

TOWN OF FAIRFAX

NOV 06 2013

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signed 1/29/09

PLANNING APPLICATION FORM
Town of Fairfax Planning Department

<p>For PLANNING COMMISSION action:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Annexation <input type="checkbox"/> General Plan Amendment from _____ to _____ <input type="checkbox"/> Design Review (hillside*, commercial*, multi-family*, 5'-8' residential setback additions to existing dwellings) <input type="checkbox"/> Precise Development Plan** <input checked="" type="checkbox"/> Second Unit Use Permit * <input type="checkbox"/> Sign Review * <input type="checkbox"/> Parcel Map/ Tentative Map/ Vesting <input type="checkbox"/> Tentative Map, Lot Line Relocation <input type="checkbox"/> Use Permit * <input checked="" type="checkbox"/> Variance <input type="checkbox"/> Zone Change from _____ to _____ <input checked="" type="checkbox"/> Encroachment <input type="checkbox"/> Certificate of Compliance <input type="checkbox"/> Hill Area Residential Development <input type="checkbox"/> Other: _____ <hr/> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental Review* 	<p>For ADMINISTRATIVE action</p> <ul style="list-style-type: none"> <input type="checkbox"/> Admin. Sign Review (commercial)* <input type="checkbox"/> Admin. Design review (hillside)* <input type="checkbox"/> Admin. Lot Line relocation <input type="checkbox"/> Other <hr/> <p>For Office Use Only Application # _____ Receipt # _____</p>
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* Please complete the appropriate Supplemental Questionnaire.

** See special submittal requirements.

~~~~~ Please see fee schedule for required application fees. ~~~~~

|                                   |                      |                     |
|-----------------------------------|----------------------|---------------------|
| Job Site Address:<br>177 FRUSTUCK | Assessor Parcel No.: | Zone:<br>RS 6 ZONE. |
|-----------------------------------|----------------------|---------------------|

|                                                          |                                                         |                          |
|----------------------------------------------------------|---------------------------------------------------------|--------------------------|
| Property Owner(s) Name:<br>JOHN OWENS<br>DIANA DULLAGHAN | Phone Numbers:<br>Home: 456 8064<br>Work: 717 7621 cel. | Fax Number:<br>456 9017. |
| Mailing Address:<br>SAME AS ABOVE                        | City:                                                   | State/Zip:               |
| Applicant(s) Name (contact person):<br>SAME AS           | Phone Numbers:<br>Home:<br>Work:                        | Fax Number:              |
| Mailing Address:<br>ABOVE                                | City:                                                   | State/Zip:               |

**PROJECT DESCRIPTION:**

2ND UNIT USE PERMIT APPLICATION

**GENERAL INFORMATION (if applicable):**

| Item                                                   | Existing       | Proposed         |
|--------------------------------------------------------|----------------|------------------|
| Lot size                                               | 8943           | 8943             |
| Size of structure(s) or commercial space (square feet) | 2093           | 2653             |
| Height and No. of stories                              | 35' - 3        | 35' - 4          |
| Lot coverage                                           | 1424           | 1424             |
| No. of dwellings units                                 | 1              | 2                |
| Parking <sup>1</sup>                                   | No. of spaces  | 5                |
|                                                        | Size of spaces | 4x9'x19' 1x8'x6' |

|                                        |                   |             |
|----------------------------------------|-------------------|-------------|
| Amount of proposed excavation and fill | Excavation = NONE | Fill = NONE |
|----------------------------------------|-------------------|-------------|

Estimated cost of construction \$ 80,000

Lot Coverage is defined as the land area covered by all buildings and improvements with a finished height above grade and all impervious surfaces except driveways.

<sup>1</sup>Minimum parking dimensions are 9' wide by 19' long by 7' high. Do not count parking spaces that do not meet the minimum standards.

Restrictions: Are there any deed restrictions, easements, etc. that affect the property, and, if so, what are they?

None that have been filed against the property title that I know of.

[Signature]  
Signature of Property Owner

1.29.09.  
Date

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

Planning Department staff is available by appointment between 8:30 a.m. and 12:00 noon and 1:00 p.m. and 5:00 p.m. Monday through Thursday at 142 Bolinas Road, Fairfax, CA. (415) 453-1584

## Submittal Requirements Checklist

- Title report for the project property is required for all submittals

**For Administrative actions** (Sign permits that comply with the Sign Ordinance, lot line adjustment or certificates of compliance.)

- Two (2) sets of site plans and floor plans (elevation plans for new construction)
- Completed Application form(s)
- Fee (see "Fee Schedule")

**For Planning Commission actions**

- Fourteen (14) full size sets and one reduced set of site plans, floor plans and elevation plans
- Completed Application forms(s)
- 14 sets of photographs of the project site
- Fee (see "Fee Schedule")
- Environmental Initial Study Questionnaire (if applicable)

**For Design Review actions**

- Eight full sized (8) sets and one reduced set of plans for design review action**

- **Note:** You must include a completed "Applicant Affidavit for Property Owners Mailing List" along with the required materials for Planning Commission or Design Review actions.

**\*\*\*ALL PROJECT PLAN MUST INCLUDE\*\*\***

**A Site Plan that is fully dimensioned and drawn to scale, collated and folded with other pages of the project, including the following:**

1. Property boundaries and easements.
2. Foundation and roof lines of all existing and proposed structures located on the property; differentiate between proposed and existing structures.
3. Foundation lines of all neighboring structures.
4. On-site drives, parking, loading spaces, landscaped areas, patios, etc.
5. Street right-of-way lines, curb line or pavement edge, sidewalks, and parkways.
6. The location and species of all trees on site, showing trunk circumferences (measured 2' above natural grade) and driplines.
7. Fences and walls, existing and proposed.
8. Yards and open space areas.
9. Storage areas and screening.
10. Topographic features: streams, drainage channels, ditches, rock outcroppings, etc. If the project is adjacent to a watercourse a cross section of the watercourse channel must also be provided.
11. Existing visible landmarks (utility poles, street lights, fire hydrants).
12. Accurate contour lines:
  - Slopes below 5% - contours not required
  - Slopes between 5% and 15% - contour interval must be two feet
  - Slopes exceeding 15% - contour interval must be five feet
13. Other information deemed necessary to evaluate this application.
14. Flood Zone and flood elevation certificate if property is located in an A' zone or B' zone.

**Floor Plans**

1. Provide existing and proposed floor plan for all structures on the site.
2. Provide proposed floor plans separately from existing floor plan.
3. Other information deemed necessary to evaluate this application.

**Building Elevations must include:**

1. Existing and proposed ground line, wall height, floor height, and ridge height, roof pitch, as well as the appearance of the structure(s).
2. Cross section drawings of existing and proposed structures.
3. For Design Review:
  - Color rendering of proposed exterior addition (one copy).
  - Color board (8 1/2" x 11") to include exterior finish/color, window trim, roof material, siding materials, etc. (one copy).
  - Photographs of the existing property and abutting neighbors.
4. Other information deemed necessary to evaluate this application.

**Landscape Plans are required for all new residences, 50% remodels and all commercial projects and must include:**

1. The type, size, and spacing of plants, and maintenance provisions. (Maintenance information includes; type of irrigation system, location of clocks, sprinkler heads and areas to be drip irrigated.)
2. Retaining walls, lighting, slopes, if applicable.
3. Other information deemed necessary to evaluate this application.

Within 30 days of submittal, Town staff will review this application for completeness of required information and/or fees, and a notice of completeness or non-completeness will be mailed to the applicant. Applications cannot be processed until accepted as complete. Further revisions of completed material may be necessary after the 30 day period.

**All plans must be fully dimensioned and drawn to scale, collated, and folded.**

| <b>OTHER IMPORTANT DEPARTMENT/AGENCIES:</b>                                                                                                                                                               |                                           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| <b>Ross Valley Fire Service:</b> It is your responsibility to contact the Fire Marshal for Fire Department requirements (e.g., sprinklers, hydrants, turnouts).                                           | Contact Fire Marshal @<br>415/258-4686    |
| <b>Building Department:</b> If you are increasing the occupancy (number of people) and/or altering the structural character of a building, you may trigger seismic, Fire and other Building requirements. | Contact Building @<br>415/453-2263        |
| <b>Marin Municipal Water District:</b> Your project may generate the need for additional water.                                                                                                           | Contact MMWD @<br>415/924-4600 ext. 335   |
| <b>Ross Valley Sanitary District:</b> If you are adding on or building new, you may need to upgrade or install a lateral sewer line.                                                                      | Contact RVSD @<br>415/461-1122            |
| <b>Ross Valley School District:</b> If adding on or building a house, school fees will likely be charged. Contact school district for the dollar amount.                                                  | Contact School District @<br>415/454-2162 |

## SUPPLEMENTAL QUESTIONNAIRE & DRB APPLICABILITY

### DESIGN REVIEW

For Commercial, Planned Developments, Hillside Residential and Multiple Family Design Review: (Include brand and number for all finish and/or paint colors.)

