

Minutes from the 9/8/04 Design Review meeting

Acting Chair Trimm closed the Public Hearing.

Boardmember LaMotte thanked the architect for the professional presentation and stated it makes the Board's job much easier. The house will be a nice addition to the neighborhood.

Boardmember Deal thanked the architect for the fantastic presentation and stated the model and color renderings were very helpful. The style of the house will be compatible with the surrounding neighborhood. He did not want them to use a lot of hard paving and suggested cobblestones for the driveway. He liked everything else about the project.

Acting Chair Trimm asked about the large, wet spot near the back of the property. Mr. Graham stated he was not aware of any well or natural spring in that area but they will check it out.

Boardmember LaMotte asked why they were removing the apple tree. Mr. Graham stated it was old and dying.

Boardmember Kerhleim stated she was pleased with the design and was happy it was below the height limit.

Acting Chair Trimm thanked the architect for the professional presentation and stated the use of the color palette on the drawings was very helpful. This will be a nice addition to the neighborhood.

M/S, LaMotte-Deal, motion to approve application #04-35 based on the findings and conditions set forth in the staff report plus the following condition: 1) The applicant shall submit plans for an irrigation system along with the Building Permit Application.

AYES: All

Senior Planner Neal stated there was a 10-day appeal period.

190 Frustuck Avenue (address changed to 177 Frustruck); design review of a 2,523 s.f. single-family residence and 430 s.f. cardeck; John Owens and Diana Dullaghan, applicants; John Wickham, owner; application #04-14; Assessor's Parcel No. 003-193-02; Residential Single-family RS 6 Zone; CEQA categorically exempt per Section 15303(e).

Senior Planner Neal presented the staff report. She stated the Planning Commission denied the project at their May 20th meeting. The applicant appealed the denial to the Town Council. The Council conditionally approved the redesigned project at their August 3rd meeting.

Acting Chair Trimm opened the Public Hearing.

Mr. John Owens, architect, presented the proposal. He stated they plan to construct a 2,093 square foot residence with an attached 400 square foot uncovered car deck and 400 square foot storage underneath. The house will not be visible from below. They moved the parking structure 15 feet from the neighbor's fence. They plan to use the following materials: 1) fire proof, pre-colored, concrete shingles, 2) windows and trim will be painted dark red, 3) the roofing will be a dark brown metal, 4) the decking material will be trex, 5) the hand-rails will be galvanized metal pipes.

Ms. Lisa Grespea, Frustuck Avenue, stated she would like to make sure the applicants comply with the Town Council's conditions. Mr. Owens stated that all the conditions were noted on the plans. Ms. Grespea expressed concern about maintaining the health of the trees. Senior Planner Neal stated this was standard procedure in the Town of Fairfax.

Mr. Niccolo Caldararo, Frustuck Avenue, stated the project was out of character with the neighborhood in terms of the size of the house and the size of the lot. The project would be located close to the property lines and would diminish the neighbor's views. He stated the parking structure, which would be located on a blind curve, would be hazardous. It would also be located too close to a hydrant. He stated the parking should be located at the bottom of the hill. He was concerned that the guest parking would be located in the public right-of-way. He stated this was unfair, unsafe, and out of character. Acting Chair Trimm asked Senior Planner Neal to respond. Senior Planner Neal stated most of the parking decks in the area were in the right-of-way because the roads were not paved to the full width of the right-of-way. This was very common on hillside lots. The Ross Valley Fire Authority has approved the plans. Boardmember LaMotte asked Mr. Caldararo if he had seen the revised plans. Mr. Caldararo stated he reviewed the revised plans at the Town Council meeting and he was still opposed to the project.

Boardmember Deal asked if the proposal would max out the FAR. Senior Planner Neal stated the proposal had a .28 FAR and the limit was .40. This configuration was approved by the Town Council, the Fire Department, the Town Engineer and the Public Works Director.

Acting Chair Trimm closed the Public Hearing.

Acting Chair Trimm acknowledged the growing concern about larger homes being built in Fairfax. She stated there was a fire hydrant at the bottom of the property and the project would not block anyone's view of Mt. Tamalpais. The original plan was changed to accommodate some of the neighbor's concerns.

Boardmember LaMotte stated the issue of fire and roadway safety was not in the purview of the Board and has been addressed by the appropriate departments. This is an unusual neighborhood and the applicant has made changes to the original design to mitigate the original concerns.

Acting Chair Trimm stated the original plans were changed to accommodate the neighbor's concerns. The proposal meets all the legal requirements.

Boardmember Deal asked about the type of shingles that will be used. Mr. Owens stated they plan to use the 12-foot long and not the large 4' X 8' panels. Boardmember Deal made some suggestions about using flashing between the shingles. Boardmember Deal had questions about the metal roof, the building materials, the awning, and the mesh panel that will go between the railings.

Boardmember Kerhlein stated they have addressed the neighbor's concerns and the proposal would be a significant improvement. She liked the fact that the project hugs the hillside and was significantly under the height limit on one side. She liked the choice of materials.

Boardmember LaMotte stated she was glad to see the use of fire resistant materials. She had some concerns about erosion control during construction. Mr. Owens stated there was an extensive grading and engineering plan that would address this concern. Boardmember LaMotte stated she would like to see some native grasses (plugs, not seed) and plants used on the hillside. She recommended they use California Fescue.

M/S, Kerhlein-Deal motion to approve application #04-14 based on the findings and conditions set forth in the staff report, the conditions set forth at the August 3rd Town Council meeting, the revisions cited in the July 29th letter from Rushton-Chartock Architects, and the following additional conditions: 1) the applicants shall plant native California Fescue (plugs) for erosion control, 2) the applicant shall submit an irrigation plan along with the Building Permit Application.

AYES: All

Acting Chair Trimm stated there was a 10-day appeal period.

94 Forrest Avenue; design review of a 1,465 s.f. single-family residence; Rushton-Chartock Architects, applicant; George Khouri, owner; application #04-36; Assessor's Parcel No. 002-191-31; Residential Single-family RS 6 Zone; CEQA categorically exempt per Section 15303(a)

Senior Planner Neal presented the staff report.

Acting Chair Trimm discussed the recommendations made by the Planning Commission at their August 19th meeting.



Excerpt from the April 15, 2004 Planning Commission Staff Report

2. The site planning preserves identified natural features.

See # 1 and 3 above.

3. Based on the soils report finding, the site can be excavated and developed without geologic, hydrologic or seismic hazards.

See # 2 above.

4. Vehicular access and parking are adequate.

The proposed development complies with the Fairfax Parking Ordinance, Town Code Chapter 17.28.

5. The proposed development harmonizes with the surrounding residential development, meets the design review criteria and does not result in the deterioration of significant view corridors.

The residence has been designed to minimize the visual impacts as viewed from Frustuck Avenue. The residence has been stepped down the hillside and the sides of the structure have been articulated to minimize the impacts of the structure on the neighboring properties. The structure has also been designed to reach a maximum of 33' which is less than the permitted 35' foot maximum. The FAR and lot coverage of the residence, .28 and .19, are significantly less than the permitted maximums of .40 and .35.

Suggested Conditions of Approval

1. This approval is limited to the development illustrated on the plans prepared by Common Sense Design, pages A1 through A6 revision date 3/5/04, the survey prepared by J.L. Hallberg, and the drainage and erosion control plan dated 3/3/04 by ILS Associates, Inc.

