 Frustuck would be the largest.

John Owens said yes that is correct; but the Commission needs to keep in mind the comparison of lot size to house size.

Chair Arguimbau said of the recently approved new homes in Town it appears that all of them are smaller with the exception of 96 Forrest Ave.

John Owens said many of the new homes were on much smaller lots and that the project at 96 Forrest Ave. is the most comparable.

Chair Arguimbau asked if the alternate placements of the house were of the same size house.

John Owens said yes and the number of trees that would need to be removed with the different placements of the house would be only one or two trees.

Commissioner Madsen asked the applicant if he had considered uncovered parking.

John Owens said no because most of the homes in the neighborhood have garages and also he said uncovered parking is unsightly because everything is exposed.

Commissioner Madsen said having uncovered parking might be a compromise, which would make the neighbors happy.

John Owens said he would consider modifying the proposal with uncovered parking.

Commissioner Meigs said the Commission advised you to meet with the neighbors to try and find a workable solution.

John Owens said they set up a meeting; that only three people showed up and the only suggestions the neighbors had was that the house should be built from the bottom of the site.

Commissioner Meigs asked the applicant if he has considered reducing the size of the decks.

John Owens said because of the steepness of the lot the decks would be the only usable outdoor space.

Pete Gang, project architect, said they met with the neighbors last week; that they went with the intent to hear their ideas and suggestions; that their main suggestion was to build the project from the bottom of the site which he said would greatly disturb the natural topography of the site.

Commissioner Herbert asked Mr. Gang to compare and contrast the alternate placements of the house for desirability and feasibility.

Pete Gang said they tried alternate building sites during the design process; that the main concerns were minimizing the impacts on the site and the neighbors and that they pushed the project as far to the west as possible to minimize the impact on the adjoining neighbor.

Commissioner Madsen said the story poles are at the northern fence line. He asked Mr. Gang if that was the correct.

Pete Gang said yes the north fence greatly encroaches on the applicant's property.

Commissioner Shaiken asked Mr. Gang if they would be willing to consider an alternate design with less storage and uncovered parking.

Mr. Gang said he can't answer for his client but he thought that might be acceptable.

Chair Arguimbau asked if a smaller footprint was considered in the design process.

Mr. Gang said 2000 square feet is average for a new home; that they considered different layouts with approximately the same size square footage; that the mass of the structure comes from the parameters of the site because it is a relatively steep lot. He also said they designed a trellis system for the side of the garage and when the vines are grown it will break up the appearance of the mass.

Ray Moritz, project arborist, said testing for Sudden Oak Disease is usually done visually; that when taking specimens from the trees you have to dissect a significant section of the tree for testing and that specimen testing produces 90% false negative results so it is not productive. He said the alternative placements of the house were not superior from an arborist perspective. He also said that they determined that seven of the trees on the site are in decline; that they would probably fall down within five to seven years. He said that they are in an area of the site the owners will not use and they are not in an area where they would fall on the neighboring structures or the street so they decided to leave them standing.

Commissioner Herbert asked Mr. Moritz if they were going to be planting more trees on the site.

Mr. Moritz said yes they would be planting trees near the rock outcropping at the lower portion of the lot and along the upper portion near the street to replace the trees that are in decline and will probably die within the next five to seven years and also near the deck for screening.

Commissioner Meigs asked Mr. Moritz if the replacement trees would be native trees.

Mr. Moritz said several of them would be a species of Madrones, which are native trees.

Bill Miles, 189 Frustuck, said he has lived in the area for 25 years; that the house would be 30 feet high and that the neighbor immediately abutting the site would lose much of the privacy from her deck and that he thought the house should be built from the bottom of the site.

Commissioner Herbert asked Mr. Myles if he felt there was still a survey dispute.

Mr. Miles said yes.

Commissioner Herbert said at the last meeting the Commission had asked the neighbors who claimed that there is a survey dispute to get proof of a survey dispute and bring the results to the Commission; otherwise the Commission has no real reason to believe there is an actual survey dispute.

Commissioner Shaiken said if there is a survey dispute the Commission needs evidence that there is a survey dispute. That the Commission had asked folks to bring proof of a survey dispute forward and no one has.