1. Exterior finish: CONCRETE SIDING
2. Proposed exterior wall color(s): GREEN EARTH TONE
3. Proposed exterior trim color: BROWN EARTH TONE
4. Proposed exterior window color: BROWN SAME AS TRIM
5. Proposed roof material and color: N/A.
6. Special features: PATIO AND WALLS TO BE FACED WITH RECYCLED CONCRETE, HAND RAILS WELDED STEEL.
7. Lot Coverage: 14.24
8. Number of existing parking spaces and their sizes: 4 x 9' x 19'
9. Number of proposed parking spaces and their sizes: 5 - 4 x 9' x 19'  
1 x 8' x 16'

### DESIGN REVIEW APPLICABILITY

#### 1. Hillside Design Review (in a ridge line)

All new dwellings located on hillside properties and all additions on properties located in a ridgeline scenic corridor (which include deck and stairway structures) shall require design review.

additions and accessory structures may be exempt from design review where the applicant demonstrates, through the use of story poles, plans and photo montages, that an accessory structure or addition will have no impact on significant view corridors due to the proposed location of the structure in relation to existing improvements. Project exemption shall be determined by the Fairfax Planning Director.

#### 2. Multiple family Design Review

Multiple family residential units of three (3) or more and additions to structures located in the Multiple Family RM Zone.

#### 3. 50% remodels of additions to residential properties

#### 4. Commercial Design Review

The Design Review Board must approve any minor modifications to existing buildings, structures or improvements such as awning, canopies, window, doors, color changes, automated teller machines, or other modifications similar to the above for properties located in the Commercial Zones.

#### 5. Signs

Signs complying with the Sign Ordinance can be approved by staff. Other signs require the approval of the Fairfax Design Review Board.

#### Design Review Application - Additional information required.

- Only 8 complete sets of plans are required for design review applications. If your project requires design review you will need to prepare the additional information described below in addition to the information required in pages 3 and 4 of the planning application.
- Exterior elevations from all sides. If multiple buildings are proposed, composite elevations for the entire street frontage are required.
- Cross section through project, showing project and existing adjacent features.
- Lighting plan - detail of exterior fixtures, location and illumination (amount of light).
- Utility entrance location, trash storage location, mechanical equipment location.
- Detail of fascias, trim, railing, trellis.
- Specify irrigation systems to be used on the landscaping plan.
- 8 color elevations.
- 8 sets of color samples (copies of color samples are not accepted).
- Projects in the Downtown Area are required to submit a drawing at 1" = 40'.

We would like you to put in your own words how the project meets the design review criteria set forth in section #17.020.040 of the Fairfax Zoning Ordinance. This will help you and the Planning Commission focus on the ordinance requirements.

**NOTE:** In order to visualize the dimensions and location of the proposed structure, the Town review process requires story poles. Story poles must be erected prior to an application being filed with the Planning Department. Poles shall be erected at all proposed building corners (rising to the proposed height of the building at that corner), and at the highest point of the proposed roof-line. Also the front corners of undeveloped land must be staked and tagged in the field. You, the applicant, will have to maintain the poles and corner flags in good condition until all public hearings on the project are over and appeal periods have lapsed. Avoid unnecessary delays to your project by maintaining the poles through out the review process.

SUPPLEMENTAL QUESTIONNAIRE

VARIANCE

VARIANCE (S) REQUESTED:

\_\_\_\_\_ foot front yard variance to construct a \_\_\_\_\_ within \_\_\_\_\_ feet of the front property line.

\_\_\_\_\_ foot rear yard variance to construct a \_\_\_\_\_ within \_\_\_\_\_ feet of the rear property line.

\_\_\_\_\_ foot side yard variance to construct a \_\_\_\_\_ within \_\_\_\_\_ feet of the side property line.

\_\_\_\_\_ foot creek setback variance to construct a \_\_\_\_\_ within \_\_\_\_\_ feet of the top of the creek bank.

Other (fence height, building height, parking number or size, etc.) BUILDING HEIGHT FOR FOURTH STORY

FINDINGS:

- 1. List below special circumstances applicable to the property, including size, shape, topography, location, or surroundings, to show why the variance should be granted; and why the granting of the variance will not be a granting of special privileges inconsistent with the limitations upon other properties in the vicinity and zone (you may attach a statement).

Building height and shape will not change. The second unit is to occupy an existing space under the existing house.

- 2. List below your reasons why the variance will not materially adversely affect the health or safety of persons residing or working in the neighborhood or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood (you may attach a statement).

Visual impact will be almost non-existent. The biggest impact would be the patio which is already in place, and not visible from the

- 3. Explain why complying with the Town Ordinance requirements will be a hardship for the owner. Street below

If the Town does not grant the variance a second unit will not be built - providing affordable housing for needy tenants, and State of California compliance

## Variance - Additional information required.

- Include a cross section through the proposed project depicting the project and the relationship of the proposal to existing features and improvements on adjacent properties.
- Lot coverage calculation including all structures and raised wooden decks.

In order to approve your project, the Planning Commission must make findings of fact which state that 1) there is a special feature of the site (such as size, shape or slope) which justifies an exception; 2) that the variance is consistent with the treatment of other property in the neighborhood; 3) that strict enforcement of the ordinance would cause a hardship; and 4) that the project is in the general public interest.

In the space below, please provide any information which you feel is relevant to these issues and which further explains your project.

When the house was designed and built the Town ordinances at that time would have allowed a second unit without a height variance — It would have been classed as a 3 story building

Granting the variance does not impact the neighbors, or change the size or shape of the building.

SUPPLEMENTAL QUESTIONNAIRE

VARIANCE

VARIANCE (S) REQUESTED:

\_\_\_\_\_ foot front yard variance to construct a \_\_\_\_\_ within \_\_\_\_\_ feet of the front property line.

\_\_\_\_\_ foot rear yard variance to construct a \_\_\_\_\_ within \_\_\_\_\_ feet of the rear property line.

5 foot side yard variance to construct a parking space within \_\_\_\_\_ feet of the side property line.

\_\_\_\_\_ foot creek setback variance to construct a \_\_\_\_\_ within \_\_\_\_\_ feet of the top of the creek bank.

Other (fence height, building height, parking number or size, etc.) \_\_\_\_\_

FINDINGS:

- 1. List below special circumstances applicable to the property, including size, shape, topography, location, or surroundings, to show why the variance should be granted; and why the granting of the variance will not be a granting of special privileges inconsistent with the limitations upon other properties in the vicinity and zone (you may attach a statement).

Existing 5 foot space is a dead zone between 177 and 183 Frustuck. 183 Frustuck had to widen the road by 7 feet. This parking space would fill in the gap in between.

- 2. List below your reasons why the variance will not materially adversely affect the health or safety of persons residing or working in the neighborhood or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood (you may attach a statement).

The widening of the parking deck is so minor it would probably be unnoticeable to neighbors or people walking by when completed.

- 3. Explain why complying with the Town Ordinance requirements will be a hardship for the owner.

No variance would mean no second unit or affordable housing for the Town. The Town is currently granting variance no nonlegal units — to make them legal for State compliance.

Variance - Additional information required.

- Include a cross section through the proposed project depicting the project and the relationship of the proposal to existing features and improvements on adjacent properties.
- Lot coverage calculation including all structures and raised wooden decks.

In order to approve your project, the Planning Commission must make findings of fact which state that 1) there is a special feature of the site (such as size, shape or slope) which justifies an exception; 2) that the variance is consistent with the treatment of other property in the neighborhood; 3) that strict enforcement of the ordinance would cause a hardship; and 4) that the project is in the general public interest.

In the space below, please provide any information which you feel is relevant to these issues and which further explains your project.

Minimal visual impact

Will provide non tandem parking for ease of tenants and the owner.

The alternative is a tandem parking variance for the second unit, which could be granted as per the second unit amnesty standards - But it would be impractical.

### Hill Area Residential Development (HRD) - Additional information required.

- Amount of excavation and fill required for development (in cubic yds.) \_\_\_\_\_  
If the excavation and fill amounts exceed 100 cubic yards it must be reviewed and approved by the Planning Commission. Please submit an excavation application and fee as well.
- If any public roads will need to be extended to access the residence plans must include the existing and proposed type of surface, the length and width of roadway to be improved, slope of roadway, elevations of any retaining walls that will need to be constructed, locations of curbs, gutter and drainage improvements and identification of emergency vehicle turn arounds (if required).
- Locate all trees within the right-of-way easement and any trees that will need to be removed (must include size and species of trees). An application for a tree permit and approval by the tree committee is required for the cutting or trimming of trees with a trunk circumference of 24 inches or more.  
 Check if a tree permit is required.