2. Prior to issuance of a building permit the applicant or his assigns shall:

a. Submit a construction plan to the Public Works Department which may include but is not limited to the following:

- Construction delivery routes approved by the Department of Public Works.
- Construction schedule (deliveries, worker hours, etc.)
- Notification to area residents
- Emergency access routes

b. The applicant shall prepare and file with the Public Works Director, a video tape of the roadway conditions on the construction delivery routes (routes must be approved by Public Works Director). This condition may also be waived by the Public Works Director.

c. The foundation and retaining elements shall be designed by a structural engineer

certified as such in the State of California. Plans and calculations of the foundation and retaining elements shall be stamped and signed by the structural engineer and submitted to the satisfaction of the Town Engineer.

d. The grading, foundation, retaining, and drainage elements shall also be stamped and signed by the site geotechnical engineer as conforming to the recommendations made by the project engineer.

e. Prior to submittal of the building permit plans the applicant shall secure written approval from the Ross Valley Fire Authority noting the development conformance with their recommendations.

f. The applicant shall secure a tree cutting permit from the Town prior to removal of any on-site trees over 24 inches in circumference measured 24 inches from the ground. To further minimize impacts on trees and significant vegetation, the applicant shall submit plans for any utility installation (including sewer, water, drainage) which incorporates the services of a licensed arborist to prune and treat trees having roots 2 inches or more in diameter that are disturbed during the construction, excavation, or trenching operations. In particular, any cross country utility extensions shall minimize impacts on existing trees. Tree root protection measures may include meandering the line, check dams, rip rap, hand trenching, soil evaluation, and diversion dams. Any trimming of trees shall be supervised by a licensed arborist. *Moritz Arboricultural Consulting make recommendation on how to ensure the continued good health of tree # 15 during and after construction and that he be on site during the project grading.*

g. Submit a record of survey subject to review by the Town Engineer prior to issuance of the building permit.

h. Pruning should be conducted when the trees are dormant. Deciduous trees should be trimmed during the winter and evergreen species during July and August.

3. During the construction process the following shall be required:

a. The geotechnical engineer shall be on-site during the grading process (if there is any grading to be done) and shall submit written certification to the Town staff that the

grading has been completed as recommended prior to installation of foundation and retaining forms and piers.

b. Prior to the concrete form inspection by the building official, the geotechnical and structural engineers shall field check the forms of the foundations and retaining elements and provide written certification to the Town staff that the work to this point has been completed in conformance with their recommendations and the approved building plans. The building official shall field check the concrete forms prior to the pour.

c. All construction related vehicles including equipment delivery, cement trucks and construction materials delivery vehicles shall be situated off the travel lane of the adjacent public right(s)-of-way at all times. This condition may be waved by the building official on

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a case-by-case basis with prior notification from the project sponsor.

d. Additionally, any proposed temporary closure of a public right-of-way shall require prior approval by the Fairfax Police Department and any necessary traffic control, signage or public notification shall be the responsibility of the applicant or his/her assigns. Any violation of this provision will result in a stop work order being placed on the property and issuance of a citation.

4. Prior to issuance of an occupancy permit the following shall be completed:

a. The geotechnical engineer shall field check the completed project and submit written certification to the Town Staff that the foundation, retaining, grading and drainage elements have been installed in conformance with the approved building plans and the recommendations of the soils report.

b. The Town Engineer shall field check the completed project to verify that the work has been installed as per approved plan.

c. The Planning Department shall field check the completed project to verify that all design review and planning commission conditions have been complied with including installation of landscaping and irrigation, if applicable.

5. Excavation shall not occur between October 1st and April 1st. The Town Engineer has the authority to waive this condition depending upon the weather.

6. The roadways shall be kept free of dust, gravel and other construction materials by sweeping the roadway, daily, if necessary.

7. During construction developer and all employees, contractor's and subcontractor's must comply with all requirements set forth in Ordinance # 637 (Chapter 8.26 of the Town Code), "Storm Water Management and Discharge Control Program."

8. Notwithstanding section # 17.38.050(A) of the Fairfax Zoning Ordinance, any changes, modifications, additions or alterations made to the approved set of plans will require a modification of this Hill Area Residential Development Permit. Any construction based on job plans that have been altered without the benefit of an approved modification of this Hill Area Residential Development Permit will result in the job being immediately stopped and red tagged.

9. No building permits shall be issued to expand this residence without a modification of the approved Hill Area Residential Development permit and approval by the Design Review Board.

10. The applicant or owner shall defend, indemnify, and hold harmless the Town of Fairfax or its agents, officers and employees from any claim, action, or proceeding against the Town of Fairfax or its agents, officers, and employees to attack, set aside, void, or annul an approval of the Planning Commission, Town Council, Planning Director, Design Review Board or any other department, committee, or agency of the Town concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permittee's duty to so defend, indemnify, and

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LAW OFFICES OF ALAN M. MAYER, INC.
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Attorney at Law
1120 Nye Street, Suite 200
San Rafael, CA 94901

E-Mail: Mayerlaw1@aol.com

October 2, 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 23rd 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

EXHIBIT #

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(29)

hold harmless shall be subject to the Town promptly notifying the applicant or owner of any said claim, action or proceeding and the Town's full cooperation in the applicant's or owner's defense of said claims, actions or proceedings.

Anne Welsh
Town of Fairfax
Planning Department
October 2, 2008
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specifically outlining why the garage proposed to be built, which is attached to the main structure, is not a "detached" structure.

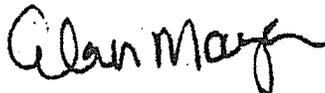
Since the garage is an integral part of the main structure and not detached, it does not need a height variance as the building is three stories. You have previously supplied me with a definition of "detached building" citing prior code section 17.04.084. This would apply to a building that has "no party 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

Public Notice
September 23rd 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 20th 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

Handwritten signatures of John Owens and Diana Dullaghan. The signature for John Owens is written over the printed name, and the signature for Diana Dullaghan is written below it.



TOWN OF FAIRFAX

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

**TOWN OF FAIRFAX
PLANNING COMMISSION
MEETING AGENDA
7:30 PM, THURSDAY OCTOBER 16, 2008
FAIRFAX WOMEN'S CLUB, 46 PARK ROAD**

CALL TO ORDER

ROLL CALL

APPROVAL OF AGENDA

PUBLIC COMMENTS ON NON-AGENDA ITEMS

MEETING PROTOCOL

The Chair shall maintain order at the meetings in accordance with Robert's Rules of Order and the Commission has a responsibility to be a model of respectful behavior in order to encourage community participation and citizen input at Commission meetings. The Commission and the audience are expected to refrain from using profane language and/or ridiculing the character or motives of Commission members, staff, or members of the public and to maintain the standards of tolerance and civility.

PUBLIC HEARING ITEMS

1. 51 Meernaa Avenue; 08-43

Request for a Use Permit and a Parking Variance to convert a portion of an existing attached garage into a playroom increasing the residence living space square footage from and to convert a 480sf accessory storage structure into living space with a full bathroom; Assessor's Parcel No. 002-092-19; Residential Single-family RS 6 Zone; Keith Hennessey, applicant/owner; CEQA categorically exempt, § 15301(a).

2. 177 Frustuck Avenue; 08-44

Request for a Use Permit to convert an uncovered parking deck to an enclosed garage structure which was previously denied by the Town Council on appeal; Assessor's Parcel No. 003-193-02; Residential Single-family RS 6 Zone; John Owens, applicant/owner; CEQA categorically exempt, § 15301(e).

DISCUSSION ITEMS

3. Discussion of Revisions to Draft Mixed Use Design Guidelines

APPROVAL OF MINUTES

Minutes from the meeting of September 18, 2008 will be reviewed at the November 20, 2008 meeting.

COMMISSION COMMENTS AND REQUESTS

ADJOURNMENT

Conduct: All interested persons are invited to attend and participate in public hearings. In order to give all interested persons an opportunity to be heard, and to ensure the presentation of all points of view, members of the audience should: (1) Limit presentation to three minutes; (2) Always address the Chair; (3) State name and address; (4) State views and concerns succinctly; and (5) Submit any new documents to the Planning Staff, first, to be entered into the record.

