

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

TOWN OF FAIRFAX

AUG 29 2013

RECEIVED

August 22, 2013

Hand Delivery

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

Re: 177 Frustuck Avenue affordable second unit application
Inaccuracies and false statements made in the Town of Fairfax
Staff report for the August 15, 2013 Planning Commission

Dear Mr. Moore and Ms. Neal:

I have reviewed the previous Staff Reports that recommended approval of our second unit at the 2.19.2009 Planning Commission Meeting, the 5.6.2009 Council Meeting, and the 7.1.2009 Council Meeting. In the previous Staff Reports the parking was not questioned, and the items/issues stated below were not in the original Staff Reports.

Quote from Resolution to deny second unit application adopted on 8.5.2009:

Specifically Code Sections 17.048040.D:

" 4. The construction of a Residential Second Unit on this property would cause excessive or unreasonable detriment to the adjoining properties because the parking for the unit would be located almost entirely within the public right of way. The future use of the right of way for public improvements would eliminate the required parking for the unit and for the guest parking space for the main residence and render the site non – conforming with regard to the parking requirements"

I noted in my letter dated 8.28.2009, that this statement was not true. In the Planning Commission motion to deny item 9 was not as stated above. There was never a mention of detriment to the neighborhood, and on the contrary Ms Neal said 'You know, chances of us widening the road, its doubtful that the city is ever going to be able to afford to be widening any of our roads unless technology changes drastically.'

Note : The motion to deny our second unit at the Council Meeting on 8.5.2009 was taken off the Consent Calendar by Council Member Susan Branbourg, and she made clear comments that the statements in the resolution to deny were not correct. Coincidentally her comments were not included in the minutes of the Council Meeting. The comments are on the audio tape. That was also the reason for my letter of 8.28.2009 to have it on the record that many of the reasons for denial were not evidenced by the audio tapes or the minutes.

If my above statements are incorrect please let me know. If they are not correct please direct me to where it is evidenced to the contrary.

The parking information analyzed in the August 15th Staff Report below is incorrect, and includes false statements that have no supporting evidence. That was my main reason for removing the item from the Planning Commission agenda of 8.15.2013. A Staff report with inaccuracies and untrue statements would have been detrimental to our application, and the Town of Fairfax.

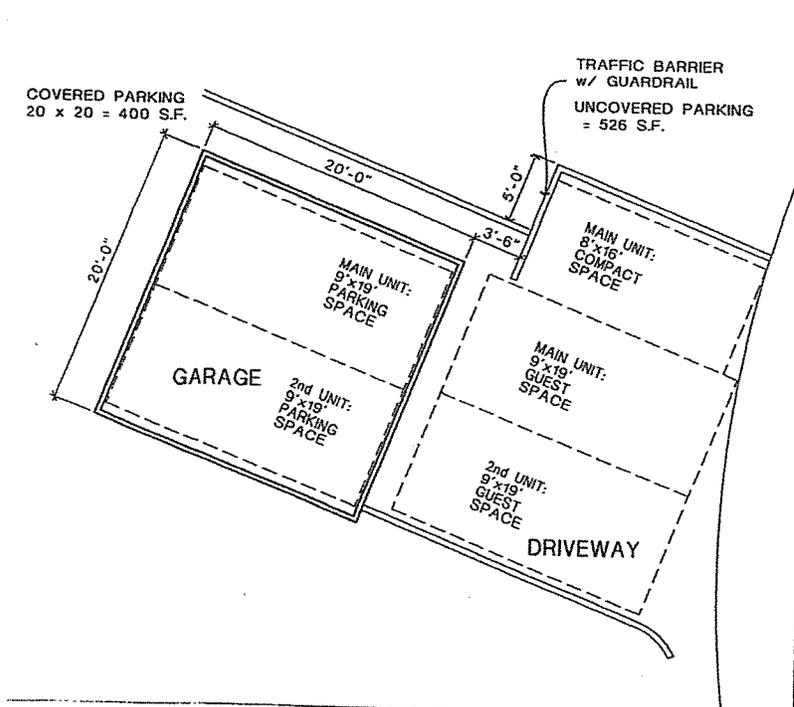
Parking

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.

(Town Staff Report, 8.15.13)

1. The plans were either not reviewed correctly, or referred to a parking layout that does not exist. There is a parking plan at the top of sheet A1.3. I was fully aware of the Town Parking Ordinances and chose the parking layout carefully (the very same layout as recommended by Ms. Neal in 2009).