Niccolo Caldararo, 155 Frustuck, said the footprint and elevation of the house would make it the biggest house in the neighborhood; that it is out of character for the neighborhood; that he has a letter from Frank Howard Allen stating that the other home in the area would decline in value if the project was built; that out of six homes near the site only one has covered parking and that the house should be built from the bottom of the site.

Chair Arguimbau asked if the problems would be minimized if the storage under the parking area were deleted and if the garage was changed to an uncovered parking deck.

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Niccolo Caldararo said yes.

Commissioner Madsen said the neighbors knew there was an undeveloped lot in the area and the Town Engineer and staff have continually said this is the best placement of the house on the site to minimize the impacts of development.

Bruce Bunnell, 170 Frustuck, said he also felt the house should be built from the bottom of the site. He drew up an alternative plan for the house, which he presented to the Commission, with the house and parking lower on the site, which he felt, would be less invasive on the neighbors.

Commissioner Madsen asked Mr. Bunnell if he felt an acceptable compromise would be to change the garage to uncovered parking and reduce the storage under the parking structure.

Mr. Bunnell said no.

Michelle Digregorio, 170 Frustuck, expressed concern about the location of the driveway approach and also said she felt the house was too large for the neighborhood.

Steve Wasserman, 1 Meadow, said he felt the house was a reasonable size for the area; that he felt a closed garage would be aesthetically more pleasing and better for the neighborhood; that the proposal is under or meets all of the zoning requirements; that the lot has been empty for years and that of course the project is going to have some impact on the neighbors.

Mark Coppel, 215 Frustuck, said both the upper and lower portions of the lot are on dangerous curves with the upper curve slightly more acute but that neither is very safe; that parking is tight in the area; that many trees would need to be cut to develop the site and he felt the neighbors should buy the lot to preserve the quality of the neighborhood.

Dave Pickey, said the Commission has given incredible scrutiny to the proposal; that he sees no supporting evidence for the claims of the petition; that he is hearing that the house does not fit into the neighborhood but the petitioners did not include the house and lot sizes of all the house sited in the petition. He asked the Commission to give the same scrutiny to the petitioner's petition as they have given to the applicant's project.

Ann Sheldon, 165 Frustuck, said her house is not as large as the applicant claims it is; and that she felt the house is out of character for the neighborhood.

Steve Keston, attorney for the applicant, stated that Mr. Owens received Mr. Bunnell's drawing last night; that the parking shown on Mr. Bunnell's drawing would be in the Town's right-of-way; that the stairs up to the house would require on going expensive maintenance; that building from the bottom of the sight would require extensive excavation; that the applicant got two surveys of the property and that each of the surveys produced the same results; that they both match up with the abutting neighbors survey; that there is no proof of a survey dispute and that the neighbors fence is encroaching on the applicants property.

Chair Arguimbau asked Mr. Keston if he had a problem with the Commission relying on the information the applicant had provided regarding the lot and house sizes of the neighboring homes.

Mr. Keston said no because that information came from the Marin County Tax Assessors offices. He also said that lot is plotted out for a single family home; that growth is inevitable and he felt in fill development is a good solution.

Commissioner Shaiken said an acceptable compromise seems to be reducing or eliminating the storage space and having a carport.

Commissioner Meigs expressed concern about the safety of the driveway approach and also the number of trees that would need to be removed for the project.

Planning Director Kirkey said the Public Works Director and the Town Engineer both reviewed the proposal and both of them felt the site lines were adequate for the driveway approach.

Commissioner Herbert said the driveway would create a space for people to pull off the road if needed; that a mirror could be added at the curve; that the house would not make the curve more blind and that the same number of trees would need to be removed for a parking deck or a garage. He said he walked all of Frustuck Avenue and that most of the houses or garages on the street are built right up to the road. He said he feels that garages are aesthetically more pleasing than carports; that requiring the applicant to have uncovered parking may not be the best solution. He said building from the bottom of the site would require heavy excavation; that the house is sited down the hillside from the street so that it would have less visual impact than the neighboring homes and that the proposal is the best design for the site that the Commission has seen.

