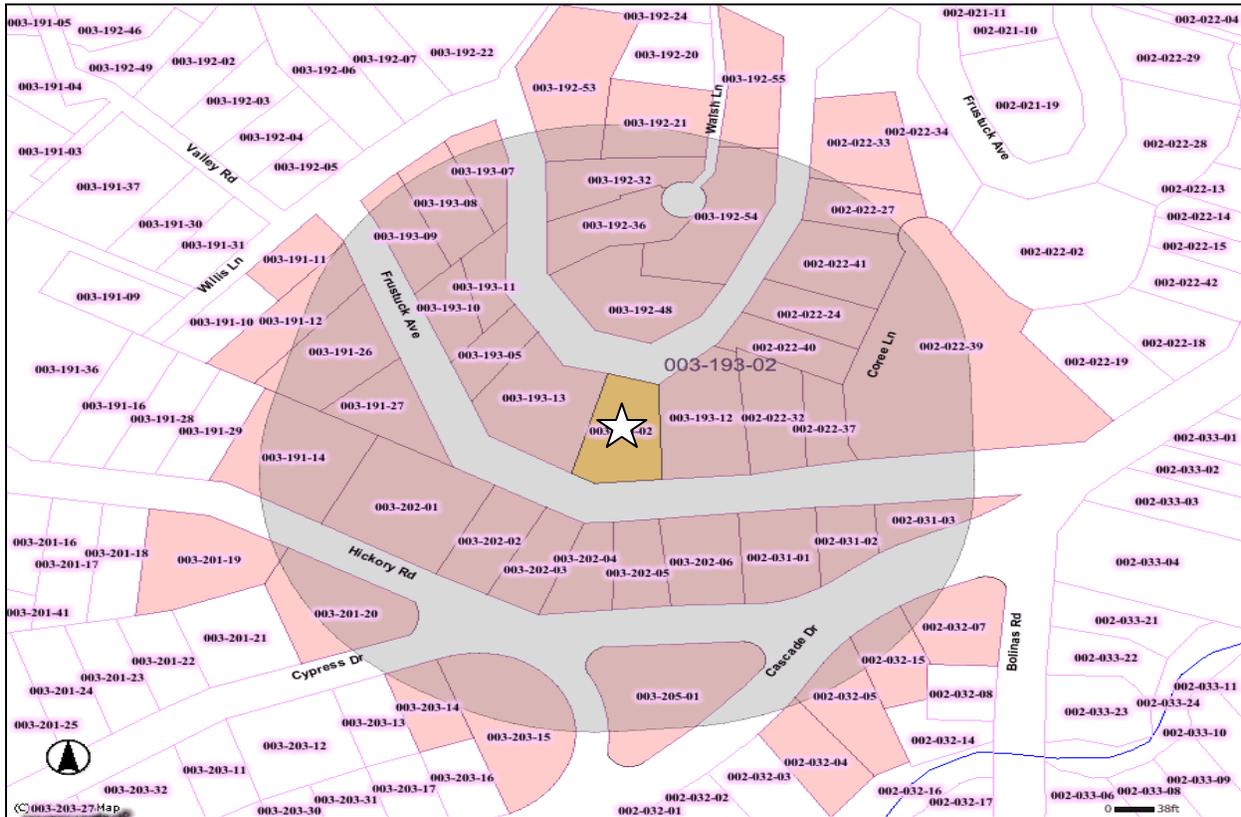


TOWN OF FAIRFAX STAFF REPORT

Department of Planning and Building Services

TO: Planning Commission
DATE: September 21, 2013
FROM: Jim Moore, 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 # 13-31
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

BACKGROUND

The 2,093 square foot, three (3) bedroom, two (2) bath residence was approved by the Town Council on appeal in 2004 subject to the residence having an uncovered parking deck. The 2,093 square foot residence and an uncovered parking deck with storage underneath and connected to the house, with a partially enclosed entryway, was completed in 2006.