The second unit 9' x 19' required space is in the Garage. The report needs to note the second unit has a second 9' x 19' guest space which is twice the required off street parking for a second unit. The main house is required to have three off street parking spaces, two of which must be 9' x 19' the third space can be a compact 8' x 16' space. The space in the side yard setback is the third space for the house, and should be noted so. Therefore the required second unit parking is on the property.

2. There will be no precedent set for allowing second unit parking in an easement for the use of the general public. This statement simply does not apply to our application, and should be removed.

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 does set a precedent that needs to be carefully considered by the Commission.

(Town Staff Report, 8.15.13)

3. The above statement is absolutely untrue. Our property was approved in 2004 with two approved parking spaces in the Town right of way. The Deals property at 183 Frustuck was approved in 2009, and has two approved parking spaces in the Town right of way (easement). Below are copies of the driveway areas from approved plans for both residences (both properties have full surveys - these lines are accurate).

4. Take a look at what space we would be using for the fifth parking spot. The driveway was already approved the full width of the lot concreted and fenced. That was at the request of the Town Engineer to prevent the public from falling into a 12 foot deep abyss. We already had an encroachment permit for our driveway, and the public has had no access to that easement since we built in 2005. The space is trapped between our elevated driveway, and the fire engine turn out next door. There is no other practical use for this five foot wide air space now or in the future.



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.

(Town Staff Report 8.15.13)

5. Note that the Deal property was approved in 2009 with two parking spaces in the Town right of way. It is a fallacy that after 2004 all parking had to be on private property. This statement infers that new homes are not allowed to be built with parking in the Town right of way. It also infers that Hillside homes (50% of Fairfax housing stock) cannot have second units because their existing approved parking was approved in the Town right of way, and that after 2004 no parking would be approved in the Town right of way for homes or second units. Parking has and still is being approved in the Town right of way. 205 Scenic has a three car parking deck in the Town right of way and it was built in 2004 – 2005.

I think it would be pointless to review every parking space in the Town of Fairfax to prove my point that parking does and will exist in the Town right of way.

I reviewed the Staff Report dated February 19th 2009, for the Planning Commission (for our previous second unit application). I read the written minutes of the meeting and listened to the audio tape of the meeting. I have included the brief enquiry about parking from Commissioner Ketchum at the 2.19.2009 Planning Commission meeting. There was no discussion of a precedent. Staff recommended approval of the unit. Only Commissioner Ketchum asked two questions, and no evidence to the contrary of the Staff Report was presented at the meeting. There were no parking enquiries at either of the 2009 Council meetings. If this is incorrect please let me know.

6. All the above statements regarding parking precedents are pure fabrication and intended to derail our current application. We want them removed from the Staff report. The parking was recommended in the last Staff report dated 2.19.2009, and I find no discussion or evidence to the contrary to support the above approach to deny the parking.

"... the site is narrow and steep so the parking for the second unit has been located within the 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 limitations depriving the applicant of the ability to provide an affordable unit in compliance with the Fairfax Housing Element and the California Government Code " Staff report 2/19/2009.

"17.052.020 Parking Exceptions

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

Parking spaces in the side yard setback do require a variance. Multiple variances for side yard setback parking spaces have been made to date, and multiple variances have been made to grant wider driveways to accommodate the parking spaces.

Previous side yard setback variances for approved second units:

Nov 20, 2003: 88 Dominga

April 17, 2008: 17 Vista Way

Sept 18, 2008: 130 Mono Avenue *** Front and side yard setback variances ***

Town Meeting Transcripts – all references to our second unit parking.

2.19.2009 Planning Commission meeting

5.6.2009 Appeal to Council

7.1.2009 Appeal to Council

2/19/09 – PC Meeting

Time on CD 1:16:45

Ketchum “and the parking just to review, the parking requirements just for this house without the unit would be how many spaces?”

Linda “three”

Ketchum “three spaces, refresh my recollection, was there any kind of parking variance granted for approving the house?”

Linda “No, the guest space for the main house can be in tandem with one of the spaces for the house so the driveway parking in tandem with one of the garage spaces counts as the guest space for the main residence”

Ketchum “ok, thank you”

Time on CD 1:29:35

Ketchum/Lax? “the other question I had, I was looking at the parking arrangement that is shown here, as I recall with the garage there’s two spaces, and then you have quite a bit of space in between...”

John “there are five spaces”

Ketchum “right, and the way you’re showing it now I thought the garage was going to provide space for storage... and wouldn’t it?”