Staff Reports: Staff reports and associated materials will be available for public review at the front counter in Town Hall after 5:00 PM on the Friday before the meeting. **Court Challenges:** If you challenge the matter(s) described above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this Notice, or in written correspondence delivered at, or prior to, the above referenced public hearing [Govt. Code section 65009(b)]. If you need accommodation to attend or participate in this meeting due to a disability, please contact the Town Clerk at (415) 453-1584.

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

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

Materials related to an item on this Agenda submitted to the Planning Commission after distribution of the agenda packet are available for public inspection on the public counter at Town Hall in a folder next to the agenda packet. Such documents are also available on the Town's website at "townoffairfax.org" subject to staff's ability to post the documents before the meeting.



TOWN OF FAIRFAX

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

October 17, 2008

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

NOTICE OF PLANNING COMMISSION ACTION

RE: 177 Frustuck Avenue; 08-44

Request for a Use Permit to convert an uncovered parking deck to an enclosed garage structure which was previously denied by the Town Council on appeal; Assessor's Parcel No. 003-193-02; Residential Single-family RS 6 Zone; John Owens, applicant/owner; CEQA categorically exempt, § 15301(e).

Dear Ms. Dullaghan and Mr. Owens,

At its meeting on October 16, 2008, the Fairfax Planning Commission denied the above referenced application.

RIGHT TO APPEAL

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

If you do decide to appeal, please note that additional sets of plans and/or other previously submitted information may be required for the appeal hearing.

If you have any questions regarding the Planning Commission action please do not hesitate to contact the Fairfax Department of Planning and Building Services.

Sincerely,

Linda Neal
Senior Planner

ENCLOSURE

REPLY TO THIS OFFICE

IF YOU HAVE ANY QUESTIONS REGARDING THIS ACTION PLEASE CONTACT THE PLANNING DEPARTMENT AT (415) 453-1584

PETITION

To: Fairfax Planning Commission

From: Neighbors of John and Diana Owens, 177 Frustuck Avenue

We support the construction of a garage at 177 Frustuck Avenue.

Signature:	Name:	Address:	Tel:
	Shane Deal	183 Frustuck Ave	457-1176
	JOAN/MARIAH	175 Frustuck Ave	454-2821
	Alexis FitzGerald	1 Corbee Lane Fairfax	454-8847
	PAUL FITZGERALD	1 CORBEE LANE	454-8847
	Glenda Wadsworth	275 Frustuck	
	JIM FOLAN	20 Corbee Lane	454-9623
	NANCY FOLAN	20 Corbee Lane	454-9623
	Spencer Stuart	#1 Hickory Rd.	453-3434
	PEGGY L. KLOCK	242 FRUSTUCK AVE	457-8065
	ROBERT M. KLOCK	242 FRUSTUCK AVE	457-8065
	Jennifer Jones	212 Frustuck	455-0218
	Genevieve Sillecto	200 FRUSTUCK	785-8128
	ANGELA de Celle	211 FRUSTUCK	456-
	Bill M. Les	189 Frustuck	
	JOHN DEAL	44 BOND AVE.	482-9972
	SHONE MARTINEZ	171 FRUSTUCK AVE	#
	Bruce Burnett	180 Frustuck Ave	

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Statistics for our house and neighboring houses.

177 Frustuck Avenue

Lot Size 8943 square feet Maximum Floor area of house for this lot
3577 square feet or 40%

House size 2093 square feet actual floor area ratio 23%.

Storage under car deck 400 square feet – Deed restricted to non
residential use.

Proposed Garage 400 square feet on top of existing car deck.

Under construction next door to the West 183 Frustuck 2830 sq.ft.
house with a 575 sq. ft. garage.

Next door to the East 175 Frustuck 2628 square foot house with a
coverd parking deck.

Number of homes in 300 foot radius of our house 35

Largest House 42 Hickory Rd. 4,857 square feet

Number of garages out of these 35 homes =22 - 62%

Number of covered car ports out of these 35 homes =7 - 20%

Number of homes with covered parking =29 – 82%

16 Cypress Dr. 003-202-05	0.25	5,400	1,340	N/A	2/1.5	448	N/A	N/A	N/A
238 Frustuck Ave. 003-191-26	0.24	9,600	2,220	N/A	4/2.5	605	N/A	N/A	432
231 Frustuck Ave. 003-193-07	0.23	5,000	1,150	1,472	2/1	N/A	N/A	N/A	322
183 Frustuck Ave. 003-193-13	0.23	12,001	2,330	N/A	3/3	576	N/A	N/A	677
155 Frustuck Ave. 002-022-27	0.22	5,000	1,088	N/A	4/2	N/A	446	N/A	992
20 Walsh Ln. 003-192-32	0.22	7,000	1,531	N/A	3/1	N/A	396	Yes	374
24 Walsh Ln. 003-192-36	0.22	6,600	1,472	N/A	1/1	N/A	152	Yes	180
20 Cypress Dr. 003-202-04	0.21	5,175	1,089	N/A	3/1	266	N/A	N/A	266
46 Hickory Rd. 003-191-29	0.21	6,500	1,375	N/A	2/2	N/A	N/A	N/A	N/A
211 Frustuck Ave. 003-193-07	0.21	5,000	1,050	396	3/1	240	N/A	N/A	225
175 Frustuck Ave. 003-193-12	0.20	13,000	2,628	N/A	3/2	N/A	N/A	Yes	N/A
10 Cypress Drive 003-202-06	0.17	8,020	1,377	N/A	2/1	180	N/A	N/A	136
10 Walsh Ln. 003-192-21	0.17	9,000	1,512	N/A	4/2	Yes	N/A	324	1,154
52 Hickory Rd. 003-191-28	0.16	7,500	1,165	231	2/1	N/A	N/A	N/A	63
33 Hickory Rd. 003-201-20	0.14	11,000	1,562	144	3/2	380	N/A	N/A	154
170 Frustuck Ave. 003-192-48	0.14	10,800	1,564	N/A	3/2	336	N/A	N/A	865
275 Frustuck Ave. 002-022-32	0.13	6,270	828	N/A	2/1	240	N/A	N/A	N/A
232 Frustuck Ave. 003-191-12	0.11	8,500	952	N/A	1/1	N/A	N/A	252	654

HOMES WITHIN 300 ft. RADIUS of PROPOSED PROJECT

ADDRESS/ ASSESSOR PARCEL # (APN)	FLOOR AREA RATIO (FAR)	LOT SIZE IN SQ. FT.	LIVING AREA IN SQ. FT.	UNFINISHED SQ. FOOTAGE	BED/ BATH	GARAGE IN SQ. FT.	CAR DECK IN SQ. FT.	CAR- PORT IN SQ. FT.	DECK/ PATIO IN SQ. FT.
195 Frustuck Ave. 003-193-11	0.61	3,150	1,808	N/A	3/2.5	N/A	N/A	N/A	N/A
189 Frustuck Ave. 003-193-05	0.50	3,780	1,890	N/A	4/3	N/A	N/A	N/A	579
1 Corree Ln. 002-022-37	0.50	3,600	1,782	N/A	3/2	304	N/A	N/A	279
171 Frustuck Ave. 002-022-40	0.45	4,575	2,060	N/A	3/2	N/A	N/A	Yes	193
241 Frustuck Ave. 003-193-10	0.44	4,320	1,901	N/A	3/2	484	N/A	N/A	216
242 Frustuck Ave. 003-191-27	0.36	5,850	2,094	480	4/2.5	Yes	N/A	N/A	456
42 Hickory Rd. 003-191-14	0.32	15,125	4,857	N/A	6/4	236	N/A	N/A	N/A
228 Frustuck Ave. 003-191-11	0.32	4,750	1,520	1,040	2/1	400	N/A	N/A	280
165 Frustuck Ave. 002-022-24	0.31	5,750	1,800	432	2/2	288	N/A	N/A	263
215 Frustuck Ave. 003-193-08	0.31	6,000	1,866	N/A	2/2.5	Yes	N/A	N/A	547
177 Frustuck Ave. 003-193-02	0.30	7,150	2,128	400	3/2.5	N/A	400	N/A	550
20 Hickory Rd. 003-202-03	0.28	6,000	1,658	N/A	3/2	320	N/A	N/A	301
24 Hickory Rd. APN#	0.27	6,000	1,600	N/A	3/2	440	N/A	400	212