The applicant applied for a Use Permit to construct a garage on the parking deck in 2008 that was denied by the Planning Commission. The Town Council approved construction of the garage on appeal on November 16, 2008.

The applicant applied for a Residential Second Unit Use Permit in 2009 along with the following additional discretionary permits; a Height Variance to have a fourth story second unit underneath the three story residence, a Parking Variance and Encroachment Permit to have the required second unit parking located within the side yard setback and partially within the public right-of-way.

The request was denied by the Planning Commission on February 19, 2009 and the denial was upheld on appeal by the Town Council on August 5, 2009 by the adoption of Resolution No. 09-56 (**Exhibit B** – Resolution No. 09-56 and minutes from the July 1, 2009 Town Council meeting and the February 19, 2009 Commission meeting). Please note that at the appeal hearing before the Town Council on February 19, 2009 the applicant/appellant was offered the opportunity to not construct the garage that had been previously approved, thereby reducing the number of existing stories to two, and likewise thereby - the proposed second unit would only be a third story – and comply with the Town Code. The appellant turned down this offer, and construction of a garage on the parking deck was completed in 2012; comprising three stories.

Staff had previously scheduled this new submittal for the August 15, 2013 Commission meeting but the applicant requested that the matter be removed from the agenda in the attached letter dated August 13, 2013 (Exhibit C). In the same letter and subsequent letters also included in the packet the owner alleges that there are inaccuracies in the staff report. He asserts that the parking for the second unit is being provided in the garage and does not require an encroachment permit.

When the house was originally approved, it was clear that the parking for the residence was being provided in the garage, on private property, as required by the Town Code. All the spaces in the driveway are mostly located within the public right-of-way and would not have met the Code requirements for parking for a new single-family residence.

Since the removal of the project from the August agenda the applicant has repeatedly indicated that the staff report is full of errors and most recently made the assertion that the Town has violated the permit streamlining act and must issue him a building permit for the fourth story second unit (Binder 2, dividers 17, 18, 23 and 24). The Town Attorney has reviewed all of the applicant's letters and other information and does not agree. The confidential attorney memorandum has been provided to the Commissioners electronically.

For a further discussion of the project see the staff report below and the attachments. The applicant has provided 1 copy of a thorough history of the property and other supplemental information in two binders (Binder 1, dividers 1 through 28 and Binder 2, dividers 1 through 25). The one hard copy of the binders is available at Town Hall and has been sent electronically to the Commissioners.

DISCUSSION

A 2,093sf single-family residence and a 400sf garage with a 400sf storage room beneath it exist on the site comprising three (3) floors.

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.

The applicant has re-submitted a Residential Second Unit Use Permit application for the same 560sf, one bedroom, and residential second unit below the existing three story residence. The first story of the residence is the garage; the first living level below the garage includes the living room, kitchen, dining room, half bath and a workroom while the third lower level includes three bedrooms and two bathrooms. The second unit would comprise a fourth level. The parking for the unit is proposed within the side yard setback and within the public right-of-way.

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.

Vegetation

The project would be located within a portion of the existing residence's envelope and the patio would extend into an area of the property with no trees. Therefore, the construction would 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 would only require the excavation of 6 cubic yards of material and therefore would 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 is located partially in the driveway on private property and partially in the public easement on the driveway approach. The fourth space for the second unit is proposed adjacent to the existing driveway in the side yard setback and almost entirely within the public road easement. Therefore, the proposal, if approved, would create a precedent of allowing second unit parking in an easement meant for the use of the general public.

Second Unit Regulations

The unit complies with the rest of the second unit requirements as follows:

(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 second unit has the potential to create a precedent for four story structures in the hillside area and to allow use of the public roadway easement for private second unit parking.***

(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.

