

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

September 4 , 2013

TOWN OF FAIRFAX

SEP 05 2013

RECEIVED

Hand Delivery

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

Re: Lack of interest from the Town of Fairfax  
177 Frustuck Avenue affordable second unit application

Dear Mr. Moore and Ms. Neal:

I have extensively read the adopted 2010 Housing Element of the Town of Fairfax ( not yet approved by State of California HCD). I have read the rejection letter Dec. 13. 2012 from the California Department of Housing and Community Development of the 2010 Housing Element ( currently not approved by the State of California HCD ). I extensively read the 2006 Housing Element ( rejected by HCD ). I am aware that the Town is rushing to get the 2010 Housing Element modified and approved by year end to avoid losing \$300,000 in funding.

It is my understanding that the California Department of Housing and Community Development is requiring the Town of Fairfax to produce 172 Housing Units during the 2007 to 2014 Planning period. That number is comprised of the 64 units not created prior to 2007 and 108 Units required by 2014. A large majority of those housing units are to be very low, or low income housing. The Town has produced only a handful of dwellings to date that would count towards this very large quota.

**"Policy LU-8.1.2: The Town of Fairfax shall permit construction of well-designed second units consistent with state law, zoning requirements, and building codes, parking requirements and street capacity." 2010 Housing element**

**"Goal H-6: Create additional opportunities for the development of Accessory Dwelling Units.**

***Objective H-6.1: At least 27 units of well-designed, legal, second ADUs in all residential neighborhoods; applying reasonable parking and street capacity standards. 2010 HE.***

**"The Town will monitor the production of housing through an annual report to the Town Council on the units constructed each year and their affordability by income level. If the number of affordable units falls short of the expected number the Town will adopt additional revisions to the Zoning Ordinance and additional incentives to increase the likelihood that the new construction objectives contained in the 2010 Housing Element can be achieved." 2010 HE**

**“Housing Element in order to accommodate our current needs. In short, many of the policies and objectives proved unattainable. As a result, the 2010 Housing Element update must take into account the shortcomings of the 2006 Housing Element to ensure that the Town of Fairfax does not face fines and penalties from State and federal agencies, or challenges from housing advocacy groups.” 2010 HE**

It is clearly stated in the 2010 Housing Element that the Town will be subject to fines, penalties, and possible lawsuits if it does not produce housing. Fairfax is the longest outstanding Town in Marin County that has not had a Housing Element approved by the HCD, and in all probability is the Town that has produced the least amount of affordable housing. It is fiscally and morally irresponsible to the Citizens of Fairfax to deny our affordable second unit. Please correct me if I am wrong.

The proposed affordable second unit at 177 Frustuck Avenue will be a LEED certified energy efficient well designed infill second unit. It will be located in an existing space below an existing residence with twice the required off street parking.

8.15. 2013 Staff Report. “ Design Standards – 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.”

We believe it meets all the criteria of the 2006, and 2010 Housing Elements and should be a proud addition to the Fairfax Housing stock. We know that the Town has made exceptions and variances for at least three affordable second units ( details included in the 8.8.2013 letter to Planning Commission ).

I am greatly surprised that the Town of Fairfax has acted to the contrary of all the above stated goals. Prior to an inaccurate Staff Report which was a rush to deny the unit we had not been contacted by the Planning Department to try and resolve any issues to move forward and get this unit approved. None of the Planning Commissioners requested to visit the site or ask any questions. We have not been contacted by the Affordable Housing Committee, or the General Plan Implementation Committee. Yesterday 9.3.2013 you agreed to meet with me if I signed a Memorandum of Understanding that said the “Staff” was not responsible for it’s planning interpretations , and on the understanding that you would not change anything in the Staff Report that I have pointed out mistakes and inaccuracies in my last two letters. That is not exactly an Olive Branch of an offer.

We have lived in Fairfax for at least twenty two years. I have followed the Planning Agenda for ten years. The approval and permitting of our original home took more than two years. It was

completed in three and a half years. A recent home destroyed by fire on Valley Road took more than two years to have the rebuild plans approved. It could be at least four years before that house is complete. Peter Ramsay former Planning Commissioner and 40 year veteran of affordable housing took two and a half years to legalize his second unit. The Second Unit Amnesty program has never produced results ( Ramsay may be the only one). If the Town really intended to legalize second units the Second Unit Amnesty program should have been revamped years ago to produce housing for the 2014 deadline. It is too late to start now. The Town is sixteen months away from the Housing Element deadline to build 172 dwelling units. Given the long average time to process applications I very much doubt that the Town could break ground on any Housing Units, or legalize any existing units to meet the 172 unit quota before the end of 2014. The Town of Fairfax at this very moment has the opportunity to approve a LEED Certified Affordable Second Unit which can be complete within six months of approval, and count towards that quota. We are willing to meet with the Planning Department, and any of the above Committees to move this application forward. I will address your 9.3.13. offer of meeting , and the Memorandum of Understanding in my next letter. Your 9.3.13. comment "If you go forward" is offensive. We would not have paid \$3685 in Planning Application fees and submitted fourteen sets of plans if our intention was not to move forward. We have always intended to move forward and complete this second unit. We simply asked for the application to be temporarily taken off the Planning Commission 8.15.13. agenda because the Staff Report contained mistakes and inaccuracies.