Commissioner Hailer said she has a degree in economics and she respectfully disagreed with Mr. Caldararo because usually improvements of adjacent properties increases the value of adjacent properties not decrease it. She also said the biggest issue seems to be the impact on the privacy of the abutting neighbor; that she felt the size is not out of character with the neighborhood and that the proposal meets or exceeds all of the zoning requirements and she agreed with Commissioner Herbert that this design is the best one the Commission has seen for the site.

Chair Arguimbau said if this house were built it would be the largest house in the neighborhood; that he thought the Commission had directed the applicant to reduce the size of the house, so that there would be less impact on the neighbors and less trees would have to be removed and the applicant did not do that and that he felt the application should be rejected as presented.

Commissioner Madsen said he did not remember the Commission directing the applicant to reduce the size of the house; that he thought the Commission had asked the applicant and the abutters for clarification, that he did not feel a 2000 square foot house was unreasonable; that the project would impact the abutting neighbor but that the lot is a developable lot zoned for a single family home.

Commissioner Shaiken said he felt the house size is out of character with the neighborhood and that he could not vote to approve the project as submitted.

M/S Herbert-Madsen motion to approve application #04-14 with the modification that the garage sited on the plans is changed to an uncovered parking deck and subject to the findings and conditions in the staff report.

Chair Arguimbau said he did not feel changing the garage to uncovered parking would solve the problem.

Commissioner Meigs felt the square footage of the proposal should be reduced.

Commissioner Hailer asked how much of a square footage reduction would be acceptable. She felt the Commission should give the applicant some quantifiable number and clear direction to work with.

Chair Arguimbau said it is out of character with the neighborhood.

Commissioner Hailer asked if it would be acceptable if the house were smaller than or equal to the largest house in the neighborhood.

Chair Arguimbau said yes.

Commissioner Herbert said if the storage were deleted from the project it would be smaller than the largest house in the neighborhood.

ROLL CALL



AYES: Herbert, Madsen, Hailer

NOES: Shaiken, Meigs, Arguimbau

Chair Arguimbau said since the vote was a tie vote the application is denied. He then said this is the decision of the Planning Commission and any interested party may file a written appeal at the Town Hall within 10 days. He said if there is no appeal the decision becomes final.

Commissioner Meigs recused herself after this item.

**308 Forrest Avenue;** request for a Variance to construct a deck, access stairs and hot tub within the required side yard setbacks; Nancy Reid, owner; Art Chartock, applicant; application # 04-18; Assessor's Parcel No. 002-105-18; Residential Single-family RS 6 Zone; CEQA categorically exempt per § 15305(a).

Senior Planner Neal read the staff report.

Art Chartock, architect, said the hot tub location would be tucked out of the way and would not disturb the landscaping that is currently in place. He also said the stairway the owners would like to build would allow them to access the creek for maintenance.

M/S Madsen- Hailer motion to approve application # 04-18 subject to the findings and conditions in the staff report.

Chair Arguimbau suggested amending the motion to include a condition that a 24-foot setback from the top of the creek bank will be maintained.

Commissioners Madsen and Hailer accepted the amendment to the motion.

AYES: All

NOES: None

Chair Arguimbau said this is the decision of the Planning Commission and any interested party may file a written appeal at the Town Hall within 10 days. He said if there is no appeal the decision becomes final.

**38 Willow Avenue;** request for a Use Permit to construct a 120 s.f. laundry room addition onto an existing 1,129 s.f. single-family residence located on a 4,000 s.f. property; Rosemarie Goldstein, owner; Dan Check, applicant; application # 04-19; Assessor's Parcel No. 001-234-07; Residential RD 5.5-7 Zone; CEQA categorically exempt per § 15301(e).

Senior Planner Neal read the staff report.

Dan Check, applicant, said the homeowner would like to add on a small addition to their home so that they can have a laundry room on site.

M/S Madsen-Shaiken motion to approve application # 04-19 subject to the findings and conditions in the staff report.

AYES: All

NOES: None

Chair Arguimbau said this is the decision of the Planning Commission and any interested party may file a written appeal at Town Hall within 10 days. He said if there is no appeal the decision becomes final.