- List any notable physical features of the site, such as creeks, drainage channels, rock outcroppings, tree stands, etc.:

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- Lot size \_\_\_\_\_ square feet      Lot frontage \_\_\_\_\_ ' \_\_\_\_\_ "
- Name and address of Licensed Surveyor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- Name and address of Registered Civil Engineer: \_\_\_\_\_  
\_\_\_\_\_

**NOTE:** In order to visualize the dimensions and location of the proposed structure, the Town review process requires story poles. Story poles must be erected prior to an application being filed with the Planning Department. Poles shall be erected at all proposed building corners (rising to the proposed height of the building at that corner), and at the highest point of the proposed roof-line. Also the front corners of undeveloped land must be staked and tagged in the field. You, the applicant, will have to maintain the poles and corner flags in good condition until all public hearings on the project are over and appeal periods have lapsed. Avoid unnecessary delays to your project by maintaining the poles through out the review process.

HRD Attachment Page 2

- Show existing and proposed on-site and off-site drainage facilities and necessary improvements on the site plan.
  - Provide a signed and sealed report by a registered civil engineer specializing in soils and foundations, containing the following information:
    - site soil drainage
    - relevant watershed boundaries (hydrologic units)
    - relationship of proposed construction to drainage patterns in the vicinity, and the cumulative effects of run-off, necessary drainage improvements, on and offsite foundation adequacy, site geology, and the safety of proposed construction
  - Include an erosion control plan with the grading plan, including a re-vegetation program.
  - Floor plans should include finished floor elevations for all living levels including attic, basement and loft areas. If the residence has multiple floor elevations (a split level residence), finished floor elevations should be included for all rooms.
  - A summary table including the following square footages; footprint, total living space, subtotals for each floor, garage, decks and any accessory buildings.
  - Profiles depicting the relationships between proposed structures on the project site and structures existing on neighboring properties (i.e. neighboring homes, parking structures).
  - Elevations of all proposed retaining walls including a description of construction materials.
  - Report from Ross Valley Fire Authority.
- Indicate in writing how the project has been designed to comply with the HRD OVERLAY ZONE DEVELOPMENT STANDARDS, Chapter 17.072 of the Fairfax Zoning Ordinance.

**Use Permit Applications - Additional information required.**

- A written description of the proposed use, major activities, hours of operation, number of employees on the premises during the busiest shift and when the busiest shift is expected and other information pertinent to the application.
- Floor plans must include location of any special equipment.
- Designate customer, employee and living areas.
- If different uses are included in this activity, for example storage, retail, living space, etc. Indicate square footage of each proposed use.

In order to approve your project, the Planning Commission must make findings of fact which state that the project will not have a negative impact on the general public welfare, conforms with the policies of the Town, does not create excessive physical or economic impacts on adjacent property and provides for equal treatment with similar properties in Town.

In the space below, please provide any information which you feel is relevant to these issues and which further explains your project.

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The final disposition of each use permit shall be in accordance with the facts of the particular case, and such facts must support the following determinations and findings before a use permit may be approved. Indicate how the findings below can be made:

- 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.
- 
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- The development and use of property, as approved under the use permit, shall not create a public nuisance, 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, any or all of which effects are substantially beyond that which might occur without approval or issuance of the use permit.
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- 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, development plan or other plan or policy, officially adopted by the town.
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**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, John Owens, 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.
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, 1, 29, 2009 in the Town of Fairfax,  
California.

Signature

Application No: \_\_\_\_\_

Project Location: \_\_\_\_\_

### Authorization for Engineering Review

I, \_\_\_\_\_, as owner / applicant on the above application and property hereby authorize the Town Engineer to review the application plans and subject site and agree to reimburse the Town for any and all charges. I understand this includes the actual cost charged by the Town Engineer, plus 20% to cover the cost of staff review, coordination and general overhead. I am making a deposit of \$ \_\_\_\_\_ toward such charges. Should the cost of the review exceed this deposit, an additional deposit to cover overages must be made before processing the application continues or prior to the issuance of respective permits and entitlements.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

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Property Owner / Applicant: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone: (H) \_\_\_\_\_ (W) \_\_\_\_\_

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Deposit Amount: \_\_\_\_\_

Receipt No.: \_\_\_\_\_

Date: \_\_\_\_\_

John Owens Diana Dullaghan  
177 Frustuck Avenue, Fairfax CA 94930  
Tel 456 8064 e mail [johnoph@aol.com](mailto:johnoph@aol.com)

February 1st 2009

Larry Kennings  
Planning Director  
Town of Fairfax  
142 Bolinas Road  
Fairfax Ca 94930

Re: re submittal of second unit application 177 Frustuck

Dear Larry,

This is in regards to the ludicrous suggestion that we now need a variance for a guardrail on a proposed patio for our proposed second unit. The previous submittal of February 20<sup>th</sup> 2008 for the proposed second unit had a deck with a guardrail approximately 16 feet above grade. The deck was to be built on the exact same pier on grade beam retaining wall/ foundation that supports the proposed patio. In the February 20<sup>th</sup> 2008 second unit review there was no mention of a variance for a fence 16 feet high..

Our existing house is one structure. It has an attached parking structure, attached stairways, and attached decks. All of these structures share a continuous pier and grade beam foundation. The proposed patio is of the same pier and grade beam construction. It contains four 18" piers between 10 and 12 feet deep. These piers are tied to each other and the house by grade beams. The design of which, and site inspections were carried out by our Engineer Michael Watkins who engineered the original house. The proposed patio foundation is integral to the existing house foundation. It is attached in the same way as all the other attached structures to our house. The same height rules that apply to the existing attached structures apply to this patio. That is a height limit of 35 feet parallel with the slope of the lot. We currently have in excess of 200 linear feet of 42" guardrail throughout our attached 880 sq foot parking area, the main access stairway, the main entry deck, our side kitchen deck, and our front view deck. The height of these guardrails vary from a minimum of 10 feet above grade to approximately 25 feet above grade. These guardrails did not require variances because they are part of the main structure. Likewise the guardrail on the patio does not require a variance because it is part of the main structure.

A retaining wall is a stand alone item. I agree that the Town Code does not allow a fence and retaining wall to exceed 6 feet without a variance. Once a retaining wall is "loaded" with a structure the wall is no longer classed as a separate item. It is part of the foundation of that structure. It could have a building on it, a swimming pool behind it, a deck above it, or an integral patio above it. The pier and grade beam walls proposed for our patio are the foundations of the patio. They are not separate stand alone retaining walls. They are integral foundations with the existing house foundation. I believe the Building Inspector would support the "loading of the retaining wall, and that the patio is an attached structure the same as a deck.

2

I'm looking out my office window right now at 183 Frustuck Avenue which has a 7 foot retaining wall on the fire engine turnout that will have a fence on it that did not require a variance. That is a true example of a fence on a retaining wall. There are many examples of real fences on real retaining walls in Town. Especially in the steeper neighborhoods like Upper Scenic and Tamalpais. Some of these walls look quite new in construction. These are true examples of boundary fences perched on retaining walls where a steep property meets the public road. It would be embarrassing if I produced photographs of these walls, and the Town could not produce variance paperwork to support their case. In our case we are dealing with a guardrail required by the Building Code for safety purposes on an attached structure not a boundary fence.

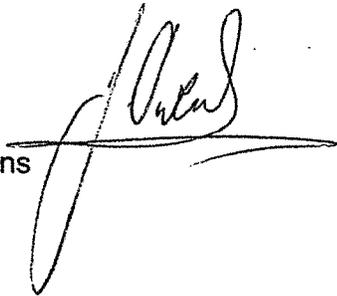
If you disagree with my analysis please respond in writing. Include the applicable Town Code sections, and how they apply to this situation.