30 Hickory Rd. 003-202-01	0.11	15,000	1,588	N/A	2/2	360	N/A	N/A	48
1 Hickory Rd. 003-203-15	0.09	18,000	1,556	N/A	2/2	456	N/A	N/A	833
21 Walsh Ln. 003-192-54	0.09	10,449	900	N/A	1/1	378	N/A	N/A	96
16 Corree Ln. 002-022-41	0.09	9,670	886	N/A	2/1	N/A	N/A	N/A	142
200 Frustuck Ave. 003-192-53	0.08	13,970	1,160	N/A	3/1	400	N/A	N/A	200
300 Bolinas Rd. 002-022-39	0.06	34,478	1,898	820	3/3	N/A	N/A	N/A	454

* Data from the County of Marin Assessor and Recorder's Office at 3501 Civic Center Drive, Rm. 208, San Rafael, CA 94903, 415-499-7215
This data (exhibit A) has been updated and cross referenced with a site visit and photographs (exhibit B) on 01/25/08

Signatures
in support
of garage

Shore
Martinez Frustuck
171 Frustuck

Glenda
Vandey
275
Frustuck

Paul +
Lexi
Fitzgerald
1 Correll

Joan
Mation
175
Frustuck

Bruce
Bunnell
170
Frustuck

UPPER
FRUSTUCK

John +
Diana
177
Frustuck

Shane
+ Jean Deal
183
Frustuck

Bill
Miles
189
Frustuck

FRUSTUCK

LOWER



October 8, 2008

**VIA FACSIMILE and
E-MAIL TO COUNCIL MEMBERS**

Council Members
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930

Re: 177 Frustuck Avenue, Fairfax

Dear Council Members:

I represent John Owens and Diana Dullaghan, owners of the property at 177 Frustuck Avenue in Fairfax. I am asking that Commissioner Megs recuse herself at the upcoming Planning Commission meeting involving the Owens project on October 16.

In June 2004 the Ross Valley Reporter published an article of alleged cronyism at the Planning Commission in regards to my clients house application. Commissioner Megs was one of the two commissioners who left the stage to congratulate with ex council member Niccolo Caldararo while the meeting was still in session. Ex Commissioner Madsen accused Commissioner Megs at her recent reappointment of colluding on applications prior to meetings. At the same meeting my client John Owens also spoke strongly in opposition to her reappointment. I believe she would not be impartial in regards to this application. Thank you for your courtesy and cooperation.

Very truly yours,

Alan M. Mayer

AMM:kh

cc: Client via e-mail only

24

LAW OFFICES OF ALAN M. MAYER, INC.
A Professional Corporation

Telephone: 415-457-4082
Facsimile: 415-457-6439

Attorney at Law
1120 Nye Street, Suite 200
San Rafael, CA 94901

E-Mail: Mayerlaw1@aol.com

November 4, 2008

VIA FACSIMILE

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

Re: 177 Frustuck Avenue, Fairfax

Dear Ms. Welsh:

It is my understanding that you are charged with the responsibility to see to it that improper construction does not proceed in the Town of Fairfax. As you know I represent John Owens, owner of the property at 177 Frustuck. Mr. Owens feels that he has been singled out by the City and is being treated unfairly.

It has recently come to his attention that one classic example of the City's unequal treatment is the City's allowing unlicensed contractors (Terry Goyan) to work on property within the Town of Fairfax without a town business license and most importantly without a permit to do the work. Please check into the work being done by Mr. Goyan and others at 30 Hickory Road in Fairfax owned by Town Council Member Lawrence Bragman. If I am in error, please let me know. If not, please take all appropriate steps to see to it that town ordinances are enforced.

It is extremely alarming to believe that a member of the Fairfax Planning Commission would in essence be depriving the City of rightful income by not paying for a town license (depriving the City of revenue) and not obtaining permits for projects that he is working on (again depriving the City of revenue) and perhaps most importantly breaking town ordinances when he is charged with the responsibility of enforcing them.

Ann Welsh

From: Ann Welsh
Sent: Thursday, November 06, 2008 11:27 AM
To: 'Mayerlaw1@aol.com'
Cc: Michael Rock
Subject: FW: 177 Frustuck

✓ to John 11/12

Dear Mr. Mayer:

In response to your recent letter dated November 4, 2008 regarding 177 Frustuck Road, the building inspector has researched the matter and provides the information which is attached below.

As the building inspector's comments indicate, the property owner at 30 Hickory has applied for the necessary permits and has signed the building permits as an owner/builder which does not require a business license.

Please let me know if you have any other concerns

Best Regards,

Ann Welsh
Director of Planning and Building Services
142 Bolinas Road
Fairfax, CA
415-453-1584

From: Building
Sent: Tuesday, November 04, 2008 2:46 PM
To: Ann Welsh
Subject: 177 Frustuck

Hi Ann

You had asked me to research permit history for 30 Hickory for answers to the following.

1. Have permits been pulled for construction work?
2. Have licensed contractors been used?
3. Did contractors have business licenses with the Town of Fairfax?

A total of 5 permits have been issued over the last few years. Two of the permits were for electrical work: 05-133 for a sub panel and 05-243 for a 50amp breaker. On both of those occasions a licensed contractor was used and they had a Town business license.

Three of the permits (06-080 bathroom upgrades, 08-218 garage roof, and 08-288 exterior door) were issued as "Owner-Builder" with the statement checked: **I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale.** There is a history of inspections being performed for all of the permits that have been issued. We do not issue business licenses to owner-builders.

Please let me know if you require further information regarding this matter.

Sincerely

Mark Lockaby
Building Official

11/12/2008



February 25th 2008

Me challenging Terry Gayan Planning
Commissioner working on an illegal
4th story second unit.

No permit, No business license, contrary
to his oath to uphold the ordinances of
the town.

Worked on project for $2\frac{1}{2}$ weeks at \$30 per
hour (over \$500 limit)

Solicited bid from licensed plumbing
contractor to do illegal plumbing work
(declined by plumber) Acted as owner's agent



Terry Goyan operated as an independent contractor (and still does) in the Town of Fairfax without a business license. He performed illegal work during his tenure as a Planning Commissioner.

He had the gall to be a majority voter in opposition of our garage and second unit applications.

How many other projects was he a majority voter against while performing services contrary to the Town Ordinances?





TOWN OF FAIRFAX

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

NOTICE OF APPEAL

FOR STAFF USE

Date: _____ Fee: _____
Appl.# _____
Receipt# _____
Recvd. By: _____
Action: _____

The purpose of the appeal procedure is to provide recourse in case it is alleged that there is an error in any order, requirement, permit, decision or determination by any administrative official, advisory body or commission in the administration or enforcement of the City Ordinances. Any person aggrieved by the action of any administrative official, advisory board or commission in the administration or enforcement of any ordinance in the Town Code may make verified application to the Town Clerk in the manner prescribed by the Town Council within ten (10) days of action that is appealed.

FEE: Fees are set by resolution of the Town Council. See fee schedule for current application fees.