# Minutes from the 6/8/04 Town Council meeting

Maurice Weitman, 145 Canyon Road, stated that the Friends of Corte Madera Creek never tested the creek on Canyon but tested below and above Canyon.

Merv Van Dyke, 170 Canyon, asked about the number of residents on Canyon necessary to sign up for sewer to have it go forward.

Mayor Egger closed the public hearing.

Mayor Egger stated that there were two small lots for sale, a 23-acre lot for sale and another larger lot for sale in the area; that the Town could pre-zone the land outside Fairfax above Canyon, and suggested a one unit to four acre minimum for the area.

Planning and Building Services Director Kirkey explained the pre-zoning process.

M/S, Ghiringhelli/Brandborg, Motion to approve Ross Valley Sanitary District's request to go forward with the Notice of Intention upon the formalization of the agreement and the signing of the agreement between the Ross Valley Sanitary District and the Town.

AYES: All

Mayor Egger adjourned the meeting for a 15-minute break at 9:04 p.m.

190 Frustuck Avenue (Address Changed to 177 Frustuck Avenue) ; appeal of Planning Commission denial of a request for a Hill Area Residential Development Permit to construct a 2,093 s.f. single-family residence with a attached 430 s.f. garage with a 430 s.f. storage area beneath; John Owens and Diana Dullaghan, applicants; John Wickham, owner; application #04-14; Assessors Parcel No. 3-193-02; Residential Single-Family RS 6 Zone; CEQA categorically exempt per sections 15303(a) and 15305(b).

Planning Director Ken Kirkey presented the staff report with a recommendation to hear the public testimony to consider the merits of approving the project with the condition that parking needs be addressed with a carport rather than the proposed garage and that the storage area be eliminated or reduced in size, noting that a Planning Commission motion to approve the project had failed in a tie vote, thereby denying the project.

Mayor Egger opened the public hearing.

John Owens, applicant, said he had submitted five alternate floor plans and was assured that the current plans met the Fairfax code. He said the square footage of the deck was not 800 square feet., but just over 600 square feet, and that the excavation did not exceed 500-700 cubic yards. He also said that the April 15, 2004 Planning Commission staff report indicated that the commission was concerned with the size and mass of the house and requested the plans be revised reducing the size of the house. He suggested the Council check the May 20<sup>th</sup> Planning Commission minutes, denying the statement was ever made. He then urged the council to approve the project.

Peter Gang, project architect, described the combined setback requirements and stated that they were crafted with specific direction from the Town's Senior Planner. He said during the May 20<sup>th</sup> Planning Commission meeting the three opposing members were most concerned with the mass of the project, that the applicant had offered to use a carport rather than a garage and to reduce the size of the storage area, but the project was still denied. He then said the direction from the Planning Commission was very vague and that they just didn't like the project.

EXHIBIT #

**B**

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Councilmember Ghiringhelli asked Architect Gang if he believed the house fit in with the rest of the neighborhood and why.

Mr. Gang stated he felt the house fit with the character of the neighborhood and that it would enhance the neighborhood.

Mayor Egger opened the public hearing.

Bill Madsen, Planning Commissioner, 109 Porteous, reported that he had sent a letter to the other Planning Commissioners about an incident at a recent Commission meeting that he believed to be in violation of the Brown Act, read from the letter and asked that it be made a part of the record, stated that he believed the decision to deny the project had been made prior to the Planning Commission meeting, and urged the council to make their decision based solely on its merits.

Chris Lang, 177 Canyon Road, former Planning Commissioner, said public perception sometimes became reality, that rules were in place to guide us, that the HRD process allowed flexibility, that the perception that the house was too big could be mitigated, and suggested landscaping to soften the impact.

Joan Mariah, 175 Frustuck, said that her only objection to 190 Frustuck was the removal of trees to clear for a driveway and garage. She also said if it were possible to move the driveway and garage over to some extent to save the trees and benefit both properties.

Lisa Grigsby, daughter of Joan Mariah, stated she obtained dimensions of the trees to be removed. She then proceeded to hand out a copy of a letter from her mother addressed to Mayor Egger with photos expressing her dismay which also included a letter from a realtor who suggested removal of the trees could devalue Mrs. Mariah's property approximately ten to fifteen percent.