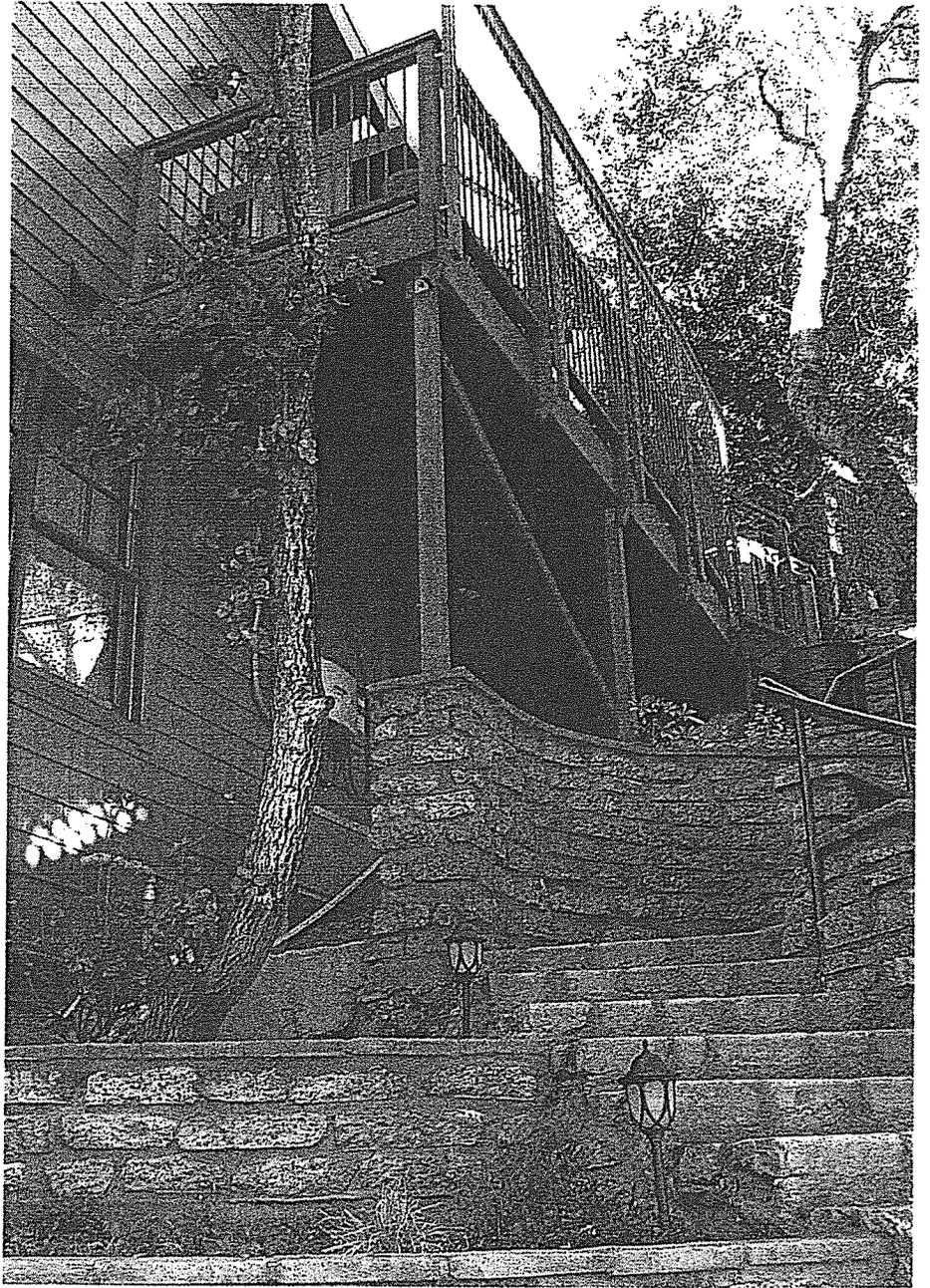
Whether a project requires a variance is not decided by the Planning Commission. This is a matter to be decided by you the Head of the Planning Department (or acting head).

I hope we can talk before our second unit review goes out. I am hoping to prevent the same situation that occurred when the February 20<sup>th</sup> 2008 review went out with at least 11 items requested that were either incorrect permit classifications, or items not required by Town Code, and we were overcharged for this submittal by at least \$1700. Of course after hiring an attorney and 10 months of wasted time those 11 items disappeared, and we will finally receive credit for the overpaid fees. Another review full of mistruths, would be another waste of valuable Town resources, and tax payers money.

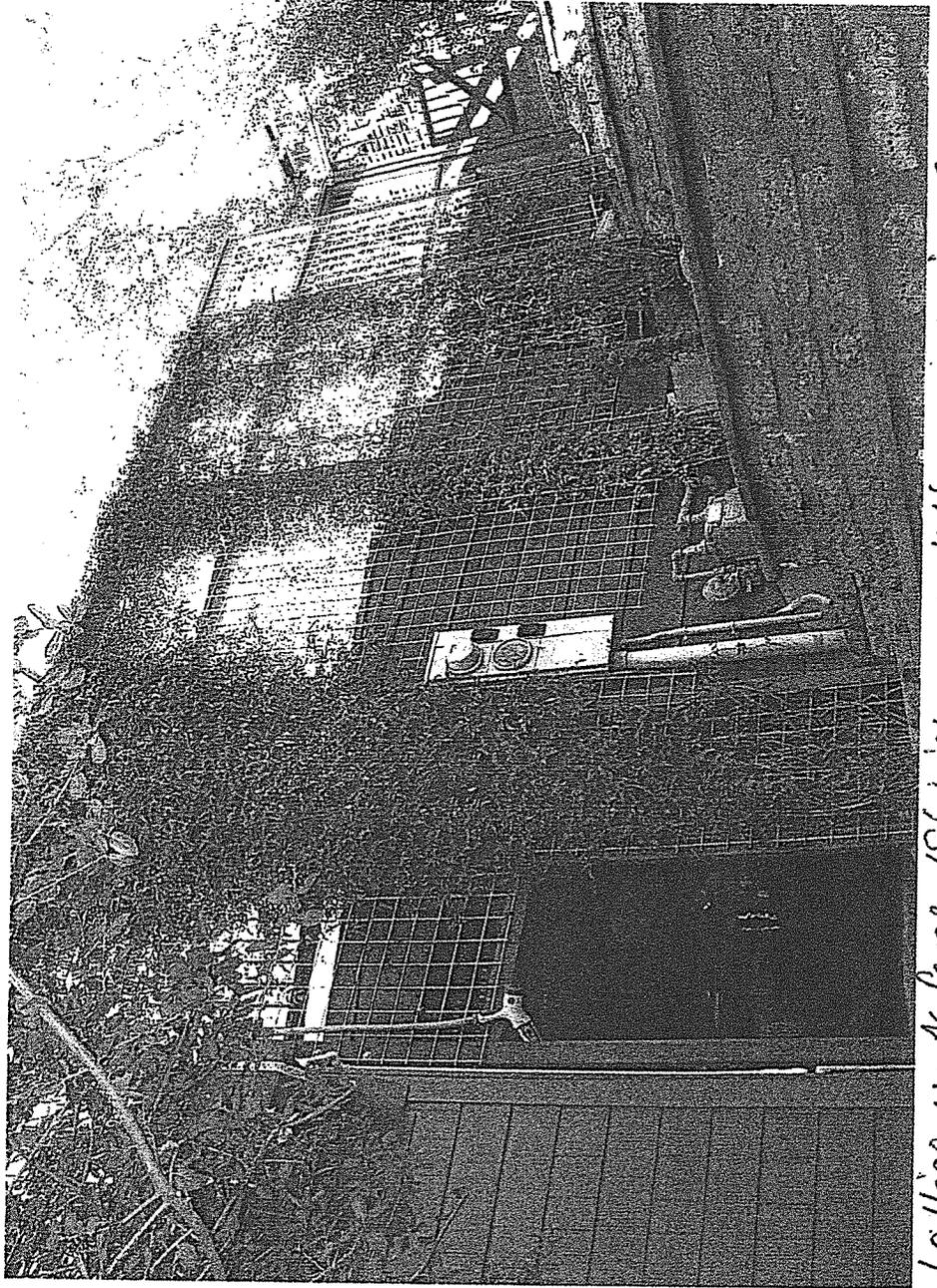
Yours sincerely,

John Owens

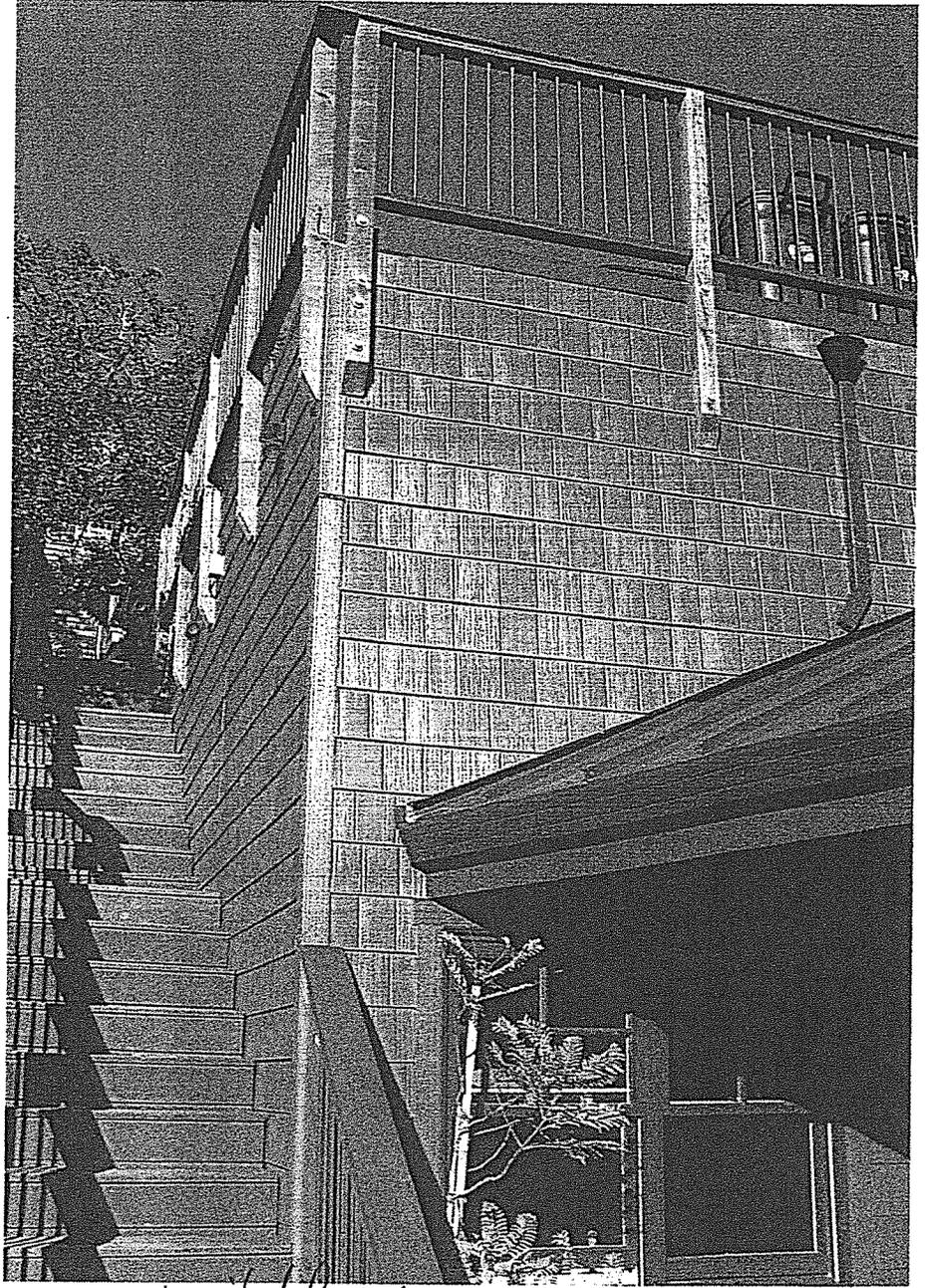
A handwritten signature in black ink, appearing to read "John Owens", written over a horizontal line. The signature is stylized and cursive.