PLEASE PRINT

Appellant's name John Owens and Diana Dullaghan

Mailing address 177 Frustuck Ave Zip: 94930 Day phone 4154568064

Property Address: same

I appeal the decision of: (list board, commission, or department and decision, for example: Planning Commission denial of variance) application # 08-44

Planning Commission denial of Use Permit

The following are my reasons for appeal:

see attached 3 pages.

hereby declare that I have read the foregoing Notice of Appeal and know the contents thereof. I further declare under penalty of perjury that the information supplied by me is true and correct.

Executed this 22 day of October, 19 2008.

SIGNATURE OF APPELLANT: Diana Dullaghan

(4/94)

TOWN OF FAIRFAX
PUBLIC NOTICE REQUIREMENTS
FOR ALL LAND USE ENTITLEMENTS

Public notice is sent to property owners, residents and businesses for all land use entitlements including the following:

Zoning Change Amendments, Design Review, Variance, Use Permit, and Hill Area Development Permits. The area to be noticed is any parcel within 300 feet of the boundary line of the property that is the subject of the application.

When filing your application include a Notification Map and a Mailing List and Mailing Labels and stamps for property owners and residents to be notified as described below. The applicant is responsible for the accuracy of these materials.

Erroneous information may require re-mailing or re-scheduling of the public hearing. When you file your application please sign and submit the attached affidavit stating that the required map, mailing list and labels have been prepared following these instructions.

The applicant prepares and provides the following:

1. A neighborhood notification map, mailing list and mailing labels
2. Postage stamps for each label
3. Completes the affidavit certifying the accuracy of the mailing list
4. Posts the site with an 11 inch x 17 inch Notice Form provided by the Planning Department.

If the approval of an application is delayed by unresponsiveness of an applicant, the address list and labels may have to be redone to ensure their accuracy.

Once Planning staff determines that an application is complete, they send a notice of completeness and provide the poster for the applicant. The poster is to be filled out by the applicant to describe the project. The poster is to be waterproofed and posted in a clearly visible location along the street frontage of the property at least 10 days prior to the public hearing.

The Planning Department provides the notices, reviews the mailing information provided by the applicant, and mails the notice.

Mailing List:

List the Assessor's Block and Lot Numbers for all lots within the Notification Map with the Names and Mailing Addresses of all the property owners and the Mailing Address for all residents and businesses. Include yourself and anyone else you wish notified. Please count the addresses and provide a stamp for each label.

Submit self-adhering Mailing Labels with this information, one name and address per label. For property owners, use the names. For residents and businesses, you may use either their name or "Occupant". Property Owners are those in the latest Assessors Tax Roll, available at the Marin County Assessor's Office

For Residents or Businesses you can get the number of dwellings or businesses on a lot from the property owner or building manager, or by counting the mail boxes, doorbells and any businesses. You may also use the reverse telephone directory at the library, use addresses shown on the mailbox, doorbell or reverse telephone directory, including any letter suffixes (134, 134A) or fractions (249, 249 1/2). If a doorbell or mailbox has a name but no separate street or apartment number, use that name for the mailing labels. There is usually a Resident anytime the Property Owner in the Townwide Tax Roll has a different mailing address.

In addition, a list of apartment/ multifamily renters is available on disk or in hard copy from the Planning Department. This list is an additional resource for creating the mailing list. Where the address of the owner differs from the location address of the property to be noticed, labels should be created for both owners and residents.

**Affidavit of Preparation of Notification Map,
Mailing List and Mailing Labels for Public
Notification for Land Use Public Hearing**

I, Diana Dullaghan, do hereby declare as follows:
(print name)

1. I have prepared the Notification Map, Mailing List and Mailing Labels for Public Notification for in accordance with Planning Department guidelines. *Mailing label list was provided by town of Fairfax -*
2. I understand that I am responsible for the accuracy of this information, and that erroneous information may require re-scheduling the public hearing.
3. I have prepared these materials in good faith and to the best of my ability.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

EXECUTED ON THIS DAY, Oct. 22, 2008 in the Town of Fairfax, California.

Diana Dullaghan
Signature

October 21, 2008

Council Members
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930

Re: 177 Frustuck Avenue, Fairfax

Dear Council Members:

The reasons for my appeal of the Planning Commission decision include the following.

1. The actions of the Planning Commission are arbitrary and capricious. To start with, Commissioner Megs recused herself from the hearing at the outset turning the meeting over to Commissioner Lacks. Commissioner Megs was requested to recuse herself because of her bias. Incredibly, when there was three members in favor and three members opposed, she then cast a deciding vote against our application.
2. The Commission stated that it believed our request for a 400 square foot garage constituted a grant of special privilege when all of the information presented to the Commission was to the contrary. The Commission acknowledged that the property immediately next door, at 183 Frustuck, was granted permission to build a 575 square foot garage, which is almost 45% larger than the one we have proposed. In fact, the information provided to the Commission was that almost two-thirds of the homes in the neighborhood have covered garages (22 out of 35) and over 80% have covered parking (29 out of 35). There was absolutely no showing by anyone that any special privilege would be provided by the granting of the permit and if anything the doctrines of equity and equal treatment would be contravened by the denial of the permit rather than the granting of it.

3. The second reason given by the Commission in its denial was that the granting of this garage would cause excessive or unreasonable detriment to adjoining property owners. A petition was submitted to the Commission showing that every adjoining property owner approved of this project. There was not a single property either adjoining our's or even adjoining one of the adjoining property owner who disapproved of this project. A petition of 17 names of our direct neighbors in favor of the project was submitted to the Commission, yet ignored by the Commission. The Commissioners relied upon action taken by the Town Council on August 3, 2004 to say that adjoining property owners would be unreasonably affected when in fact at this point in time all of the adjoining property owners, after seeing the new designs of the project, are in favor of it.
4. The Commission next cited denial of the permit based on the garage being inconsistent and contrary to objectives, goals or standards of the Town of Fairfax. To the contrary, all of the information provided to the Council was that the granting of this permit would be consistent with everything that the Town is trying to achieve. The granting of permission for the garage would make the property more secure and present a more pleasing view for the neighborhood. Garbage cans would be able to be kept inside of enclosed structures. Automobiles and tools and equipment that often would be stored in my truck would be behind closed doors. In addition, by being able to store tools and equipment in a closed garage, it would avoid having to bring this property up and down over 20 stairs on a virtual daily basis.
5. The Commission cited that approval of the use permit would be in conflict with Town Code 17.052.020. To the contrary, there is absolutely nothing in Ordinance Section 17.052.020 which is inconsistent. The Town of Fairfax actually requires covered parking and garages and this ordinance merely makes it permissible for properties on a downslope to avoid that construction at the property owners option.
6. The Commission stated that view corridors would be affected and that visual obstructions would occur to those using the public roadway. There is absolutely no testimony of any kind given at the hearing to support this finding.
7. The Commission stated that granting of the use permit would not in the public interest or for protection or enhancement of the safety or welfare of the community. Absolutely no testimony was given to support this finding. To the contrary, providing a closed garage enhances the safety and welfare of the community. Testimony was supplied to the Commission to support this.

8. Each of the Commissioners who voted against approval specifically stated that they wanted the Town Council to decide this hearing and that this was one of the reasons for their negative votes. They stated that they believed they did not have the power or authority to treat this application as a new application when in fact the advice received from the Town's attorney was to treat it as a new application.

9. The Commission totally ignored the changes and circumstances which exist between the filing of this new application and the prior denial of the garage by the Town Council in 2004. The design of the garage is different than previously submitted. The voice of the neighbors and particularly the adjoining property owners is now all in favor of this project when it was previously against it under a different design and other project have been approved including the one next door at 183 Frustuck that would show that the denial of a garage would be inequitable and singling out this property owner where the Town has already shown that there is no reason to deny garages in this neighborhood and in this specific view corridor.