Bruce Bunnell, 170 Frustuck, said the house was extremely invasive the way it was designed, that he wanted to have all the alternatives explored, that he was not trying to prevent construction but that he would prefer to see the carport, garage, and storage on the lower level of the lot to save the trees, which is what Fairfax was all about. He also said Joan Mariah offered to give up a portion of her own property to allow the project to continue and save the trees. He then recommended the project be denied and re-submitted.

Councilmember Brandborg stated that she had a problem with the neighbors designing the house.

Mark Copel, 215 Frustuck, said the neighborhood was having quite a reaction to the proposed development of the property, that anyone would be troubled if a 40-50 ft. wall was erected in their neighborhood, and that his recommendation would be to build the house in the middle of the lot to prevent loss of quality of life.

Michele DeGregorio, 170 Frustuck, stated that she could live with the design if the garage was moved.

Councilmember Ghiringhelli asked if the applicant would lose his view by moving the garage and Mayor Egger responded that moving the garage would not eliminate the view.

Steve Kesten, attorney representing the applicant, said the applicant was entitled to build on his property. He said his client had not only experienced impropriety but had received threats as well. He also said the project would not affect surrounding property values except perhaps to improve them; that it was probably the lowest impact residence proposed in Fairfax in the past four years; and that it was his belief that the project would enhance the street.

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Steve Wasserman, Meadow Way, stated that he was representing Bob Klock, a resident across the street from the project, who wanted to go on record as having no objections to the project. He stated that he was not sure that building a garage would require extensive excavation and that it would require the applicants to walk up hundreds of steps, that it would be better to have a garage, that vines could be grown to camouflage the garage, and that a 3 bedroom, 2-bath house was a reasonable size for a house.

Steve Kesten, Attorney for the applicant, stated that parking at the bottom of the property would require 100 steps criss-crossing the property, that the neighbor who had alleged a property dispute had built on the applicant's property, that the house as designed would harmonize with the neighborhood, that the Town Engineer had approved of the design, that the Town should encourage infill housing, that it was probably the lowest impact house built in Fairfax in years, that the Town Council didn't have the benefit of the arborist's opinions that were available at the Planning Commission meeting, that it was in conformance with the Floor Area Ratio ordinance, and that it was a modest house that would fit in.

Laurie Hailer, Planning Commissioner described improprieties in procedure that she had observed at a recent meeting of the Planning Commission, stated that she was not addressing the merits of the project, but behavior of several planning commissioners at the May 20<sup>th</sup> meeting. She stated that at that meeting, several planning commissioners said they would approve the project if changes were made and then didn't vote to approve the project when proposed changes were agreed to by the applicant.

Mayor Egger closed the public hearing.

Mayor Egger stated that it had not been the original intention of the combined setback requirements in the ordinance to change back and forth along the property.

Councilmember Ghiringhelli stated that it seemed like the applicants took all the necessary steps and worked with the staff through the process and that it would benefit the neighborhood and was legal.

Councilmember Brandborg stated that, although trees would be cut down, trees would also be planted, that Mr. Moritz was a very conservative arborist, and asked about whether or not the applicants had agreed to provide a carport rather than a garage.

Planning and Building Services Director Kirkey responded that there had been no decision on a carport rather than a garage, that it had been a suggestion from staff and that there had been lengthy discussion about the issue at the Planning Commission.

David Picchi, attorney for the applicant, stated that there had been a discussion about the elimination of the garage but with the same footprint for a carport.

Mayor Egger stated that when it was heard by the Town Council on appeal it was heard "de novo" and the entire application was before them like a new application. He stated that the slope ordinance required a larger lot, that the project didn't meet the setback requirements, that the code required that the garage be moved over ten feet, that he objected to the 52-foot bulk height, that the carport could be built on the right of way, and there was no vote on the application with the required findings.

Vice Mayor Tremaine expressed concern with the carport/garage and its location, stated that he would like to have an interpretation of the sideyard setbacks and see how setbacks had been interpreted in the past.