~~Hand~~ Fence 20' high on existing retainer.



La Uñca 1 m de la 100 186 m. alt. 10.10.1960



- guardrail / fence on existing wall  
21' high - no variance



John Owens Diana Dullaghan  
177 Frustuck Avenue, Fairfax CA 94930  
Tel 456 8064 e mail [johnoph@aol.com](mailto:johnoph@aol.com)

February 1st 2009

Larry Kennings  
Planning Director  
Town of Fairfax  
142 Bolinas Road  
Fairfax Ca 94930

Re: re submittal of second unit application 177 Frustuck

Dear Larry,

This is in regards to the Planning Fees we have paid to date. I gave you a complete breakdown of my interpretation of the fees paid. I asked that if you viewed the situation differently to let me know. I received an e mail saying we owed \$602, another that the balance due was \$590, and a note to say you had negotiated a half fee of \$295. If the legal fees were \$1190, and you would like us to pay half. Then we would need to pay \$595 applied to our credit of \$500. This would determine that we owe the Town \$95.

If you disagree with my analysis of the fee schedule please provide me with a complete breakdown of how the Town computes the fees. If the fee schedule includes legal fees please include a copy of the Town Ordinance that pertains to such fees. In the past I have signed fee agreements to have the Town Engineer review our projects. I was also required to pay deposits for Town Engineer consultation time. I am not aware that I signed a fee agreement to retain the services of the Town Attorney. If I signed an agreement that I was responsible for legal fees last year please forward me a copy.

After reviewing your information and legal fees are in order I will have no problem paying the Town. An e mail stating that we calculated you owe us \$602 is not enough information for me to pay fees.

Yours sincerely,

John Owens



John Owens Diana Dullaghan  
177 Frustuck Avenue, Fairfax CA 94930  
Tel 456 8064 e mail [johnoph@aol.com](mailto:johnoph@aol.com)

February 9th 2009

Planning Commission

Re: re submittal of second unit application 177 Frustuck

Dear Commissioners,

We feel there is a need to clarify some of the history of 177 Frustuck, and document arguments to support approval of our second unit.

#### History

When our house was originally designed it had an attached garage. It was 100% compliant with the Town ordinances and required no variances. The living level of the house was positioned to give a view of Mount Tam over the tree tops. This created a 14 foot high void under the house. **When the house was designed in 2004 development of the space under the house would not have constituted developing a fourth story, and would not have required a height variance.** We always thought of developing an affordable rental unit. In 2005 during construction of the main house we installed all the utilities for a future unit, including separate gas and electric services.

#### Last year's application.

Our application of February 20<sup>th</sup> 2008 included a garage and a sustainably built second unit. We believed the complete application would go through quickly on the merits of producing affordable housing for the Town, and producing a much needed garage for us.

For the Record: The Town took the stance that our previously attached garage in the 2004 application had become detached over the four year period. We were for some unexplained reason placed in the incorrect HRD permit category, which incorrectly prompted design review, structural engineering, landscaping, lighting, story poles, civil engineering, and arborist reports. For this incorrect review we were over charged by approximately \$1700 ( which we just received credit for this month 2009). We were also given a list of approximately 16 corrections in the review of our plans. The permit categories were incorrect and so were the list of corrections and reports. Most of these requests were not required by Town Code.

After months of legal wrangling 11 of the requests disappeared because they were not required by the Town Code. We removed the second unit to concentrate on the garage because the Town was focusing on preventing the garage. The attached versus detached issue was eventually dropped because there was no code to support the Town's opinion. The Planning Department took the stance that the garage application should be turned down because it had been turned down before. The Town Attorney advised that this was a completely new application, and the Town should not take this adversarial approach. The end result was the application was denied by the Planning

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

#### Construction of retaining walls as the foundations to a patio.

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

#### The need for legal Second Units.

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

#### Variances for the Second Units

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

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

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

#### Town desire for Affordable Housing and Green Building.

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

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

#### Sustainability

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

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

Yours sincerely,

John Owens

Diana Dullaghan

#### Supporting Meeting Minutes John Owens Attended

Planning Commission Oct 20 2005

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

Town Council Meeting Minutes 9.19.07.

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

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

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

Excerpt from Town Council Meeting Minutes 10.17.07.

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

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

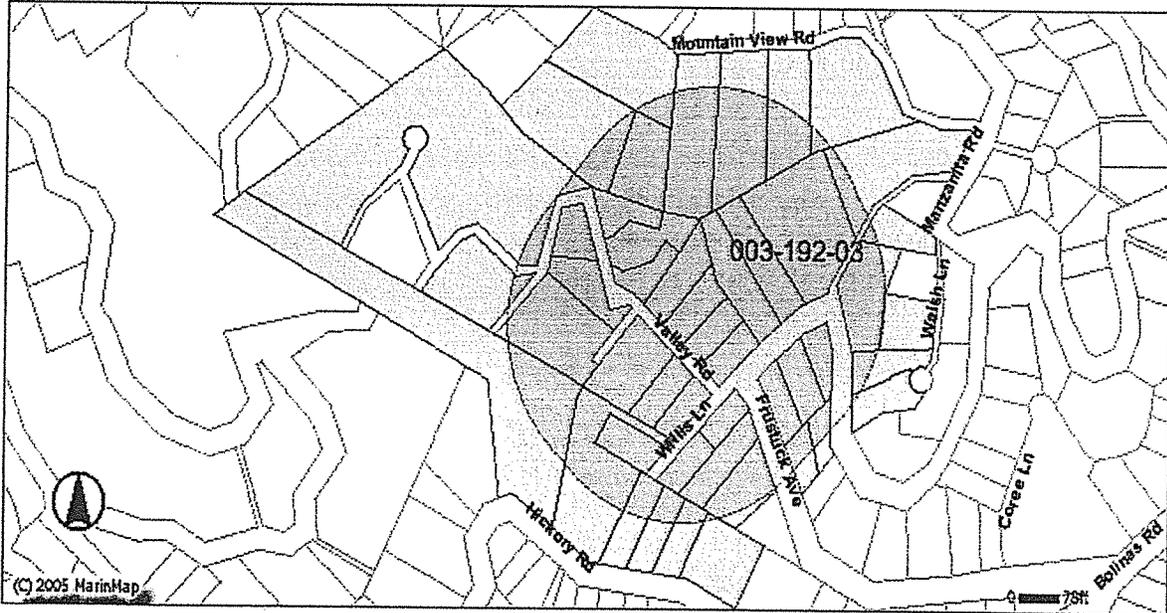
Council Meeting January 9th 2008

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

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

**TOWN OF FAIRFAX  
STAFF REPORT**  
**Department of Planning and Building Services**

**TO:** Planning Commission  
**DATE:** February 19, 2009  
**FROM:** Larry Kennings, Director of Planning and Building Services  
Linda Neal, Senior Planner  
**PROJECT:** Residential second unit and associated parking additions to a single-family residence  
**ACTION:** Residential Second Unit Use Permit, Height Variance, Setback Variance and Encroachment Permit; Application # 09-02  
**APPLICANTS:** John Owens and Diana Dullaghan  
**OWNERS:** Same  
**LOCATION:** 177 Frustuck Avenue; Assessor's Parcel No. 003-193-02  
**ZONING:** Residential Single-family RS 6 Zone  
**CEQA STATUS:** Categorically exempt, § 15301(e), 15303(a) and 15305(a) and (b).



**177 FRUSTUCK AVENUE**

## RECOMMENDATION

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to approve application # 09-02 based on the following findings and subject to the following conditions:

### Recommended Findings

1. The second unit is being constructed within the existing structure and will not change the residential character of the neighborhood which has another residential second unit two houses away at 189 Frustuck Avenue. Therefore, 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.