To download selected parcels/addresses, Right Click here Save Target As

The Owner/nonOwner Mailing list contains 52 Addresses Print

Name	Mail address	City	State	ZIP Code
Current Resident	1 CASCADE DR	FAIRFAX	CA	94930
FITZGERALD PAUL M &	1 COREE LN	FAIRFAX	CA	94930
STUART SPENCER M &	1 HICKORY RD	FAIRFAX	CA	94930
Current Resident	10 CYPRESS DR	FAIRFAX	CA	94930
NORWOOD ROBERT S TR	10 WALSH LN	FAIRFAX	CA	94930
NORWOOD ROBERT S TR &	10 WALSH LN	FAIRFAX	CA	94930
Current Resident	14 CASCADE DR	FAIRFAX	CA	94930
WALL ROSEMARY	149 FRUSTUCK AVE	FAIRFAX	CA	94930
WILLIS STEVEN J &	15 CASCADE DR	FAIRFAX	CA	94930
BASSIK ELAINE R TR	15 KENILWORTH TER	GREAT NECK	NY	11024
GJEVIK ASMUND /TR/ &	155 FRUSTUCK AVE	FAIRFAX	CA	94930
Current Resident	16 COREE LN	FAIRFAX	CA	94930
MONTEROSSO MARIE D /TR/	16 CYPRESS DR	FAIRFAX	CA	94930
CALDARARO NICCOLO L &	165 FRUSTUCK AVE	FAIRFAX	CA	94930
DI GREGORIO MICHELE E	170 FRUSTUCK AVE	FAIRFAX	CA	94930
MARTINEZ SHONE M & ALICE O	171 FRUSTUCK AVE	FAIRFAX	CA	94930
MARIAH JOAN /TR/	175 FRUSTUCK AVE	FAIRFAX	CA	94930
OWENS JOHN &	177 FRUSTUCK AVE	FAIRFAX	CA	94930
MILES WILLIAM C	189 FRUSTUCK AVE	FAIRFAX	CA	94930
TAYLOR PATRICIA L	19 CASCADE DR	FAIRFAX	CA	94930
CUTLER ALLEN G TR	195 FRUSTUCK AVE	FAIRFAX	CA	94930
FRANTZIS BRUCE K /TR/ &	195 VAN WINKLE	SAN ANSELMO	CA	94960
FOLAN JAMES P	20 COREE LN	FAIRFAX	CA	94930
Current Resident	20 CYPRESS DR	FAIRFAX	CA	94930
LOEB KERRY S /TR/	20 HICKORY RD	FAIRFAX	CA	94930
RILEY BARRY M &	20 WALSH LN	FAIRFAX	CA	94930
MURPHY DENIS C JR &	200 FRUSTUCK AVE	FAIRFAX	CA	94930
Current Resident	21 WALSH LN	FAIRFAX	CA	94930
DE CELLE ANGELA S TR	211 FRUSTUCK AVE	FAIRFAX	CA	94930
KOEPPEL MARTIN P /TR/ &	215 FRUSTUCK AVE	FAIRFAX	CA	94930
WICK DONALD A &	226 REDWOOD DR	WOODACRE	CA	94973
SCHEREMETOW ALEXANDRA TR	228 FRUSTUCK AVE	FAIRFAX	CA	94930
SHAW RICHARD B /TR/ &	231 FRUSTUCK AVE	FAIRFAX	CA	94930
BROWN NANCY K TR	232 FRUSTUCK AVE	FAIRFAX	CA	94930
CLARK DOREE S &	236 FRUSTUCK AVE	FAIRFAX	CA	94930
LAMONT CHARLES &	24 HICKORY RD	FAIRFAX	CA	94930
CASADY ROBERT M &	24 WALSH LN	FAIRFAX	CA	94930
JONES BRIAN K & THERESE M	241 FRUSTUCK AVE	FAIRFAX	CA	94930
KLOCK ROBERT M TR	242 FRUSTUCK AVE	FAIRFAX	CA	94930
VANDERGRIFT GLENDA	275 FRUSTUCK AVE	FAIRFAX	CA	94930
PERI CHARLES A TR	29 BROADWAY	FAIRFAX	CA	94930

BRAGMAN LAWRENCE W	30 HICKORY RD	FAIRFAX	CA	94930
Current Resident	300 BOLINAS RD	FAIRFAX	CA	94930
Current Resident	33 CASCADE DR	FAIRFAX	CA	94930
CAMPODONICO SANDRA G	33 HICKORY RD	FAIRFAX	CA	94930
ROBINSON MICHAEL E	35 CYPRESS DR	FAIRFAX	CA	94930
OLIVER GEORGE D	42 HICKORY RD	FAIRFAX	CA	94930
DEAL SHANE S	44 BELLE AVE	FAIRFAX	CA	94930
PELLETIER GERALD L TR &	45 HICKORY RD	FAIRFAX	CA	94930
NIEVERGELT PETER 50%	510 MAIN ST	SAUSALITO	CA	94965
Current Resident	76 MANZANITA RD	FAIRFAX	CA	94930
Current Resident	8 CYPRESS DR	FAIRFAX	CA	94930