Town Attorney Brecher stated that the code didn't speak to the interpretation of the combined sideyard setbacks but that he was inclined to agree with the Planning Director's opinion allowing them to be staggered.

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Vice Mayor Tremaine stated that he didn't have the information he needed to make a decision, that he would like a carport rather than a garage, that regardless of how the setbacks were interpreted, the deck off of the garage could be reduced in size, that he had no problem with the house itself, that the Planning Commission needed to deal with the inclusion of decks in the Floor Area Ratio (FAR) ordinance, and that he would like to see a reconfiguration of the garage to a carport and to have it moved over.

In response to a question from Mayor Egger, Town Attorney Brecher stated that compliance with the State Streamlining Act was not a problem since the clock stopped while an appeal was pending on the project.

Councilmember Bragman stated that he agreed with Vice Mayor Tremaine that the project would be in Ms. Moriah's lap.

M/S, Ghiringelli/Brandborg, Motion to overturn the Planning Commission denial of the HRD Permit and Encroachment permit related to the proposed project at 190 Frustuck Avenue.

Roll Call Vote: Bragman: NO, Brandborg: AYE, Ghiringelli: AYE, Tremaine: NO, Egger: NO

M/S, Tremaine/Bragman, Motion to continue the appeal to the next meeting with a request to town staff for information regarding how setback requirements had been applied in the past and with a request to the applicant to provide drawings of a proposed carport rather than a garage moved over, with the garage deck reduced in size with story poles erected to reflect the changes and a drawing of an uncovered parking deck for consideration.

Town Attorney Brecher said he would be willing investigate how setback requirements were applied in the past and the consensus of the Council was to have him do so.

Steve Kesten, attorney for the applicant, said he would be willing to agree to extend the waiver of the Streamlining Act for thirty days.

AYES: ALL

Second Reading and Adoption of Ordinance No. 704, an Ordinance of the Town of Fairfax amending Chapter 17.26 of Title 17 of the Fairfax Town Code, adopting regulations for the residential second units and incorporating a process for the review of applications at ministerial level; Categorically exempt from the provisions of the California Environmental Quality Act (CEQA) as amended per Section 16061(b)(3)

George de Tuncq, 39 Ridge Road, stated that the Uniform Housing Code was referred to in the ordinance, that the Code was quite inclusive; that there were over 300 properties in Fairfax on the Assessor's Roll that had second units; asked if the standards would be the same for old and new units; and that an exception was made to the sewer requirement in the ordinance. He began a more detailed review of the requirements and was cautioned by Vice Mayor Tremaine that, due to the lateness of the hour and the fact that he had already been given more than the allotted time for a speaker and that his list of questions had been submitted at 7:30 p.m., that it wasn't reasonable to spend more time on his concerns.

Planning and Building Services Director Kirkey stated that the ordinance complied with State law, was much the same as the interim ordinance, and that, at the time of resale of the property, second units were required to comply.

Mayor Egger informed Mr. de Tuncq that he could help make sure that the codes were enforced.

M/S, Tremaine/Ghiringelli, Motion to waive further reading of Ordinance No. 704, An Ordinance of the Town of Fairfax, amending Chapter 17.26 of the Title 17, of the Fairfax Town Code, adopting regulations for the

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# Minutes from the August 3, 2004 Town Council meeting.

## Annual report from Fairfax representative to the Marin Commission on Aging, Nancy Peters-Janover

Nancy Peters-Janover presented the annual report of the activities of the Marin Commission on Aging. She stated in her report that Marin County's population was aging faster than the rest of the nation; that there were over 34,000 citizens over 65 in Marin and almost 10% of the population of Fairfax; that informative workshops on a variety of topics of interest to seniors had been conducted throughout the County; that the annual Senior Information Faire would be held; and that the mission of the Division of Aging was to promote the quality of life and independence of disabled and older adults in Marin County.

## Interview and appointment of candidate for full three-year term to July 31, 2007 on the Volunteer Board

Sonya Stanley appeared before the Council and stated that she had been the treasurer of the Board for the last six months, that it had been a pleasure to be on the Board, and that she looked forward to continuing to serve.