2. The application includes the provision of the minimum required number of parking spaces for a single-family residence and a second unit. Additionally, there are; a) no windows on the side of the unit immediately adjacent to the residence to the east at 175 Frustuck Avenue; b) there is only 1 window to an entryway area to the west adjacent to 183 Frustuck Avenue; c) the parking for the unit is located adjacent to the garage for 183 Frustuck Avenue and not to the neighbor's living space; d) the unit will not be visible to passersby on Frustuck Avenue because it is set well below the level of the roadway; and e) the unit and outdoor patio area will be located over 86ft from the neighboring residences on Frustuck and Hickory to south. Therefore, 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.
3. Approval of the use permit is not contrary to those objectives, goals or standards pertinent to the particular case and contained in the Zoning Ordinance and the adopted 2006 Fairfax Housing Element (see Housing Element Goals H3 and H8).
4. Approval of the use permit will result in an equal development of the premises because the unit will not project beyond the foundation line and siding that already exists for the single-family residence. Also, the construction will provide an affordable living unit which is in the public interest and for enhancement of the general health and welfare of the community.
5. The site is narrow and steep so the parking for the second unit has been located within the required side yard setback adjacent to the neighboring garage and the unit has been designed as a fourth story within the existing residence. The narrow width and steep slope are the special circumstances applicable to the property, that contribute to the strict

application of the setback requirements and height limitation depriving the applicant of the ability to provide an affordable unit in compliance with the Fairfax Housing Element and the California Government Code.

6. The only change to the exterior of the residence that will occur due to the construction of the second unit will be the installation of 4 windows, a second electrical meter and the installation of a 197.6sf patio that will be screened from view by 5 screening shrubs. Therefore, the variance or adjustment will not constitute a grant of special privilege, is consistent with the limitations upon other properties in the vicinity and under identical zone classification, and is consistent with the objectives of this title.
7. The strict application of Zoning Ordinance regulations would result in an unreasonable hardship for the owners by eliminating their ability to provide an affordable second living unit which has been determined to be desirable by both the Planning Commission and the Town Council as evidenced by their adoption of the Fairfax Housing Element.
8. The fourth story will be a separate second living unit and will not expand the living space of the main residence. The living space for the second unit will not extend beyond the limits of the existing residence walls, the windows have been minimized, the unit will not be visible from the upper portion of Frustuck Avenue and it will maintain over an 86ft setback from the residences below on Frustuck Avenue and Hickory Road. Therefore, the granting of the variance of adjustment will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated.
9. The proposed residential second unit complies with the following goals as stated in the 2006 Fairfax Housing Element:

Goal H 3: To create high quality, well designed and sustainable affordable housing.

Goal H 8: To create opportunities for the development of accessory dwelling units.

#### Recommended Conditions

1. The development is limited to the plans developed for the Owens-Dullaghan Residence, by dated January 16, 2009, pages A1.1 through A1.3, A2.0 through A2.3, A3.1 and A3.2 and P1
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 schedule (deliveries, worker hours, etc.)
    - Notification to area residents
  - b. The applicant shall submit a bond to the Town in an amount that will cover the cost of grading, weatherization and repair of possible roadway damage. The applicant shall submit

contractor's estimates for any grading, site weatherization and improvement plans for approval by the Building Official. Upon approval of the contract costs, the applicant shall submit a bond or letter of credit equaling 100% of the estimated construction costs.

c. The applicant shall secure written approval from the Ross Valley Fire Authority noting the development's conformance with their recommendations prior to submittal of the building permit plans.

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

a. The project 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. The structural engineer 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 prior to the concrete form inspection by the structural engineer. 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 shall be situated off the travel lane of the adjacent public right(s)-of-way at all times. This condition may be waived by the building official on a case by case basis with prior notification from the project sponsor.

d. 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. Excavation shall not occur between October 1st and April 15th. The Town Engineer has the authority to waive this condition depending upon the weather.

5. The roadways shall be kept clean and the site free of dust by watering down the site or sweeping the roadway daily, if necessary.

6. During construction the developer and all employees, contractors and subcontractors must comply with all requirements set forth in Ordinance #637 (Chapter 8.32 of the Town Code), "Urban Runoff Pollution Prevention".

7. Any changes, modifications, additions or alterations made to the approved set of plans will require a modification of Application # 08-16. Any construction based on job plans that have been altered without the benefit of an approved modification of Application # 08-16 will result in the job being immediately stopped and red tagged.

8. Any damages to the roadways accessing the site resulting from construction activities shall be the responsibility of the property owner.

9. 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, or employees to attach, set aside, void, or annul an approval of the Planning Commission, Town Council, Planning Director, Design Review Board or any other department 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 owner's duty to so defend, indemnify, and hold harmless shall be subject to the Town's 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.

10. If the property is sold the new owner(s) shall sign an affidavit indicating that they are going to live in one of the units prior to close of escrow. The affidavit shall be filed with the Town and recorded at the Marin County Recorders Office. If the new owners do not plan to live at the property, the kitchen in the second unit shall be removed, removal shall be verified by the Building Official and the new owners shall sign a deed restriction indicating the property is to be used as only a single-family residence.

11. The second unit shall comply with the design criteria set forth in Town Code § 17.020.040 and compliance shall be verified by the Planning Director as set forth in Town Code § 17.048.060.

12. Metering requirements. The main unit and the second unit shall be provided with separate meters.

13. Construction and Fire Code compliance.

- (A) All new construction (including structural modifications to existing facilities) shall conform to the requirements of the Uniform Building Code as currently adopted by the town. The site is in the Wildland Urban Interface area and is subject to the 2006 International Wildland Interface Code as adopted by the Town (Exhibit B – Ross Valley Fire Department memorandum dated 2/12/09).
- (B) Existing facilities shall conform to the requirements of the Uniform Housing Code to assure minimum health and safety standards for the occupants of the structures.
- (C) A central smoke/fire detection system shall be installed in each primary and approved second unit, of a type acceptable to the local fire and building officials. The system shall provide simultaneous warning to residents of both units of a fire in either unit. The installation of smoke/fire detectors in each unit is required at all times; however, this requirement for a common wiring of detectors between units may be waived by the local fire and building officials if the system is deemed unnecessary.

14. The Second Unit Use Permit shall be scheduled for a possible revocation hearing if at any time the Town receives complaints that any of the conditions are not being complied with or if

the owner refused to allow a prescheduled inspection of both the main residence and the second unit.

15. Should the Town ever widen and/or improve Frustuck Avenue such that the residential second unit parking is removed and it can not be provided elsewhere on the site, the second unit shall be removed.

16. Prior to issuance of the building permit for the project the applicant shall execute and record a "License Agreement to Permit Revocable Encroachment On Town Property".

17. The applicant shall comply with the requirements of the Ross Valley Fire Department as set forth in their letter dated February 12, 2009 including that they provide a vegetative management plan prior to issuance of the building permit, that they upgrade the fire hydrant at 177 Frustuck Avenue and that the existing fire sprinkler system be extended into the second unit (Exhibit B).

## 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 400sf storage room beneath it exist on the site. The residence was constructed in 2006. On November 19, 2008, the Town Council approved a garage cover on top of the existing parking deck. The garage has not been constructed yet.

The applicant is now proposing to construct a 560sf, one bedroom, residential second unit below the existing three story residence. The first story of the residence will house the garage once it is built, the first living level includes the living room, kitchen, dining room, half bath and a workroom while the third level includes three bedrooms and two bathrooms. The second unit will comprise the fourth level.