Current Resident
1 Cascade Drive
Fairfax, CA 94930

Paul Fitzgerald
1 Coree Ln
Fairfax, CA 94930

Spencer Stuart
1 Hickory Rd
Fairfax, CA 94930

Current Resident
10 Cypress Drive
Fairfax, CA 94930

Robert Norwood
10 Walsh Ln
Fairfax, CA 94930

Current Resident
14 Cascade Dr
Fairfax, CA 94930

Rosemary Wall
149 Frustuck Ave
Fairfax, CA 94930

Steven Willis
15 Cascade Dr
Fairfax, CA 94930

Elaine Bassik
15 Kennilworth Ter
Great Neck NY 11024

Ashmund Gjevik
155 Frustuck Ave
Fairfax, CA 94930

Current Resident
16 Coree Ln
Fairfax, CA 94930

Marie Monterosso
16 Cypress Dr
Fairfax, CA 94930

N. Caldararo
165 Frustuck Ave
Fairfax, CA 94930

Michele Di Gregorio
170 Frustuck Ave
Fairfax, CA 94930

Shone Martinez
171 Frustuck Ave
Fairfax, CA 94930

Joan Mariah
175 Frustuck Ave
Fairfax, CA 94930

William Miles
189 Frustuck Ave
Fairfax, CA 94930

Patricia Taylor
19 Cascade Dr
Fairfax, CA 94930

Allen Cutler
195 Frustuck Ave
Fairfax, CA 94930

Bruce Frantzis
195 Van Winkle
San Anselmo, CA 94960

James Folan
20 Coree Ln
Fairfax, CA 94930

Current Resident
20 Cypress Dr
Fairfax, CA 94930

Current Owner/Resident
20 Hickory
Fairfax, CA 94930

Barry Riley
20 Walsh Ln
Fairfax, CA 94930

Denis Murphy
200 Frustuck Ave
Fairfax, CA 94930

Current Resident
21 Walsh Ln
Fairfax, CA 94930

Angela De Celle
211 Frustuck Ave
Fairfax, CA 94930

Martin Koepfel
215 Frustuck Ave
Fairfax, CA 94930

Donald Wick
226 Redwood Dr
Woodacre, CA 94973

Alexandra Scheremetow
228 Frustuck Ave
Fairfax, CA 94930



Richard Shaw
231 Frustuck Ave
Fairfax, CA 94930

Nancy Brown
232 Frustuck Ave
Fairfax, CA 94930

Doree Clark
238 Frustuck Ave
Fairfax, CA 94930

Charles Lamont
24 Hickory Rd
Fairfax, CA 94930

Robert Casady
24 Walsh Ln
Fairfax, CA 94930

Brian Jones
241 Frustuck Ave
Fairfax, CA 94930

Robert Klock
242 Frustuck Ave
Fairfax, CA 94930

Glennnda Vandergrift
275 Frustuck Ave
Fairfax, CA 94930

Charles Peri
29 Broadway
Fairfax, CA 94930

Lawrence Bragman
30 Hickory Rd
Fairfax, CA 94930

Current Resident
300 Bolinas Rd
Fairfax, CA 94930

Current Resident
33 Cascade Drive
Fairfax, CA 94930

Sandra Campodonico
33 Hickory Rd
Fairfax, CA 94930

Michael Robinson
35 Cypress Dr
Fairfax, CA 94930

George Oliver
42 Hickory Rd
Fairfax, CA 94930

Shane Deal
44 Belle Ave
Fairfax, CA 94930

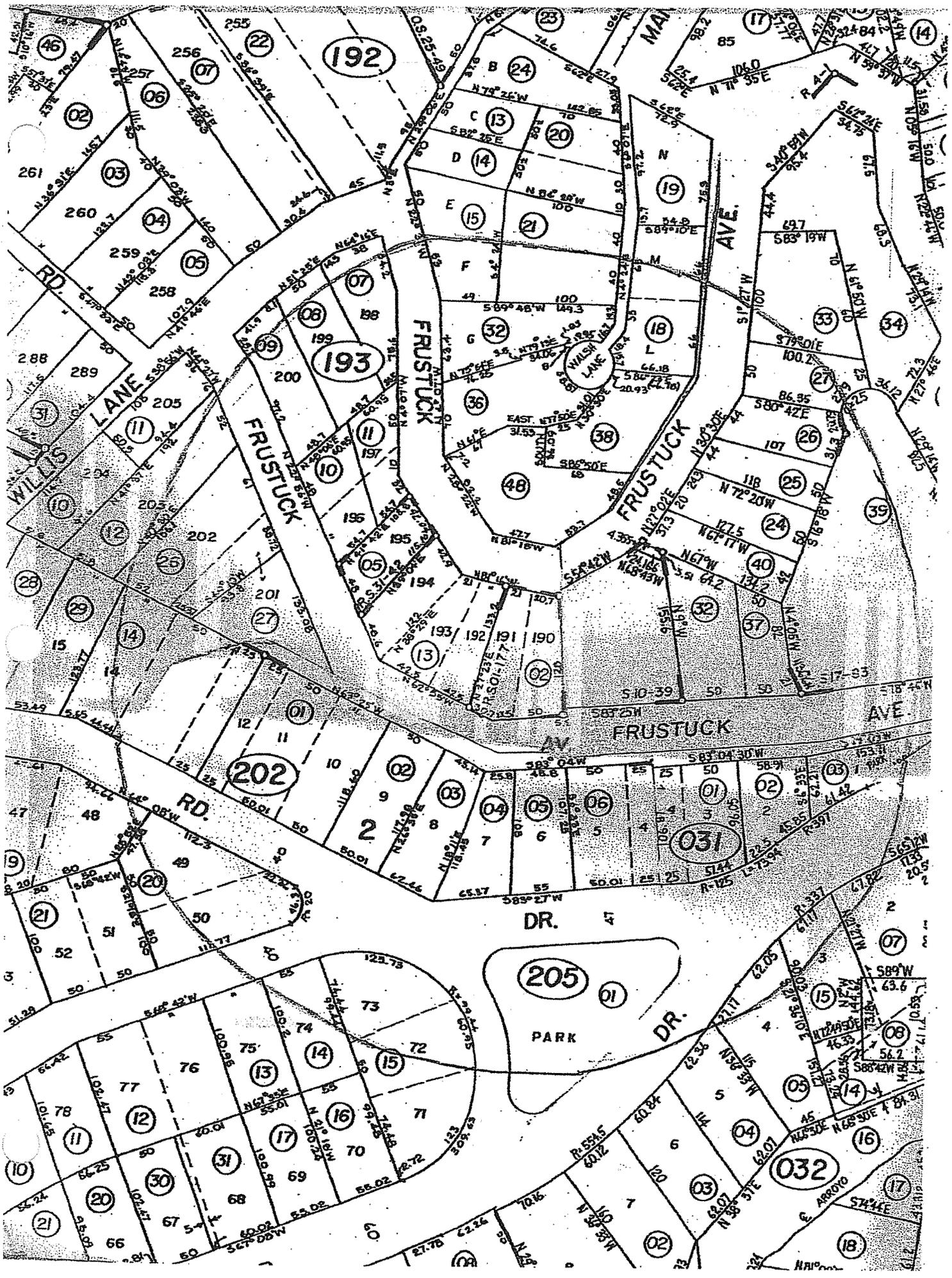
Gerald Pelletier
45 Hickory Rd
Fairfax, CA 94930

Peter Nievergelt
510 Main St
Sausalito, CA 94965

Current Resident
76 Manzanita Rd
Fairfax, CA 94930

Current Resident
8 Cypress Drive
Fairfax, CA 94930



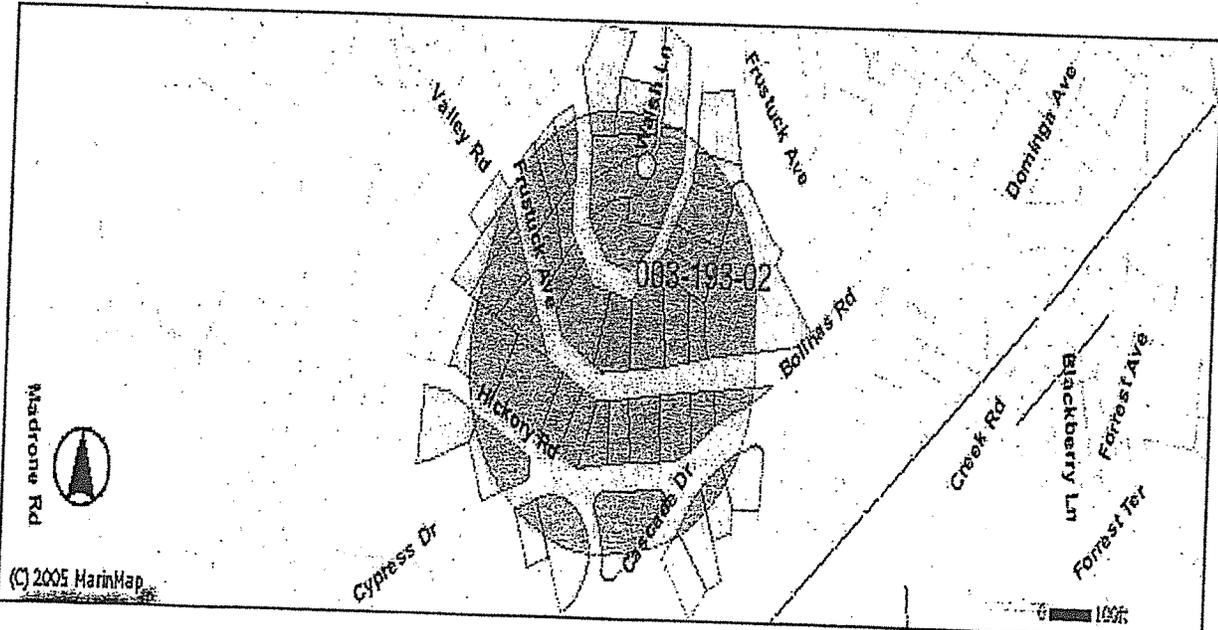


TOWN OF FAIRFAX STAFF REPORT

TO: Mayor and Town Council
FROM: Michael Rock, Town Manager *MR*
Ann Welsh, Director of Planning and Building Services

DATE: November 19, 2008

SUBJECT: Appeal of Planning Commission denial of Use Permit Application #08-44 to construct a garage on an existing parking deck located at 177 Frustuck Avenue; Residential Single Family, RS-6 Zone, Assessor's Parcel No. 003-193-02; John Owens and Diana Dullaghan, owners/appellants, and Adoption of Resolution No. 2594, A Resolution of the Town Council of the Town of Fairfax making a determination on the decision of the Planning Commission regarding a project at 177 Frustuck Avenue.