Precedent Setting Policy Issues

After the original adoption of the Residential Second Unit Ordinance in 1987 the building and planning staff found themselves spending a lot of time reviewing, trying to figure out where property lines were, and rejecting marginal second unit application where the parking was located off site in the right-of-way, wedged between trees, along neighboring property frontages, etc. As a result of this the Council amended the Ordinance in 2004 to require that a property survey be provided and all the parking for the main unit and the second unit be located on the private property project site.

Please Note: It is true, that with the adoption of the 2010 – 2030 Fairfax General Plan, the Town documented that it wants to encourage residential second units in appropriate locations and at the appropriate scales that would/will contribute to meeting the Town’s affordable housing needs. This does not by necessity mean allowing fourth floors in this Zone.

While staff previously recommended approval of this second unit and the required discretionary exceptions in 2009, the Planning Commission and Town Council did not agree and the application was denied. Staff now acknowledges that the approval of the project as designed would set a “unwelcomed” precedent for the approval of the following:

- Exceptions to the limit on the number of stories (e.g., allowing four stories) for residential structures.
- Exceptions to allowing second unit parking in the side yard setbacks.
- Exceptions to the code section that requires the main unit parking and the second unit parking to be on-site.

While the current potential for the Town to ever need to use the unused portion of the roadway easement at 177 Frustuck Avenue is small, there is no determining technological strides that may be made in construction techniques, transportation innovation and/or other potential public uses for the public easement. Therefore, allowing a private property owner to capture portions of the public easement for private use for a second unit does set a precedent that needs to be carefully considered by the Commission.

In addition, there are many down-sloping properties in Town that have unused understory areas that could be converted to living space for additional residential second units should this project be approved and a fourth floor precedent be set by approving this project. At their February 19, 2009 meeting where the same project was reviewed and denied the Commission determined that allowing four (4) story residential structures would change the character of Fairfax.

Should the Planning Commission and the Town Council decide in the future to permit fourth floors in this Zone, the proper place for that change to occur is in the Town Code – applicable to all properties: after a thorough public hearing on amending the Town Code.

Other Agency/Department Comments/Conditions

Ross Valley Fire

A fire sprinkler system shall be installed throughout the entire building which complies with the requirements of the National Fire Protection Association 13-D and local standards.

An effective fire break shall be maintained around the structure in compliance with Ross Valley Fire Protection Standard 220, Vegetative/Fuels Management Plan.

Smoke detectors and carbon monoxide alarms shall be provided.

Address numbers at least 4 inches tall must be in place adjacent to the front door. If not clearly visible from the street, additional numbers are required. Residential numbers must be internally illuminated.

Marin Municipal Water District

Submittal of a Standard Water Service Application and payment of a second connection fee is required.

Installation of a separate meter for the second unit is optional.

Ross Valley Sanitary District

A connection permit is required. The size of the sewer lateral will depend on the fixture count calculated during the permitting process. If the existing lateral meets the size requirement for the fixture count, the applicant has the option of installing a new lateral or demonstrating to a District Inspector that the existing lateral is adequate and meets current district requirements.

RECOMMENDATION

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to deny application # 13-31 by adopting Resolution No. 13-9, including the findings contained therein: or move to approve the application after considering the policy setting precedents described above and direct staff to prepare a resolution of approval with findings reflecting the Commissions direction to staff.

ATTACHMENTS

Binders 1 and 2 (Binder 1, dividers 1 through 28 and Binder 2, dividers 1 through 25) provided electronically to the Commission. The one paper copy provided by the applicant to the Town is available at Town Hall

Exhibit A – Resolution No. 13-9

Exhibit B - letter dated 8/13/13 requesting continuance

Exhibit C – Resolution No 09-56 and minutes from the 7/1/09 Council meeting and 2/19/09 Commission meeting

Exhibit D – Memorandums from the Ross Valley Fire Department, Marin Municipal Water District and the Ross Valley Sanitary District

Exhibit E – Anonymous letter in opposition of the requested second unit dated 8/15/13