The proposed second unit complies with the current Residential Single-family RS 6 Zone regulations as follows:

|                     | Front Setback | Rear Setback | Combined Front/rear Setback | Side Setbacks | Combined Side Setbacks | FAR | Lot Coverage | Height          |
|---------------------|---------------|--------------|-----------------------------|---------------|------------------------|-----|--------------|-----------------|
| Required/ Permitted | 6ft           | 12ft         | 35ft                        | 5ft & 5ft     | 20ft                   | .40 | .35          | 35ft            |
| Existing            | 6ft           | 57ft         | 63ft                        | 5ft & 17ft    | 22ft                   | .27 | .34          | 35ft, 3 stories |
| Proposed            | 6ft           | 52ft         | 58ft                        | 5ft & 17ft    | 22ft                   | .16 | .18          | 35ft, 4 stories |

In order to approve the residential second unit the Planning Commission will need to approve the

following discretionary permits:

- A residential second unit use permit: Section 17.048.180 of the Second Unit Amnesty Ordinance indicates that second unit amnesty permits can be approved by the Planning Director provided the project does not require any exceptions to the Zoning Ordinance (Exhibit C). This project requires exceptions to the zoning regulations and therefore, requires the review and approval of the Planning Commission.
- A height variance: Town Code § 17.080.060(A) limits the height of residences on down-sloping lots to 35ft and only three stories. The proposed residence and unit will result in a four-story structure but it will not exceed the 35ft maximum height limitation.
- A side setback variance: The 9ft x 19ft parking space for the second unit is proposed within the required 5ft side yard setback. Town Code § 17.052.010(B) prohibits the location of parking in a side yard setback.
- An encroachment permit: Most of the parking space for the second unit will be located within the public right-of-way. Although the Residential Second Unit Ordinance requires that the parking for a second unit be located on private property [Town Code 17.048.040(D)], Town Code § 12.32.030 allows the Planning Commission to approve private improvements in portions of the public right-of-way not being used by the public.

The recommended findings which include the facts particular to this case to support the findings are contained above in the "Recommendation" section of the report and in the attached Resolution No. 09-02.

## **VEGETATION**

The project is located within a portion of the existing residence and the patio will extend into an area of the property with no trees. Therefore, the construction will not require the removal of any trees that are subject to the tree removal process. The applicant is proposing to plant 5 shrubs at the rear of the patio to screen it from the view of the neighbors and to provide the resident of the second unit with some private outdoor living space.

## **EXCAVATION**

Construction of the unit will only require the excavation of 6 cubic yards of material and therefore will not require the approval of an excavation permit from the Planning Commission (Town Code § 12.20.080).

## **PARKING**

Town Code § 17.052.030(A) indicates that three 9ft x 19ft parking spaces are required for a

single-family residence. The Residential Second Unit Ordinance requires an additional one 9ft x 19ft parking space for a second unit [17.048.040(D)].

The proposed project provides two spaces for the main residence in the garage, a third guest space for the main residence in the driveway and a fourth space for the second unit adjacent to the existing driveway in the side yard setback. Therefore, the proposal complies with the parking requirements for a residence with a residential second unit.

## SECOND UNIT REGULATIONS

The unit complies with the rest of the second unit requirements as follows (staff's recommended findings follow the Town Code requirements in bold and italicized print):

(A) *Owner occupancy.* Either the primary residence or the second unit shall be owner-occupied. The occupancy shall be verified by the submission to the Director of an affidavit of occupancy signed by the property owner prior to issuance of the permit for a residential second unit. The affidavit shall be provided by the town. The affidavit shall be renewable every three years or upon the sale of the property, whichever occurs first, and shall require a re-inspection of the second unit by town staff to verify continued conformance with the development standards. A nominal fee shall be imposed for the affidavit renewal and inspection, as set by resolution of the Town Council. *The owner currently resides in the residence and will have to comply with this requirement to assure the continued legalization of the unit.*

(B) *Unit type.* Second units shall be limited to those contained within the existing single-family residential structure, additions thereto, or detached structures on sites developed with a single family residence. *The unit is attached to the main residence.*

(C) *Maximum number.* Only one residential accessory unit is allowed for a single-family residence developed on a legal and conforming building site, as determined by the town. Accessory units are not allowed in conjunction with duplex or multiple residential developments. *After construction only one residential accessory unit will exist on the property.*

(D) *Design standards.* Any modifications to the exterior of the building, or construction of new structures, shall be strictly in keeping with the architectural character of the principal residence, and shall maintain the scale and character of the existing residence within the neighborhood in which the second unit is situated. *The unit is located below the existing residence and the entrance will be from the side. Therefore, the unit will not be visible from the street and the residence will still appear to be a single-family residence.*

(E) *Utilities.* Adequate utility service shall be available for sewer, water, telephone, gas and electricity. *Marin Municipal Water District and the Ross Valley Sanitary District have indicated that they can provide service to the proposed unit (Exhibit B – Memorandums dated 3/4/08 and 3/3/08)*

(F) *Separate entry and facilities.* The unit shall contain a separate entry, kitchen and bathroom. *The proposed unit contains a separate entry, kitchen and bathroom.*

(G) *Negative impacts.* The second unit shall not cause excessive noise, traffic/parking congestion or overloading of public facilities, nor change the character of the neighborhood. *The unit is limited in size, the owner will live on the property, the driveway and garage provide parking for 4 vehicles and the unit has been designed with a minimum number of windows and a screened outdoor area. Therefore, the second unit is not expected to cause excessive noise, traffic/ parking congestion, or overloading of public facilities, nor change the character of the neighborhood.*

(H) *Minimum site size.* The project site shall meet the minimum size and width requirements, based on the slope of the property, that are set forth for the residential zoning district in which the property is located. *The applicant has applied for a Use Permit for the unit which is the requirement for a property with less than the minimum size and width as indicated in the Second Unit Ordinance, Town Code § 17.048.100(A).*

(I) *Required inspection.* The property owner(s) shall provide written consent to a physical inspection of the premises as part of the application requirements. *By signing the application the owner provides written consent to inspect the property. Ongoing inspections of the site during construction and approval of the Use Permit allows staff to inspect the site if there are any complaints that the conditions of approval are not being complied with. If the Town receives complaints that the unit and/or owners and tenants are not complying with the conditions of approval or are creating problems for the neighborhood, the Town may schedule hearings to address the neighbors concerns.*

#### NEIGHBORHOOD COMMENT

At the time of the writing of this report the staff had received no negative neighborhood comments on this project.

#### ATTACHMENTS

- Exhibit A – applicants letter dated 2/9/09 and other supplemental information
- Exhibit B – Memorandums from the Ross Valley Fire Department, Marin Municipal Water District and the Ross Valley Fire Department
- Exhibit C – Ordinance 737, An Ordinance of the Town of Fairfax Creating a Second Unit Amnesty Program



# 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 FEBRUARY 19, 2009  
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. 123 Bolinas Road; Application # 09-01**

Request for a parking variance to locate a restaurant in an existing commercial space previously occupied by a retail use; Assessor's Parcel No. 002-104-08; Central Commercial CC Zone; Jennie Arconti, owner; Fra Kepler, applicant; CEQA categorically exempt, § 15301(a).

**2. 177 Frustuck Avenue; Application # 09-02**

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

**3. Tree Ordinance**

Adoption of Resolution No. 09-01 recommending the Town Council adopt a draft Ordinance regulating the removal of trees within the Town of Fairfax.

## DISCUSSION ITEMS

4. Preliminary discussion on the Circulation Element.

## APPROVAL OF MINUTES

5. Review of the minutes from the meeting of January 15, 2009.

## COMMISSION COMMENTS AND REQUESTS

## ADJOURNMENT

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**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.

FOR John Owens

**DRAFT** Town of Fairfax Planning Commission minutes  
Fairfax Women's Club  
Thursday, February 19, 2009

Call to Order/Roll Call:

**COMMISSIONERS PRESENT:** Peter Lacques (Chair)  
Terry Goyan  
Peter Ramsay  
Pam Meigs  
Brannon Ketcham  
Shelby LaMotte

**COMMISSIONERS ABSENT:** Shelley Hamilton

**STAFF PRESENT:** Larry Kennings, Interim Planning Director  
Linda Neal, Senior Planner  
Joanne O'Hehir, Minutes-Secretary

Chair Lacques called the meeting to order at 7.30pm.

Approval of the Agenda

M/S, Ketcham/Goyan, Motion to approve the agenda with a brief discussion on the item concerning the draft tree ordinance, with the main discussion to be continued to a meeting when the Assistant Town Attorney would be available to discuss the substantial changes that have been made to the draft ordinance.

AYES: All

Public Comments on Non-Agenda Items

No members of the public came forward to speak.

Public Hearing Items

123 Bolinas Road; Application # 09-011 - Request for a parking variance to locate a restaurant in an existing commercial space previously occupied by a retail use; Assessor's Parcel No. 002-104-08; Central Commercial CC Zone; Jennie Arconti, owner; Fra Kepler, applicant; CEQA categorically exempt, § 15301(a).