John “no, I still intend to put two vehicles in there”

Ketchum “But one of the spaces is for the second unit and one of the spaces is for the house?”

John “that’s the way it’s shown, yeah. So actually the requirement for a second unit is one space, but this second unit will actually get two spaces and the house will have three so...”

Ketchum “but as I, going back, the close up doesn’t show the property line but the three spaces that are in tandem with the garage are, split the property line, is that correct? The property line isn’t the road edge, the property line is on the hill.”

John “always, usually the property line is about ten feet back from the tarmac.”

Ketchum “ok, so these three spaces are partially on private...”

John “town right of way”

Ketchum "ok, I think those are the questions I had"

1:35:45

Ketchum "a quick question for staff, one of the variances is an encroachment variance, because the deck will actually be in town right of way"

Staff "correct, the parking for the unit"

Ketchum "how would that work if the town were to widen the road at some point?"

Staff "well if the road had to be widened they would lose their parking. Doubting my own memory here but I thought I put a condition in there that if parking was removed they would have to eliminate the unit, because it would no longer comply with the code. You know, chances of us widening the road, its doubtful that the city is ever going to be able to afford to be widening any of our roads unless technology changes drastically."

Please remove all reference to precedential treatment for parking. They are not true, and were not items of opposition at previous meetings. You have presented no supporting history or evidence to support these statements. Again if this statement is incorrect let me know.

Excavation statement - please correct the excavation statement. 1 cubic yard of soil will be removed to drill one pier for the parking deck, and it will be re distributed on site.

(G) Negative impacts.

Please remove the precedent statement that the parking in the public roadway easement would create a precedent.

Please remove the statement that the second unit has the potential to create a precedent for four story structures in the hillside area. In the previous 2009 public meetings on our second unit no evidence was presented to support that statement, and it was not the previous opinion of the Planning Staff in the 2009 staff reports when approval was recommended.

This second unit is the infill of an existing space under an existing house. It will have no visual impact. The portion of the existing structure where the unit will be in filled is under the 35 foot height , and currently has two stories above. We are not constructing a fourth story. The space, the entry, and the storage room floor already exist. The variance is for long time residents of Fairfax to utilize an existing space to provide to provide legal, Leed certified, safe affordable housing with off street parking in Fairfax. This argument was supported by the 126 signatures we presented in 2009 from residents of Fairfax, and is completely supported by the 2010 Town Housing Element. It is also supported by the multiple variances granted previous second unit applicants.

Fourth stories exist all over Fairfax. It is documented that there are three to four hundred illegal non conforming second units within the Town . Illegal units are generally built in spaces under or above existing approved residential spaces. Given that a good percentage of the housing is located on hillsides similar to our house fourth story illegal units already exist, and the Town of

Fairfax has made no effort to penalize existing units for their non compliance with the Town ordinances, and the Housing code.

We sincerely believe we can work this out with the Town of Fairfax, and Staff will support this additional parking space and second unit, especially with the 2014 State Housing deadline of 172 housing units fast approaching. When approved this Leed Certified second unit will certainly be a positive step forward in fulfilling Fairfax's Housing Element goals and the Town's commitment to producing affordable dwelling units. Please correct the above items. I would be willing to meet with the Planning Department, and the Affordable Housing Committee so that we can proceed to approve this valuable second unit.

Best regards,

John Owens & Diana Dullaghan



K E S T E N - L A W

400 Redhill Avenue, San Anselmo, CA 94960
Reply to: POB 426, San Anselmo, CA 94979
Telephone: (415) 457-2668 Fax: (415) 457-2848

October 4, 2013

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

Re: Application for second unit 177 Frustuck Avenue Fairfax.

Dear Mr. Moore,

As a long time Fairfax Resident, property owner and former Planning Commissioner I have been asked to review the Staff Report of 8.15.13. and the plans for the project dated 6.3.13. I have also read John Owens rebuttal of the Staff Report. As a former volunteer I am not a great reader of plans. However it is obvious that the description of the parking layout in the beginning of the Staff report does not match the parking layout clearly set out on page A1.3 of the plans.

I am aware that there are distinct differences between second unit parking and regular house parking. Therefore it is very difficult to follow the arguments in the Staff Report regarding the Town Parking Code and possible precedents when the description of the parking layout is incorrect.

I agree with Mr. Owens that the statement "Therefore, allowing a private property owner to capture portions of the public easement for private use does set a precedent that needs to be carefully considered by the Commission" is ridiculous. Half of the residents of Fairfax have captured the public easement for their existing parking.