177 FRUSTUCK AVENUE

AGENDA ITEM # 5

26

RECOMMENDATION

Staff recommends that Council conduct a hearing on the appeal as follows:

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Determine whether to grant or deny the Appeal for Use Permit # 08-44 and adopt a resolution with findings supporting the Council's decision.

APPEAL STATUS

The project that is being appealed is the conversion of a 400 square foot parking deck into a 400 square foot garage. The property owner is appealing the Planning Commission's decision of October 16, 2008 which was to uphold staff's recommendation to deny a Use Permit for construction of the garage.

BACKGROUND DISCUSSION

The proposed garage at 177 Frustuck Avenue involves a site that was previously before Town Council in 2004. At that time, the owner sought to build a house, shed and garage. The 2004 project was appealed by the property owner to Town Council to overturn the Planning Commission denial of the Hillside Residential Development (HRD) permit for the construction of a new home/shed and garage. The Town Council overturned the Planning Commission's decision and approved the construction of the new home on the condition that the garage be removed from the plans and that a parking deck be constructed. In the intervening four years, the house/storage shed and parking deck have been constructed. The current project proposes construction of a garage on the deck site; the garage has a somewhat different design than the one included in the 2004 project.

In their discussions, the Planning Commission expressed concern that the applicant was essentially attempting to overturn the previous Town Council conditions of approval which required that the garage be removed from the plans and that even consideration of the request by the Planning Commission may set a troubling precedent. However, under the Town Code, there is no time limit on an owner's right to seek a new use permit or a modification of an existing one. Furthermore, under the Code, the process for considering an application for a modification is the same as the process for a new permit, namely, by application to the Planning Commission in accordance with Chapter 17.032 of the Code.

At the October 16 Planning Commission hearing, the applicant's attorney introduced new information at the Planning Commission meeting which included a revised garage design which reduced the height by 1.5 feet. Also submitted at the meeting was a petition with 17 neighbor's signatures which supported the project. The Planning

Commission expressed concern at being provided this new information at the meeting and considered requesting that the hearing be continued to the November meeting to allow the Planning Commission time to review this new information. The applicants stated that they did not want a continuance and wished that the Planning Commission would make a decision that night.

In response, the Planning Commission made the decision to deny the project with a vote of four to three. The discretionary Use Permit required by the project was denied by the Planning Commission based on the findings outlined in the staff report of October 16, 2008 as well as the Planning Commission supplementary findings as follows:

1. The project will impact the view corridor because the property is a hillside development.
2. The project contradicts the prior decision of the Town Council to allow a car deck in lieu of a garage.

In response to this decision the applicant filed an appeal on October 23, 2008 in which the appellant requests that the Town Council approve the application for the garage and outlined the reasons for the appeal in a letter dated October 21, 2008 (see Exhibit 3).

Among the reasons for the appeal are the following:

1. The garage would not constitute a special privilege because approximately two thirds of the neighbors have covered garages;
2. The garage would not cause excessive or unreasonable detriment to the adjoining property owners because a petition submitted, at the meeting, indicated that the neighbors are in support of the project; and
3. The garage would not obstruct view corridors because there was no testimony to support this finding.

Under Section 17.032.060 of the Town Code, the following findings must be made backed by substantial evidence in the record prior to the issuance of a Use Permit:

- 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 Town.
- 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.

Conversely, if the Town wishes to deny the use permit, it must justify its action with findings backed by substantial evidence in the record that at least one of the criteria in Section 17.032.060 cannot be met.

ATTACHMENTS

Exhibit 1:

Planning Commission Staff Report with attachments dated 10/16/08.

Exhibit 2:

Notice of Appeal with correspondence dated 10/23/08.

Exhibit 3:

Notice of Planning Commission Action dated 10/17/08.

Exhibit 4:

Draft Minutes of the 10/16/08 Planning Commission meeting.

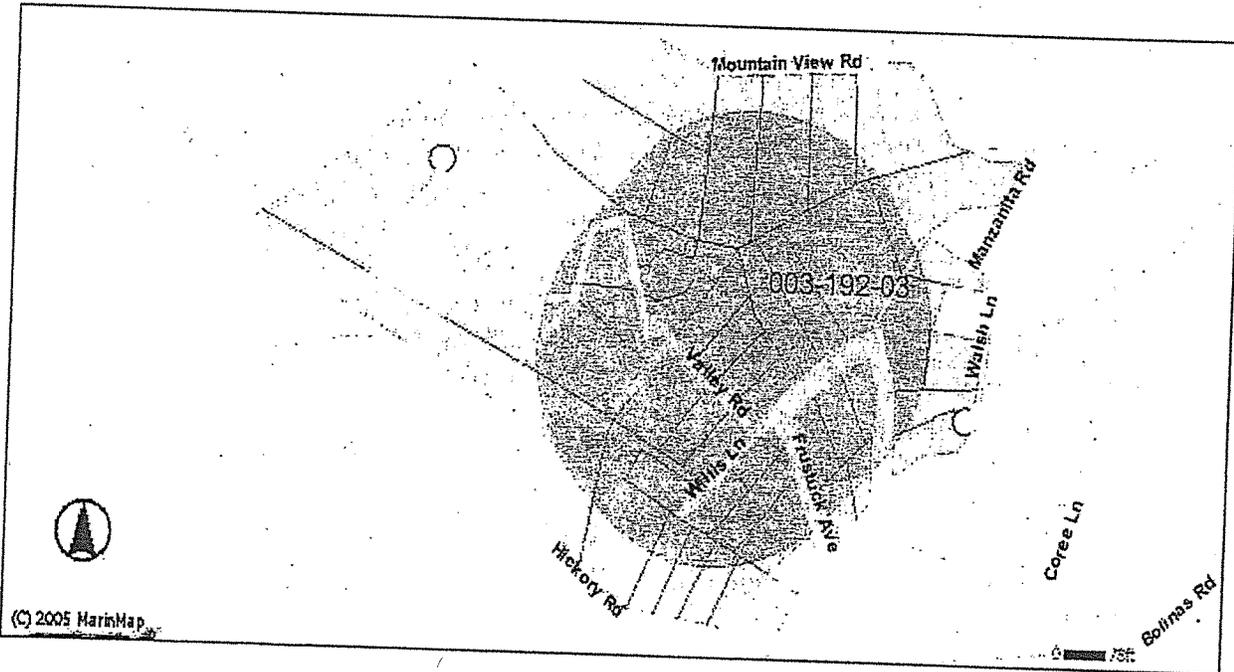
Exhibit 5:

Proposed Garage Plans for Owens/Dullaghan Residence prepared by Steve McArthur dated 7/28/08 with revisions received on 10/16/08.

**TOWN OF FAIRFAX
STAFF REPORT**

Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: October 16, 2008
FROM: Ann Welsh, Director of Planning and Building Services
Linda Neal, Senior Planner
PROJECT: A garage on an existing parking deck
ACTION: Use Permit; Application # 08-44
ADDRESS: 177 Frustuck Avenue; Assessor's Parcel No. 003-193-02
ZONING: Residential Single-family RS 6 Zone
**OWNER/
APPLICANT:** John Owens and Diana Dullaghan
CEQA STATUS: CEQA categorically exempt per § 15303(e)



177 FRUSTUCK AVENUE

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.