Senior Planner Neal presented the staff report. She noted that there would be no more than two or three employees on site and that the business hoped to attract cyclists. Senior Planner Neal noted that a restaurant is a permitted use on this site, thus no discussion would take place on permitted uses. However, parking would be an issue because if the restaurant were to comply with the current parking ordinance, sixteen spaces would be necessary, which would not be possible to provide.

John Malloy, Sorella Café, stated that he was thrilled that a restaurant would be opening next door. Mr. Malloy and Senior Planner Neal discussed parking requirements.

Commissioner Goyan stated that he was delighted that a business would be moving in to the property and that there appeared to be adequate parking.

Commissioner Meigs was in agreement with Commissioner Goyan.

Commissioner Ketcham noted any commercial business would be unlikely to meet the parking requirements for the site, and that bicyclists would be encouraged. He supported the project with the findings made in the staff report.

Commissioner LaMotte stated that activity had been needed in that space, and noted that people could walk there from nearby parks. She would encourage stroller parking, in addition to bike racks and stated that she supported the project.

Commissioner Ramsay noted that he was a cyclist and a vegetarian and that he supported the project.

Chair Lacques noted that the previous use had not appeared to impact parking, and traffic impact should be insignificant. He supported the project.

M/S, La Motte/Meigs, Motion to approve Application # 09-01 for a request for a parking variance to locate a restaurant in an existing commercial space previously occupied by a retail use at 123 Bolinas Road.

AYES: All

The Chair read the appeal rights.

177 Frustuck Avenue; Application # 09-02, Request for a setback variance, a height variance and a second unit use permit in order to construct a second unit underneath an existing single-family residence and to construct parking for the second unit within the required side yard setback; Assessor's Parcel No. 003-193-02; Residential Single-family RS 6 Zone; John Owens and Diana Dullaghan, owners; John Owens, applicant; CEQA categorically exempt, § 5301(e), 15303(a) and 15305(a) and (b).

Senior Planner Neal presented the staff report. She noted that living space would be provided within the interior of the house, and that the deck and patio were the only additional outside spaces. Senior Planner Neal discussed the reasons why staff had been able to support a side setback variance and height variance for the fourth story second unit construction; that the main reason was that affordable housing would be constructed.

Senior Planner Neal noted that the application complied with the Second Unit Ordinance, which included the need for the owner to remain in one of the residences.

Mr. Owns discussed the deck and he noted that a fourth story variance would not have been required had the first floor been a garage, rather than living space. He also explained the reasons the projects had been split and that the construction of second units, in general, seemed to require variances.

Commissioner Ketchem noted that a second unit application with a requested height variance had not been presented previously to the Commission, and that side yard variances had been granted in the past because lots were often very small.

Commissioner Ketcham and Mr. Owens discussed the parking variance.

Chair Lacques and Senior Planner Neal discussed the noticing process and the encroachment variance, which Senior Planner Neal said was necessary in order to allow for construction of the second unit.

In response to Commissioner Ramsay, Senior Planner Neal stated that the original house and garage had not required variances.

Chair Lacques opened the meeting to the public.

Bill Miles, Frustruck Avenue, stated that he supported the project.

Chair Lacques closed the meeting to the public.

In response to Commissioner Goyan, Senior Planner Neal stated that the patio and path, which were about 320 sq ft, would be the only impervious surfaces being added.

Commissioner Meigs stated that she supported affordable housing but, however, this project would not be in keeping with the character of the town and would set a precedent for other four-story projects. Furthermore, it was unusual that the owner had not needed a permit to drill piers. Commissioner Meigs did not support the project.

In response to Commissioner Goyan, Senior Planner Neal stated that a similar project was unlikely to be presented because this property was on a particularly steep hillside which could accommodate a second unit, but staff would not the opportunity to inspect every possible site.

Commissioner Ketcham noted that a single project would not solve the issue of lack of affordable housing; that the Town Council had made a decision not to allow fourth stories and that this property would consist of four stories, as defined by the Code. Furthermore, Commissioner Ketcham stated that the Code did not stipulate that a second unit would be entitled to a height variance. Commissioner Ketcham further stated that more applications for four-story developments could be forthcoming if this project were approved. He did not support the project.

M/S, Ketcham-Meigs, motion to deny application 09-02 based on the following findings:

1. The project does not comply with the three story height limit, set forth in Town Code § 17.080.060A.
2. The definition of a second unit either under the Town Code second unit ordinance or the second unit amnesty ordinance does not suggest or convey waiver of the second unit requirements. If the intent of the amnesty program was to waive zoning regulations such as height and setbacks it should have included language to that effect and it does not.
3. There are a very large number of downslope properties that could make similar application for four story structures that could in the short term or long term change the overall character of Fairfax.
4. Denial of the application does not deny the owners substantial use of their property.
5. This decision does not change the discretionary permits issued in the past for the development of this property, including the approval of the garage.
6. The granting of a fourth story to this property would be a grant of special privilege to this site that would not be feasible to grant to property owners of up-sloping sites.
7. Denial of this application is not a hardship for the applicant. Hardship was not identified as a need in the application.
8. This denial in no way reduces the importance, value or need for affordable housing within the Town of Fairfax as long as it is provided in a manner that complies with the Town Code and will not change the character of the Town.

Chair Lacques offered the following friendly amendment to the motion: That the piecemeal nature of this application is such that if the project was originally proposed as it is now submitted with a covered garage, 4 stories, a second unit and with the given the square footage of the house, it would not have been approved because it is out of proportion with the project site and requires far too many variances.

Mr. Owens indicated that he and his wife have to leave to pick up their daughter and asked that the Commission make a decision. Then the applicants left the meeting at 10PM.

Commissioner Ketcham rejected the friendly amendment indicating that the original residence did not require any variances only a Hill Area Residential Development permit and an encroachment permit.

The following was added as additional finding number 9: the application as presented requires multiple variances besides the height variance, a variance for the compact

Commissioner LaMotte said that they removed redundant parts and reorganized some of the sections. However, they tried to preserve the intentions of GPAC.

It was agreed that the Board Members would review the changes and that the draft Town Center Element had been copied for their perusal.

General discussion took place on the changes made by the sub-committee and Commissioner LaMotte noted that they added language on traffic lights, trails and easements.

Commissioner Goyan suggested that the draft Circulation Element should include language on the necessity of bike riders observing stop signs.

In response to Commissioner Goyan, Interim Planning Director Kennings suggested that storm drainage could be part of the draft Circulation Element, although it was included in the draft Safety Element.

Planning Director Kennings and Commissioner Goyan discussed the circulation of creeks, and Planning Director Kennings noted that the Open Space Committee would be discussing their aesthetic values.

Consensus was reached that the Commissioners would study the changes to the draft Circulation Element and the draft Town Center Element.

The Chair thanked the members of the sub-committee for their work on the draft Circulation Element.

#### Approval of the Minutes from January 15, 2009

M/S, Ketcham/Ramsey, Motion to approve the minutes of January 15, 2009.

AYES: All

#### Commission Comments and Requests

Commissioner Ketcham stated that definitions of sustainability and affordable housing were needed in order to support applications. A brief discussion followed.

Interim Planning Director Kennings stated that the County had an evaluation sheet for sustainability.

In response to Commissioner Ketcham, Senior Planner Neal stated that staff was unable to requisition an attorney for meetings.

#### Adjournment

Motion to deny Application at Planning Commission February 19th 2009

Ketchum;

I would like to make a motion to deny the application 09 02, and deny it based upon the following grounds. The project does not comply with the three story height limit of the Town of Fairfax 17.08.06A. That the definition of a second unit under the Town Code or Second Unit Amnesty does not suggest or convey a waiver of those requirements. If it was that important it should have been suggested in those second unit descriptions. That there are a very large number of downslope properties; that could make similar applications; in the long term and the short term change the overall character of Fairfax. The denial of the variance does not deny the owners substantial use of their property. All decisions made in the past including the garage, no change occurs to those programs; And I think in this case the granting of a fourth story would grant special privilege to this property, and in the long term deny similar privileges to properties that are upslope rather than downslope; and finally the denial of this application is not a hardship or demonstrated as a need for the applicant; and furthermore the denial of this application in no way diminishes the importance of the need for affordable housing in the Town of Fairfax, as long as it's done in a manner that meets Town Codes.

Laques;

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

Ketchum:

Mumbling – no variances being required for the original project

Laques;

The point I am making is this current application and the garage were part of a unified application for a project, incorporating the garage and the second unit would have required too many variances.

Ketchum, Laques, Goyan – inaudible

Laques;

My friendly amendment is made, you have the opportunity to amend your original motion.

Ketchum;

Additional finding is that the application as presented requires multiple variances; not just the height variance, but also the side yard setback variance, and an encroachment.

Motion Ketchum, Second Meigs, roll call vote.

Transcribed from Audio Tape.