M/S, Tremaine/Brandborg, Motion to appoint Sonya Stanley to serve on the Volunteer Board for a full three-year term to July 31, 2007.

AYES: Bragman, Brandborg, Tremaine, Egger

NOES: None

ABSENT: Ghiringhelli

## PUBLIC HEARINGS

190 Frustuck Avenue (address changed to 177 Frustuck Avenue); continued consideration of an appeal of the Planning Commission denial of a request for a Hill Area Residential Development Permit to construct a 2,093 s.f. single-family residence with an attached 430 s.f. garage; John Owens and Diana Dullaghan, applicants; John Wickham, owner; application # 04-14; Assessor's Parcel No. 3-193-02; Residential Single-family RS 6 Zone; CEQA categorically exempt per sections 15303(a) and 15305(b)

Councilmember Bragman recused himself and stated that it was because he was in a contract with a party at 50 Hickory Road that was within 500 feet of the property at 190 Frustuck.

Planning and Building Services Director Kirkey presented the staff report and noted that the applicants had produced a revised submittal for the project based on the requested changes which included changing the proposed 430 sf garage to a 400 sf carport; reducing the size of the storage area beneath the carport from 430 sf to 400 sf; moving the proposed stairway to the westerly side as requested by a neighbor; with alternative designs for the roof of the parking structure; with the deck on the easterly side of the parking structure to be shifted 8 feet to the west and reduced in size; and with the proposal for additional planting of vegetation on the easterly side of the property to provide more screening for the adjacent property.

Mayor Egger opened the public hearing.

John Owens, 6 June Court, stated that he had submitted revised plans to the Town by July 23<sup>rd</sup> and had subsequently met with Joan, the next door neighbor at 175 Frustuck. As a result of the meeting, they had saved two more trees; agreed to plant six 15-foot trees; reduced the size of the decks; provided extra screening; agreed to install a carport rather than a garage; and had moved the parking structure over eight feet.

Art Chartock, Architect representing Joan Mirah, 175 Frustuck, stated that his role was to work to reduce the impact of the new structure. This had been accomplished by moving the stairs to the West side, saving and adding trees, moving the deck 15 feet from the property line, and adding screen lattice.

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Daniel Tey, representing John Owens, asked that the points enumerated in a letter distributed and authored by Art Chartock be added as conditions of approval for the project. He referred to an arborist's report indicating that all the trees between the properties were healthy and that four mature oaks were to be saved.

Niccolo Caldararo, 165 Frustuck Ave., stated that the neighborhood had expressed concerns about the size of the structure and the coverage of the proposed building; that an exception for required parking should not be made; that the blind curve was not taken into consideration for the location of the parking structure; suggested a deed restriction to prohibit building over the parking structure; stated that the property owners planned to build two structures on the property; and that parking could have been provided down below to be safer.

Stan Schriebman, 51 Hickory, stated that the size of the house wasn't a factor, that there were bigger houses on the street, some bigger and some smaller.

Martin Copell, 215 Frustuck, stated that there was no guarantee that the 400 square foot parking structure would remain as a parking structure and no guarantee that many people wouldn't live in the large house with many cars; that the parking structure on a blind curve was a bad idea; and that there was still going to be a large structure close to the neighbor.

Bruce Burnell, 170 Frustuck, stated that Joan had worked with the Owens, but that nobody had talked to him and he and his wife lived across the street from the project; stated that the project would stick up and stick out; that he was pleased that they had tried to amend the plans for the project; that Joan was willing to offer an easement on her property to allow them to place the driveway at the bottom of the property; that how the house would be built was of concern to him; and that he would like to hear from the owner.

Steve Kesten, attorney for the applicants, stated that Mr. Burnell had stated early on that he wanted to keep the lot undeveloped and that he wanted to derail the project. He reviewed the testimony given in support of the project, noted that four parking spaces were being provided when only three were required, and stated that the plans had been with the Town for six months and available to all the neighbors to review during that time. He further stated that every effort would be made to keep the trees, that changes had been made to the project to protect the trees, and that trees increased the value of property as well as providing privacy.