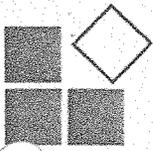
There are errors and inaccuracies in the Staff Report and I believe they should be corrected prior to any public meeting (and I am not qualified to review or point out all the errors). As a former volunteer Planning Commissioner and a layperson I relied heavily on the Staff Report and the advice of the Planning Staff. I am not qualified to point out all the errors in the Staff Report. I agree with Mr. Owens that a public meeting is not the venue to correct errors in the Staff Report.

I am available to answer questions should you feel the need.

Sincerely,

Steven Kesten

SMK: ns



Date: November 5, 2013

To: Jim Moore, Planning Director
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930

From: Pete Gang, AIA, LEED-AP
Common Sense Design
145 Keller Street
Petaluma, CA 94952

Re: **Owens-Dullaghan Residential Second Unit Use Permit, Application #13-31**
177 Frustuck Avenue
Fairfax, CA 94930
APN: 003-193-02

Dear Mr. Moore,

I am writing this letter in strong support of the above-referenced application. I am the design architect for the existing primary residence at the above-referenced address. The following views are founded on over 25 years of experience in residential design, planning, permitting, and construction matters in Marin and Sonoma Counties.

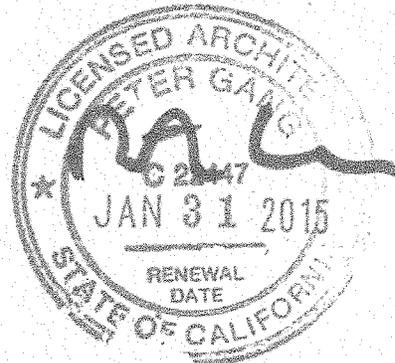
It is abundantly clear that hair-splitting discussions of **parking layouts and building heights** contained in the August 15, 2013 Staff Report are of secondary importance. The real issue here is the legal requirement incumbent on all California jurisdictions to meet **annual affordable housing goals**. Although the Town of Fairfax has repeatedly failed to achieve its objectives, it continues to act in blatant disregard for its own Adopted Housing Element which calls for modification, exceptions, and revisions of applicable parking and other standards as needed to achieve its affordable housing objectives.

In the face of the Town's abysmal failure to meet its own **affordable housing objectives**, it instead responds to a well-designed proposal for an affordable second unit with distortions and misrepresentations in a thinly-veiled effort to kill the project. The August 15, 2013 Staff Report starts with blatant mis-statements and proceeds with discussions of incorrect precedents based on those mis-statements. In an individual, this type of bias and inattention would be cause for a psychiatric evaluation.

I urge you and your Staff to correct the false statements contained in the Staff Report [see John Owens's August 22nd letter for the needed corrections] and offer your well-deserved approval to a project that provides some much-needed affordable housing in the Town of Fairfax.

Sincerely,

Pete Gang, AIA, LEED-AP



Common
Sense
Design

145 Keller Street
Petaluma, CA
94952

(707) 762-4838

Architecture
& Planning

November 5, 2013

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

603 Redbud Way
Nevada City
CA 95959

Re: 177 Frustuck Second Unit

Dear Mr. Moore,

As a former Fairfax Planning Commissioner, and a retired Town and Country Planner with a long history of working with affordable housing. I am appalled by the 8.15.13. Staff report recommending denial of the Owens Leed certified affordable second unit. This energy efficient second unit is the very housing the Town is asking for in the 2010 Housing Element. I served on the Fairfax Planning Commission and the Affordable Housing Committee and I am well aware of the looming deadline of 172 housing units by 2014. We spoke many times that exceptions would have to be made for Fairfax to produce affordable housing with the almost non existing building land, and the existing strange mix of housing. Working at Marin Housing Authority I witnessed all the housing programs of the County of Marin, the Cities, and the Towns. I was always greatly frustrated that Fairfax never implemented any programs that actually produced affordable housing. For that reason I left the affordable housing committee.

My wife and I legalized an existing second unit in our home at 130 Mono Avenue under the 2008 second unit amnesty program. It took us two and a half years, \$50,000, and all of my forty years experience in affordable housing to struggle to legalize the unit before my retirement.