Best regards,

John Owens & Diana Dullaghan

The image shows two handwritten signatures in black ink. The top signature is for John Owens, and the bottom signature is for Diana Dullaghan. Both signatures are written in a cursive, flowing style.

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

September 5, 2013

TOWN OF FAIRFAX

SEP 05 2013

RECEIVED

Hand Delivery

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

Re: September 3<sup>rd</sup> offer to meet.

Dear Mr. Moore:

Thank you for your e mail offer to meet in person to discuss the Staff Report of 8.15.13. I have read the attached Memorandum of Understanding . "information or advice given by staff at the front counter, on the telephone, or via e mails is a response to preliminary and or general questions, and represents only a staff person's good faith interpretation of how applicable codes would apply to the facts presented as he or she understands them"

This paragraph deals with preliminary conversations at the front counter , or on the phone by "front counter staff", and a signature of the MOU verifies that preliminary information is exactly that.

However the second paragraph discusses that such preliminary information cannot be relied upon as a final determination from the Town which can only be obtained after submission of a complete project application and it's consideration of the appropriate reviewing body or official. ( eg. Planning Director or Building Inspector).

The Town has received from us a complete application and completed a review of the application. I assume that as the Director of Planning and Building Services you are the "official" who has the authority to review or supervise the review of our application. I believe a full review had taken place before the Staff Report was written. Mistakes were made that we would like corrected. The MOU does not apply at this stage in our application, and it is only for " front counter staff" and not the "official" who has completed a thorough review of the application.

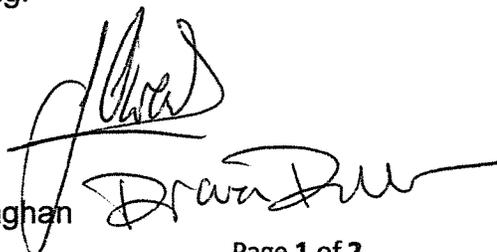
I would be willing to meet with you to discuss our application and would sign the MOU with a note that the MOU covers meetings with "front counter staff" giving preliminary information, but not Town Officials who have completed a thorough review.

Your statement that if I disagree with the Staff Report, I am welcome to take it up at the Planning Commission is inappropriate. The Planning Commission is a group of volunteers who are not qualified to discuss any changes to the Staff Report.

We have always intended to move forward with this application, and never withdrew the application. We simply pointed out that the Staff Report had errors, and we wanted errors corrected before proceeding.

Best regards,

John Owens & Diana Dullaghan





John Owens &lt;johnowensservices@gmail.com&gt;

**177 Frustruck Application**

1 message

**Jim Moore** <jmoore@townoffairfax.org>  
To: John Owens <johnowensservices@gmail.com>  
Cc: Linda Neal <lneal@townoffairfax.org>

Thu, Sep 5, 2013 at 1:30 PM

Mr. Owens,

We are in receipt of your most recent letters dated September 4 and 5, and have this response to offer.

(1) If you would like to meet and discuss your application and/or our staff report please signed the MOU and return it to us. We will gladly schedule an appointment after you have done so. We are particularly interested in your signing the MOU so that there is not any confusion on your part as to staff's role in the processing of your application.

(2) We have read your prior letters claiming that our staff report has errors, and do not agree. We stand by the staff report, and with all respect, it's staff's report not yours. As we have said to you, it is your right to make your case about our assumptions to the Planning Commission. Contrary to your statements about the Planning Commission being a group of "volunteers who are not qualified to discuss any changes to the staff report" you could not be more mistaken. That is exactly what is discussed and reviewed at every meeting.

(3) The dispute you have with us about the parking requirements for a second unit on your property with relation to your previous entitlements also fly in the face the Town's Code. You are not entitled to play a shell game with two covered parking spaces out of the public right-of-way that are required for the main house.

(4) I am well aware of what our 2010 Housing Element is about; including the recent amendments passed last week at a joint meeting of the Town Council, Planning Commission, General Plan Implementation Committee, and the Affordable Housing Committee. In fact, you seem again to be most confused about what the State requires Towns like Fairfax to do. Contrary to your statement in the most recent letter – the State does not require "the Town of Fairfax to produce" a single unit; only to zone for units to be created where appropriate.

(5) You also seem not to understand that you have, by your own design and previous arguments, three floors already on-site: and that was exactly the issue that prohibited you from winning an appeal.

As you know, I was not employed with the Town of Fairfax when your previous application went before the Planning Commission. I was however, working here during the appeal and remember that event well. Particularly, the part about a fourth floor – that you seem to conveniently forget. As we see it, that is the main issue you will still be faced with.

Having said all this, we would respectfully request that you accept the fact that you do not have staff's support for an application that is identical to one that was previously denied by both the Planning Commission and the

• Town Council under appeal.

Please let us know when you would like to be on a future Planning Commission agenda.

Best Regards,

Jim

James M. Moore

Director of Planning & Building Services

Town of Fairfax

142 Bolinas Road

Fairfax, CA 94930

Phone: (415) 453-1584

Fax: (415) 453-1618

***"The Life of the Land is Perpetuated in Righteousness"***

*(Ua mau ke ea o ka aina i ka pono* has been the motto of Hawaii for over 160 years)