Dan Tey for Joan Moriah, stated that an arborist would be retained and would guarantee the survival of the trees as a condition of approval; that her arborist stated that the trees were healthy, and that the term "every effort" to retain the trees was not good enough.

Bill Miles, 189 Frustuck, stated that the owner's phone number was not listed making it difficult to contact them; that he had put an in-law unit in his house 10 years previous and that tandem parking was not counted to meet the required parking; that the proposed parking was on a town right-of-way; that it was a very busy street, like Cascade Drive, that to back out onto the street was dangerous; that he had a storage area under his carport and was required to record a deed restriction so the applicant should have to do the same; that parking should be built at the bottom of the hill and that trees had died on his property and could also die on the applicant's property.

Lisa Rigsby, Joan's daughter, stated that her mother was willing to offer an easement on the lower part of her property for parking.

Mayor Egger closed the public hearing.

Councilmember Ghiringhelli stated that he was impressed with how the neighbors had worked together; that the Council had given direction to the applicants and that they had responded to that direction; that the neighbor had hired a local architect to help resolve the remaining issues, and that they had done a great job of working together to reach solutions.

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Vice Mayor Tremaine asked if there was a document that outlined the terms of the agreement, was referred to the letter from Mr. Chartock that outlined suggested conditions of approval, and was told that the listed conditions were perhaps not specific enough regarding the trees.

Vice Mayor Tremaine stated that the applicant had followed the direction of the Town Council and had worked with the immediate neighbor to resolve their differences; that if construction were to harm the trees, the trees would be replaced; that a deed restriction was not unreasonable; and that there wouldn't be a roof on the carport.

Councilmember Brandborg stated that there were many carports on Frustuck that hadn't been converted and that, without a roof on the car deck, conversion wouldn't be a problem.

Mayor Egger stated that the overall height of the structure was his concern; that if the cover on the structure were removed to reduce the height, he would agree with Vice Mayor Tremaine.

M/S, Ghiringhelli/Brandborg, Motion to uphold the appeal overturning the Planning Commission's denial of the project and to approve the project based on the revised submittal and with the following conditions: 1) the parking structure to be an uncovered parking deck; 2) with a deed restriction to be recorded to prevent conversion of the storage area beneath the parking structure into living space; 3) with any tree(s) identified for retention and subsequently harmed during construction to be replaced with suitably mature tree(s); 4) All trees identified in the June 18 and August 2, 2004 plans to be retained; 5) with six 15-foot trees to be planted as proposed; 6) conditions 2-10 outlined in the April 15, 2004 Staff Report; and 7) conditions 1,2,3 and 5 acknowledged as part of the accepted revisions to the development plan outlined in a letter from Architect Art Chartock to the appellant and submitted to the Town Council.

**Roll Call Vote:**

Brandborg: AYE; Ghiringhelli, AYE; Tremaine: AYE; Egger: AYE (Bragman, recused)

Mayor Egger adjourned the meeting for a break from 9:15 to 9:25 p.m.

Adoption of Resolution No. 2335, A Resolution of the Town Council of the Town of Fairfax declaring a fiscal emergency

Town Administrator Bengyel presented a report and stated that the tax proposed to go before the voters would be a special tax, not a general tax, and would therefore require a 2/3 majority and would not require a declaration of fiscal emergency.

Councilmember Brandborg asked why no numbers were presented to indicate how much money would be raised by such a tax and stated that, since the proposed ballot wording listed all the departments, it didn't seem like a special tax.

Town Administrator Bengyel, stated that, although at first all the areas to be impacted were listed, that, on further consideration, he thought it would be better to just use it for public safety and emergency services.

Councilmember Ghiringhelli stated his opposition to any new tax.

Mayor Egger determined that it was the consensus of the Council to not adopt a resolution declaring a fiscal emergency.

Adoption of Resolution No. 2337, A Resolution of the Town Council of the Town of Fairfax calling for an election

Vice Mayor Tremaine stated that they shouldn't declare a fiscal emergency; that they should go with a special tax that required a 2/3 vote; that the Town was in a fiscal emergency because of the State take-aways; and that they had to convince 2/3 of the voters that the tax was necessary.