Exceptions will have to be made to produce affordable housing. Great exceptions were made for us. We needed variances as the Owens's do. We were also required by code to fire sprinkle the entire house and second unit. At my suggestion you brought forward a motion to the Town Council to eliminate the requirement of fire sprinklers in the legalizing of second units. This required a modification of the State Fire Code, and was firmly opposed by the Ross Valley Fire Marshall. The motion was passed unanimously and my wife and I saved approximately \$50,000 in the process of legalizing our second unit. Upon legalizing the unit we sold our home for at least \$200,000 more than other homes

in our neighborhood because of the legal second unit. The current owner has the benefit of \$1500 a month income from a legal safe second unit. The Town has the benefit of one affordable housing unit towards the 172 unit requirement. Because of the lack of housing programs in the past few years my wife and I may have been the only people to have benefited from the fire sprinkler change. We certainly were the only beneficiaries by the time I left the Planning Commission.

I have read the Staff report. I have read the plans. I have read Mr. Owens rebuttal of the report, and I agree there are mistakes and inaccuracies in the report. My experience in Town Planning and as a volunteer Planning Commissioner supports Mr. Owens opinion that the errors and inaccuracies need to be corrected before any public meeting. I had experience as a Town Planner and a General Contractor. Yet most Planning Commissioners have little experience of reading plans and negotiating the Town Code. They rely heavily on the accuracy of the Staff Report to produce findings. The Staff Report needs to be corrected before a public meeting.

Exceptions will have to be made for affordable housing to be produced. The Owens unit is a Leed certified sustainable second unit that will not be visible from any location, and the application includes two off street parking spaces. Approval of this unit can only benefit the Town of Fairfax. I strongly support the application.

Sincerely

Peter Ramsay



John Owens <johnowensservices@gmail.com>

Fwd: second units

1 message

Peter Ramsay <petramsay@gmail.com>

Wed, Aug 28, 2013 at 11:00 AM

To: John Owens <johnowensservices@gmail.com>

Begin forwarded message:

From: Jim Moore <jmoore@townoffairfax.org>

Date: August 28, 2013 8:44:43 AM PDT

To: Peter Ramsay <petramsay@gmail.com>

Subject: RE: second units

Hi Peter,

It's good to hear from you! Hope all is well.

Thank you for the letter. I will have Linda put a copy in John Owens file.

About John's property: his application is unlike your property's second unit in that it involves the fourth floor issue. As you know, staff doesn't set policy, nor does the PC, the TC does. Which means it comes down to political will. Time will tell.

BTW: Last night we had a joint meeting of the TC/PC/GPIC/AHC where they approved the draft amendments to the 2010 Housing Element that we've been working on for months. Now it goes back to HCD (from whom we have "tacit" approval from for our edits). Next, as time permits, we will start to redraft the amnesty ordinance - hopefully with some relaxation on sprinklers and parking requirements where it makes sense.

Best Regards,

Jim

James M. Moore

August 19, 2013

Peter Ramsay
603 Redbud Way
Nevada City
CA 95959

Jim Moore , Planning Director and
Town Council, Town of Fairfax, CA.

More Second Units Required for the Town of Fairfax and HCD (Housing Element)

Greetings from Nevada City , where most recent approvals of SFD's have **required** a second unit as part of the development to meet the need for affordable housing.

As you know I was strongly in favor of the amnesty and pushed hard for relaxation of the fire sprinkler requirement to encourage more proposals. I understood at the time that if this was not sufficient incentive the Town would consider further relaxations of parking or other requirements. Always in my mind was the overwhelming need for safe and affordable small units and the need for more than 20 new legal second units to meet the ABAG/ HCD target..

I believe that the superior results from the amnesties in the City of Mill Valley and the unincorporated County show what might be achieved with the appropriate political will in Fairfax. You can do it!! But only by thinking outside the box.

I voted in favor of the Owens proposal when it was first presented and rejection sent a very negative message about the commitment of the Town to its affordable housing goals and its many renters. Not only does this invite penalties from the State but it may also provoke the sort of lawsuit that forced Corte Madera to change its policy some years ago.

In case of fears about precedent, any exception to normal requirements could be framed as part of the amnesty needed to meet current needs. The Owens proposal is similar to mine in that no addition is required to the existing structure because the space already exists : it needs only a change of use and an additional parking space.

Creating legal second units is not very affordable for the owner /developer. In my case the space cost me about \$90K in 1996 and the remodel cost about \$80K. The finished unit added about \$200K to the sale price in 2011. This tells me that the town needs to welcome and celebrate each and every proposal that is brought forward.

I continue to hope that the Town will live up to the Fair in Fairfax.

Sincerely

Peter Ramsay. Former Planning Commissioner

